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SENATE BILL 5606

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State of Washington

57th Legislature

2001 Regular Session

By Senators Kohl-Welles and Long; by request of Department of Social and Health Services

Read first time 01/29/2001. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to making the background check requirements for  
2 department of social and health services' employees consistent with  
3 background check requirements for service providers, agencies, and  
4 entities serving vulnerable adults and children; amending RCW  
5 9.96A.020, 41.06.475, 43.20A.020, 43.20A.710, 43.43.830, 43.43.832,  
6 72.05.440, and 72.23.035; reenacting and amending RCW 74.15.030;  
7 creating a new section; and declaring an emergency.

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

9 **Sec. 1.** RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read  
10 as follows:

11 (1) Subject to the exceptions in subsections (3) (~~and (4)~~)  
12 through (5) of this section, and unless there is another provision of  
13 law to the contrary, a person is not disqualified from employment by  
14 the state of Washington or any of its counties, cities, towns,  
15 municipal corporations, or quasi-municipal corporations, nor is a  
16 person disqualified to practice, pursue or engage in any occupation,  
17 trade, vocation, or business for which a license, permit, certificate  
18 or registration is required to be issued by the state of Washington or  
19 any of its counties, cities, towns, municipal corporations, or quasi-

1 municipal corporations solely because of a prior conviction of a  
2 felony. However, this section does not preclude the fact of any prior  
3 conviction of a crime from being considered.

4 (2) A person may be denied employment by the state of Washington or  
5 any of its counties, cities, towns, municipal corporations, or quasi-  
6 municipal corporations, or a person may be denied a license, permit,  
7 certificate or registration to pursue, practice or engage in an  
8 occupation, trade, vocation, or business by reason of the prior  
9 conviction of a felony if the felony for which he or she was convicted  
10 directly relates to the position of employment sought or to the  
11 specific occupation, trade, vocation, or business for which the  
12 license, permit, certificate or registration is sought, and the time  
13 elapsed since the conviction is less than ten years. However, for  
14 positions in the county treasurer's office, a person may be  
15 disqualified from employment because of a prior guilty plea or  
16 conviction of a felony involving embezzlement or theft, even if the  
17 time elapsed since the guilty plea or conviction is ten years or more.

18 (3) A person is disqualified for any certificate required or  
19 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior  
20 guilty plea or the conviction of a felony involving sexual exploitation  
21 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44  
22 RCW where a minor is the victim, promoting prostitution of a minor  
23 under chapter 9A.88 RCW, or a violation of similar laws of another  
24 jurisdiction, even if the time elapsed since the guilty plea or  
25 conviction is ten years or more.

26 (4) A person is disqualified from employment by school districts,  
27 educational service districts, and their contractors hiring employees  
28 who will have regularly scheduled unsupervised access to children,  
29 because of a prior guilty plea or conviction of a felony involving  
30 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses  
31 under chapter 9A.44 RCW where a minor is the victim, promoting  
32 prostitution of a minor under chapter 9A.88 RCW, or a violation of  
33 similar laws of another jurisdiction, even if the time elapsed since  
34 the guilty plea or conviction is ten years or more.

35 (5) The department of social and health services is exempt from the  
36 requirements of subsections (1) and (2) of this section when employing  
37 a person who, in the course of his or her employment, will or may have  
38 unsupervised access to children, juveniles as defined in RCW 72.05.020,

1 vulnerable adults as defined in RCW 43.20A.020, or individuals with  
2 developmental disabilities or mental illness.

3 (6) Subsections (3) and (4) of this section only apply to a person  
4 applying for a certificate or for employment on or after July 25, 1993.

5 **Sec. 2.** RCW 41.06.475 and 1993 c 281 s 38 are each amended to read  
6 as follows:

7 (1) The Washington personnel resources board shall adopt rules,  
8 consistent with RCW 43.20A.710, and in cooperation with the secretary  
9 of social and health services, (~~for~~) concerning the background  
10 investigation of (~~persons being considered for state employment in~~  
11 positions directly responsible for the supervision, care, or treatment  
12 of children or developmentally disabled persons)) current employees or  
13 applicants seeking or being considered for any position that will or  
14 may allow unsupervised access, as defined in RCW 43.43.830, to  
15 children, juveniles, vulnerable adults, or individuals with  
16 developmental disabilities or mental illness.

17 (2) The rules shall:

18 (a) Specify that the department of social and health services shall  
19 conduct a background investigation, including a conviction record check  
20 through the Washington state patrol in accordance with chapter 10.97  
21 RCW, on all current department of social and health services'  
22 employees, volunteers and students, and all applicants who are being  
23 considered for any existing or new position under this act;

24 (b) Require that the background investigation conducted on  
25 applicants or current department of social and health services'  
26 employees be equivalent to the investigation required to be conducted  
27 for any service provider, entity, agency, facility, organization or  
28 business, their staff, and volunteers and students. The secretary of  
29 social and health services shall use the information solely to  
30 determine the character, suitability, and competence of the applicant  
31 to have unsupervised access to children, juveniles, vulnerable adults,  
32 or individuals with developmental disabilities or mental illness;

33 (c) Require that the disqualification of an applicant or current  
34 department of social and health services' employee from unsupervised  
35 access to children, juveniles, vulnerable adults, or individuals with  
36 developmental disabilities or mental illness is based on a standard  
37 equivalent to the disqualification requirements for service providers  
38 who are not department of social and health services' employees;

1 (d) Specify that one year from the effective date of this act, the  
2 department of social and health services will initiate background check  
3 investigations for all current department of social and health  
4 services' employees, students, and volunteers who hold positions  
5 covered by this section and have not previously had a department of  
6 social and health services' background check investigation under this  
7 act;

8 (e) Specify that any current employee or applicant seeking or being  
9 considered for employment with the department of social and health  
10 services in a position covered under this act who has resided in the  
11 state less than three years prior to the application for the position  
12 will be required to be fingerprinted for the purpose of conducting a  
13 background check through the federal bureau of investigation;

14 (f) Describe the actions the department of social and health  
15 services will take if, as a result of a background investigation, a  
16 current permanent employee is not eligible to have unsupervised access  
17 to children, juveniles, vulnerable adults, or individuals with  
18 developmental disabilities or mental illness;

19 (g) Ensure that if an employee's position is changed due to a  
20 reduction in force or reorganization, and the new position includes  
21 unsupervised access to children, juveniles, vulnerable adults, or  
22 individuals with developmental disabilities or mental illness, the  
23 department of social and health services will conduct a background  
24 investigation unless a background investigation has previously been  
25 conducted in accordance with this section;

26 (h) Require that information obtained from a background  
27 investigation will be private in accordance with chapter 10.97 RCW,  
28 Washington state criminal records privacy act, and be handled under the  
29 confidentiality requirements of the Washington state patrol and the  
30 federal bureau of investigation; and

31 (i) Specify that department of social and health services'  
32 employees who work for more than one administration, or those that  
33 transfer from one administration to another, will be responsible to  
34 meet the background investigation standards of the administration with  
35 the more rigorous requirement.

36 **Sec. 3.** RCW 43.20A.020 and 1987 c 283 s 1 are each amended to read  
37 as follows:

38 As used in this chapter, unless the context indicates otherwise:

1       (1) "Applicant" means applicant as defined in RCW 43.43.830.

2       (2) "Background investigation" means a review of conviction  
3 records, and may include: Review of in-state and/or out-of-state  
4 disciplinary board final decisions; civil adjudication records; records  
5 of protection orders issued against the applicant; department findings;  
6 license status; and pending charges.

7       (3) "Department" means the department of social and health  
8 services.

9       ~~((2) "Secretary" means the secretary of the department of social~~  
10 ~~and health services.~~

11       ~~(3))~~ (4) "Department finding" means a determination by the  
12 department that an individual has physically, sexually, or verbally  
13 abused, neglected, or exploited a child, juvenile, vulnerable adult, or  
14 individual with a developmental disability or mental illness.

15       (5) "Deputy secretary" means the deputy secretary of the department  
16 of social and health services.

17       ~~((4))~~ (6) "Disciplinary board final decision" means the same as  
18 defined in RCW 43.43.830 and includes the following additional  
19 professions:

20       (a) Physicians' assistant;  
21       (b) Nursing assistant registered or certified;  
22       (c) Occupational therapist;  
23       (d) Recreational therapist and certified therapeutic specialists;  
24       (e) Speech therapist; and  
25       (f) Forensic therapist;

26       (7) "Juvenile" means a person under the age of twenty-one who has  
27 been sentenced to a term of confinement under the supervision of the  
28 department under RCW 13.40.185.

29       (8) "License status" means the current and past history of an  
30 individual's professional license, certification, or registration or  
31 the current and past history of a license issued to a service provider,  
32 organization, agency, or other entity to provide care or service to  
33 children, juveniles, vulnerable adults, or individuals with  
34 developmental disabilities or mental illness.

35       (9) "Overpayment" means any department payment or department  
36 benefit to a recipient or to a vendor in excess of that to which the  
37 recipient or vendor is entitled by law, rule, or contract, including  
38 amounts in dispute pending resolution.

1       (~~(5)~~) (10) "Secretary" means the secretary of the department of  
2 social and health services.

3       (11) "Vendor" means an entity that provides goods or services to or  
4 for clientele of the department and that controls operational  
5 decisions.

6       (12) "Vulnerable adult, or an individual with a developmental  
7 disability or mental illness" means the same as those terms are defined  
8 in RCW 43.43.830 and chapter 74.34 RCW, except for agencies certified  
9 under chapter 70.96A RCW, vulnerable adult means individuals admitted  
10 for detoxification treatment or who are involuntarily committed under  
11 chapter 70.96A RCW.

12       **Sec. 4.** RCW 43.20A.710 and 2000 c 87 s 2 are each amended to read  
13 as follows:

14       (1) The secretary shall (~~(investigate the conviction records,~~  
15 ~~pending charges or disciplinary board final decisions of)~~) conduct  
16 background investigations for:

17       (a) (~~(Persons being considered for state employment in positions~~  
18 ~~directly responsible for the supervision, care, or treatment of)~~) Any  
19 current employee or applicant seeking or being considered for any  
20 position with the department who will or may have unsupervised access  
21 to children, juveniles, vulnerable adults, or individuals with mental  
22 illness or developmental disabilities according to rules adopted under  
23 RCW 41.06.475;

24       (b) (~~(Persons being considered for state employment in positions~~  
25 ~~involving unsupervised access to vulnerable adults)~~) Any current  
26 employee or applicant seeking or being considered for any position with  
27 the department who will or may have unsupervised access to children,  
28 juveniles, vulnerable adults, or individuals with developmental  
29 disabilities or mental illness to conduct comprehensive assessments,  
30 financial eligibility determinations, licensing and certification  
31 activities, investigations, surveys, or case management; or for state  
32 positions otherwise required by federal law to meet employment  
33 standards according to rules adopted under RCW 41.06.475;

34       (c) Individual providers who are paid by the state and providers  
35 who are paid by home care agencies to provide in-home services  
36 involving unsupervised access to persons with physical, mental, or  
37 developmental disabilities or mental illness, or to vulnerable adults

1 as defined in chapter 74.34 RCW, including but not limited to services  
2 provided under chapter 74.39 or 74.39A RCW; and

3 (d) Individuals or businesses or organizations for the care,  
4 supervision, case management, or treatment of children, developmentally  
5 disabled persons, or vulnerable adults, including but not limited to  
6 services contracted for under chapter 18.20, 18.48, 70.127, 70.128,  
7 72.36, or 74.39A RCW or Title 71A RCW.

8 (2) The investigation may include an examination of state and  
9 national criminal identification data. The secretary shall use the  
10 information solely (~~for the purpose of determining~~) to determine the  
11 character, suitability, and competence of (~~these~~) applicants to have  
12 unsupervised access to children, juveniles, vulnerable adults, or  
13 individuals with developmental disabilities or mental illness.

14 (3) An individual provider or home care agency provider who has  
15 resided in the state less than three years before applying for  
16 employment involving unsupervised access to a vulnerable adult as  
17 defined in chapter 74.34 RCW must be fingerprinted for the purpose of  
18 investigating conviction records both through the Washington state  
19 patrol and the federal bureau of investigation. This subsection  
20 applies only with respect to the provision of in-home services funded  
21 by medicaid personal care under RCW 74.09.520, community options  
22 program entry system waiver services under RCW 74.39A.030, or chore  
23 services under RCW 74.39A.110. However, this subsection does not  
24 supersede RCW 74.15.030(2)(b).

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

35 (5) The secretary shall provide the results of the background check  
36 on individual providers to the persons hiring them or to their legal  
37 guardians, if any, for their determination of the character,  
38 suitability, and competence of the applicants. If the person elects to  
39 hire or retain an individual provider after receiving notice from the

1 department that the applicant has a conviction for an offense that  
2 would disqualify the applicant from having unsupervised access to  
3 persons with physical, mental, or developmental disabilities or mental  
4 illness, or to vulnerable adults as defined in chapter 74.34 RCW, then  
5 the secretary shall deny payment for any subsequent services rendered  
6 by the disqualified individual provider.

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

10 **Sec. 5.** RCW 43.43.830 and 1999 c 45 s 5 are each amended to read  
11 as follows:

12 Unless the context clearly requires otherwise, the definitions in  
13 this section apply throughout RCW 43.43.830 through ~~((43.43.840))~~  
14 43.43.842.

15 (1) "Applicant" means:

16 (a) Any prospective employee or student who will or may have  
17 unsupervised access to children under sixteen years of age ~~((or~~  
18 ~~developmentally disabled persons or))~~, juveniles, vulnerable adults, or  
19 individuals with developmental disabilities or mental illness during  
20 the course of his or her employment or involvement with the business or  
21 organization;

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

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

32 (2) "Business or organization" means a business or organization  
33 licensed in this state, any agency of the state, or other governmental  
34 entity, that educates, trains, treats, supervises, houses, or provides  
35 recreation to ~~((developmentally disabled persons,))~~ vulnerable adults,  
36 ~~((or))~~ individuals with developmental disabilities or mental illness,  
37 children under sixteen years of age, or juveniles, including but not

1 limited to public housing authorities, school districts, and  
2 educational service districts.

3 (3) "Civil adjudication" means a specific court finding of sexual  
4 abuse or exploitation or physical abuse in a dependency action under  
5 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In  
6 the case of vulnerable adults, civil adjudication means a specific  
7 court finding of abuse or financial exploitation in a protection  
8 proceeding under chapter 74.34 RCW. It does not include administrative  
9 proceedings. The term "civil adjudication" is further limited to court  
10 findings that identify as the perpetrator of the abuse a named  
11 individual, over the age of eighteen years, who was a party to the  
12 dependency or dissolution proceeding or was a respondent in a  
13 protection proceeding in which the finding was made and who contested  
14 the allegation of abuse or exploitation.

15 (4) "Conviction record" means "conviction record" information as  
16 defined in RCW 10.97.030(3) relating to a crime against children or  
17 other persons committed by either an adult or a juvenile. It does not  
18 include a conviction for an offense that has been the subject of an  
19 expungement, pardon, annulment, certificate of rehabilitation, or other  
20 equivalent procedure based on a finding of the rehabilitation of the  
21 person convicted, or a conviction that has been the subject of a  
22 pardon, annulment, or other equivalent procedure based on a finding of  
23 innocence. It does include convictions for offenses for which the  
24 defendant received a deferred or suspended sentence, unless the record  
25 has been expunged according to law.

26 (5) "Crime against children or other persons" means a conviction of  
27 any of the following offenses: Aggravated murder; first or second  
28 degree murder; first or second degree kidnaping; first, second, or  
29 third degree assault; first, second, or third degree assault of a  
30 child; first, second, or third degree rape; first, second, or third  
31 degree rape of a child; first or second degree robbery; first degree  
32 arson; first degree burglary; first or second degree manslaughter;  
33 first or second degree extortion; indecent liberties; incest; vehicular  
34 homicide; first degree promoting prostitution; communication with a  
35 minor; unlawful imprisonment; simple assault; sexual exploitation of  
36 minors; first or second degree criminal mistreatment; child abuse or  
37 neglect as defined in RCW 26.44.020; first or second degree custodial  
38 interference; first or second degree custodial sexual misconduct;  
39 malicious harassment; first, second, or third degree child molestation;

1 first or second degree sexual misconduct with a minor; patronizing a  
2 juvenile prostitute; child abandonment; promoting pornography; selling  
3 or distributing erotic material to a minor; custodial assault;  
4 violation of child abuse restraining order; child buying or selling;  
5 prostitution; felony indecent exposure; criminal abandonment; or any of  
6 these crimes as they may be renamed in the future.

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

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

14 (8) "Disciplinary board final decision" means any final decision  
15 issued by a disciplining authority under chapter 18.130 RCW or the  
16 secretary of the department of health for the following businesses or  
17 professions:

- 18 (a) Chiropractic;
- 19 (b) Dentistry;
- 20 (c) Dental hygiene;
- 21 (d) Massage;
- 22 (e) Midwifery;
- 23 (f) Naturopathy;
- 24 (g) Osteopathic medicine and surgery;
- 25 (h) Physical therapy;
- 26 (i) Physicians;
- 27 (j) Practical nursing;
- 28 (k) Registered nursing; and
- 29 (l) Psychology.

30 "Disciplinary board final decision," for real estate brokers and  
31 salespersons, means any final decision issued by the director of the  
32 department of licensing for real estate brokers and salespersons.

33 (9) "Unsupervised" means not in the presence of:

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

36 (b) Any relative or guardian of any of the children or  
37 (~~developmentally disabled persons~~) individuals with developmental  
38 disabilities or vulnerable adults to which the applicant has access

1 during the course of his or her employment or involvement with the  
2 business or organization.

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

8 (11) "Financial exploitation" means the illegal or improper use of  
9 a vulnerable adult or that adult's resources for another person's  
10 profit or advantage.

11 (12) "Agency" means any person, firm, partnership, association,  
12 corporation, or facility which receives, provides services to, houses,  
13 or otherwise cares for vulnerable adults, children, juveniles, or  
14 individuals with developmental disabilities or mental illness.

15 (13) "Juvenile" means juvenile as defined in RCW 43.20A.020.

16 **Sec. 6.** RCW 43.43.832 and 2000 c 87 s 1 are each amended to read  
17 as follows:

18 (1) The legislature finds that businesses and organizations  
19 providing services to children, ~~((developmentally disabled persons,~~  
20 ~~and)) juveniles, vulnerable adults, or individuals with developmental  
21 disabilities or mental illness need adequate information to determine  
22 which employees or licensees to hire or engage. The legislature  
23 further finds that many ~~((developmentally disabled))~~ individuals  
24 ~~((and)) with developmental disabilities or mental illness, or other~~  
25 vulnerable adults desire to hire their own employees directly and also  
26 need adequate information to determine which employees or licensees to  
27 hire or engage. Therefore, the Washington state patrol criminal  
28 identification system shall disclose, upon the request of a business or  
29 organization as defined in RCW 43.43.830, ~~((a developmentally disabled~~  
30 ~~person)) an individual with a developmental disability or mental~~  
31 illness, or a vulnerable adult as defined in RCW 43.43.830 or his or  
32 her guardian, an applicant's record for convictions of offenses against  
33 children or other persons, convictions for crimes relating to financial  
34 exploitation, but only if the victim was a vulnerable adult,  
35 adjudications of child abuse in a civil action, the issuance of a  
36 protection order against the respondent under chapter 74.34 RCW, and  
37 disciplinary board final decisions and any subsequent criminal charges~~

1 associated with the conduct that is the subject of the disciplinary  
2 board final decision.

3 (2) The legislature also finds that the state board of education  
4 may request of the Washington state patrol criminal identification  
5 system information regarding a certificate applicant's record for  
6 convictions under subsection (1) of this section.

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

13 (4) The legislature further finds that the department of social and  
14 health services must ~~((consider the information listed in subsection  
15 (1) of this section in the following circumstances))~~ conduct a  
16 background investigation in accordance with RCW 43.20A.710 and follow  
17 the rules adopted under RCW 41.06.475 when:

18 (a) ~~((When))~~ Considering ((persons)) any current employee or other  
19 applicant for state employment in ((positions directly responsible for  
20 the supervision, care, or treatment of)) any position that will or may  
21 have unsupervised access to children, juveniles, vulnerable adults, or  
22 individuals with mental illness or developmental disabilities; and

23 (b) ~~((When))~~ Considering ((persons)) any current employee or other  
24 applicant for any state position((s involving)) that will or may allow  
25 unsupervised access to children, juveniles, vulnerable adults, or  
26 individuals with developmental disabilities or mental illness to  
27 conduct comprehensive assessments, financial eligibility  
28 determinations, licensing and certification activities, investigations,  
29 surveys, or case management; or for state positions otherwise required  
30 by federal law to meet employment standards((+)).

31 ~~((+e))~~ (5) The department of social and health services must  
32 consider the information listed in subsection (1) of this section when:

33 (a) Licensing agencies or facilities with individuals in positions  
34 directly responsible for the care, supervision, or treatment of  
35 children, ((developmentally disabled persons)) juveniles, ((or))  
36 vulnerable adults, ((including but not limited to agencies or  
37 facilities licensed under chapter 74.15 or 18.51 RCW)) or individuals  
38 with developmental disabilities or mental illness;

1       (~~(d) When~~) (b) Contracting with individuals or businesses or  
2 organizations for the care, supervision, case management, or treatment  
3 of children, (~~developmentally disabled persons~~) juveniles, (or)  
4 vulnerable adults, (~~including but not limited to services contracted~~  
5 ~~for under chapter 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or~~  
6 ~~Title 71A RCW~~) or individuals with developmental disabilities or  
7 mental illness; and

8       (~~(e) When~~) (c) Individual providers are paid by the state or  
9 providers are paid by home care agencies to provide in-home services  
10 involving unsupervised access to persons with physical, mental, or  
11 developmental disabilities or mental illness, or to vulnerable adults  
12 as defined in (~~chapter 74.34~~) RCW 43.43.830, including but not  
13 limited to services provided under chapter 74.39 or 74.39A RCW.

14       (~~(5)~~) (6) Whenever a state conviction record check is required by  
15 state law, persons may be employed or engaged as volunteers or  
16 independent contractors on a conditional basis pending completion of  
17 the state background investigation. Whenever a national criminal  
18 record check through the federal bureau of investigation is required by  
19 state law, a person may be employed or engaged as a volunteer or  
20 independent contractor on a conditional basis pending completion of the  
21 national check.

22       (7) The Washington personnel resources board shall adopt rules in  
23 accordance with RCW 41.06.475 to accomplish the purposes of this  
24 subsection as it applies to state employees.

25       (~~(6)~~) (8)(a) For purposes of facilitating timely access to  
26 criminal background information and to reasonably minimize the number  
27 of requests made under this section, recognizing that certain health  
28 care providers change employment frequently, health care facilities  
29 may, upon request from another health care facility, share copies of  
30 completed criminal background inquiry information.

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

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

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

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

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

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

24 ~~((7))~~ (9) If a federal bureau of investigation check is required  
25 in addition to the state background check by the department of social  
26 and health services, an applicant who is not disqualified based on the  
27 results of the state background check shall be eligible for a one  
28 hundred twenty day provisional approval to hire, pending the outcome of  
29 the federal bureau of investigation check. The department may extend  
30 the provisional approval until receipt of the federal bureau of  
31 investigation check. If the federal bureau of investigation check  
32 disqualifies an applicant, the department shall notify the requestor  
33 that the provisional approval to hire is withdrawn and the applicant  
34 may be terminated.

35 **Sec. 7.** RCW 72.05.440 and 1998 c 269 s 16 are each amended to read  
36 as follows:

37 (1) A person shall not be eligible for an employed or volunteer  
38 position within the juvenile rehabilitation administration or any

1 agency with which it contracts in which the person may have regular or  
2 unsupervised access, as defined in RCW 43.43.830, to juveniles under  
3 the jurisdiction of the department of social and health services or the  
4 department of corrections if the person has been convicted of one or  
5 more of the following:

6 (a) Any felony sex offense;

7 (b) Any violent offense, as defined in RCW 9.94A.030.

8 (2) Subsection (1) of this section applies only to persons hired by  
9 the department or any of its contracting agencies after September 1,  
10 1998.

11 (3) Any person employed by the juvenile rehabilitation  
12 administration, or by any contracting agency, who may have regular or  
13 unsupervised access, as defined in RCW 43.43.830, to juveniles under  
14 the jurisdiction of the department or the department of corrections and  
15 who is convicted of an offense set forth in this section after  
16 September 1, 1998, shall report the conviction to his or her  
17 supervisor. The report must be made within seven days of conviction.  
18 Failure to report within seven days of conviction constitutes  
19 misconduct under Title 50 RCW.

20 (4) For purposes of this section "may have regular access to  
21 juveniles" means access for more than a nominal amount of time.

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

23 **Sec. 8.** RCW 72.23.035 and 1989 c 334 s 12 are each amended to read  
24 as follows:

25 (1) In consultation with law enforcement personnel and other state  
26 agencies, the secretary shall have the power and duty to investigate  
27 the ((conviction record and the protection proceeding record  
28 information under chapter 43.43 RCW of each prospective employee of))  
29 background of any current employee or applicant, as defined in RCW  
30 43.20A.020, seeking or being considered for any position that will or  
31 may allow unsupervised access, as defined in RCW 43.43.830, to clients  
32 residing in a state hospital.

33 (2) The background investigation that is conducted must be the same  
34 as described in RCW 43.20A.710 and shall meet the rules adopted in  
35 accordance with RCW 41.06.475.

36 **Sec. 9.** RCW 74.15.030 and 2000 c 162 s 20 and 2000 c 122 s 40 are  
37 each reenacted and amended to read as follows:

1 The secretary shall have the power and it shall be the secretary's  
2 duty:

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

12 (2) In consultation with the children's services advisory  
13 committee, and with the advice and assistance of persons representative  
14 of the various type agencies to be licensed, to adopt and publish  
15 minimum requirements for licensing applicable to each of the various  
16 categories of agencies to be licensed.

17 The minimum requirements shall be limited to:

18 (a) The size and suitability of a facility and the plan of  
19 operation for carrying out the purpose for which an applicant seeks a  
20 license;

21 (b) The character, suitability, and competence of an agency and  
22 other persons associated with an agency directly responsible for the  
23 care and treatment of, or in positions that will or may allow  
24 unsupervised access to, children, expectant mothers, or  
25 ((developmentally disabled persons)) individuals with developmental  
26 disabilities. In consultation with law enforcement personnel, the  
27 secretary shall investigate the conviction record or pending charges  
28 and dependency record information under chapter 43.43 RCW of each  
29 agency and its staff seeking licensure or relicensure. No unfounded  
30 allegation of child abuse or neglect as defined in RCW 26.44.020 may be  
31 disclosed to a child-placing agency, private adoption agency, or any  
32 other provider licensed under this chapter. In order to determine the  
33 suitability of applicants for an agency license, licensees, their  
34 employees, and other persons who have unsupervised access to children  
35 in care, and who have not resided in the state of Washington during the  
36 three-year period before being authorized to care for children shall be  
37 fingerprinted. The fingerprints shall be forwarded to the Washington  
38 state patrol and federal bureau of investigation for a criminal history  
39 records check. The fingerprint criminal history records checks will be

1 at the expense of the licensee except that in the case of a foster  
2 family home, if this expense would work a hardship on the licensee, the  
3 department shall pay the expense. The licensee may not pass this cost  
4 on to the employee or prospective employee, unless the employee is  
5 determined to be unsuitable due to his or her criminal history record.  
6 The secretary shall use the information solely for the purpose of  
7 determining eligibility for a license and for determining the  
8 character, suitability, and competence of those persons or agencies,  
9 excluding parents, not required to be licensed who are authorized to  
10 care for children, expectant mothers, and (~~developmentally disabled~~  
11 ~~persons~~) individuals with developmental disabilities. Criminal  
12 justice agencies shall provide the secretary such information as they  
13 may have and that the secretary may require for such purpose;

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

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

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

23 (f) The financial ability of an agency to comply with minimum  
24 requirements established pursuant to chapter 74.15 RCW and RCW  
25 74.13.031; and

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

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

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

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

10 (6) To prescribe the procedures and the form and contents of  
11 reports necessary for the administration of chapter 74.15 RCW and RCW  
12 74.13.031 and to require regular reports from each licensee;

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

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

21 (9) To consult with public and private agencies in order to help  
22 them improve their methods and facilities for the care of children,  
23 expectant mothers, and ~~((developmentally disabled persons))~~ individuals  
24 with developmental disabilities.

25 NEW SECTION. **Sec. 10.** The Washington personnel resources board  
26 and the department of social and health services must adopt emergency  
27 rules to implement this act to protect the health and safety of the  
28 vulnerable clients of the department of social and health services.

29 NEW SECTION. **Sec. 11.** This act is necessary for the immediate  
30 preservation of the public peace, health, or safety, or support of the  
31 state government and its existing public institutions, and takes effect  
32 immediately.

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