

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6095

63rd Legislature
2014 Regular Session

Passed by the Senate March 10, 2014
YEAS 49 NAYS 0

President of the Senate

Passed by the House March 5, 2014
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6095** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6095

AS AMENDED BY THE HOUSE

Passed Legislature - 2014 Regular Session

State of Washington 63rd Legislature 2014 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Kline, and Roach)

READ FIRST TIME 01/29/14.

1 AN ACT Relating to background checks for persons who will have
2 access to children or vulnerable adults; amending RCW 43.43.842,
3 43.20A.710, and 74.13.700; and adding a new section to chapter 74.15
4 RCW.

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

6 **Sec. 1.** RCW 43.43.842 and 2007 c 387 s 4 are each amended to read
7 as follows:

8 (1)(a) The secretary of social and health services and the
9 secretary of health shall adopt additional requirements for the
10 licensure or relicensure of agencies, facilities, and licensed
11 individuals who provide care and treatment to vulnerable adults,
12 including nursing pools registered under chapter 18.52C RCW. These
13 additional requirements shall ensure that any person associated with a
14 licensed agency or facility having unsupervised access with a
15 vulnerable adult shall not be the respondent in an active protective
16 order under RCW 74.34.130, nor have been: (i) Convicted of a crime
17 against persons as defined in RCW 43.43.830, except as provided in this
18 section; (ii) convicted of crimes relating to financial exploitation as

1 defined in RCW 43.43.830, except as provided in this section; or (iii)
2 found in any disciplinary board final decision to have abused a
3 vulnerable adult under RCW 43.43.830.

4 (b) A person associated with a licensed agency or facility who has
5 unsupervised access with a vulnerable adult shall make the disclosures
6 specified in RCW 43.43.834(2). The person shall make the disclosures
7 in writing, sign, and swear to the contents under penalty of perjury.
8 The person shall, in the disclosures, specify all crimes against
9 children or other persons, all crimes relating to financial
10 exploitation, and all crimes relating to drugs as defined in RCW
11 43.43.830, committed by the person.

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

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

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

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

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

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

32 (f) The department of social and health services reviewed the
33 employee's otherwise disqualifying criminal history through the
34 department of social and health services' background assessment review
35 team process conducted in 2002, and determined that such employee could
36 remain in a position covered by this section; or

37 (g) The otherwise disqualifying conviction or disposition has been
38 the subject of a pardon, annulment, or other equivalent procedure.

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

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

18 **Sec. 2.** RCW 43.20A.710 and 2012 c 164 s 505 are each amended to
19 read as follows:

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

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

30 (b) Individual providers who are paid by the state and providers
31 who are paid by home care agencies to provide in-home services
32 involving unsupervised access to persons with physical, mental, or
33 developmental disabilities or mental illness, or to vulnerable adults
34 as defined in chapter 74.34 RCW, including but not limited to services
35 provided under chapter 74.39 or 74.39A RCW; and

36 (c) Individuals or businesses or organizations for the care,
37 supervision, case management, or treatment of children, persons with

1 developmental disabilities, or vulnerable adults, including but not
2 limited to services contracted for under chapter 18.20, 70.127, 70.128,
3 72.36, or 74.39A RCW or Title 71A RCW.

4 (2) The secretary shall require a fingerprint-based background
5 check through both the Washington state patrol and the federal bureau
6 of investigation as provided in RCW 43.43.837. Unless otherwise
7 authorized by law, the secretary shall use the information solely for
8 the purpose of determining the character, suitability, and competence
9 of the applicant.

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

21 (4) Long-term care workers, as defined in RCW 74.39A.009, who are
22 hired after January 7, 2012, are subject to background checks under RCW
23 74.39A.056, except that the department may require a background check
24 at any time under RCW 43.43.837. For the purposes of this subsection,
25 "background check" includes, but is not limited to, a fingerprint check
26 submitted for the purpose of investigating conviction records through
27 both the Washington state patrol and the federal bureau of
28 investigation.

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

1 (6) The secretary shall provide the results of the state background
2 check on long-term care workers, including individual providers, to the
3 persons hiring them or to their legal guardians, if any, for their
4 determination of the character, suitability, and competence of the
5 applicants. If the person elects to hire or retain an individual
6 provider after receiving notice from the department that the applicant
7 has a conviction for an offense that would disqualify the applicant
8 from having unsupervised access to persons with physical, mental, or
9 developmental disabilities or mental illness, or to vulnerable adults
10 as defined in chapter 74.34 RCW, then the secretary shall deny payment
11 for any subsequent services rendered by the disqualified individual
12 provider.

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

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

27 NEW SECTION. Sec. 3. A new section is added to chapter 74.15 RCW
28 to read as follows:

29 If an agency operating under contract with the children's
30 administration chooses to hire an individual that would be precluded
31 from employment with the department based on a disqualifying crime or
32 negative action, the department and its officers and employees have no
33 liability arising from any injury or harm to a child or other
34 department client that is attributable to such individual.

35 **Sec. 4.** RCW 74.13.700 and 2013 c 162 s 2 are each amended to read
36 as follows:

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

3 (a) Deny or delay a license or approval of unsupervised access to
4 children to an individual solely because of a crime or civil infraction
5 involving the individual or entity revealed in the background check
6 process that (~~is not on the secretary's list of crimes and negative~~
7 ~~actions and is not related~~) does not fall within the categories of
8 disqualifying crimes described in the adoption and safe families act of
9 1997 or does not relate directly to child safety, permanence, or well-
10 being; or

11 (b) Delay the issuance of a license or approval of unsupervised
12 access to children by requiring the individual to obtain records
13 relating to a crime or civil infraction revealed in the background
14 check process that (~~is not on the secretary's list of crimes and~~
15 ~~negative actions and is not related~~) does not fall within the
16 categories of disqualifying crimes described in the adoption and safe
17 families act of 1997 or does not relate directly to child safety,
18 permanence, or well-being (~~and is not a permanent disqualifier~~
19 ~~pursuant to department rule~~)).

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

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

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

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

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