

# HOUSE BILL REPORT

## SSB 5605

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As of Second Reading

**Title:** An act relating to aligning the office of the superintendent of public instruction's background check authority with that of the department of early learning.

**Brief Description:** Aligning the office of the superintendent of public instruction's background check authority with that of the department of early learning.

**Sponsors:** Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators Walsh and Billig; by request of Superintendent of Public Instruction).

**Brief History:**

**Committee Activity:**

None.

**Brief Summary of Substitute Bill**

- Extends record check requirements for employees and contractors of specified education entities to persons who will have regularly scheduled unsupervised access to developmentally disabled persons.
- Authorizes certain education entities to use the record check process required for education employees and contractors for any prospective volunteer who will have regularly scheduled unsupervised access to children under 18 years of age or developmentally disabled persons.
- Allows certain individuals who have completed fingerprint background checks with the Office of Superintendent of Public Instruction (OSPI) to submit these results to the Department of Early Learning to meet its background check requirements.
- Allows the OSPI to consider founded reports of child abuse or neglect when determining whether a certificated school employee lacks good moral character or personal fitness.
- Establishes new fee provisions for record checks, and creates a nonappropriated K-12 criminal background check account in the custody of the State Treasurer.

**Staff:** Ethan Moreno (786-7386) and Megan Wargacki (786-7194).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Superintendent of Public Instruction Record Checks.

School districts, educational service districts (ESDs) the Washington State Center for Childhood Deafness and Hearing Loss (CDHL), the Washington State School for the Blind (School for the Blind) as well as contractors of these entities that hire employees who will have regularly scheduled and unsupervised access to children must perform record checks on prospective employees before they are hired. The record checks must be conducted through a criminal identification system of the Washington State Patrol (WSP) and through the Federal Bureau of Investigation (FBI), and must include a fingerprint check using a complete Washington State Criminal Identification Fingerprint Card.

*Record Check Costs.* School districts, the CDHL, the School for the Blind, and contractors hiring the employees are authorized to determine who is responsible for the costs associated with a record check.

*Copies.* Upon completion of the record check, the requesting entity must provide a copy of the report to the applicant.

*Rules.* The Superintendent of Public Instruction (SPI) is charged with adopting rules to implement record checks. The rules must include written procedures providing specified education entities access to information obtained in accordance with a required record check, and written procedures limiting access to a record check database of the SPI to individuals of specified education entities who process record check information.

### Department of Early Learning Record Checks.

Individuals applying for first-time agency licenses, all new employees, and other persons not previously qualified by the Department of Early Learning (DEL) to have unsupervised access to children in care must be fingerprinted and obtain a criminal history record check. The DEL may use the fingerprint criminal history record check information solely for the purpose of determining an individual's eligibility or suitability. The applicant must pay the cost of the WSP criminal background history check, including cost to obtain fingerprints, and a fee to the DEL for administration.

*Sharing Information.* The DEL and the Department of Social and Health Services (DSHS) share federal fingerprint-based background check in order to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person.

Revocation or Suspension of a Certificate. The certificate or permit of school or school district employee may be revoked or suspended for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state. A reprimand may be issued as an alternative to suspension or revocation of a certificate or permit.

Reports of Child Abuse or Neglect. Upon receipt of a report concerning the possible occurrence of abuse or neglect, a law enforcement agency or the DSHS must investigate and provide a report.

"Founded" means it is more likely than not that child abuse or neglect did occur based on available information. "Unfounded" means that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the DSHS to determine whether the alleged child abuse did or did not occur. Screened-out report means a report of alleged child abuse or neglect that the DSHS has determined does not rise to the level of a credible report of abuse or neglect and is not referred for investigation. Inconclusive means the determination following an investigation by the DSHS, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

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### **Summary of Bill:**

#### Record Checks for Employees, Volunteers, and Contractors of Education Entities.

Record check requirements for employees and contractors of specified education entities who will have regularly scheduled unsupervised access to children are extended to employees and contractors who will have regularly scheduled unsupervised access to developmentally disabled persons.

The following entities and their contractors may use the record check process required for specified education employees and contractors for any prospective volunteer who will have regularly scheduled unsupervised access to children under 18 years of age or developmentally disabled persons:

- school districts
- ESDs;
- the CDHL;
- the School for the Blind;
- schools funded by Federal Bureau of Indian Affairs;
- charter schools; and
- schools that are the subject of a state-tribal education compact.

The record check requirements apply if the unsupervised access will or may involve the following:

- groups of five or fewer children under 12 years of age;
- groups of three or fewer children between 12 and 18 years of age; or
- developmentally disabled persons.

*Record Check Costs.* The cost of record checks must include the fees established by the WSP and the FBI for the criminal history background checks, a fee paid to the SPI for administrative costs, and other applicable fees for obtaining the fingerprints.

*Copies.* Regarding copies of record check reports to applicants, the requesting entity may provide a copy of the report to the applicant at the applicant's request.

*Rules.* Provisions governing the record check rules that the SPI must adopt relating information access by education entities, and limited access to persons who process record

check information, are modified to include charter schools and state-tribal education compact schools.

Establishment of the K-12 Criminal Background Check Account.

The K-12 criminal background check account is created as a nonappropriated account in the custody of the State Treasurer. Expenditures from the account may be made only for specified record check duties. Only the SPI or the Superintendent's designee may authorize expenditures from the account.

Revocation or Suspension of a Certificate. A school or school district employee's certificate or permit may be revoked or suspended for lack of good moral character or personal fitness, rather than immorality. In determining whether a certificated employee lacks good moral character or personal fitness, the OSPI may consider founded reports of child abuse or neglect made by the DSHS.

The DSHS must furnish the OSPI with reports of founded findings of child abuse or neglect in a timely fashion, but must not disclose screened-out, inconclusive, or unfounded reports. If the DSHS inadvertently furnishes the OSPI with a screened-out, inconclusive, or unfounded report, OSPI must:

- not consider the information contained in the reports for any purpose;
- notify the DSHS of the violation;
- notify the subject of the reports at his or her last known address of the DSHS violation; and
- destroy the improperly disclosed reports.

Record Check Requirements. Individuals, who have completed a fingerprint background check as required by the OSPI and have been continuously employed by the same school district or ESD, can meet the DEL record check requirements by providing a true and accurate copy of their WSP and FBI background check report results to the DEL. A school district or the ESD may also provide an affidavit to the DEL that the individual has completed a record check and has been authorized to work. The DEL may require that additional background checks be completed that do not require additional fingerprinting and may charge a fee for these additional background checks.

The SPI must use the fingerprint criminal history record check information solely for the purpose of determining eligibility for a certificate of a person applying for employment in the common schools.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) None.

(Opposed) None.

**Persons Testifying:** None.

**Persons Signed In To Testify But Not Testifying:** None.