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**SENATE BILL 5533**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Braun, Darneille, and Zeiger

AN ACT Relating to certificates of parental improvement; amending RCW 74.13.700; reenacting and amending RCW 28A.400.303 and 74.13.020; adding new sections to chapter 74.13 RCW; adding a new section to chapter 18.20 RCW; and adding a new section to chapter 18.51 RCW.

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

**Sec.**  RCW 28A.400.303 and 2017 3rd sp.s. c 33 s 1 and 2017 3rd sp.s. c 6 s 220 are each reenacted and amended to read as follows:

(1) School districts, educational service districts, the Washington state center for childhood deafness and hearing loss, the state school for the blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to children or developmentally disabled persons shall require a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation before hiring an employee. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The requesting entity may provide a copy of the record report to the applicant at the applicant's request. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two years, the district, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or contractor may waive the requirement. Except as provided in subsection (2) of this section, the district, pursuant to chapter 41.59 or 41.56 RCW, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or contractor hiring the employee shall determine who shall pay costs associated with the record check.

(2) Federal bureau of Indian affairs-funded schools may use the process in subsection (1) of this section to perform record checks for their employees and applicants for employment.

(3)(a) School districts, educational service districts, the Washington state center for childhood deafness and hearing loss, the state school for the blind, federal bureau of Indian affairs-funded schools, charter schools established under chapter 28A.710 RCW, schools that are the subject of a state-tribal education compact under chapter 28A.715 RCW, and their contractors may use the process in subsection (1) of this section to perform record checks for any prospective volunteer who will have regularly scheduled unsupervised access to children under eighteen years of age or developmentally disabled persons, during the course of his or her involvement with the school or organization under circumstances where access will or may involve the following:

(i) Groups of five or fewer children under twelve years of age;

(ii) Groups of three or fewer children between twelve and eighteen years of age; or

(iii) Developmentally disabled persons.

(b) For purposes of (a) of this subsection, "unsupervised" means not in the presence of:

(i) Another employee or volunteer from the same school or organization; or

(ii) Any relative or guardian of any of the children or developmentally disabled persons to which the prospective employee or volunteer has access during the course of his or her involvement with the school or organization.

(4) School districts, educational service districts, the Washington state center for childhood deafness and hearing loss, the state school for the blind, federal bureau of Indian affairs-funded schools, charter schools established under chapter 28A.710 RCW, schools that are the subject of a state-tribal education compact under chapter 28A.715 RCW, and their contractors may not deny a prospective volunteer solely because of a founded finding of abuse or neglect involving the individual revealed in the record check or a court finding that the individual's child was dependent pursuant to chapter 13.34 RCW when that founded finding or court finding is accompanied by a certificate of parental improvement as defined in chapter 74.13 RCW related to the same incident.

(5) Individuals who hold a valid portable background check clearance card issued by the department of children, youth, and families consistent with RCW 43.216.270 can meet the requirements in subsection (1) of this section by providing a true and accurate copy of their Washington state patrol and federal bureau of investigation background report results to the office of the superintendent of public instruction.

((~~(5)~~)) (6) The cost of record checks must include: The fees established by the Washington state patrol and the federal bureau of investigation for the criminal history background checks; a fee paid to the superintendent of public instruction for the cost of administering this section and RCW 28A.195.080 and 28A.410.010; and other applicable fees for obtaining the fingerprints.

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

(1) The department shall develop and implement a process by which an individual with a founded finding of child abuse or neglect as defined in RCW 26.44.020 or an individual whose child was found by a court to be dependent pursuant to chapter 13.34 RCW may petition the department for issuance of a certificate of parental improvement.

(2) The department shall respond to a certificate of parental improvement request and notify the individual making the request of the department's determination to issue or deny that request within sixty days.

(3) The department may not issue a certificate of parental improvement to any individual if:

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

(b) The applicant has any conviction or pending criminal action for:

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

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

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

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

(v) Any of the following felony offenses:

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

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

(C) Manslaughter in the first or second degree;

(D) Indecent liberties if committed by forcible compulsion;

(E) Kidnapping in the second degree;

(F) Arson in the second degree;

(G) Extortion in the first degree;

(H) Robbery in the second degree;

(I) Drive-by shooting; and

(J) Vehicular homicide; or

(vi) Any out-of-state, federal, or state conviction for a felony offense that is comparable to an offense listed in this subsection (3)(b).

(4) The department shall consider the following when determining whether to issue a certificate of parental improvement:

(a) Documentation of any founded finding of child abuse or neglect and the underlying documentation the department relied upon to make that finding;

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

(c) Referral history alleging child abuse or neglect against the applicant;

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

(e) Whether a court made a finding that the applicant's child was dependent pursuant to chapter 13.34 RCW, the length of time elapsed since that dependency court process was dismissed, and the outcome of the dependency court process including whether the child was returned to the applicant's care;

(f) Any documentation that the applicant successfully addressed the circumstances that led to an administrative finding of child abuse or neglect, including but not limited to: A declaration by the applicant; recent assessments or evaluations; completion or progress toward completion of recommended court ordered treatment, services, or programs;

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

(h) Results of a Washington state patrol criminal history and federal background check;

(i) Personal and professional references from employers, professionals, and agencies familiar with the applicant who can address the applicant's current character; and

(j) Any education, volunteer work, employment history, or community involvement of the applicant.

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

(1) A person who applies for a certificate of parental improvement pursuant to section 2 of this act has the right to seek review of the department's denial of this certificate request as provided in this section.

(2) Within thirty calendar days after the department has notified the applicant that the department is denying the applicant's request for a certificate of parental improvement pursuant to section 2 of this act, the applicant may request that the department review this determination. The applicant's request for department review must be made in writing. The written notice provided by the department denying an applicant's request for a certificate of parental improvement must include at least the following information in plain language:

(a) The reason or reasons for the department's denial of an applicant's request for issuance of a certificate of parental improvement following a child abuse or neglect finding; and

(b) That the applicant has a right to challenge the department's decision not to issue a certificate of parental improvement following a child abuse or neglect finding, including a description of the process for requesting a review of the department's decision to deny a request for a certificate of parental improvement.

(3) If an applicant does not request review according to the process provided in this subsection, the applicant may not further challenge the department's decision not to issue a certificate of parental improvement following a child abuse or neglect finding.

(4) Upon receipt of a written request for review, the department shall review and, if appropriate, may change its decision and issue a certificate of parental improvement. The secretary shall designate the appropriate staff to conduct this review. The review must be completed within thirty days after receiving the written request for departmental review. Upon completion of this review, the department shall notify the applicant in writing of the department's determination.

(5) If the department does not alter its decision not to issue a certificate of parental improvement following a child abuse or neglect finding, the applicant may request an adjudicative hearing to contest this decision. The adjudicative proceeding is governed by the administrative procedure act, chapter 34.05 RCW, and this section. The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination. If a request for an adjudicative proceeding is not made as provided in this section, the applicant may not further challenge the department's decision and has no right to departmental review, an adjudicative hearing, or judicial review of the determination not to issue a certificate of parental improvement.

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

(7) The department shall establish by administrative rule procedures for reviewing decisions not to issue certificates of parental improvement. The department may adopt additional rules to implement this section.

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

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

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

(b) Deny or delay a license or approval of unsupervised access to children to an individual solely because of a founded finding of abuse or neglect involving the individual revealed in the background check process or solely because the individual's child was found by a court to be dependent pursuant to chapter 13.34 RCW when that founded finding or court finding is accompanied by a certificate of parental improvement as defined in this chapter related to the same incident; or

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

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

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

(4) The department or its officers, agents, or employees may not be held civilly liable based upon its decision to grant or deny unsupervised access to children if the background information it relied upon at the time the decision was made did not indicate that child safety, permanence, or well-being would be a concern.

**Sec.**  RCW 74.13.020 and 2018 c 284 s 36, 2018 c 58 s 51, and 2018 c 34 s 3 are each reenacted and amended to read as follows:

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

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

(2) "Child" means:

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

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

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

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

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

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

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

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

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

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

(5) "Department" means the department of children, youth, and families.

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

(7) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

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

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

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

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

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

(13) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(14) "Secretary" means the secretary of the department.

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

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

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

(18) "Certificate of parental improvement" means a certificate issued under section 2 of this act to an individual with a founded finding of child abuse or neglect or a court finding that the individual's child was dependent pursuant to chapter 13.34 RCW.

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

Assisted living facilities, as defined in RCW 18.20.020, and nursing homes, as defined in RCW 18.51.010, may not deny a prospective volunteer solely because of a founded finding of abuse or neglect involving the individual revealed in the record check or a court finding that the individual's child was dependent pursuant to chapter 13.34 RCW when that founded finding or court finding is accompanied by a certificate of parental improvement as defined in this chapter related to the same incident.

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

Assisted living facilities, as defined in this chapter, may not deny a prospective volunteer solely because of a founded finding of abuse or neglect involving the individual revealed in the record check or a court finding that the individual's child was dependent pursuant to chapter 13.34 RCW when that founded finding or court finding is accompanied by a certificate of parental improvement as defined in chapter 74.13 RCW related to the same incident.

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

Nursing homes, as defined in this chapter, may not deny a prospective volunteer solely because of a founded finding of abuse or neglect involving the individual revealed in the record check or a court finding that the individual's child was dependent pursuant to chapter 13.34 RCW when that founded finding or court finding is accompanied by a certificate of parental improvement as defined in chapter 74.13 RCW related to the same incident.

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