

**WSR 21-20-097
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES**

[Filed October 1, 2021, 3:38 p.m., effective October 1, 2021, 3:38 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend chapters 110-04 and 110-06 WAC to allow the department of children, youth, and families (DCYF) to issue background check clearance authorizations before completing fingerprint-based background checks. Amend WAC 110-06-120 to remove certain crimes that disqualify a subject individual from authorization.

Citation of Rules Affected by this Order: Amending WAC 110-04-0040, 110-04-0080, 110-06-0040, 110-06-0046, and 110-06-120.

Statutory Authority for Adoption: RCW 43.216.065.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Proclamation of the Governor 20-05 declared a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-31 amends Proclamation 20-05 and waives and suspends fingerprint-based background checks before a person may be approved to have unsupervised access to children during the COVID-19 pandemic due to the potential risk of exposure to COVID-19 resulting from face-to-face contact in submitting fingerprints, limited access to fingerprinting as entities that receive and process fingerprints limit or suspend operations in order to limit exposure to COVID-19, and the unavailability of law enforcement agencies to process fingerprints during the pandemic. The ability to issue background check clearance authorizations before completing fingerprint-based background checks better enables DCYF to ensure the availability of child welfare service providers as well as stable and quality child care during the COVID-19 pandemic.

The amendment to WAC 110-06-120 temporarily removes crimes that account for 33 percent of family, friends, and neighbors being disqualified from participation in working connections child care. The amendment is in accord with the federal disqualifying crimes list, significantly increases the number of individuals who may provide care, and will not pose a safety risk for children in care.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 1, 2021.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-21-064, filed 10/11/19, effective 11/11/19)

WAC 110-06-0040 Background clearance requirements. This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals associated with early learning services applying for a first-time background check must complete the DCYF background check application process including, but not limited to:

- (a) Submitting a completed background check application;
- (b) Completing the required fingerprint process; and
- (c) Paying all required fees as provided in WAC 110-06-0044.

(2) All subject individuals qualified by the department to have unsupervised access to children in care who are renewing their applications must:

- (a) Submit the new background check application through DCYF;
- (b) Submit payment of all required fees as provided in WAC

110-06-0044; (())

(c) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed, or has not previously completed the fingerprint process required by this section.

(3) Each subject individual completing the DCYF background check process must disclose whether they have:

- (a) Been convicted of any crime;
- (b) Any pending criminal charges; and
- (c) Been subject to any negative action, as defined by WAC

110-06-0020.

(4) Subject individuals must not have unsupervised access to children in care unless they have obtained DCYF authorization under this chapter.

(5) Applicants may be approved to have unsupervised access to children before the fingerprint-based background check is conducted.

(6) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0046 Requirements for license-exempt in-home/relative providers. (1) The background check process must be completed for:

- (a) All license-exempt in-home/relative providers who apply to care for a WCCC consumer's child; and
- (b) Any individual sixteen years of age or older who is residing with a license-exempt in-home/relative provider when the provider

cares for the child in the provider's own home where the child does not reside.

(2) Additional background checks must be completed for individuals listed in subsection (1)(a) and (b) of this section when an individual sixteen years of age or older is newly residing with a license-exempt in-home/relative provider when the provider cares for the child in the provider's own home where the child does not reside.

(3) The background check process for license-exempt in-home/relative providers requires:

- (a) Submitting a completed background check application; and
- (b) Completing the required fingerprint process.

(4) Each subject individual completing the DCYF background check process must disclose:

- (a) Whether he or she has been convicted of any crime;
- (b) Whether he or she has any pending criminal charges; and
- (c) Whether he or she has been subject to any negative actions, as defined by WAC 110-06-0020.

(5) A subject individual must not have unsupervised access to children in care unless he or she has obtained DCYF background check clearance authorization under this chapter.

(6) Applicants may be approved to have unsupervised access to children before the fingerprint-based background check is conducted.

(7) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

~~((7))~~ (8) DCYF pays for the cost of the background check process. The fees include:

- (a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation and the DCYF fingerprint contractor; and
- (b) The DCYF administrative fee.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0120 Secretary's list (1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify ~~((him or her))~~ the individual from authorization to care for or have unsupervised access to children receiving early learning services.

(2) A subject individual's conviction for any crime listed in column (b) in the table below will disqualify ~~((him or her))~~ the individual from authorization to care for or have unsupervised access to children receiving early learning services for a period of five years from the date of conviction.

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
((Bail jumping))	Custodial sexual misconduct
	Extortion 2
Child buying or selling	((Forgery))
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	((Identity theft))
Controlled substance homicide	Leading organized crime
Criminal mistreatment	((Malicious explosion 3))
Custodial interference	((Malicious mischief))
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	((Patronizing a prostitute))
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	((Prostitution))
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	((Theft))
Malicious explosion 2	((Theft-welfare))
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism	