

December 15, 2011

# Report to the Legislature

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## Background Check Sharing

### House Bill 1903



Washington State Department of  
**Early Learning**

## **Background**

The 2011 Washington State Legislature session passed **House Bill 1903**, modifying the Department of Early Learning's (DEL) Background Check system. These changes include a portable background check registry that will create efficiencies in providers' hiring process and require a national criminal data review for all new employees in licensed/certified child care settings.

The bill also requested DEL, the Office of Superintendent of Public Instruction (OSPI) and Educational Service Districts (ESDs) develop a proposal to coordinate background checks to avoid duplication of efforts, reduce costs and to streamline background checks. Currently, employees who work for school districts in child care settings are required to undergo two background checks. Currently, OSPI/ESDs conduct a criminal background check, but do not perform the additional searches completed by DSHS nor the child abuse and neglect check performed by DEL staff.

These agencies serve a concurrent purpose – to protect the health and safety of children in Washington state. DEL, OSPI and ESDs met to discuss the similar and distinctly different policies and practices. The targeted programs for the background checks are licensed or certified by DEL, which includes some but not necessarily all preschool programs operated by the ESDs.

Early Childhood Education and Assistance Program (ECEAP) and Head Start are provided through school districts and ESDs and through contracted programs in Washington. When ECEAP or Head Start services are provided through a school district or an ESD at a location that is also a licensed/certified child care facility, duplicate background checks occur.

## **Current Process**

Beginning July 1, 2012, DEL and OSPI will have the same initial process for new applicants who request unsupervised access to children in care. New applicants will be subject to the examination of state and national criminal data via Washington State Patrol (WSP) and Federal Bureau of Investigation (FBI), which will include a fingerprint-based check.

Each ESD has a WSP- FBI fingerprint scanner and conducts a fingerprint scan whenever a new employee is hired. OSPI completes criminal background checks for the ESDs. Conviction information is sent to the hiring superintendent. If there is no conviction information, OSPI "clears" the individual in their database, which is shared with the ESDs. The database displays two options for the ESDs to view – "cleared" and "rap-sheet."

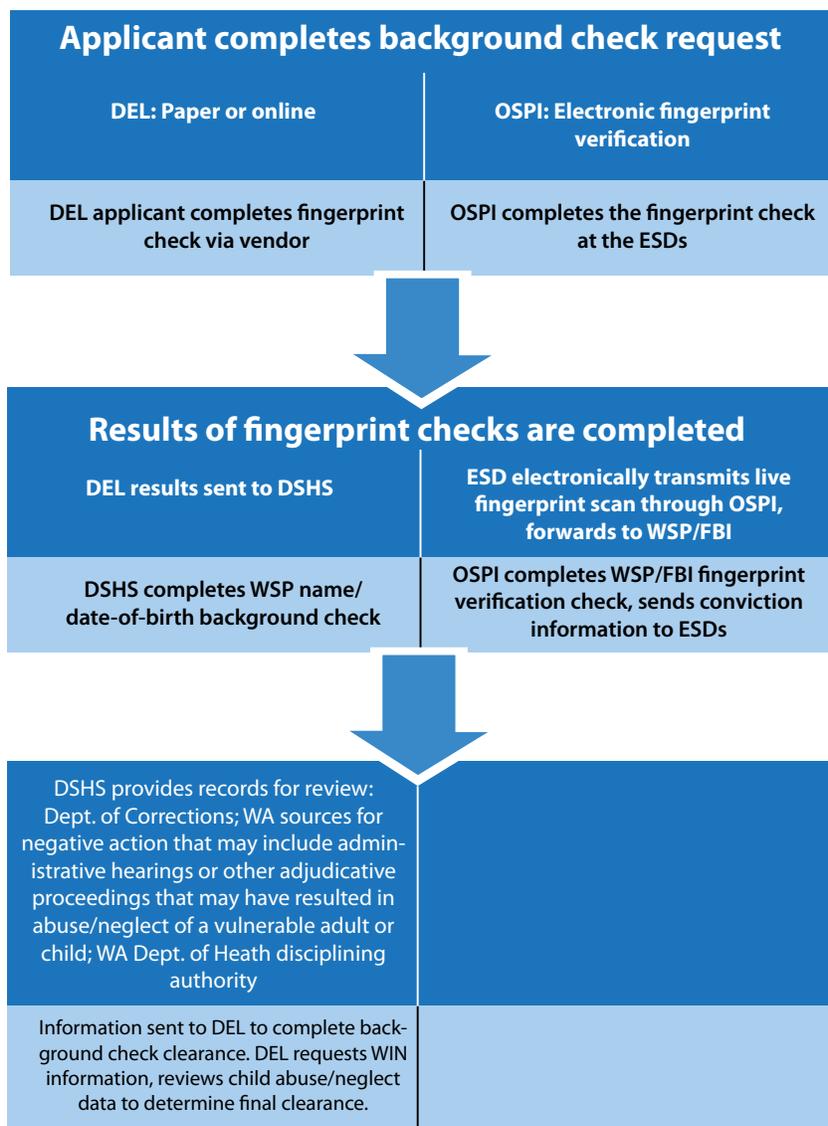
OSPI reviews the criminal history information for the ESDs, school districts, private schools, Childhood School for the Deaf and Hearing Loss, the state School for the Blind and their contractors. OSPI forwards any conviction information to the district superintendent, ESD superintendent or private school administrator for review. Electronic copies of the information are maintained at OSPI. If an employee changes school districts and has had a background check investigation completed within the last two years, the district may waive the requirement. If the background check was completed more than two years ago, another background check is required. If an individual remains employed with the same district, there is no requirement to repeat background checks. By contrast, DEL background checks are repeated every three years.

The DEL background check process for child care licensees includes several additional steps beyond the OSPI/ESD process. DSHS/BCCU provides DEL with additional non-conviction data that may provide information to determine the applicant’s “character, suitability, and competence.” These sources include but are not limited to: the Sexual Offenders Registry, Department of Corrections, Department of Health, DSHS and Washington Courts data.

Criminal background information retention for DEL and OSPI is quite different and presents challenges. OSPI/ESDs maintain a fingerprint database for two years for all applicants who work unsupervised with children. DSHS retains fingerprint information for 20 years on DEL’s behalf.

There is a new development in this process. Recently, WSP began receiving information from the Western Identification Network (WIN). WIN provides WSP with criminal background information that the FBI may not have. DEL has chosen to act on the WIN information by requiring child care applicants to obtain the information from states who supplied information. The OSPI is currently developing a process on how to incorporate WIN information. Depending on the process developed by the OSPI, this may create a difference in the clearance process.

**Process description as of July 1, 2012**



## Requirements for Process Change

The FBI limits sharing of federal criminal history records. The FBI must approve the exchange of background check results before DEL and OSPI/ESD start sharing that information. FBI-approved language must be written into a bill and then enacted into law. The final step to sharing federal criminal history records is the FBI's re-approval. Legislative language has been drafted and is under review by DEL, OSPI and DSHS.

### Operational Challenges

Since DEL and OSPI use different databases, it is not possible to determine the number of duplicate checks that currently occur. It is unknown how many child care sites are operated by ESDs and school districts. DEL does not maintain data at this level, as not all school district sites are required be licensed or certified according to RCW 43.215.010.

Information obtained from a few ESDs provides the following picture:

Community/District	Child care sites	Total employees for ESD, child care
Vancouver – ESD 112	26	170 (includes ECEAP)
Spokane	20	110
Wenatchee	20	106
Kitsap County	17	115 (includes Head Start/ECEAP)
Edmonds	2	12

DSHS maintains the database for DEL background check applicants. Because DEL and DSHS use the same database for storing background check information, the sharing allowed under House Bill 1419 and approved by the FBI required very few system changes.

DEL and OSPI will need to create an electronic method for tracking and sharing information, including whether will confirm if a fingerprint check is in process, has been completed or whether a fingerprint check was not completed for each individual.

Each agency's database has several validation elements to ensure the information received from both national and state data is for the correct individual. To achieve the lowest error rate possible, there must be a careful analysis of these databases to ensure the criminal history information shared between DEL and OSPI is for the same person.

### Recommendation

- Pending FBI approval, we recommend legislation that will allow sharing background check information between DEL, OSPI/ESDs, DSHS and WSP. This legislation should include time for the agencies to conduct additional analysis to fully determine the differences between DSHS/DEL and OSPI/ESD processes and systems.

CERTIFICATION OF ENROLLMENT

**SECOND SUBSTITUTE HOUSE BILL 1903**

Chapter 295, Laws of 2011

62nd Legislature  
2011 Regular Session

CHILD CARE--LICENSEES AND EMPLOYEES--BACKGROUND CHECKS

EFFECTIVE DATE: 07/22/11

Passed by the House April 15, 2011  
Yeas 96 Nays 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate April 12, 2011  
Yeas 46 Nays 0

BRAD OWEN

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**President of the Senate**

Approved May 10, 2011, 3:46 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1903** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

May 11, 2011

**Secretary of State  
State of Washington**

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**SECOND SUBSTITUTE HOUSE BILL 1903**

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AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

**State of Washington                      62nd Legislature                      2011 Regular Session**

**By** House Education Appropriations & Oversight (originally sponsored by Representatives Orwall, Goodman, Roberts, Reykdal, Kagi, Kenney, and Kelley)

READ FIRST TIME 02/24/11.

1            AN ACT Relating to background checks for child care licensees and  
2 employees; amending RCW 43.215.215; reenacting and amending RCW  
3 43.215.010; adding new sections to chapter 43.215 RCW; and creating a  
4 new section.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 43.215 RCW  
7 to read as follows:

8            Subject to appropriation, the department of early learning shall  
9 establish and maintain an individual-based or portable background check  
10 clearance registry by July 1, 2012. Any individual seeking a child  
11 care license or employment in any child care facility licensed or  
12 regulated under current law shall submit a background application on a  
13 form prescribed by the department in rule.

14            **Sec. 2.** RCW 43.215.215 and 2007 c 415 s 5 are each amended to read  
15 as follows:

16            (1) In determining whether an individual is of appropriate  
17 character, suitability, and competence to provide child care and early  
18 learning services to children, the department may consider the history

1 of past involvement of child protective services or law enforcement  
2 agencies with the individual for the purpose of establishing a pattern  
3 of conduct, behavior, or inaction with regard to the health, safety, or  
4 welfare of a child. No report of child abuse or neglect that has been  
5 destroyed or expunged under RCW 26.44.031 may be used for such  
6 purposes. No unfounded or inconclusive allegation of child abuse or  
7 neglect as defined in RCW 26.44.020 may be disclosed to a provider  
8 licensed under this chapter.

9 (2) In order to determine the suitability of (~~applicants~~)  
10 individuals newly applying for an agency license, new licensees, their  
11 new employees, and other persons who newly have unsupervised access to  
12 children in care, (~~and who have not resided in the state of Washington~~  
13 during the three-year period before being authorized to care for  
14 children,) shall be fingerprinted.

15 (a) The fingerprints shall be forwarded to the Washington state  
16 patrol and federal bureau of investigation for a criminal history  
17 record check.

18 (b) (~~The fingerprint criminal history record checks shall be at~~  
19 ~~the expense of the licensee. The licensee may not pass this cost on to~~  
20 ~~the employee or prospective employee, unless the employee is determined~~  
21 ~~to be unsuitable due to his or her criminal history record.)) (i)  
22 Effective July 1, 2012, all individuals applying for first-time agency  
23 licenses, all new employees, and other persons who have not been  
24 previously qualified by the department to have unsupervised access to  
25 children in care must be fingerprinted and obtain a criminal history  
26 record check pursuant to this section.~~

27 (ii) Persons required to be fingerprinted and obtain a criminal  
28 record check pursuant to this section must pay for the cost of this  
29 check as follows: The fee established by the Washington state patrol  
30 for the criminal background history check, including the cost of  
31 obtaining the fingerprints; and a fee paid to the department for the  
32 cost of administering the individual-based/portable background check  
33 clearance registry. The fee paid to the department must be deposited  
34 into the individual-based/portable background check clearance account  
35 established in section 5 of this act. The licensee may, but need not,  
36 pay these costs on behalf of a prospective employee or reimburse the  
37 prospective employee for these costs. The licensee and the prospective  
38 employee may share these costs.

1 (c) The director shall use the fingerprint criminal history record  
2 check information solely for the purpose of determining eligibility for  
3 a license and for determining the character, suitability, and  
4 competence of those persons or agencies, excluding parents, not  
5 required to be licensed who are authorized to care for children.

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

9 (e) No later than July 1, 2013, all agency licensees holding  
10 licenses prior to July 1, 2012, persons who were employees before July  
11 1, 2012, and persons who have been qualified by the department before  
12 July 1, 2012, to have unsupervised access to children in care, must  
13 submit a new background application to the department. The department  
14 must require persons submitting a new background application pursuant  
15 to this subsection (2)(e) to pay a fee to the department for the cost  
16 of administering the individual-based/portable background check  
17 clearance registry. This fee must be paid into the individual-  
18 based/portable background check clearance account established in  
19 section 5 of this act. The licensee may, but need not, pay these costs  
20 on behalf of a prospective employee or reimburse the prospective  
21 employee for these costs. The licensee and the prospective employee  
22 may share these costs.

23 (f) The department shall issue a background check clearance card or  
24 certificate to the applicant if after the completion of a background  
25 check the department concludes the applicant is qualified for  
26 unsupervised access to children in care. The background check  
27 clearance card or certificate is valid for three years from the date of  
28 issuance. A valid card or certificate must be accepted by a potential  
29 employer as proof that the applicant has successfully completed a  
30 background check as required under this chapter.

31 (g) The original applicant for an agency license, licensees, their  
32 employees, and other persons who have unsupervised access to children  
33 in care shall submit a new background check application to the  
34 department, on a form and by a date as determined by the department.

35 (h) The applicant and agency shall maintain on-site for inspection  
36 a copy of the background check clearance card or certificate.

37 (i) Individuals who have been issued a background check clearance

1 card or certificate shall report nonconviction and conviction  
2 information to the department within twenty-four hours of the event  
3 constituting the nonconviction or conviction information.

4 (j) The department shall investigate and conduct a redetermination  
5 of an applicant's or licensee's background clearance if the department  
6 receives a complaint or information from individuals, a law enforcement  
7 agency, or other federal, state, or local government agency. Subject  
8 to the requirements contained in RCW 43.215.300 and 43.215.305 and  
9 based on a determination that an individual lacks the appropriate  
10 character, suitability, or competence to provide child care or early  
11 learning services to children, the department may: (i) Invalidate the  
12 background card or certificate; or (ii) suspend, modify, or revoke any  
13 license authorized by this chapter.

14 **Sec. 3.** RCW 43.215.010 and 2007 c 415 s 2 and 2007 c 394 s 2 are  
15 each reenacted and amended to read as follows:

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

18 (1) "Agency" means any person, firm, partnership, association,  
19 corporation, or facility that provides child care and early learning  
20 services outside a child's own home and includes the following  
21 irrespective of whether there is compensation to the agency:

22 (a) "Child day care center" means an agency that regularly provides  
23 child day care and early learning services for a group of children for  
24 periods of less than twenty-four hours;

25 (b) "Early learning" includes but is not limited to programs and  
26 services for child care; state, federal, private, and nonprofit  
27 preschool; child care subsidies; child care resource and referral;  
28 parental education and support; and training and professional  
29 development for early learning professionals;

30 (c) "Family day care provider" means a child day care provider who  
31 regularly provides child day care and early learning services for not  
32 more than twelve children in the provider's home in the family living  
33 quarters;

34 (d) "Nongovernmental private-public partnership" means an entity  
35 registered as a nonprofit corporation in Washington state with a  
36 primary focus on early learning, school readiness, and parental

1 support, and an ability to raise a minimum of five million dollars in  
2 contributions;

3 (e) "Service provider" means the entity that operates a community  
4 facility.

5 (2) "Agency" does not include the following:

6 (a) Persons related to the child in the following ways:

7 (i) Any blood relative, including those of half-blood, and  
8 including first cousins, nephews or nieces, and persons of preceding  
9 generations as denoted by prefixes of grand, great, or great-great;

10 (ii) Stepfather, stepmother, stepbrother, and stepsister;

11 (iii) A person who legally adopts a child or the child's parent as  
12 well as the natural and other legally adopted children of such persons,  
13 and other relatives of the adoptive parents in accordance with state  
14 law; or

15 (iv) Spouses of any persons named in (i), (ii), or (iii) of this  
16 subsection (2)(a), even after the marriage is terminated;

17 (b) Persons who are legal guardians of the child;

18 (c) Persons who care for a neighbor's or friend's child or  
19 children, with or without compensation, where the person providing care  
20 for periods of less than twenty-four hours does not conduct such  
21 activity on an ongoing, regularly scheduled basis for the purpose of  
22 engaging in business, which includes, but is not limited to,  
23 advertising such care;

24 (d) Parents on a mutually cooperative basis exchange care of one  
25 another's children;

26 (e) Nursery schools or kindergartens that are engaged primarily in  
27 educational work with preschool children and in which no child is  
28 enrolled on a regular basis for more than four hours per day;

29 (f) Schools, including boarding schools, that are engaged primarily  
30 in education, operate on a definite school year schedule, follow a  
31 stated academic curriculum, accept only school-age children, and do not  
32 accept custody of children;

33 (g) Seasonal camps of three months' or less duration engaged  
34 primarily in recreational or educational activities;

35 (h) Facilities providing care to children for periods of less than  
36 twenty-four hours whose parents remain on the premises to participate  
37 in activities other than employment;

1 (i) Any agency having been in operation in this state ten years  
2 before June 8, 1967, and not seeking or accepting moneys or assistance  
3 from any state or federal agency, and is supported in part by an  
4 endowment or trust fund;

5 (j) An agency operated by any unit of local, state, or federal  
6 government or an agency, located within the boundaries of a federally  
7 recognized Indian reservation, licensed by the Indian tribe;

8 (k) An agency located on a federal military reservation, except  
9 where the military authorities request that such agency be subject to  
10 the licensing requirements of this chapter;

11 (l) An agency that offers early learning and support services, such  
12 as parent education, and does not provide child care services on a  
13 regular basis.

14 (3) "Applicant" means a person who requests or seeks employment in  
15 an agency.

16 (4) "Department" means the department of early learning.

17 (5) "Director" means the director of the department.

18 (6) "Employer" means a person or business that engages the services  
19 of one or more people, especially for wages or salary to work in an  
20 agency.

21 (7) "Enforcement action" means denial, suspension, revocation,  
22 modification, or nonrenewal of a license pursuant to RCW 43.215.300(1)  
23 or assessment of civil monetary penalties pursuant to RCW  
24 43.215.300(3).

25 (8) "Probationary license" means a license issued as a disciplinary  
26 measure to an agency that has previously been issued a full license but  
27 is out of compliance with licensing standards.

28 (9) "Requirement" means any rule, regulation, or standard of care  
29 to be maintained by an agency.

30 (10) "Conviction information" means criminal history record  
31 information relating to an incident which has led to a conviction or  
32 other disposition adverse to the applicant.

33 (11) "Negative action" means a court order, court judgment, or an  
34 adverse action taken by an agency, in any state, federal, tribal, or  
35 foreign jurisdiction, which results in a finding against the applicant  
36 reasonably related to the individual's character, suitability, and  
37 competence to care for or have unsupervised access to children in child  
38 care. This may include, but is not limited to:

1 (a) A decision issued by an administrative law judge;

2 (b) A final determination, decision, or finding made by an agency  
3 following an investigation;

4 (c) An adverse agency action, including termination, revocation, or  
5 denial of a license or certification, or if pending adverse agency  
6 action, the voluntary surrender of a license, certification, or  
7 contract in lieu of the adverse action;

8 (d) A revocation, denial, or restriction placed on any professional  
9 license; or

10 (e) A final decision of a disciplinary board.

11 (12) "Nonconviction information" means arrest, founded allegations  
12 of child abuse, or neglect pursuant to chapter 26.44 RCW, or other  
13 negative action adverse to the applicant.

14 NEW SECTION. Sec. 4. A new section is added to chapter 43.215 RCW  
15 to read as follows:

16 Effective July 1, 2011, all agency licensees shall pay the  
17 department a one-time fee established by the department. When  
18 establishing the fee, the department must consider the cost of  
19 developing and administering the registry, and shall not set a fee  
20 which is estimated to generate revenue beyond estimated costs for the  
21 development and administration of the registry. Fee revenues must be  
22 deposited in the individual-based/portable background check clearance  
23 account created in section 5 of this act and may be expended only for  
24 the costs of developing and administering the individual-based/portable  
25 background check clearance registry created in section 1 of this act.

26 NEW SECTION. Sec. 5. A new section is added to chapter 43.215 RCW  
27 to read as follows:

28 The individual-based/portable background check clearance account is  
29 created in the custody of the state treasurer. All fees collected  
30 pursuant to RCW 43.215.215 and section 4 of this act must be deposited  
31 in the account. Expenditures from the account may be made only for  
32 development and administration, and implementation of the individual-  
33 based/portable background check registry established in section 1 of  
34 this act. Only the director of the department of early learning or the  
35 director's designee may authorize expenditures from the account. The

1 account is subject to allotment procedures under chapter 43.88 RCW, but  
2 an appropriation is not required for expenditures.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.215 RCW  
4 to read as follows:

5 Upon resignation or termination with or without cause of any  
6 individual working in a child care agency, the child care agency shall  
7 report to the department within twenty-four hours if it has knowledge  
8 of the following with respect to the individual:

9 (1) Any charge or conviction for a crime listed in WAC 170-06-0120;

10 (2) Any other charge or conviction for a crime that could be  
11 reasonably related to the individual's suitability to provide care for  
12 or have unsupervised access to children or care; or

13 (3) Any negative action as defined in RCW 43.215.010.

14 NEW SECTION. **Sec. 7.** To the extent that existing resources are  
15 available, the department of early learning, the office of the  
16 superintendent of public instruction, and educational service districts  
17 shall develop a proposal to coordinate their common background check  
18 activities. The proposal shall include the development of an  
19 information sharing system, or protocol, that will operate in accord  
20 with federal regulations. These agencies shall submit their proposal  
21 to the legislature no later than December 15, 2011.

Passed by the House April 15, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.