



STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

P.O. Box 45330, Olympia, Washington 98504-5330

June 15, 2004

TO: Alcohol and Drug County Coordinators
County Prevention Specialists
DASA Certified Chemical Dependency Treatment Providers
DASA Contracted Treatment and Prevention Providers
Native American Treatment and Prevention Providers
Other Interested Parties

FROM: Kenneth D. Stark, Director *signed 6/15/2004*
Division of Alcohol and Substance Abuse

SUBJECT: **BACKGROUND CHECK RESOURCE GUIDE**

Attached is a copy of the *Revised Background Check Resource Guide for Division of Alcohol and Substance Abuse (DASA) Certified and Contracted Agencies*. This is to replace the August 2000 edition of the guide.

If you have any questions about the guide, please contact:

Robert Geissinger, Certification Specialist
Division of Alcohol and Substance Abuse
P.O. Box 45330
Olympia, Washington 98504-5330
*Telephone:(360) 725-3728; Toll Free: 1-877-301-4557; Fax: (360) 438-8057
E-Mail: geissrs@dshs.wa.gov

For additional copies of the guide, please contact:

Washington State Alcohol/Drug Clearinghouse
6535 – 5th Place South
Seattle, Washington 98108-0243
1-800-662-9111 (from within Washington)
(206) 725-9696 (from Seattle or outside Washington); Fax: (206) 760-0589
E-Mail: clearinghouse@adhl.org
Website: <http://clearinghouse.adhl.org>

KDS:RG:tl

Attachment

cc: Robert Geissinger
Liz Wilhelm, Washington State Alcohol Drug Clearinghouse
DASA Management Group
DASA Treatment Managers
DASA Regional Administrators
DASA Certification Section
Community College/University Chemical Dependency Program Directors
Washington State Patrol, Identification Section

*phone # updated 6/15/2005ra.

BACKGROUND CHECK RESOURCE GUIDE FOR DASA CERTIFIED AND CONTRACTED AGENCIES

**REVISED
June 15, 2004**

- **OBTAINING A BACKGROUND CHECK THROUGH THE WASHINGTON STATE PATROL**
- **READING AND UNDERSTANDING THE RESULTS**

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If you have any questions about the guide, please contact:

Robert Geissinger, Certification Specialist
Division of Alcohol and Substance Abuse
P.O. Box 45330 (Mail Stop 45330)
Olympia, Washington 98504-5330
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**BACKGROUND CHECK RESOURCE GUIDE
FOR
DASA CERTIFIED AND CONTRACTED AGENCIES**

**Revised
June 15, 2004**

Department Of Social and Health Services (DSHS)
Dennis Braddock, Secretary

Health and Rehabilitative Services Administration (HRSA)
Tim Brown, Assistant Secretary

Division of Alcohol and Substance Abuse (DASA)
Kenneth D. Stark, Director
David Curts, Certification Section Supervisor

An Instructional Booklet
By: Robert S. Geissinger, CCDCIII
Certification Specialist, DASA

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DISCLAIMER

This booklet is a guide and is not intended to be a substitute for legal advice or to be substituted in place of organizational policies and procedures.

CRIMINAL BACKGROUND CHECK PROCESS

Prior to accepting a person on your staff, determine if the person will have unsupervised access to youth or vulnerable adults. If so, then...

Advise person that:

- ◆ A criminal background check will be made; and,
- ◆ If accepted on your staff, retention will be contingent upon the results of the background check.

Submit a Background Inquiry Request Form to the Washington State Patrol no later than three days from acceptance of person on your staff.

Review the results upon receipt:

- ◆ A. Hire or retain, directly or by contract, any person to be associated with the agency who has been convicted of a crime defined in RCW 43.43.830(5-6) and ensure they have no unsupervised direct contact with youth or vulnerable adults; or,
- ◆ B. Do not hire or retain, directly or by contract, any person to be associated with the agency who will have direct contact with a youth or vulnerable adult who has been convicted of a crime defined in RCW 43.43.830(5-8).
- ◆ Advise person of the results within 10 days from receipt.
- ◆ Offer the person a copy of the results.

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SECTION 1

INTRODUCTION

This booklet contains information and guidance to assist counties, contracted agencies, individual providers, and volunteers in meeting the requirements of Revised Code of Washington (RCW) and Washington Administrative Code (WAC) related to background checks.

Background screening should be one small part of the assessment of a potential employee's ability to care for, or have unsupervised access to children, vulnerable adults or persons who are developmentally disabled who may be impacted by alcohol or other substance abuse.

Each certified chemical dependency treatment agency and all DASA contractors and sub-contractors must follow the mandate of the law and should carefully consider the background inquiry results.

Certified agencies and contractors are encouraged to develop standards, policies, and procedures that guide staff members in the background screening process. It is considered good practice to have all written procedures reviewed by your legal counsel.

If you are unable to determine what is required in a specific case, please consult this booklet. DASA, Certification Section; the Washington State Patrol (WSP); and your legal counsel may also be of assistance.

Division of Alcohol and Substance Abuse (DASA)
Certification Section
Post Office Box 45330
Olympia, Washington 98504-5330
Robert Geissinger
Toll Free: 1-877-301-4557
Telephone: (360) 725-3728
Fax: (360) 438-8057
E-Mail: geissrs@dshs.wa.gov

Washington State Patrol (WSP)
Identification Section
Post Office Box 42633
Olympia, Washington 98504-2633
Telephone: (360) 705-5100
E-Mail: crimhis@wsp.wa.gov
Web Site: <http://www.wa.gov/wsp/crime/crimhist.htm#info>

Additional copies of this booklet are available by calling:

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(206) 725-9696 from Seattle or outside Washington State
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Web Site: <http://clearinghouse.adhl.org/>

NOTICE

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SECTION 2

THE LAW

What is a background check? A background check is a process to research a person's criminal record. A background check may also include information about state findings of abuse, neglect, or exploitation, out-of-state convictions, disciplinary board action, and civil action related to abuse and neglect.

Why is a background check required? State law requires that children, vulnerable adults, and persons who are developmentally disabled receiving services in the state are to be protected from the possibility of criminal activity by caregivers who have been convicted of certain crimes.

Who is required to have a background check? Washington State has various laws and regulations requiring background checks for a variety of settings and reasons. The laws affecting DASA certified chemical dependency treatment providers and contractors require that anyone who may have unsupervised access to children, vulnerable adults or persons who are developmentally disabled have a criminal history background check, including but not limited to, the following people:

- Employees;
- Volunteers;
- Owners;
- Administrators;
- Chemical dependency counselor/professionals, interns, or trainees;
- Contract employees;
- Employees of contractors; and,
- Anyone who may have regular scheduled unsupervised access to children, vulnerable adults or persons who are developmentally disabled.

What will a background check show? The WSP, Identification and Criminal History Section, will send a report of results indicating whether there is any record of arrests or convictions within the state of Washington for the person identified on the request form and based on the information provided.

Will I have to automatically dismiss an employee or volunteer who may be disqualified from having unsupervised access to children, vulnerable adults or persons who are developmentally disabled? Yes, if you determine that the employee *will have* unsupervised access to children, vulnerable adults, or persons who are developmentally disabled. The state regulation requires the certified or contracted agency to not have the applicant in a position where they may have unsupervised access to children, vulnerable adults or persons who are developmentally disabled per the Revised Codes of Washington (RCW) and Washington Administrative Codes (WAC).

No, if you determine that the employee or volunteer *will not have* unsupervised access to children, vulnerable adults, or persons who are developmentally disabled.

Where does the background information come from? The information comes from criminal history and conviction information kept by the WSP Identification and Criminal History Section.

Is there a fee for requesting background checks through WSP? Yes. There is a \$10 fee for profit agencies. There is no fee for non-profits.

When should I request a background check? We recommend no later than 72 hours after hire, and before they are allowed unsupervised access to children, vulnerable adults or persons who are developmentally disabled.

How often should I request a background check? Certified and contracted agency administrators should conduct new background checks if circumstances suggest there may have been new charges or convictions since the last check.

What are some of the reasons why new WSP background check reports should be conducted?

- When the result of a background check is issued, it is possible that the individual has been convicted and the conviction has not yet been entered into the system.
- It is possible that a person is in the midst of a conviction at the time the check is completed and, because of other laws, the employer will not be informed on the report.
- It is possible to be convicted within the space of two years. Some agencies have developed a policy that requires a background check to be completed at regular intervals for all staff members.

Can I use the results of a past background check? Yes, but only if the background check was conducted within the two years before the date of hire, is still valid, and there is no reason to believe there has been a new or subsequent offense or conviction.

Am I required to re-check staff members on a regular basis? No, not if there is no reason to suspect the person has a new offense or conviction. Conducting rechecks, however, at regular intervals on all staff members and volunteers is a way to provide ongoing assurance that patients are protected from criminal behavior.

Can I accept a background check results directly from the applicant? No. Background check results are easily altered.

Where can I find a copy of RCW 43.43.830 through .845?

You can either go to your local library for a copy of the RCWs, or on the Internet at <http://search.leg.wa.gov>. You will also find a copy of the law current as of September 26, 2003, in the appendix section of this book.

SECTION 3

BACKGROUND CHECKS BY OTHER AGENCIES & BUSINESSES

When a person is licensed or certified by the Department of Health (DOH), is a background check routinely conducted? Yes. DOH is the state agency responsible for licensing, certifying, and monitoring health care professionals, including chemical dependency professionals. DOH conducts criminal background checks on all applicants for counselor registration and Chemical Dependency Professional certification.

Does the DSHS Children's Administration (CA) conduct state and national background checks? Yes. CA conducts background checks for its contractors and licensed providers serving children. If an applicant has lived in the state for less than three years, a national (FBI) fingerprint-based background check is conducted.

Are there other divisions or departments of state government that conduct background checks? Yes. Within DSHS, Aging and Adult Services Administration, Employee Services Division, and the Division of Child Support conduct background checks. Several other state agencies, such as the Superintendent of Public Instruction, conduct background checks on employees and/or contractors under various state laws and regulations.

Can I use background checks conducted by another state agency? No. Current WSP regulations and DSHS practice does not allow for the sharing of background information between state agencies. There is an ongoing effort to review the possibility of streamlining the current practices, assessing the potential for coordination, and/or consolidation of background checks within the state system.

Are agencies or businesses outside the state system required to conduct background checks? Yes. The law specifically mentions businesses; such as home health, hospice, and home care agencies licensed by the state and private facilities serving people with mental illness. Contractors providing many different services to children, vulnerable adults or persons who are developmentally disabled must also undergo background checks. Some state agencies also conduct these background checks when there are statutory or regulatory authority.

Are certified chemical dependency treatment providers and DASA contractors who are not providing services to children, vulnerable adults or persons who are developmentally disabled required to conduct background checks? No, but many providers consider all their patients to be vulnerable when admitted or when they are receiving services from the agency, and the agency has implemented background check policies for the protection of their patients. Providers should ensure they do not discriminate against persons because of their disabilities while considering whether or not to serve children, vulnerable adults, or developmentally disabled persons.

SECTION 4

UNSUPERVISED ACCESS

What does "unsupervised access" mean? Unsupervised access is defined in RCW 43.43.830(9).

Unsupervised means not in the presence of:

- Another employee or volunteer from the same business or organization as the applicant; or
- Any relative or guardian of any of the children, vulnerable adults or persons who are developmentally disabled to whom the applicant has access during the course of his or her employment or involvement with the business or organization.

Access means being left alone in the presence of a child, vulnerable adult or person who is developmentally disabled for **any** period of time.

Can I allow the individual to work while waiting for the results of a background check? Yes. However, we recommend agency managers submit the request for a background check within 72 hours of hire. The law states that an agency may, if necessary, hire an individual contingent upon the result of the background check.

Does the requirement for a background check apply to volunteers, student trainees/interns, contracted workers, and other workers given access to children, vulnerable adults or persons who are developmentally disabled? Yes. This law applies to all individuals in a work or volunteer capacity with unsupervised access to children or vulnerable adults.

Can I conduct background checks on an applicant's family or friends? No. Family and friends of applicants are not providing a service to the agency and generally do not have unsupervised access to children, vulnerable adults or persons who are developmentally disabled.

What if a family member provides volunteer services at the DASA certified agency? Anyone, who performs "volunteer type" services for other residents, with unsupervised access, must have a background check.

Should I conduct background checks on clients? No. There are several reasons not to conduct background checks on clients:

- An agency cannot use the information for purposes of denying services;
- Doing so may violate client's civil rights;
- It may give a "false sense" of security. Clients without a criminal record may still pose a risk to other clients; and,
- It is critical that admission and services not be based on the result of a background check.

SECTION 5

REQUESTING A WSP BACKGROUND CHECK

How do I request a background check through WSP? You must submit a completed Request for Criminal History Information Form to the Identification and Criminal History Section of WSP.

Is there a fee to conduct a background check through WSP? Yes and no. There is a \$10 fee for profit providers. There is no fee for non-profit corporations.

Where do I mail requests for criminal history information to WSP?

Washington State Patrol
Identification Section
Post Office Box 42633
Olympia, Washington 98504-2633

How will the results be returned to me? The results will be sent by mail to the agency address indicated on the request form.

Why do some background checks take more time? There are many variables that cause some results to take longer than others, including the following:

- The request form provided an incorrect address of the requesting agency;
- The application form is sent to the wrong address;
- The application form is lost in the mail;
- The application form is returned to the agency without being processed, due to incomplete, incorrect, or illegible information; or,
- More extensive research is required, because of criminal history information or charges pending.

How long should I wait to call WSP after sending in an application? WSP is able to track an application any time after its receipt at the Identification Section office. Agencies or regions should wait at least two weeks, but no longer than one month before contacting the section. Each agency should establish a policy and process to track background applications sent to WSP, especially if the applicant is hired contingent upon the results of the check.

Should the contracted agency re-fax or re-mail the original application? No! Please call the section to check on the status of an application. WSP will request the agency resubmit an application, if necessary. Each time an application is sent in a second or third time, the workload increases for WSP, thus increasing turnaround time.

SECTION 6

FORMS

Is there a specific criminal history request form? Yes. The WSP Request for Criminal History Information forms are specifically designed to provide the information necessary to conduct the background check required by law.

Why is it necessary to use a specific WSP form? The form is designed to meet the requirements of law and regulation, including the specific information necessary to determine whether the applicant of inquiry has an arrest or conviction record.

Where can I get a copy of the Request for Criminal History Information form look like? You will find a sample form in the appendices of this book.

Can an agency copy the form instead of ordering them? Yes, provided both sides of the form are copied.

Why are forms returned to me without WSP conducting the background check? WSP must have all necessary information, such as nicknames, to run a thorough background check. Some other examples of why forms are returned are:

- The information is illegible;
- The form is not signed; or,
- The form does not have sufficient identifying information.

Should the agency staff person fill in the missing information for the applicant? No. The Request for Criminal History Information form is a legal document. The applicant of inquiry has the most accurate information required to make the request. Errors made by agency staff members may result in an error in reporting. The results will be based on the identification information provided on the form.

Why is it necessary to write in all other names, married names, and nicknames? Every possible name is necessary to conduct a thorough check. If only one name is processed through WSP, a conviction may not be found. Individuals can be arrested and convicted using a variety of names, which may or may not be associated with them in the computer database at WSP.

SECTION 7

INTERPRETING THE RESULTS

How long are results valid (good)? WSP background check is valid for two (2) years, because a record may be conviction-free when an existing or pending conviction has not been posted to the record at the time the check is conducted. Also, during two years, it is possible for an individual to be arrested, charged, and convicted of a crime.

Can an agency rely 100 percent on the results of a background check? No. Agency staff members should use their best judgment when hiring anyone, even when a background report is favorable, for the following reasons:

- When the result of a background check is issued, it is possible that the individual has been convicted and the conviction has not yet been entered into the system.
- It is possible that a person is in the midst of a conviction at the time the check is made and ,because of other laws, the employer will not be informed on the report.
- It is possible to be convicted within the space of two years.
- An individual may have convictions in other states or other jurisdictions, such as a conviction in federal court, which is not included in WSP report.

Are there any limits on the use of results by agency staff? Yes. State law, RCW 43.43.834, says that background inquiry results must be used only to make initial employment decisions.

Are felony crimes more important than others are? No. State law, RCW 43.43.830-845, specifically addresses crimes considered relevant to providing care for children, vulnerable adults or persons who are developmentally disabled. Felonies and misdemeanors are both listed in the law.

What are the confidentiality requirements when an agency is handling background inquiry results? Only designated and trained staff responsible for the receipt of inquiry results should have access to these records. Applicants have the right to expect that the results of an inquiry will be kept private and held in confidence.

Can the agency share the results with an applicant of inquiry? Yes. The law requires the agency/region to notify the applicant that a copy of the background result will be made available. The agency/region must notify the applicant within 10 days of receipt of the background check result.

Can results be shared with another certified agency or organization? No. Providers will need to request another background check.

What if the applicant of inquiry claims the results of the background check are wrong? State law requires WSP to correct results that are wrong or that incorrectly show a conviction record. The results can be corrected easily if the applicant contacts WSP.

What should I do about the applicant's employment while waiting for the record to be corrected? The agency must act on the information reported in the request to ensure the applicant of inquiry does not have unsupervised access to children, vulnerable adults or persons who are developmentally disabled.

If I have conditionally employed an individual contingent upon the result of the criminal history request and the request is returned with indications of a disqualifying criminal history, am I required to do anything other than let the individual go? No, but agency staff members should thoroughly document the reasons for dismissal.

What if I receive a background inquiry result that I did not request? Please send it back to the WSP Identification and Criminal History Section so the problem can be corrected and the information re-directed.

How do I check on the status of inquiry results that have been requested, but not received? Call the WSP Identification Section at (360) 705-5100. You should be ready to provide the following information:

- Agency;
- Date the application form was faxed or mailed;
- Applicant's full name; and,
- Applicant's date of birth.

How long should I wait to call WSP Identification and Criminal History Section after sending in a request? It is suggested that you establish a policy and process to track requests for criminal history information sent to WSP, especially if the applicant is hired contingent upon the result of the check. The WSP Identification Section is able to track an application any time after it has been received. Agencies or counties should wait at least two weeks and no longer than one month before contacting WSP.

Should I re-mail the request for criminal history information? No. When a request form is sent in a second time, the workload increases for WSP staff, and turnaround time is delayed. Please call WSP to check on the status of an application. WSP will request the agency to resubmit the application, if necessary.

SECTION 8

READING WSP BACKGROUND CHECK RESULTS

How do I interpret WSP abbreviations on the “rap sheet”? WSP has provided a list of abbreviations of terms used on background inquiry results. Contact the WSP for further information.

How can I tell if there is a conviction on a record? WSP developed instructions on how to read a “rap sheet.” Contact the WSP for further information.

What if the record shows arrests and charges with no conviction? The agency should have a policy that describes what is done when a potentially disqualifying charge or arrest is pending on someone. The policy may include:

- A means to prevent unsupervised access to clients; or,
- A policy not to hire contingent on outcome;
- A method for agency to be informed of the decision of the court;
- Documentation of process; and,
- Review of policy by legal counsel.

What if the result shows a conviction without a degree? Do not assume that the conviction is for the lesser degree. Agency staff members should:

- Attempt to determine the degree of the conviction, especially if it is one that allows hiring after time has past;
- If the degree cannot be determined through official channels (such as through WSP), ask the applicant to request a copy of the court documents from the court of jurisdiction;
- Have the applicant instruct the courts to send the documents directly to the agency.

NOTE: You may not have expertise to interpret court documents. Whenever in doubt, consult with your legal counsel.

Why am I now receiving more conviction information than has been available in the past?

In the past, WSP only provided information on those crimes listed in RCW 43.43.842 and some additional crimes defined as crimes against persons. The Criminal Records Privacy Act, RCW 10.97, allows anyone, for any reason, to access an individual’s entire conviction record by submitting the person’s name, date of birth, and a \$10 fee to WSP. Since this more extensive information is publicly available, WSP began providing RCW 10.97 information.

Now that I will have additional conviction information, can convictions for crimes that are not “disqualifying” under RCW 43.43.842 be considered in hiring decisions? Yes, but the list of crimes that require disqualification has not changed. You must use your best judgment in making hiring decisions.

Does the conviction record provided under RCW 10.97 contain all the information that was provided under RCW 43.43.842? Yes.

Why are "drug crimes" not on the list of disqualifying crimes? The law was changed by the 1998 Legislature to include "crimes related to drugs." The new law states that specific crimes related to the manufacture, delivery, or possession of a controlled substance with the intent to manufacture or deliver may be used as a tool for investigation, and may be used for any decision regarding the person's suitability for a position allowing unsupervised access to children, vulnerable adults or persons who are developmentally disabled.

The law specifies that agency staff members may consider the following crimes related to drugs:

- Manufacture of a controlled substance;
- Delivery of a controlled substance;
- Possession with the intent to manufacture a controlled substance; and,
- Possession with the intent to deliver a controlled substance.

This leaves the decision regarding the hiring of an individual with a conviction related to drugs up to you. Agencies should consult legal counsel and develop written policies and procedures to direct staff.

What does "dismissed" mean? If a record indicates the disposition is "**DISM**" (WSP abbreviation for dismissed), it may not have been dismissed. This requires further interpretation. Call WSP.

Is a "deferred sentence" a conviction? Yes. A deferred sentence represents the terms or conditions agreed to after being found guilty or pleading guilty to a crime. RCW 43.43.830(4) clearly includes a deferred sentence as a conviction.

Is a "deferred prosecution" a conviction? No. When a prosecution is deferred, a person has not been convicted and sentenced.

What if the results show "bail forfeit"? Bail forfeit means the individual did not show for the court hearing and forfeited the bail paid. WSP states that when a record shows "bail forfeit," the person may have been convicted of the crime. Therefore, the agency should check with WSP and possibly the prosecuting authority for the conviction, to determine whether the individual was convicted of the disqualifying crime.

INSTRUCTIONS: HOW TO READ RESULTS

Reading the results of a background inquiry can be confusing and difficult. Call WSP, Criminal Identification Section at (360) 705-5100, if you cannot determine to your satisfaction what a report says using the abbreviation list and the sample conviction results **on the following page**.

SAMPLE WSP CONVICTION RESULTS

- A. Applicant convicted of 4th degree assault - 01/93
- B. Pending charges for vehicular assault - 09/93

NO KNOWN SCARS, MARKS AND TATTOOS DETAILS

ARREST DETAILS

Date of 1st Arrest

ARREST - 01

OCA: 35000 PCN: N/A DATE: 01-01-93
AGENCY: WA00000000 - EVERETT PD
ARREST NAME: SMITH, JOHN

1st Arrest
Details

CHARGE - 01

UNIQUE NUMBER: N/A OFFENSE DATE: 01-01-93
JUVENILE: N
DISPOSITION RESPONSIBILITY: WA00000000

Found guilty
on 4/29/93

DISPOSITION:

00454 - SIMPLE ASSAULT
STATUS: GUILTY DISPO DATE: 04-29-93 CAUSE: N/A
FINE: 500.00 FINE SUSP: 200.00 COST: N/A
JAIL TERM: 90 DS JAIL SUSP: 85 DS DEF RD: N/A

Conviction
resulted in:
\$500 fine, \$200
suspended, 90
days jail, with 85
day suspended

ARREST- 02

OCA: 40000 PCN: N/A DATE: 09/17/93
AGENCY: WA00000000 - YAKIMA CO SHERIFF'S OFFICE, YAKIMA WA
ARREST NAME: SMITH, JOHN

2nd Arrest
Details

CHARGE - 01

07612 VEHICULAR ASSAULT UNIQUE NUMBER: 9300000000 OFFENSE
DATE: 09-19-93
JUVNL OFFENSE: N
DISPOSITION RESPONSIBILITY: WA000000A

Charged with vehicular
assault for offense on
9/19/93
Charges still pending.

DISPOSITION:

DOC ACTIVITY

*** NO KNOWN DOC ACTIVITY DETAILS****
*****ATTACHMENT*****

CHILD ABUSE DISCLAIMER:
CONVICTION(S) LISTED MAY OR MAY NOT INCLUDE FINANCIAL EXPLOITATION OF A
VULNERABLE ADULT. CRIMINAL HISTORY RECORDS DO NOT CONTAIN SPECIFIC
VICTIM STATUS.

SECTION 9

EMPLOYMENT AND ACCESS DECISIONS

At what point in the employment process should I request a background check? We recommend the request be made no later than 72 hours after hire. A background check should be conducted according to agency policies and procedures. Many agencies use the background check as the last step in the agency hiring process, after:

- Conducting interviews;
- Checking references; and,
- Choosing the best candidate for the job.

The background check should not be the only means to screen potential employees.

Can the background check be used as the first level of screening to identify potential problems right away? Yes. Again, agency policies and procedures should dictate the process. Background checks should be only one part of personnel screening.

Who makes the employment or contract decision? You do. As a private entity, you are required to follow the laws and regulations governing operation. WSP and DASA staff members are available to explain requirements and give examples of what other agencies have implemented, but will not make employment decisions for the agency.

What will disqualify a person from having unsupervised access to children, vulnerable adults or persons who are developmentally disabled? The law (federal and state) specifies what will disqualify a person from working with children, vulnerable adults, and persons who are developmentally disabled. Employees working with these populations cannot have a background, which shows they have been:

- Convicted of a crime against persons as defined in RCW 43.43.830-845;
- Convicted of crimes relating to financial exploitation as defined in RCW 43.43.842;
- Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor;
- Subject to an order of protection under RCW 74.34 for abuse or financial exploitation of a vulnerable adult;
- Found in a final decision issued by a disciplinary board to have:
 - (a) Sexually or physically abused or exploited any minor or developmentally disabled person, or,
 - (b) Abused or financially exploited any vulnerable adult.

- Found in any dependency action under RCW 3.34.030(2)(b) to have sexually assaulted, exploited, or physically abused any minor.

Are there crimes that may be relevant to an agency hiring or a region contracting decision, which are not on the list? Yes. An example would be crimes, such as Criminal Mistreatment or Abandonment of a Dependent Person. These crimes are not on the list; however, both are committed against vulnerable persons and would indicate a lack of competence and suitability to care for vulnerable persons.

If the law has changed to include crimes related to drugs, why are "drug crimes" not on the list of crimes in RCW 43.43.842? The law was changed by the 1998 Legislature to include "crimes related to drugs." The new law states that specific crimes related to the manufacture, delivery, or possession of a controlled substance with the intent to manufacture or deliver:

- May be used as a tool for investigation, and,
- May be used for any decision regarding the person's suitability for a position allowing unsupervised access to children, vulnerable adults or persons who are developmentally disabled.

The decision is left up to the agency regarding the hiring of an individual with a conviction for crimes related to drugs. Agency staff members should consult legal counsel and develop written policy to direct implementation.

Does the law allow a convicted person to be hired or contracted after a certain time has passed? There are five crimes that are disqualifying for a limited period of time. After the time has passed, the agency may choose to hire or a region may choose to contract that person. All other crimes are permanently disqualifying.

After the specified time has passed, will the conviction remain on the individual's record? Yes. The law, which allows for the passage of time on certain crimes, has nothing to do with the conviction record. Once the person is convicted, the record remains until it is removed.

What if the applicant admits to having a conviction? If an applicant discloses a conviction that is on the list of disqualifying crimes in the statute or regulation, the agency does not have to verify the conviction. Agencies should have written personnel policies and procedures that direct staff members how to proceed if this occurs. Counties can stop the contracting process.

How do I treat a pending charge or arrest identified on the "rap" sheet? Agencies should have policies and procedures that describe what is done when a potentially disqualifying charge or arrest is pending. The policies may:

- Explain how to assess the seriousness of the pending charges;
- Develop the means to prevent unsupervised access to clients or adopt a policy against hiring contingent on outcome;
- Develop a method to be informed of the decision of the court; and,

- Explain the process to document the decision of the court. Legal counsel should review agency policy.

What if an employee/contractor admits to a disqualifying conviction after they have been employed for a period of time? Once you know that an employee/contractor has been convicted of a disqualifying crime, you must act according to the requirements of the law. No one convicted of a crime that is on the list can have unsupervised access to children, vulnerable adults or persons who are developmentally disabled.

How should I respond to “rumors” or reports that an employee has a disqualifying conviction? You should have personnel policies and procedures that direct staff members how to proceed when such reports arise. It is recommended that you discuss the rumor directly with the staff person as soon as possible. You can request the employee bring court documents if the conviction was in a different state or you can request that a new background check be completed.

If a student is in a training program, do I have to get a background check completed on that student? Yes. Students may have unsupervised access to persons who are developmentally disabled. We recommend agency staff members request a background check within 72 hours of hire.

Can I hire or contract with a person who has a disqualifying conviction if they work in the laundry, kitchen, or another “non-care giving” position? “Unsupervised access” is defined earlier in this book. If the agency has a policy that designates certain positions as prohibiting unsupervised access to children, vulnerable adults or persons who are developmentally disabled, it may be possible to hire convicted individuals into those positions. However, agencies should consider that “access” might include sharing entry doors, bathrooms, smoking and break areas, as well as delivery of food or laundry to clients or agency storage areas. Agencies should seek legal counsel before implementing such a policy.

Counties cannot contract with a person who has a disqualifying conviction.

SECTION 10

WASHINGTON STATE PATROL

What is WSP's official responsibility for criminal records? WSP is the Washington State storehouse (repository) for criminal records. These records include all "reported" arrests, charges, convictions, and Department of Corrections information.

How is the information reported to WSP? Paperwork in an arrest consists of two parts: an arrest card and a disposition section. When a person is arrested and charged, the following occurs:

- A copy of an "arrest card" with arrest and charge information and fingerprints is mailed to WSP in Olympia; and,
- A copy of the "disposition" section is sent to the court of jurisdiction.

When the court acts on the case, the court clerk completes the disposition section and sends it to WSP to be added to the individual's criminal history record.

How does WSP assure that the correct information is matched to the correct person?

When WSP receives the arrest card, the following action is taken:

- Fingerprints are compared through an automated fingerprint system to match the person to any previous record;
- Every person with a record has an assigned State Identification (SID) Number. If there is a previous record, the record associated with that SID is updated with the current arrest information; and,
- If there is not a previous record, the individual is assigned a SID and the arrest information is entered in WSP database.

Is there a difference between WSP criminal records and conviction records? Yes. Criminal records are not public information. State and federal laws allow only designated criminal justice agencies to request and receive criminal records from WSP. These laws protect an individual's right to privacy in matters that have not been settled in a public court process.

Criminal records include:

All information about arrests, charges, and convictions in the state of Washington.

Conviction records include:

All Washington convictions and any pending arrest and charge information that is less than 12 months old when it releases the conviction record. If the person has not gone to court within 12 months of the arrest, the arrest and charge information becomes part of the criminal record (non-conviction data) and will not be released as part of the conviction record.

Why have some people been convicted, but have no record at WSP?

- Some counties may not yet have submitted the disposition information to WSP;
- Paperwork may be lost; or,
- WSP may have a backlog of dispositions that need to be entered into the WSP database.

If I discover a conviction that is not recorded at WSP, what should be done?

If you have the court documents, please forward to the appropriate WSP section.

If you do not have the court documents:

- Send the person's full name;
- Date of birth; and,
- The approximate date and county in which convicted to:

Washington State Patrol
Identification Section
Post Office Box 42633
Olympia, Washington 98504-2633

Does WSP keep information on action(s) taken by disciplinary boards for abuse, neglect, and exploitation? The law says WSP will supply this information when they issue the result of a background check. However, to attach anything to a person's record, WSP must have fingerprints. Most disciplinary boards do not take fingerprints; thus, the information will not be on most WSP records.

Does WSP have information on civil proceedings involving abuse and neglect? Often WSP does not have this information. Civil proceeding information needs to be submitted to WSP with fingerprints and most judges in civil court actions do not order fingerprinting. When a civil court finding is reported to WSP without fingerprints, it is not added to the individual's record.

Does WSP have information on Federal Court convictions? No. The Federal Court system does not send reports of convictions to WSP. Federal convictions can include crimes such as interstate kidnapping, weapons, pornography distribution, and many other crimes that could be relevant to working with children or other vulnerable people. To obtain information on a conviction for a federal crime, the agency must request the record directly from the federal court that convicted the individual.

Will WSP assist agencies in interpretation of results? Yes, in most cases.

WSP will:

- Tell an agency if a crime has been renamed (for example, carnal knowledge is an old crime and may be the same conviction as a differently named crime today); and,
- Tell agencies if there is a degree associated with a crime if it is available and/or can be

obtained from the court.

What is the responsibility of WSP when a record is released for the wrong individual? State law requires WSP to correct the record. WSP will do the following:

- Request a thumbprint (or fingerprints) of the individual questioning their record;
- Compare the print(s) with those on file in the existing record;
- Change the record if the person is identified as someone else; and,
- Notify the employer at the request of the individual.

This process is completed very quickly by WSP. The agency should document the name of the WSP staff person, and the date the staff person notifies them that the results are wrong. The record will be changed. The agency should then submit another background inquiry form using the time frame given by WSP for correction.

Who should contact WSP to get the record corrected? This is the responsibility of the individual questioning the background check result. The agency must act on the original information provided by WSP until WSP informs the agency the individual has taken the necessary action and the record is going to be changed.

What if the employee brings court documents showing they were not convicted? Agencies do not have the legal expertise or the authority under law to interpret or accept documentation from the court. The employee should take the documents to WSP for review and action. DASA will assist an agency if there are problems with this process.

What if the employee's lawyer, a corrections official, prosecutor, or public defender calls and says the conviction does not apply? Agency staff members must act on the information provided by WSP. Refer the caller to WSP for discussion about the specific case.

Does WSP take fingerprints? No. The applicant will need to go to a local law enforcement agency or to a person who has been certified by WSP to fingerprint.

Will WSP assist people who have had their identification used by someone else with a conviction record? Yes. A resident of this state may request that his or her fingerprint impressions be recorded and submitted to the Identification Section for "personal identification." The voluntary submission may be used for identification in the case of someone else using his/her name. The individual with this problem may also submit a thumbprint each time they apply for a care-giving job.

How long are WSP records valid (good)? The WSP background check is valid for two (2) years. A person may show a clear record only because an existing or pending conviction was not posted to their record at the time the check was conducted. Also, within a two-year time span, an individual could be arrested, charged, and convicted of a crime.

SECTION 11

WATCH & WATCH-IGN

What is WATCH? Washington Access to Criminal History (WATCH) is a program developed to provide secure access to Washington State criminal conviction records across the Internet. WATCH offers two ways to access the information. The general public information request is based on RCW 10.97, and it provides the requester with conviction information for all crimes committed in Washington. The child and vulnerable adult request is based on RCW 43.43.830-845, and it provides information on only those convictions considered “crimes against persons.”

What are the differences between WATCH and the WSP background check? The WATCH system is an electronic way to conduct a background check through WSP. However, since it is a public system, the search is limited by the computer matching the exact name and date of birth (DOB) entered. An agency may receive a clear background for a person who actually has a conviction record because the person was arrested and convicted under a slightly different name.

WATCH is faster and more convenient for me. Why should WATCH be used only as a preliminary check? If you depend solely on WATCH, you may want to consider these issues:

The agency may not have adequate legal support and oversight for the staff member interpreting the results. The agency may be liable for erroneous staff actions, because a staff member may be:

- Inadequately trained or not trained;
- Incorrectly conducting a background check;
- Misreading the WATCH system and/or record;
- Inconsistent application of the law(s);
- Inappropriate use of charge/arrest information;
- Allowing consideration of circumstances of the conviction;
- Legal determination of a conviction as equivalent/not equivalent to one on the list of disqualifying crimes; and,
- Interpreting out-of-state equivalent convictions.

You may not have adequate standards, guidelines, procedures, and policies, which address:

- Consistent training and orientation of staff;
- Qualifications of staff;
- Interpretation of criminal records;

- Out-of-state convictions;
- Disposition status (dismissal, bond forfeit, deferred, juvenile crimes, certification of rehabilitation, etc.);
- Application of law and WAC;
- Prohibitions, such as considering the circumstances of a conviction;
- Identification problems (fingerprints);
- Confidentiality and use restrictions;
- Practice of law; and,
- Identification of legal issues beyond staff expertise.

Agency staff members need to be educated with an unwavering understanding of the application of the statutes to avoid hiring a person who cannot legally have unsupervised access to children, vulnerable adults or persons who are developmentally disabled under the law.

The agency needs to make sure that legal staff is available to deal with calls questioning the hiring decision. Calls may come from:

- Lawyers;
- Prosecutors;
- Corrections officials incorrectly believing rehabilitation certificates apply;
- News reporters; or,
- Public defenders.

What is WATCH-IGN? WATCH-IGN (Washington Access to Criminal History - Inter Governmental Network) is the WSP electronic system that provides some state agencies access to non-public criminal history information that is not available through WATCH, the public system. DASA does not currently have access to this system.

Can counties use WATCH for background checks of potential providers? No. The WATCH system needs the exact name and date of birth to be accurate.

SECTION 12

APPLICATION FOR CHEMICAL DEPENDENCY TREATMENT AGENCY CERTIFICATION BACKGROUND CHECKS

When am I required to submit the results of a WSP criminal background check directly to DASA? WAC 388-805-015(2)(d) requires you to submit a criminal background check to DASA for each owner of 5 percent or more of the assets, and the administrator, if you are applying for certification as a new chemical dependency treatment provider. This applies where applicable to new provider applications, changes in ownership, and branch applications.

Will I ever have to submit more than a WSP background check to DASA? Possibly. WAC 388-805-015(2)(i) states the applicant must submit additional disclosure statements or background inquiries when requested if DASA has reason to believe that offenses, specified under RCW 43.43.830, have occurred since the completion of the original application.

Can DASA disqualify me as an applicant for chemical dependency treatment agency certification? Yes, WAC 388-805-065(1) **requires** DASA to disqualify an applicant if it is determined that one of the following conditions occurred and was not satisfactorily resolved, or when an owner or administrator:

- Had a license or certification for a chemical dependency treatment service or health care agency denied, revoked, or suspended;
- Was convicted of child abuse or adjudicated as a perpetrator of substantiated child abuse;
- Obtained or attempted to obtain a health provider license, certification, or registration by fraudulent means or misrepresentation;
- Committed, permitted, aided, or abetted the commission of an illegal act or unprofessional conduct as defined in RCW 18.130.180;
- Demonstrated cruelty, abuse, negligence, misconduct, or indifference to the welfare of a patient or displayed acts of discrimination;
- Misappropriated patient property or resources;
- Knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in:
 - ◆ The application or materials attached; and,
 - ◆ Any matter under department investigation.
- Refused to allow the department access to records, files, books, or portions of the premises relating to operation of the chemical dependency treatment service;
- Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative; or,

- Does not meet criminal background check requirements.

WAC 388-805-065(2)(a) states that DASA may deny certification if the applicant fails to provide satisfactory application materials such as not providing a copy of the results of a criminal background check when required.

SECTION 13

DASA COMPLIANCE MONITORING

How does DASA monitor my compliance with WAC and RCW criminal background requirements? All agencies seeking to contract with DASA or seeking certification as a chemical dependency treatment agency are required to have policies and procedures in place for conducting criminal background checks on anyone who would have access to children, vulnerable adults or persons who are developmentally disabled. This is needed before certification or approval is granted.

Each existing contracted agency or certified chemical dependency treatment agency has its criminal background check policies and procedures reviewed at least once every three years as a part of their periodic on-site surveys. Note: While DASA Certification survey staff members do not have the authority to review the actual results of the criminal background checks, they do ensure the agency is aware of the background check requirements, review the agency's processes for conducting background checks, and verify that personnel records include sealed envelopes containing background check result forms.

Can DASA suspend or revoke my agency's certification once it has been granted? Yes. WAC 388-805-065-130(1) provides DASA with the authority to suspend or revoke a provider's certification when a disqualifying situation described under WAC 388-805-065-065 applies to a current service provider or when any of the following provider deficiencies or circumstances occur:

- Violation of a rule threatens or results in harm to a patient;
- A reasonably prudent provider should have been aware of a condition resulting in significant violation of a law or rule;
- Noncompliance occurs repeatedly in the same or similar areas;
- There is an inability to attain compliance with laws or rules within a reasonable period of time;
- The provider fails to submit an acceptable and timely plan of correction for cited deficiencies; or,
- The provider fails to correct cited deficiencies.

SECTION 14

APPENDICES

APPENDIX A	RCW 43.43.830-.845, Background Checks -- Access to Children & Vulnerable Persons
APPENDIX B	RCW 10.97, Washington State Criminal Records Privacy Act
APPENDIX C	WAC 446-20-150, Correction of Erroneous information (WSP)
APPENDIX D	WAC 446-20-160, Review of Refusal to alter Record (WSP)
APPENDIX E	WAC 388-805, Applicable requirements
APPENDIX F	Sample background inquiry application form (Request for Criminal History Information form)
APPENDIX G	List of disqualifying crimes
APPENDIX H	Definitions

**RCW 43.43.700-845
CRIMINAL BACKGROUND CHECKS**

This appendix includes a copy of the indicated regulations, current as of September 26, 2003, and is subject to periodical revision. The reader should periodically determine whether the specific regulation has been revised.

RCW 43.43.700

Identification, child abuse, vulnerable adult abuse, and criminal history section -- Generally. There is hereby established within the Washington State Patrol a section on identification, child abuse, vulnerable adult abuse, and criminal history hereafter referred to as the section.

In order to aid the administration of justice the section shall install systems for the identification of individuals, including the fingerprint system and such other systems as the chief deems necessary. The section shall keep a complete record and index of all information received in convenient form for consultation and comparison.

The section shall obtain from whatever source available and file for record the fingerprints, palm prints, photographs, or such other identification data as it deems necessary, of persons who have been or shall hereafter be lawfully arrested and charged with, or convicted of any criminal offense. The section may obtain like information concerning persons arrested for or convicted of crimes under the laws of another state or government.

The section shall also contain like information concerning persons, over the age of eighteen years, who have been found to have physically abused or sexually abused or exploited a child pursuant to a dependency proceeding under chapter [13.34](#) RCW, or to have abused or financially exploited a vulnerable adult pursuant to a protection proceeding under chapter [74.34](#) RCW.

[1998 c 141 § 2; 1989 c 334 § 6; 1987 c 486 § 9; 1985 c 201 § 7; 1984 c 17 § 17; 1972 ex.s. c 152 § 1.]

RCW 43.43.705

Identification data -- Processing procedure -- Definitions. Upon the receipt of identification data from criminal justice agencies within this state, the section shall immediately cause the files to be examined and upon request shall promptly return to the contributor of such data a transcript of the record of previous arrests and dispositions of the persons described in the data submitted.

Upon application, the section shall furnish to criminal justice agencies, or to the department of social and health services, hereinafter referred to as the "department", a transcript of the criminal offender record information, dependency record information, or protection proceeding record information available pertaining to any person of whom the section has a record.

For the purposes of RCW [43.43.700](#) through [43.43.785](#) the following words and phrases shall have the following meanings:

"Criminal offender record information" includes, and shall be restricted to identifying data and public record information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal offender record information" shall not include intelligence, analytical, or investigative reports and files.

"Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

"Dependency record information" includes and shall be restricted to identifying data regarding a person, over the age of eighteen, who was a party to a dependency proceeding brought under chapter [13.34](#) RCW and who has been found, pursuant to such dependency proceeding, to have sexually abused or exploited or physically abused a child.

"Protection proceeding record information" includes and shall be restricted to identifying data regarding a person, over eighteen, who was a respondent to a protection proceeding brought under chapter [74.34](#) RCW and who has been found pursuant to such a proceeding to have abused or financially exploited a vulnerable adult.

The section may refuse to furnish any information pertaining to the identification or history of any person or persons of whom it has a record, or other information in its files and records, to any applicant if the chief determines that the applicant has previously misused information furnished to such applicant by the section or the chief believes that the applicant will not use the information requested solely for the purpose of due administration of the criminal laws or for the purposes enumerated in *RCW [43.43.760](#)(3). The applicant may appeal such determination by notifying the chief in writing within thirty days. The hearing shall be before an administrative law judge appointed under chapter [34.12](#) RCW and in accordance with procedures for adjudicative proceedings under chapter [34.05](#) RCW.

[1999 c 151 § 1101; 1989 c 334 § 7; 1987 c 486 § 10; 1985 c 201 § 8; 1977 ex.s. c 314 § 14; 1972 ex.s. c 152 § 2.]

NOTES:

***Reviser's note:** RCW [43.43.760](#) was amended by 2001 c 217 § 3, changing subsection (3) to subsection (4).

Part headings not law -- Effective date -- 1999 c 151: See notes following RCW [18.28.010](#).

RCW 43.43.710

Availability of information. Information contained in the files and records of the section relative to the commission of any crime by any person shall be considered privileged and shall not be made public or disclosed for any personal purpose or in any civil court proceedings except upon a written order of the judge of a court wherein such civil proceedings are had. All information contained in the files of the section relative to criminal records and personal histories of persons arrested for the commission of a crime shall be available to all criminal justice agencies upon the filing of an application as provided in RCW [43.43.705](#).

Although no application for information has been made to the section as provided in RCW [43.43.705](#), the section may transmit such information in the chief's discretion, to such agencies as are authorized by RCW [43.43.705](#) to make application for it.

[1995 c 369 § 13; 1987 c 486 § 11; 1986 c 266 § 87; 1985 c 201 § 9; 1979 ex.s. c 36 § 7. Prior: 1977 ex.s. c 314 § 15; 1977 ex.s. c 30 § 1; 1972 ex.s. c 152 § 3.]

NOTES:

Effective date -- 1995 c 369: See note following RCW [43.43.930](#).

Severability -- 1986 c 266: See note following RCW [38.52.005](#).

RCW 43.43.815

Conviction record furnished to employer -- Purposes -- Notification to subject of record -- Fees -- Limitations -- Injunctive relief, damages, attorneys' fees -- Disclaimer of liability -- Rules.

- (1) Notwithstanding any provision of RCW [43.43.700](#) through [43.43.810](#) to the contrary, the Washington State Patrol shall furnish a conviction record, as defined in RCW [10.97.030](#), pertaining to any person of whom the Washington State Patrol has a record upon the written or electronic request of any employer for the purpose of:
 - (a) Securing a bond required for any employment;
 - (b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or
 - (c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.
- (2) When an employer has received a conviction record under subsection (1) of this section, the employer shall notify the subject of the record of such receipt within thirty days after receipt of the record, or upon completion of an investigation under subsection (1)(c) of this section. The employer shall make the record available for examination by its subject and shall notify the subject of such availability.
- (3) The Washington State Patrol shall charge fees for disseminating records pursuant to this section, which will cover, as nearly as practicable, the direct and indirect costs to the Washington State Patrol of disseminating such records.
- (4) Information disseminated pursuant to this section or RCW [43.43.760](#) shall be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated and shall be used only as necessary for those purposes enumerated in subsection (1) of this section.
- (5) Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this section, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court finds that the defendant is violating or has violated any of the provisions of this section, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief,

the plaintiff in the action is entitled to recover from the defendant the amount of the actual damages, if any, sustained by him if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of chapter [10.97](#) RCW.

- (6) Neither the section, its employees, nor any other agency or employee of the state is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information pursuant to this section or RCW [43.43.760](#).
- (7) The Washington State Patrol may adopt rules and forms to implement this section and to provide for security and privacy of information disseminated pursuant hereto, giving first priority to the criminal justice requirements of chapter [43.43](#) RCW. Such rules may include requirements for users, audits of users, and other procedures to prevent use of criminal history record information inconsistent with this section.
- (8) Nothing in this section shall authorize an employer to make an inquiry not otherwise authorized by law, or be construed to affect the policy of the state declared in RCW [9.96A.010](#), encouraging the employment of ex-offenders.

[1995 c 169 § 1; 1982 c 202 § 1.]

RCW 43.43.830

Background checks -- Access to children or vulnerable persons -- Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW [43.43.830](#) through [43.43.840](#).

- (1) "Applicant" means:
 - (a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;
 - (b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults; or
 - (c) Any prospective adoptive parent, as defined in RCW [26.33.020](#).
- (2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including but not limited to public housing authorities, school districts, and educational service districts.

- (3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW [13.34.040](#) or in a domestic relations action under Title [26](#) RCW. In the case of vulnerable adults, civil adjudication means a specific court finding of abuse or financial exploitation in a protection proceeding under chapter [74.34](#) RCW. It does not include administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding or was a respondent in a protection proceeding in which the finding was made and who contested the allegation of abuse or exploitation.
- (4) "Conviction record" means "conviction record" information as defined in RCW [10.97.030](#)(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.
- (5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnapping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW [26.44.020](#); first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.
- (6) "Crimes relating to drugs" means a conviction of a crime to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.
- (7) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.
- (8) "Disciplinary board final decision" means any final decision issued by a disciplining authority under chapter [18.130](#) RCW or the secretary of the department of health for the following businesses or professions:
- (a) Chiropractic;
 - (b) Dentistry;

- (c) Dental hygiene;
- (d) Massage;
- (e) Midwifery;
- (f) Naturopathy;
- (g) Osteopathic medicine and surgery;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing; and
- (l) Psychology.

"Disciplinary board final decision," for real estate brokers and salespersons, means any final decision issued by the director of the department of licensing for real estate brokers and salespersons.

- (9) "Unsupervised" means not in the presence of:
 - (a) Another employee or volunteer from the same business or organization as the applicant; or
 - (b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.
- (10) "Vulnerable adult" means "vulnerable adult" as defined in chapter [74.34](#) RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW [43.43.832](#), it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.
- (11) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.
- (12) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults.

[2002 c 229 § 3; 1999 c 45 § 5; 1998 c 10 § 1; 1996 c 178 § 12; 1995 c 250 § 1; 1994 c 108 § 1; 1992 c 145 § 16. Prior: 1990 c 146 § 8; 1990 c 3 § 1101; prior: 1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

NOTES:

Effective date -- 2002 c 229: See note following RCW [9A.42.100](#).

Effective date -- 1996 c 178: See note following RCW [18.35.110](#).

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW [18.155.900](#) through [18.155.902](#).

At-risk children volunteer program: RCW [43.150.080](#).

Developmentally disabled persons: RCW [41.06.475](#).

State hospitals: RCW [72.23.035](#).

RCW 43.43.832

Background checks -- Disclosure of information--Sharing of criminal background information by health care facilities.

- (1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or licensees to hire or engage. The legislature further finds that many developmentally disabled individuals and vulnerable adults desire to hire their own employees directly and also need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington State Patrol criminal identification system shall disclose, upon the request of a business or organization as defined in RCW [43.43.830](#), a developmentally disabled person, or a vulnerable adult as defined in RCW [43.43.830](#) or his or her guardian, an applicant's record for convictions of offenses against children or other persons, convictions for crimes relating to financial exploitation, but only if the victim was a vulnerable adult, adjudications of child abuse in a civil action, the issuance of a protection order against the respondent under chapter [74.34](#) RCW, and disciplinary board final decisions and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision.
- (2) The legislature also finds that the state board of education may request of the Washington State Patrol criminal identification system information regarding a certificate applicant's record for convictions under subsection (1) of this section.
- (3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.
- (4) The legislature further finds that the department of social and health services must consider the information listed in subsection (1) of this section in the following circumstances:
 - (a) When considering persons for state employment in positions directly responsible for the supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities;

- (b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;
 - (c) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to agencies or facilities licensed under chapter [74.15](#) or [18.51](#) RCW;
 - (d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, *18.48, 70.127, 70.128, 72.36, or [74.39A](#) RCW or Title [71A](#) RCW;
 - (e) When individual providers are paid by the state or providers are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter [74.34](#) RCW, including but not limited to services provided under chapter [74.39](#) or [74.39A](#) RCW.
- (5) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.
- (6)(a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment frequently, health care facilities may, upon request from another health care facility, share copies of completed criminal background inquiry information.
- (b) Completed criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer, no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the criminal background information is no more than two years old.
 - (c) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW [43.43.842](#) since the completion date of the most recent criminal background inquiry.

- (d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW [43.43.842](#), subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's criminal background inquiry information. A new criminal background inquiry shall be requested pursuant to RCW [43.43.830](#) through [43.43.842](#).
 - (e) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.
 - (f) Health care facilities shall transmit and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.
 - (g) For the purposes of this subsection, "health care facility" means a nursing home licensed under chapter [18.51](#) RCW, a boarding home licensed under chapter [18.20](#) RCW, or an adult family home licensed under chapter [70.128](#) RCW.
- (7) If a federal bureau of investigation check is required in addition to the state background check by the department of social and health services, an applicant who is not disqualified based on the results of the state background check shall be eligible for a one hundred twenty day provisional approval to hire, pending the outcome of the federal bureau of investigation check. The department may extend the provisional approval until receipt of the federal bureau of investigation check. If the federal bureau of investigation check disqualifies an applicant, the department shall notify the requestor that the provisional approval to hire is withdrawn and the applicant may be terminated.

[2000 c 87 § 1; 1997 c 392 § 524; 1995 c 250 § 2; 1993 c 281 § 51; 1990 c 3 § 1102. Prior: 1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

NOTES:

*Reviser's note: Chapter [18.48](#) RCW was repealed in its entirety by 2002 c 223 § 2.

Short title--Findings -- Construction--Conflict with federal requirements--Part headings and captions not law--1997 c 392: See notes following RCW [74.39A.009](#).

Effective date -- 1993 c 281: See note following RCW [41.06.022](#).

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW [18.155.900](#) through [18.155.902](#).

RCW 43.43.834**Background checks by business, organization, or insurance company -- Limitations -- Civil liability.**

- (1) A business or organization shall not make an inquiry to the Washington State Patrol under RCW [43.43.832](#) or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer, that an inquiry may be made.
- (2) A business or organization shall require each applicant to disclose to the business or organization whether the applicant has been:
 - (a) Convicted of any crime against children or other persons;
 - (b) Convicted of crimes relating to financial exploitation if the victim was a vulnerable adult;
 - (c) Convicted of crimes related to drugs as defined in RCW [43.43.830](#);
 - (d) Found in any dependency action under RCW [13.34.040](#) to have sexually assaulted or exploited any minor or to have physically abused any minor;
 - (e) Found by a court in a domestic relations proceeding under Title [26](#) RCW to have sexually abused or exploited any minor or to have physically abused any minor;
 - (f) Found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person or to have abused or financially exploited any vulnerable adult; or
 - (g) Found by a court in a protection proceeding under chapter [74.34](#) RCW, to have abused or financially exploited a vulnerable adult.

The disclosure shall be made in writing and signed by the applicant and sworn under penalty of perjury. The disclosure sheet shall specify all crimes against children or other persons and all crimes relating to financial exploitation as defined in RCW [43.43.830](#) in which the victim was a vulnerable adult.

- (3) The business or organization shall pay such reasonable fee for the records check as the state patrol may require under RCW [43.43.838](#).
- (4) The business or organization shall notify the applicant of the state patrol's response within ten days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.
- (5) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited, except as provided in RCW [28A.320.155](#). A business or organization violating this subsection is subject to a civil action for damages.

- (6) An insurance company shall not require a business or organization to request background information on any employee before issuing a policy of insurance.
- (7) The business and organization shall be immune from civil liability for failure to request background information on an applicant unless the failure to do so constitutes gross negligence.

[1999 c 21 § 2; 1998 c 10 § 3; 1990 c 3 § 1103. Prior: 1989 c 334 § 3; 1989 c 90 § 3; 1987 c 486 § 3.]

NOTES:

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3:
See RCW [18.155.900](#) through [18.155.902](#).

RCW 43.43.835

Background checks -- Drug-related conviction information. For purposes of background checks, convictions for crimes relating to drugs may be used as a tool for investigation and may be used for any decision regarding the person's suitability for a position in which the person may have unsupervised access to children or vulnerable adults.

[1998 c 10 § 2.]

RCW 43.43.836

Disclosure to individual of own record -- Fee. An individual may contact the state patrol to ascertain whether that same individual has a civil adjudication, disciplinary board final decision, or conviction record. The state patrol shall disclose such information, subject to the fee established under RCW [43.43.838](#).

[1987 c 486 § 4.]

RCW 43.43.842

Vulnerable adults -- Additional licensing requirements for agencies, facilities, and individuals providing services.

- (1)(a) The secretary of social and health services and the secretary of health shall adopt additional requirements for the licensure or relicensure of agencies, facilities, and licensed individuals who provide care and treatment to vulnerable adults, including nursing pools registered under chapter [18.52C](#) RCW. These additional requirements shall ensure that any person associated with a licensed agency or facility having unsupervised access with a vulnerable adult shall not have been: (i) Convicted of a crime against persons as defined in RCW [43.43.830](#), except as provided in this section; (ii) convicted of crimes relating to financial exploitation as defined in RCW [43.43.830](#), except as provided in this section; (iii) found in any disciplinary board final decision to have abused a vulnerable adult under RCW [43.43.830](#); or (iv) the subject in a protective proceeding under chapter [74.34](#) RCW.

- (b) A person associated with a licensed agency or facility who has unsupervised access with a vulnerable adult shall make the disclosures specified in RCW [43.43.834\(2\)](#). The person shall make the disclosures in writing, sign, and swear to the contents under penalty of perjury. The person shall, in the disclosures, specify all crimes against children or other persons, all crimes relating to financial exploitation, and all crimes relating to drugs as defined in RCW [43.43.830](#), committed by the person.
- (2) The rules adopted under this section shall permit the licensee to consider the criminal history of an applicant for employment in a licensed facility when the applicant has one or more convictions for a past offense and:
- (a) The offense was simple assault, assault in the fourth degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;
 - (b) The offense was prostitution, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;
 - (c) The offense was theft in the third degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;
 - (d) The offense was theft in the second degree, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment;
 - (e) The offense was forgery, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment.

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

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

[1998 c 10 § 4; 1997 c 392 § 518; 1992 c 104 § 1; 1989 c 334 § 11.]

NOTES:

Short title--Findings--Construction--Conflict with federal requirements--Part headings and captions not law -- 1997 c 392: See notes following RCW [74.39A.009](#).

RCW 43.43.845

Crimes against children -- Notification of conviction or guilty plea of school employee.

- (1) Upon a guilty plea or conviction of a person of any felony crime involving the physical neglect of a child under chapter [9A.42](#) RCW, the physical injury or death of a child under chapter [9A.32](#) or [9A.36](#) RCW (except motor vehicle violations under chapter [46.61](#) RCW), sexual exploitation of a child under chapter [9.68A](#) RCW, sexual offenses under chapter [9A.44](#) RCW where a minor is the victim, promoting prostitution of a minor under chapter [9A.88](#) RCW, or the sale or purchase of a minor child under RCW [9A.64.030](#), the prosecuting attorney shall determine whether the person holds a certificate or permit issued under chapters [28A.405](#) and [28A.410](#) RCW or is employed by a school district. If the person is employed by a school district or holds a certificate or permit issued under chapters [28A.405](#) and [28A.410](#) RCW, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.
- (2) When the state patrol receives information that a person who has a certificate or permit issued under chapters [28A.405](#) and [28A.410](#) RCW or is employed by a school district has pled guilty to or been convicted of one of the felony crimes under subsection (1) of this section, the state patrol shall immediately transmit that information to the superintendent of public instruction. It shall be the duty of the superintendent of public instruction to provide this information to the state board of education and the school district employing the individual who pled guilty or was convicted of the crimes identified in subsection (1) of this section.

[1990 c 33 § 577; 1989 c 320 § 6.]

NOTES:

Purpose -- Statutory references -- Severability -- 1990 c 33: See RCW [28A.900.100](#) through [28A.900.102](#).

Severability -- 1989 c 320: See note following RCW [28A.410.090](#).

RCW 10.97

WASHINGTON STATE CRIMINAL RECORDS PRIVACY ACT

This appendix includes a copy of the indicated regulations, current as of September 26, 2003, and is subject to periodical revision. The reader should periodically determine whether the specific regulation has been revised.

RCW 10.97.010

Declaration of policy. The legislature declares that it is the policy of the state of Washington to provide for the completeness, accuracy, confidentiality, and security of criminal history record information and victim, witness, and complainant record information as defined in this chapter.

[1977 ex.s. c 314 § 1.]

RCW 10.97.020

Short title. This chapter may be cited as the Washington State Criminal Records Privacy Act.

[1977 ex.s. c 314 § 2.]

NOTES:

Reviser's note: The phrase "This 1977 amendatory act" has been changed to "This chapter." This 1977 amendatory act [1977 ex.s. c 314] consists of chapter 10.97 RCW and the amendments of RCW 42.17.310, 43.43.705, 43.43.710, 43.43.730, and 43.43.810.

RCW 10.97.030

Definitions. For purposes of this chapter, the definitions of terms in this section shall apply.

- (1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges, and any disposition arising there from, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release.

The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

- (a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;
- (b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

- (c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;
 - (d) Records of traffic violations, which are not punishable by a maximum term of imprisonment of more than ninety days;
 - (e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130;
 - (f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330;
 - (g) Announcements of executive clemency.
- (2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, charge, or service of warrant and no disposition has been entered.
- (3) "Conviction record" means criminal history record information relating to an incident, which has led to a conviction or other disposition adverse to the subject.
- (4) "Conviction or other disposition adverse to the subject" means any disposition of charges other than:
- (a) A decision not to prosecute;
 - (b) A dismissal; or
 - (c) Acquittal;

With the following exceptions, which shall be considered dispositions adverse to the subject: An acquittal due to a finding of not guilty by reason of insanity and a dismissal by reason of in competency, pursuant to chapter 10.77 RCW; and a dismissal entered after a period of probation, suspension, or deferral of sentence.

- (5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.
- (6) "The administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime.

- (7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.
- (8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:
 - (a) When criminal justice agencies jointly participate in the maintenance of a single record-keeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;
 - (b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;
 - (c) The reporting of an event to a record keeping agency for the purpose of maintaining the record is not a dissemination.

[1999 c 49 § 1; 1998 c 297 § 49; 1990 c 3 § 128; 1979 ex.s. c 36 § 1; 1979 c 158 § 5; 1977 ex.s. c 314 § 3.]

NOTES:

Effective dates--Severability -- Intent -- 1998 c 297: See notes following RCW 71.05.010.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

RCW 10.97.040

Information required -- Exceptions.

No criminal justice agency shall disseminate criminal history record information pertaining to an arrest, detention, indictment, information, or other formal criminal charge made after December 31, 1977, unless the record disseminated states the disposition of such charge to the extent dispositions have been made at the time of the request for the information: PROVIDED, HOWEVER, That if a disposition occurring within ten days immediately preceding the dissemination has not been reported to the agency disseminating the criminal history record information, or if information has been received by the agency within the seventy-two hours immediately preceding the dissemination, that information shall not be required to be included in the dissemination: PROVIDED FURTHER, That when another criminal justice agency requests criminal history record information, the disseminating agency may disseminate specific facts and incidents which are within its direct knowledge without furnishing disposition data as otherwise required by this section, unless the disseminating agency has received such disposition data from either: (1) the state patrol, or (2) the court or other criminal justice agency required to furnish disposition data pursuant to RCW [10.97.045](#).

No criminal justice agency shall disseminate criminal history record information which shall include information concerning a felony or gross misdemeanor without first making inquiry of the identification section of the Washington State Patrol for the purpose of obtaining the most

current and complete information available, unless one or more of the following circumstances exists:

- (1) The information to be disseminated is needed for a purpose in the administration of criminal justice for which time is of the essence and the identification section is technically or physically incapable of responding within the required time;
- (2) The full information requested and to be disseminated relates to specific facts or incidents, which are within the direct knowledge of the agency, which disseminates the information;
- (3) The full information requested and to be disseminated is contained in a criminal history record information summary received from the identification section by the agency, which is to make the dissemination not more than thirty days preceding the dissemination to be made;
- (4) The statute, executive order, court rule, or court order pursuant to which the information is to be disseminated refers solely to information in the files of the agency, which makes the dissemination;
- (5) The information requested and to be disseminated is for the express purpose of research, evaluative, or statistical activities to be based upon information maintained in the files of the agency or agencies from which the information is directly sought; or
- (6) A person who is the subject of the record requests the information and the agency complies with the requirements in RCW [10.97.080](#) as now or hereafter amended.

[1979 ex.s. c 36 § 2; 1977 ex.s. c 314 § 4.]

RCW 10.97.045

Disposition data to initiating agency and state patrol. Whenever a court or other criminal justice agency reaches a disposition of a criminal proceeding, the court or other criminal justice agency shall furnish the disposition data to the agency initiating the criminal history record for that charge and to the identification section of the Washington State Patrol as required under RCW 43.43.745.

[1979 ex.s. c 36 § 6.]

RCW 10.97.050

Restricted, unrestricted information -- Records.

- (1) Conviction records may be disseminated without restriction.
- (2) Any criminal history record information which pertains to an incident for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

- (3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain the purpose for which the information is to be used by the agency making the inquiry.
- (4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.
- (5) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.
- (6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained there from and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.
- (7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:
 - (a) An indication of to whom (agency or person) criminal history record information was disseminated;
 - (b) The date on which the information was disseminated;
 - (c) The individual to whom the information relates; and
 - (d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year.

- (8) In addition to the other provisions in this section allowing dissemination of criminal history record information, RCW 4.24.550 governs dissemination of information concerning offenders who commit sex offenses as defined by RCW 9.94A.030. Criminal justice agencies, their employees, and officials shall be immune from civil liability for dissemination on criminal history record information concerning sex offenders as provided in RCW 4.24.550.

[1990 c 3 § 129; 1977 ex.s. c 314 § 5.]

NOTES:

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3:
See RCW 18.155.900 through 18.155.902.

RCW 10.97.060

Deletion of certain information, conditions. Criminal history record information which consists of nonconviction data only shall be subject to deletion from criminal justice agency files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a named or otherwise identified individual when two years or longer have elapsed since the record became nonconviction data as a result of the entry of a disposition favorable to the defendant, or upon the passage of three years from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained unless the defendant is a fugitive, or the case is under active prosecution according to a current certification made by the prosecuting attorney.

Such criminal history record information consisting of nonconviction data shall be deleted upon the request of the person who is the subject of the record: PROVIDED, HOWEVER, That the criminal justice agency maintaining the data may, at its option, refuse to make the deletion if:

- (1) The disposition was a deferred prosecution or similar diversion of the alleged offender;
- (2) The person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor;
- (3) The individual who is the subject of the record has been arrested for or charged with another crime during the intervening period.

Nothing in this chapter is intended to restrict the authority of any court, through appropriate judicial proceedings, to order the modification or deletion of a record in a particular cause or concerning a particular individual or event.

[1977 ex.s. c 314 § 6.]

RCW 10.97.070

Disclosure of suspect's identity to victim.

- (1) Criminal justice agencies may, in their discretion, disclose to persons who have suffered physical loss, property damage, or injury compensable through civil action, the identity of persons suspected as being responsible for such loss, damage, or injury together with

such information as the agency reasonably believes may be of assistance to the victim in obtaining civil redress. Such disclosure may be made without regard to whether the suspected offender is an adult or a juvenile, whether charges have or have not been filed, or a prosecuting authority has declined to file a charge or a charge has been dismissed.

- (2) Unless the agency determines release would interfere with an ongoing criminal investigation, in any action brought pursuant to this chapter, criminal justice agencies shall disclose identifying information, including photographs of suspects, if the acts are alleged by the plaintiff or victim to be a violation of RCW 9A.50.020.
- (3) The disclosure by a criminal justice agency of investigative information pursuant to subsection (1) of this section shall not establish a duty to disclose any additional information concerning the same incident or make any subsequent disclosure of investigative information, except to the extent an additional disclosure is compelled by legal process.

[1993 c 128 § 10; 1977 ex.s. c 314 § 7.]

NOTES:

Severability -- Effective date -- 1993 c 128: See RCW 9A.50.901 and 9A.50.902.

RCW 10.97.080

Inspection of information by subject -- Challenges and corrections. All criminal justice agencies shall permit an individual who is, or who believes that he may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter 42.17 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington State Patrol shall establish rules for the challenge of records, which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The Washington State Patrol shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information

to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information.

[1979 ex.s. c 36 § 3; 1977 ex.s. c 314 § 8.]

RCW 10.97.090

Administration by state patrol. The Washington State Patrol is hereby designated the agency of state government responsible for the administration of the 1977 Washington State Criminal Records Privacy Act. The Washington State Patrol may adopt any rules and regulations necessary for the performance of the administrative functions provided for in this chapter.

The Washington State Patrol shall have the following specific administrative duties:

- (1) To establish by rule and regulation standards for the security of criminal history information systems in order that such systems and the data contained therein be adequately protected from fire, theft, loss, destruction, other physical hazard, or unauthorized access;
- (2) To establish by rule and regulation standards for personnel employed by criminal justice of other state and local government agencies in positions with responsibility for maintenance and dissemination of criminal history record information; and
- (3) To contract with the Washington state auditor or other public or private agency, organization, or individual to perform audits of criminal history record information systems.

[1979 ex.s. c 36 § 4; 1977 ex.s. c 314 § 9.]

RCW 10.97.100

Fees. Criminal justice agencies shall be authorized to establish and collect reasonable fees for the dissemination of criminal history record information to agencies and persons other than criminal justice agencies.

[1977 ex.s. c 314 § 10.]

RCW 10.97.110

Civil remedies -- Criminal prosecution not affected. Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this chapter, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant the amount of the actual damages, if any, sustained by him if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal.

Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of this chapter.

[1979 ex.s. c 36 § 5; 1977 ex.s. c 314 § 11.]

RCW 10.97.120

Criminal penalties -- Civil action not affected. Violation of the provisions of this chapter shall constitute a misdemeanor, and any person whether as principal, agent, officer, or director for himself or for another person, or for any firm or corporation, public or private, or any municipality who or which shall violate any of the provisions of this chapter shall be guilty of a misdemeanor for each single violation. Any criminal prosecution shall not affect the right of any person to bring a civil action as authorized by this chapter or otherwise authorized by law.

[1977 ex.s. c 314 § 12.]

RCW 10.97.130

Child victims of sexual assaults, identification confidential. Information identifying child victims under age eighteen who are victims of sexual assaults is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying the child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault. Prior to release of any criminal history record information, the releasing agency shall delete any information identifying a child victim of sexual assault from the information except as provided in this section.

[1992 c 188 § 8.]

NOTES:

Findings -- Intent -- Severability -- 1992 c 188: See notes following RCW 7.69A.020.

RCW 10.97.140

Construction. Nothing in RCW 40.14.060, 40.14.070, or 42.17.310 precludes dissemination of criminal history record information, including nonconviction data, for the purposes of this chapter.

[1999 c 326 § 4.]

WAC 446-20-150

CORRECTION OF ERRONEOUS INFORMATION.

This appendix includes a copy of the indicated regulations, current as of September 26, 2003, and is subject to periodical revision. The reader should periodically determine whether the specific regulation has been revised.

WAC 446-20-150 Correction of erroneous information.

- (1) The originating agency must send information correcting the previously incorrect information to all agencies and persons to which the previously incorrect information was disseminated by the originating agency. This obligation shall be limited to disseminations made within one year of the date on which the challenge was initiated.
- (2) Any criminal justice agency maintaining criminal history record information within the state shall adopt a procedure which, when significant information in a criminal history record maintained on an individual is determined to be inaccurate, leads to the dissemination of corrected information to every agency and person(s) to which the prior erroneous information was disseminated within the preceding one year.

[Statutory Authority: RCW [10.97.080](#) and [10.97.090](#). 80-08-057 (Order 80-2), § 446-20-150, filed 7/1/80.]

WAC 446-20-160

REVIEW OF REFUSAL TO ALTER RECORD.

This appendix includes a copy of the indicated regulations, current as of September 26, 2003, and is subject to periodical revision. The reader should periodically determine whether the specific regulation has been revised.

A person who is the subject of a criminal record and who disagrees with the refusal of the agency maintaining or submitting the record to correct, complete, or delete the record, may request a review of the refusal within twenty business days of the date of receipt of such refusal. The request for review shall be in writing, and shall be made by the completion of a form substantially equivalent to that set forth in WAC [446-20-410](#). If review is requested in the time allowed, the head of the agency whose record or submission has been challenged shall complete the review within thirty days and make a final determination of the challenge. The head of the agency may extend the thirty-day period for an additional period not to exceed thirty business days. If the head of the agency determines that the challenge should not be allowed, he shall state his reasons in a written decision, a copy of which shall be provided to the subject of the record. Denial by the agency head shall constitute a final decision under RCW [34.04.130](#).

[Statutory Authority: [RCW 10.97.080](#) and [10.97.090](#). 80-08-057 (Order 80-2), § 446-20-160, filed 7/1/80.]

**WAC 388-805 REQUIREMENTS RELATED
TO CRIMINAL BACKGROUND CHECKS**

This appendix includes a copy of the indicated regulations, current as of October 25, 2003, and is subject to periodical revision. The reader should periodically determine whether the specific regulation has been revised.

The following are excerpts from WAC 388-805 that pertain to criminal background checks and does not include all the certification requirements for chemical dependency treatment service providers.

WAC 388-805-005 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter:

"Child" means a person less than eighteen years of age, also known as adolescent, juvenile, or minor;

"Criminal background check" means a search by the Washington state patrol for any record of convictions or civil adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults, per RCW 43.43.830 through 43.43.842 relating to the Washington state patrol;

"Vulnerable adult" means a person who lacks the functional, mental, or physical ability to care for oneself.

"Youth" means a person seventeen years of age or younger.

WAC 388-805-015 Application for certification.

- (1) A potential chemical dependency treatment service provider, otherwise referred to as applicant, seeking certification for one or more treatment services, as described under WAC 388-805-010, shall:
 - (h) A copy of the report of findings from a criminal background check of any owner of five percent or more of the assets and the administrator. The background check shall be conducted by the Washington state patrol or the law enforcement agency of the previous state of residence if the person was not a resident of Washington for one year before the date of application.
 - (i) Additional disclosure statements or background inquiries if the department has reason to believe that offenses, specified under RCW 43.43.830, have occurred since completion of the original application.

APPENDIX E

WAC 388-805-065 Disqualification, denial. The department shall consider the ability of each person named in the application to operate in accord with this chapter before the department grants or renews certification of a chemical dependency treatment service.

- (1) The department shall deny an applicant's certification when any of the following conditions occurred and was not satisfactorily resolved, or when any owner or administrator:
 - (a) Had a license or certification for a chemical dependency treatment service or health care agency denied, revoked, or suspended;
 - (b) Was convicted of child abuse or adjudicated as a perpetrator of substantiated child abuse;
 - (c) Obtained or attempted to obtain a health provider license, certification, or registration by fraudulent means or misrepresentation;
 - (d) Committed, permitted, aided, or abetted the commission of an illegal act or unprofessional conduct as defined under chapter 18.130.180 RCW;
 - (e) Demonstrated cruelty, abuse, negligence, misconduct, or indifference to the welfare of patient or displayed acts of discrimination;
 - (f) Misappropriated patient property or resources;
 - (i) Knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in:
 - (i) The application or materials attached; and
 - (ii) Any matter under department investigation.
 - (k) Refused to allow the department access to records, files, books, or portions of the premises relating to operation of the chemical dependency treatment service;
 - (l) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative;
 - (m) Does not meet criminal background check requirements.
- (2) The department may deny certification when an applicant:
 - (a) Fails to provide satisfactory application materials.
- (4) The applicant may appeal department decisions in accord with chapter 34.05 RCW, the Washington Administrative Procedure Act.

WAC 388-805-105 Change in ownership.

- (1) When a certified chemical dependency service provider plans a change in ownership, the current service provider shall notify the department, in writing, sixty or more days before the proposed date of ownership change.
- (2) The current provider must include the following information with the application:
 - (g) A copy of the report of findings from a criminal background check of any new owner of five percent or more of the organizational assets and new administrator when applicable.
- (3) The department shall determine which, if any, WAC 440-22-015 or 440-22-020 requirements apply to the potential service provider, depending on the extent of ownership and operational changes.
- (4) The department may grant certification to the new owner when the new owner:
 - (a) Successfully completes the application process; and
 - (b) Ensures continuation of compliance with rules of this chapter and implementation of plans of correction for deficiencies relating to this chapter, when applicable.

WAC 388-805-200 Personnel manual. The administrator shall have and adhere to a personnel manual, which contains, at a minimum:

- (2) Methods to meet RCW 43.43.830 through 43.43.842 requirements relating to criminal background checks;

WASHINGTON STATE PATROL

Identification and Criminal History Section
PO Box 42633, Olympia WA 98504-2633

REQUEST FOR CRIMINAL HISTORY INFORMATION CHILD/ADULT ABUSE INFORMATION ACT RCW 43.43.830 THROUGH 43.43.845

(Instructions on Reverse Side)

A REQUESTING AGENCY/ADDRESS

Agency _____

Attn _____

Address _____

City/State/Zip _____

I certify this request is made pursuant to and for the purpose indicated.

Authorized Signature _____

Date _____

Title _____

Area Code/Phone Number _____

B PURPOSE

Check appropriate box

- Educational School District (ESD)/School District Volunteer - no fee
- Non-Profit Business/Organization - no fee (Excluding Schools & ESD's)
- Profit Business/Organization - \$10
- Adoptive Parent - \$10

Fees: Make payable to **Washington State Patrol** by cashier's check, money order, or business account.

C APPLICANT OF INQUIRY (please provide as much information as possible name and date of birth are mandatory)

Applicant's Name: _____
Last
First
Middle

Alias/Maiden Name(s): _____

Date of Birth: _____ Sex: _____ Race: _____
Month/Day/Year

Social Security Number: _____ Driver's Lic. Number/State: _____ / _____

Secondary dissemination of this criminal history record information response is prohibited unless in compliance with RCW 10.97.050.

D IDENTIFICATION DECLARING NO EVIDENCE WASHINGTON STATE PATROL IDENTIFICATION & CRIMINAL HISTORY SECTION

As of this date, the applicant named below shows no evidence pursuant to RCW 43.43.830 through 43.43.845.

Requesting Agency _____

Applicant's Signature _____

Applicant's Name _____

Address _____

City/State/Zip _____

WSP Use Only

Valid Two Years From Issue

Applicant Right Thumb Print (Optional)

MAIL COMPLETED FORM TO:

WASHINGTON STATE PATROL
 IDENTIFICATION AND CRIMINAL HISTORY SECTION
 PO BOX 42633
 OLYMPIA, WA 98504-2633

FOR FURTHER INFORMATION, CONTACT THE WASHINGTON STATE PATROL AT PHONE NUMBER: (360) 705-5100

EMAIL ADDRESS: crimhis@wsp.wa.gov

Washington State Patrol WEBSITE: <http://www.wa.gov/wsp/>

CHILD/ADULT ABUSE RECORD SEARCH GUIDELINES:

Refer to Revised Code of Washington (RCW) 43.43.830-43.43.845 for complete information. Child/Adult Abuse Information Act background checks may be conducted by Washington state businesses, organizations or individuals. All other states must conduct searches under the Criminal Records Privacy Act, RCW 10.97.

1. Searches can be conducted only on prospective employees, volunteers or adoptive parents.

Background checks can be conducted on prospective employees, volunteers, or adoptive parents who will or may have unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults. The background check is for initial employment or engagement decisions only.

Background checks on current employees or volunteers should be done through the Criminal Records Privacy Act, RCW 10.97

2. Applicants must be notified an inquiry may be made.

A business or organization shall not make an inquiry to the Washington State Patrol unless the business or organization has notified the applicant, applying for a position as an employee or volunteer that an inquiry may be made.

3. A business or organization must prepare a disclosure statement to be signed by the applicant before a background check may be conducted.

A business or organization shall require each applicant to disclose whether the applicant has been:

- (a) convicted of any crime against children or other persons;
- (b) convicted of crimes relating to financial exploitation if the victim was a vulnerable adult;
- (c) convicted of crimes related to drugs as defined in RCW 43.43.830;
- (d) found in any dependency action under RCW 13.34.040 to have sexually assaulted or exploited any minor or to have physically abused any minor;
- (e) found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor;
- (f) found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person or to have abused or financially exploited any vulnerable adult;
- (g) found by a court in a protection proceeding under chapter 74.34 RCW, to have abused or financially exploited a vulnerable adult.

The disclosure shall be made in writing and signed by the applicant and sworn under penalty of perjury. The disclosure sheet shall specify all crimes against children or other persons, all crimes relating to drugs, and all crimes relating to financial exploitation as defined in RCW 43.43.830 in which the victim was a vulnerable adult.

4. Applicants must be notified of the response.

The requesting agency shall notify the applicant of the Washington State Patrol's response within ten days after receipt. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

WASHINGTON STATE PATROL RESPONSE

This identification certificate is the result of a request for criminal conviction record information from the Washington State Patrol Identification and Criminal History Section on a prospective applicant by a business or organization. Pursuant to the Child/Adult Abuse Information Act, RCW 43.43.830 through 43.43.845, if the conviction record, disciplinary board final decision, or civil adjudication record shows no evidence of a crime against children or other persons, an identification declaring the showing of no evidence shall be issued to the applicant.

CHILD/ADULT ABUSE RECORD SEARCH GUIDELINES

Refer to Revised Code of Washington (RCW) 43.43.830-43.43.845 for complete information.

Child/Adult Abuse Background checks may be conducted only by Washington State business, organizations or individuals, all other states must conduct searches under the Criminal Records Privacy Act.

1. **Searches can be conducted only on prospective employees, volunteers or adoptive parents.** (For current employees or volunteers, see note below.)

Background checks can be requested on **prospective employees, volunteers or adoptive parents** who will or may have unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults. The background check is for **initial employment or engagement decisions only**.

2. **Applicants must be notified an inquiry may be made.**

A business or organization shall not make an inquiry to the Washington State Patrol unless the business or organization has **notified the applicant**, who has been offered a position as an employee or volunteer, **an inquiry may be made**.

3. **A signed disclosure statement is required from applicant before a search is conducted.**

A business or organization **shall require each applicant to disclose** to the business or organization whether the applicant has been:

- (a) convicted of any crime against children or other persons;
- (b) convicted of crimes relating to financial exploitation if the victim was a vulnerable adult;
- (c) convicted of crimes related to drugs as defined in RCW 43.43.830;
- (d) found in any dependency action under RCW 13.34.040 to have sexually assaulted or exploited any minor or to have physically abused any minor;
- (e) found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor;
- (f) found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person or to have abused or financially exploited any vulnerable adult;
- (g) found by a court in a protection proceeding under chapter 74.34 RCW, to have abused or financially exploited a vulnerable adult.

The disclosure shall be made in writing and signed by the applicant and sworn under penalty of perjury. The disclosure sheet shall specify all crimes against children or other persons, all crimes relating to drugs, and all crimes relating to financial exploitation as defined in RCW 43.43.830 in which the victim was a vulnerable adult.

4. **Applicants must be notified of the response.**

The requesting agency shall notify the applicant of the state patrol's response within ten days after receipt. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

Notes

- The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this subsection is subject to a civil action for damages.
- Background checks pursuant to the Child and Adult Abuse Information Act do not expire and therefore should not be conducted routinely.
- Background checks on current employees or volunteers should be done through the Criminal Records Privacy Act, RCW 10.97.
- Responses are limited to **Washington State records** only.

LIST OF DISQUALIFYING CRIMES

CRIMES AGAINST PERSONS (RCW 43.43.830) AS OF SEPTEMBER 26, 2003

- Aggravated murder
- Arson 1st Degree
- Assault 1st/2nd/3rd degree
- Assault on a child 1st/2nd/3rd degree
- Burglary 1st Degree
- Child abandonment
- Child abuse or neglect
- Child buying or selling
- Child molestation 1st/2nd/3rd degree
- Communication with a minor
- Criminal abandonment
- Criminal mistreatment 1st/2nd degree
- Custodial assault
- Custodial interference 1st/2nd degree
- Custodial sexual misconduct 1st/2nd degree
- Endangerment with a controlled substance
- Extortion 1st/2nd degree
- Felony indecent exposure
- Incest
- Indecent liberties
- Kidnapping 1st/2nd degree
- Malicious harassment
- Manslaughter 1st/2nd degree
- Murder 1st/2nd degree
- Patronizing a juvenile prostitute
- Promoting pornography
- Promoting prostitution 1st Degree
- Prostitution
- Rape 1st/2nd/3rd degree
- Rape of a child 1st/2nd/3rd degree
- Robbery 1st/2nd degree
- Selling or distributing erotic material to a minor
- Sexual exploitation of minors
- Sexual misconduct with a minor 1st/2nd degree
- Simple assault
- Unlawful imprisonment
- Vehicular homicide
- Violation of a child abuse restraining order

Or any of these crimes as they may be renamed in the future.

CRIMES RELATING TO DRUGS

Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

CRIMES RELATING TO FINANCIAL EXPLOITATION (RCW 43.43.830)

Extortion 1st/2nd/3rd degree
Forgery
Theft 1st/2nd/3rd degree
Robbery 1st/2nd degree

Or any of these crimes as they may be renamed in the future.

DISCIPLINARY BOARD DECISIONS

Disciplinary board final decision means any final decision issued by a disciplining authority under Chapter 18.130 RCW or the secretary of the department of health for the following businesses or professions:

- Chiropractic
- Dentistry
- Dental hygiene
- Massage
- Midwifery
- Naturopathy
- Osteopathic medicine and surgery
- Physical therapy
- Physicians
- Practical nursing
- Registered nursing
- Psychology

EXCEPTIONS PROVIDED FOR CERTAIN CRIMES

The provider may consider an applicant for employment when the applicant has one or more of the following convictions for a past offense, and:

- The offense was **simple assault, assault 4th degree**, or the same offense as it may be renamed and three or more years have passed between the most recent conviction and the date of application for employment;
- The offense was **prostitution**, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;
- The offense was **theft 3rd degree**, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;
- The offense was **theft 2d degree**, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment; or,
- The offense was **forgery**, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment.

DEFINITIONS

The words and/or phrases in this definitions section are here to assist the provider in understanding the meaning of legal and law enforcement language that is used in the interpretation of Washington laws & process related to vulnerable adults and children. These definitions include information necessary to assess the crimes and conviction history of people who will have unsupervised access to persons who are developmentally disabled.

Abandonment of a Dependent Person - Abandonment of a dependent person is a criminal act in Washington. This *specific* crime is not on the list of crimes against persons. To be convicted of abandonment, a person has committed abuse and/or very serious neglect, which may be equivalent to a crime on the list. Any background with this conviction will be further investigated.

Accessory - A person who, though absent, helps another to break or escape the law.

Adverse to the subject - This term is used in state statute, Chapter 10.97 RCW, as part of the definition of "conviction record". A disposition that is ***adverse to the subject*** is: a **conviction**; findings of not guilty by reason of insanity *and* the person was committed under 10.77 RCW; a dismissal entered after a period of probation, suspension, or deferral of sentence.

Admitting to a crime - A person can admit to a crime before the court by pleading guilty, (*see pleading guilty*) and can "admit to a crime" (*disclose*) on the DDD/Background Inquiry form. When a potential employee admits: to a crime; to a conviction; being the subject of an order of protection; or to having committed abuse, neglect or exploitation, the agency must take action to protect vulnerable adults, according to the laws of Washington.

Acquittal - An acquittal is the legal and formal certification of innocence of a person who has been charged with a crime; a finding of not guilty.

Applicant - An applicant is the individual who has signed the background inquiry form releasing the result of a background check to the agency or region.

Attorney of Record - An attorney, named in the records of a case, who is responsible for handling the case on behalf of the party he/she represents.

Bail forfeiture - This happens when the person fails to appear in court for trial. This does not necessarily mean that the charges were dismissed or otherwise dealt with. If a record contains reference to bail forfeiture (BF), DDD background check unit will do a further investigation. This can be accomplished by either requesting the applicant work with the court of jurisdiction to obtain court documents or directly conducts an investigation.

Certificate of Rehabilitation - The Department of Corrections (in some parts of the country and this state) issue a "*Certificate of Rehabilitation*" as a matter of practice when discharging convicts from prison. The majority of such certificates offer proof that the person served the sentence as required by the court and are not necessarily issued as proof that the person has been "*rehabilitated*" while in prison. Certificate of Rehabilitation listed in RCW 43.43.80, is a certificate from Superior court.

Charge - Formal accusation of having committed a criminal offense.

Circumstances of commission of the crime - Agencies do not have the authority to consider the "*circumstances of the commission of the crime*". Agencies do not have the authority to give consideration as to the fairness of the conviction. The judge (or jury) heard it, the judge (or jury) legally decided the case based on the evidence in the trial.

Civil action - A court action, which is not criminal and relates to the private rights of individuals.

Competency - In the law of evidence, the presence of those characteristics, which render a witness legally, fit and qualified to give testimony.

Conviction - To be convicted of a crime, an individual must go to court and be found guilty or admit guilt (plead guilty). A conviction includes dispositions *adverse to the subject* (see definition above). Records of convictions are public information and can be released as such by the court or the WSP.

Conviction Record - A "conviction record" is a record kept by the WSP, or a similar law enforcement agency in other states, showing all conviction information. Conviction records are considered public information and can be released as such by the court or the WSP.

Crimes against persons – "*Crimes against persons*" is a list of crimes that the legislature listed in Chapter 43.43.830 RCW when the original law was passed in 1987. Agencies authorized to provide services to persons who are developmentally disabled are required to consider these crimes and other specified potential criminal activity according to state regulation, federal law, or state statute.

Crimes relating to financial exploitation – "*Crimes relating to financial exploitation*" are considered the same as all other crimes listed in RCW 43.43.830. Chapter 43.43.830 RCW lists exploitation crimes which are referred to as "*crimes relating to financial exploitation*".

Crimes relating to drugs - The 1998 legislature passed an amendment to Chapter 43.43 RCW adding a new category of crimes, "***crimes relating to drugs***", which include the following; conviction of a crime to manufacture a controlled substance; or delivery of a controlled substance; or possession of a controlled substance with the intent to manufacture or deliver.

Agencies who process their own criminal history will get conviction information on crimes related to drugs. The law states that the agency may use the information as a tool for investigation and may use information related to the above crimes for

decisions regarding suitability for a position with unsupervised access to persons who are developmentally disabled.

Criminal mistreatment – “Criminal mistreatment” is a crime in Washington State. This crime is not on the list of crimes in RCW 43.43.830. However, if a potential employee has been convicted of criminal mistreatment, they have committed abuse and/or very serious neglect, which may be equivalent to a crime on the list. Any background with this conviction should be further investigated.

Criminal record - A “criminal record” or “criminal history” is technically all the information found in a person’s record held by state (WSP) or national (FBI) law enforcement. The information includes arrests, charges, and convictions and is called “non-conviction information”. The arrest and charge information becomes private (no longer public information) after 12 months and cannot be released to the public.

Deferred prosecution - The court may defer prosecution or put off the conviction by adding a stipulation and/or an agreed order. If the individual violates the agreement, prosecution for the crime charged goes forward. A “***deferred prosecution***” is not a conviction. A person cannot be disqualified under RCW 43.43 for a deferred prosecution.

Deferred sentence - The court may defer a sentence. This ***is a conviction*** involving some type of restitution, training, or other agreed action, which must be completed by the individual. If the individual does not follow through with the court ordered action, a sentence is automatically imposed, such as jail time or fines. Completion of the court ordered action ***does not*** remove the conviction from a record for employment with vulnerable people under Chapter 43.43 RCW.

Dependency proceeding - A court finding regarding a person, over the age of 18, who has been found to have sexually abused or exploited or physically abused a child.

Direct access - The statute does not define direct access, however, it is generally accepted that it means the same as unsupervised access.

Disclosure - Chapter 43.43 RCW specifically requires that any person granted unsupervised access to children, vulnerable adults, and persons who are developmentally disabled give consent to the facility, agency, or organization to conduct a background inquiry. The law also requires that the individual granting the consent sign a disclosure statement about any convictions or other prohibited activity in his/her history. The disclosure is signed under the penalty of perjury.

Disposition - Law enforcement uses the word ***disposition*** as a reference to the final settlement of the case. A disposition tells the reader what the court decision was, such as “guilty,” meaning convicted.

Disposition adverse to the subject - This term is used in state statute, Chapter 10.97 RCW as part of the definition of “conviction record”. A disposition that is

adverse to the subject is: a **conviction**; findings of not guilty by reason of insanity and the person was committed under Chapter 10.77 RCW; and a dismissal entered after a period of probation, suspension, or deferral of sentence.

Dismissed convictions - If a record indicates that the disposition is "dism"(dismissed), ***it is not dismissed for purposes of employment with vulnerable adults or children.*** If the crime on the record is listed in Chapter 43.43.830 RCW, the person is disqualified from having unsupervised access to persons who are developmentally disabled.

Equivalent conviction - Each state or county may have different names for similar or the same crimes, or the name of a crime may have changed since the conviction.

Expunge - The act of physically destroying information, including criminal records in files, computers, or other depositories.

Expungement of conviction record - State law allows the court to delete certain convictions under specific conditions. State law does not allow expungement of a conviction of a crime against vulnerable persons.

Felony - Legally defined, a felony is a crime of a more serious nature than those designated as misdemeanors. The crimes listed as *crimes against persons* include both felonies and misdemeanors.

Fine - When a person is convicted of some types of crimes, fines can be assessed by the court. Paying a fine does not delete the conviction from the record.

Guilty - Defendant is found responsible for a delinquency, crime, or other offense.

Infraction - Any act, which law prohibits but which is not legally defined as a crime. In Washington State, many traffic violations are classified as infractions.

Insanity/not guilty due to insanity - Records with this notation reflect a conviction because the disposition is adverse to the subject. (*See adverse to the subject.*)

Kidnapping - Taking a person against his/her will without authority and with a criminal intent for the purpose of collecting a ransom for his/her safe return.

Kidnapping (RSO)- The official title for the Registered Sex Offender List is ***Sex and Kidnapping Offenders Requiring Registration.*** Any one on this list has committed a crime that would disqualify them from working with vulnerable adults or children.

Misdemeanor - A misdemeanor is an offense lower than a felony and includes crimes punishable by fine or jail time (not in a penitentiary.) The crimes listed as *crimes against persons* include misdemeanors and felonies.

Municipal court - A court of exclusive jurisdiction of matters arising from ordinances of the city and no jurisdiction of other matters except as conferred by statute.

Non-conviction information - Non-conviction information is information entered into a criminal record, which shows arrest & charge data more than 12 months old.

Pardoned - The exemption of a convicted person from the penalties of an offense or crime by the power of the executor of the laws.

Parole - The conditional release of a convict from prison before the expiration of his/her sentence. If he/she meets the conditions, the parolee does not have to serve the remainder of the sentence.

Penalty of perjury - If an applicant lies on the background inquiry form, he/she may be prosecuted for lying.

Perjury - Lying on a legal document that has been signed and sworn to as the truth.

Pleading guilty - Admitting to the court that you committed a crime. This is the same as being *found guilty* by the court. Both result in a conviction.

Privacy Act - There are two *privacy acts* related to criminal conviction history records. The federal Privacy Act of 1974 found in 28 CFR, and the Washington State Criminal Records Privacy Act, found in Chapter 10.97 RCW.

Probation - Set of conditions and regulations under which a person found guilty of a crime is allowed to remain in the community, usually under the supervision of a probation officer.

Prosecution - A criminal action. When a person is charged with a crime, there is a judicial proceeding for the purposes of determining their guilt or innocence. This proceeding is prosecution.

Protection proceeding - A court finding regarding a person, over the age of 18, who has been found to have abused or financially exploited a vulnerable adult.

RCW - Revised Code of Washington. The laws of Washington; passed by the legislature and codified by the Code Revisers Office into a set of laws called the Revised Code of Washington.

RCW 10.97 - This is the Washington State Criminal Records Privacy Act. This law allows any person to request a conviction record background check on another person for any reason. Access to conviction records is allowed because all convictions in Washington State are considered public information. This law also specifies what is private information and who can access it.

RCW 43.43.830-845 - This is the Washington state law, which requires agencies serving vulnerable adults, to conduct conviction history background checks of employees, volunteers, student interns, & contract employees. The law includes a list of crimes that will disqualify anyone from unsupervised access to vulnerable adults and children.

RSO - Registered Sex Offender

Restitution - In general, restitution means that a person who has committed a crime or been convicted of a crime, agrees to pay money or to perform other restorative services, as a condition of sentence.

SID number - The state identification number assigned to each individual retained in the AFIS (Automated Fingerprint Identification System) and criminal history databases.

Superior Court - The court having original criminal jurisdiction of felony offenses and misdemeanors, when not otherwise provided by law.

Unsupervised access - Unsupervised is defined in Chapter 43.43.830 (8) RCW. (See Section 14- Appendix) Unsupervised access is discussed in detail in Section 4 of this book - *Unsupervised Access*. "Unsupervised" means not in the presence of: (a) Another employee or volunteer from the same business or organization as the applicant; or (b) Any relative or guardian of any of the children or developmentally disabled persons to which the applicant has access during the course of his or her employment or involvement with the business or organization. "Access" means being left alone in the presence of a vulnerable adult for any period of time.

Vacation of conviction record - State law allows for a convicted individual to request that their record be deleted under certain circumstances. There are special provisions in the law about *crimes against persons*.

Vulnerable adult - A vulnerable adult is defined in Chapter 43.43.830 RCW as follows: Vulnerable adult means vulnerable adult as defined in Chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to Chapter 43.43.832 RCW, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

WASIS - Washington State Identification and Criminal History Section. (Identification, child abuse, vulnerable adult abuse, and criminal history section)