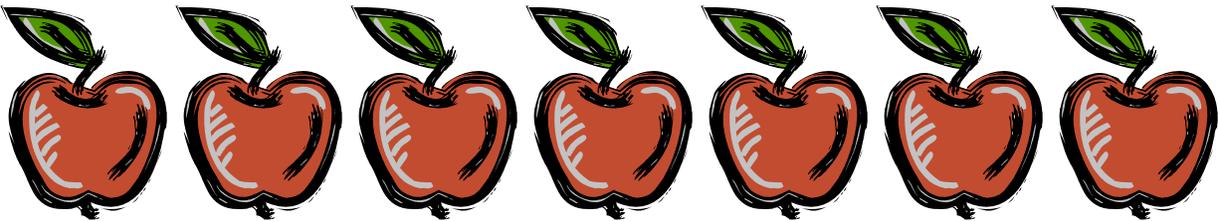




Appendix

(2) CAPTA Background Check WAC & CA Policy



**Children's Administration
Department of Social and Health Services**

Annual Progress and Services Report FY 2007 - FY 2008
Child Abuse Prevention and Treatment Act
Appendix (2): WAC and CA Policy on Background Checks

Below is the CA policy and WAC regarding criminal background checks for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household.

WAC on Background Checks

Here is the link to view Chapter 388-06 WAC on Background Checks:

<http://apps.leg.wa.gov/WAC/default.aspx?cite=388-06&full=true>

DSHS Children's Administration Policy 01-07

The current CA policy is as follows:

Department of Social and Health Services

CHILDREN'S ADMINISTRATION POLICY 01-07

SUBJECT:	Background Check
INFORMATION CONTACT:	Deborah Reed Division of Program & Practice Improvement
AUTHORIZATION:	WAC 388-06
EFFECTIVE DATE:	December 31, 2007
REVISED:	N/A
APPROVED:	<hr/> Assistant Secretary
SUNSET REVIEW DATE:	December 31, 2006

I. Purpose and Scope

A. The purpose of this policy is to ensure accurate compliance with Washington Administrative Code (WAC) 388-06, Background Checks. There are convictions for certain crimes that will permanently prohibit an individual from being licensed, contracted, or authorized to have unsupervised access to children or to individuals with developmental disabilities, as further defined in IV. A. 1-8. Those felony convictions are:

1. Child abuse and/or neglect;
2. Spousal abuse;
3. A crime against a child (including child pornography);
4. A crime involving violence including rape, sexual assault, or homicide but not including other physical assault; or
5. Any federal or out-of-state conviction for an offense that under the laws of this state would disqualify you from having unsupervised access to children or individuals with developmental disabilities in any home or facility.

- B. This policy outlines the specific convictions in the chart labeled Background Check Crime List.
- C. This policy applies to all Children's Administration divisions, sections, and units.

II. Policy

- A. On October 1, 2001, Washington Administrative Code (WAC) 388-06 for background checks became effective for individuals having unsupervised access to a child or an individual with a developmental disability.
 - 1. WAC section 388-06-0170 does not list individual crimes that disqualify a person from having unsupervised access to a child or an individual with developmental disability. Instead, there are general categories of crimes that echo the federal Adoption and Safe Families Act language. This policy interprets the general categories to include the specific permanent disqualifying convictions.

III. Definitions

- A. The Background Check Crime List chart has two sections that correspond to WAC 388-06-0170 and 388-06-0180.
 - 1. The first section contains criminal convictions that **permanently** (WAC 388-06-0170) disqualify a person from being licensed, contracted or authorized to have unsupervised access to a child or an individual with a developmental disability, as further defined in IV. A. 1-8.
 - 2. The second section contains the criminal convictions that disqualify a person from being licensed, contracted, or authorized to have unsupervised access to a child or an individual with a developmental disability, as further defined in IV. A. 1-8, for up to **five years** from the date of conviction (WAC 388-06-0180).
- B. Chart Legend. The bold-type letter in the Background Check Crime List, after the specific crime, indicates the following:
 - 1. **A**=Class A felony;
 - 2. **B**=Class B felony
 - 3. **C**=Class C felony
 - 4. **DV**=Domestic Violence
- C. Other types of charges accepted as convictions are:
 - 1. "Pending charges" are treated the same as a conviction.
 - 2. "Criminal attempt" is treated the same as a conviction for the crime attempted.
 - 3. "Criminal conspiracy" and "criminal solicitation" are treated the same as a conviction for the crime.
 - 4. "Deferred sentencing" is a conviction and treated as such.

IV. Procedure

- A. Children's Administration performs a background check on the following people (WAC 388-06-0110):
 - 1. A person licensed, certified, or contracted by us to care for children (chapter 74.15 RCW and RCW 43.43.832);
 - 2. A prospective or current employee for a licensed care provider or a person or entity contracting with us;
 - 3. A volunteer or intern with regular or unsupervised access to children who is in a home or facility that offers licensed care to children;
 - 4. A person who is at least sixteen years old, is residing in a foster home, relative's home, or child care home and is not a foster child;

5. A relative other than a parent who may be caring for a child or an individual with a developmental disability;
 6. A person who regularly has unsupervised access to a child or an individual with a developmental disability;
 7. A provider who has unsupervised access to a child or individual with a developmental disability in the home of the child or individual with a developmental disability; and
 8. Adoptive parents as defined in RCW 26.33.020.
- B. Background checks are conducted on Children's Administration employees under a separate DSHS Policy.
- C. Decision Making
1. Any conviction of a crime from section B (388-06-0180) of five or more years from the date of conviction, or any crime not listed in section A or B requires the scrutiny of the factors outlined in 388-06-0190 that are listed below in # 3.
 2. The decision-making process must be documented in the client's file. Prior to making a decision to authorize unsupervised access to children or an individual with developmental disabilities the social worker, licenser, or contracts manger must review any conviction listed using the factors listed below.
 3. The factors in the review are as follows:
 - a. Amount of time since the conviction;
 - b. Seriousness of the crime that led to the conviction;
 - c. Number and types of other convictions;
 - d. Age at the time of conviction;
 - e. Documentation of successful completion of all court-ordered programs & restitution;
 - f. Behavior since the conviction; and
 - g. The vulnerability of those that would be under the care of the individual being checked.
- D. Exceptions: Under extraordinarily rare circumstances, an Administrative Approval may be authorized.
1. An Administrative Approval may be granted to people, if after review, it has been determined that allowing the licensing, contracting, or authorization of a person with a criminal conviction to have unsupervised access to a child does not jeopardize the child's health and safety and promotes long-term stability.
 2. An Administrative Approval may require a change in the funding source of payment to the care provider for the placement of the child.
- E. Authorization of an Administrative Approval:
1. A request for an Administrative Approval to allow an individual with a criminal conviction to have unsupervised access to a child or an individual with a developmental disability requires written approval as follows:

Criminal Convictions	Request for Administrative Approval	Approval Process*
Disqualifying crimes: Permanent 388-06-0170	Deputy Assistant Secretary Directors Regional Administrators	Deputy Assistant Secretary, Director, Regional Administrator makes a request to the Assistant Secretary who will consult with the Secretary for a decision.
Disqualifying crimes: 5 years or less crimes 388-06-180	Social Worker	Deputy Assistant Secretary, Director, Regional Administrator decides and notifies the Assistant Secretary immediately if approval has been granted.
	Contracts Manager	
	Licensor	
Crimes on the B list of more than 5 years	Social Worker	Regional Administrator
	Contracts Manager	Director, Management Services
	Licensor	Office Chief, OFCL
Any crime not on A or B list (good character)	Social Worker	DCFS, Area Administrators
	Contracts Manager	Director, Management Services
	Licensor	OFCL Regional Manager

BACKGROUND CHECK CRIME LIST

A. WAC 388-06-0170 – Permanently disqualified if:	B. WAC 388-06-0180 – Disqualified if less than 5 years from conviction date, if:
<p>(a) Felony convictions for Child Abuse and/or Neglect;</p> <p>(b) Felony convictions for Spousal Abuse;</p> <p>(c) Felony convictions of Crimes Against a Child, including child Pornography;</p> <p>(d) Felony crimes involving Violence, including rape, sexual assault or homicide but not including other physical assault;</p> <p>(e) Any Federal or out-of-state equivalent conviction for (a) through (d) above.</p> <p>“Pending charges” treated the same as a conviction. “Attempted” treated the same as conviction for the crime attempted. “Criminal conspiracy” treated the same as conviction. “Deferred sentencing” treated the same as a conviction.</p>	<p>(i) Any physical assault not included in WAC 388-06-0170;</p> <p>(ii) Any sex offense not included in WAC 388-06-0170;</p> <p>(iii) Any felony conviction not included in WAC 388-06-0170; or</p> <p>(iv) Felony violation of the following drug-related crimes:</p> <ol style="list-style-type: none"> 1) The Imitation Controlled Substances Act – RCW 69.52; 2) The Legend Drug Act – 69.41 3) The Precursor Drug Act – 69.43 4) The Uniform Controlled Substances Act – 69.50 5) Unlawfully manufacturing, delivering or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes. <p>“Pending charges” treated the same as a conviction. “Attempted” treated the same as conviction for the crime attempted. “Criminal conspiracy” treated the same as conviction. “Deferred sentencing” treated the same as a conviction.</p>
Abandonment of a dependent person in the first degree – 9A.42.060 – If against a child. B	Abandonment of a dependent person in the first degree – 9A.42.060 – If not against a child B
Abandonment of a dependent person in the 2 nd degree. 9A.42.070 - If against a child. C	Abandonment of a dependent person in the 2d degree – 9A.42.070 – If not against a child. C
Abandonment of a dependent person in the third degree – 9A.42.080 – If against a child. GM	Abandonment of a dependent person in the third degree – 9A.42.080 – If not against a child. GM
B. Abuse or neglect of a child – 26.44.050	Assault in the third degree – 9A.36.031 –if not DV C
Aggravated Murder –See murder first degree	Assault in the fourth degree/Simple Assault – 9A.36.041 GM
Arson in the first degree – (violent offense) A	C. Burglary in the first degree – 9A.52.020 A
Arson in the second degree – (violent offense) B	D. Burglary in the second degree – 9A.52.030 B
Assault in the first degree – 9A.36.011- (violent offense) A	Coercion – 9A.36.070 GM
Assault in the second degree – 9A.36.021 (violent offense) A	Criminal mistreatment in the first degree – 9A.42.020 If Not against a child or spouse B

BACKGROUND CHECK CRIME LIST

A. WAC 388-06-0170 – Permanently disqualified if:	B. WAC 388-06-0180 – Disqualified if less than 5 years from conviction date, if:
Assault in the third degree – 9A.36.031 C- DV	Criminal mistreatment in the second degree – 9A.42.030 – If Not against a child or spouse C
Assault of a child in the first degree – 9A.36.120	Criminal mistreatment in the third degree – 9A.42.035 If Not against a child or spouse GM
Assault of a child in the second degree – 9A.36.130	Custodial Assault – 9A.36.100 C
Burglary in the first degree – 9A.52.020 A-DV	Custodial sexual misconduct in the first degree – 9A.44.160 C
Burglary in the second degree – 9A.52.030 B-DV	Custodial sexual misconduct in the second degree – 9A.44.170
Child molestation in the first & second degree – 9A.44.083;086	Extortion in the second degree – 9A.56.130 C
Child molestation in the third degree – 9A.44.089	II. Forgery – 9A. 60.020 C
Child selling/buying – 9A.64.030	Harassment – 9A.46.060
Communication with minor for immoral purposes – 9.68A.090 GM unless prior conviction for any other sex offense, then a C	Identity theft in the first degree – 9.35.020
Controlled substance homicide – 69.50.415 B	Identity theft in the second degree – 9.35 (not codified)
Criminal mistreatment in the first degree – 9A.42.020 B If against a child or spouse.	Imitation Controlled Substances Act – 69.52 (For substances that are falsely represented as controlled substances) -
Criminal mistreatment in the second degree – 9A.42.030 C If against a child or spouse-	Incendiary devices (poss.,manufct.,dispose) – 9.40.110
Criminal mistreatment in the third degree – 9A.42.035 GM If against a child or spouse	Indecent liberties – 9A.44.100 B
Custodial interference in the first degree – 9A.40.060 C	Leading Organized crime – 9A.82.060 B
Custodial interference in the second degree – 9A.40.070 C	Legend Drug Act (Prescription drugs) – 69.41
Dealing in depictions of minor engaged in sexually explicit C conduct – 9.68.050	Malicious explosion in the third degree – 70.74.280 B
Delivery of a controlled substance – 69.50.401	Malicious placement of an explosive in the second degree 70.74.270 B
A. Domestic Violence – 10.99.020 (3) All crimes with DV in code.	Malicious placement of an explosive in the third degree 70.74.270 B
Drive-by shooting – 9A.36.045 (violent offence) B	Malicious mischief in the first degree – 9A.48.070 B
Extortion in the first degree – 9A.56.120 (violent offence) B	Malicious mischief in the second degree – 9A.48.080 C
Family abandonment – 26.20.030 C	Malicious mischief in the third degree – 9A.48.090
Homicide by abuse – 9A.32.055 A	Malicious placement of an imitation device – 70.74.272 B
Homicide by watercraft – 79A.60.050 A	Manufacture of a controlled substance – 69.50.401

BACKGROUND CHECK CRIME LIST

A. WAC 388-06-0170 – Permanently disqualified if:	B. WAC 388-06-0180 – Disqualified if less than 5 years from conviction date, if:
Incest in the first degree – 9A.64.020	Patronizing a prostitute – 9A.88.110 M
Incest in the second degree – 9A.64.020	Possess explosive device – 70.74.180
Indecent exposure if toward a person under fourteen years – 9A.88.010 –(Public indecency)	Possession with the intent to deliver a controlled substance – 69.50.401
Indecent liberties – if by forcible compulsion – 9A.44.100 (a) B	Possession with the intent to manufacture a controlled substance – 69.50.401
Kidnapping in the first degree – 9A.40.020 (violent offense) A	Precursor Drug Act (Substances used in making controlled substances) – 69.43
Kidnapping in the second degree – 9A.40.030-violent offense B	Promoting a suicide attempt – 9A.36.060 C
Luring – 9A.40.090	Possession with the intent to deliver a controlled substance – 69.50.401
Malicious explosion in the first degree – 70.74.280 A	Promoting prostitution in the first degree – 9A.88.070 B
Malicious explosion in the second degree – 70.74.280 A	Promoting prostitution in the second degree – 9A.88.080 C
Malicious placement of an explosive in the first degree – 70.74.270 A	Promoting pornography – 9.68.140 C
Malicious mischief in the first degree – 9A.48.070 B-DV	
Malicious mischief in the second degree – 9A.48.080 C-DV	Prostitution – 9A.88.030 M
Manslaughter in the first degree – 9A.32.060	Reckless endangerment – 9A.36.050 GM
Manslaughter in the second degree – 9A.32.070	Residential burglary – 9A.52.025 B
Murder in the first degree –9A.32.030	Sexually violating human remains – 9A.44.105 C
Murder in the second degree – 9A.32.050	Stalking – 9A.46.110 GM, C
Malicious explosion in the first degree – 70.74.280 A	Theft in the first degree – 9A.56.030 B
Patronizing a juvenile prostitute – 9.68A.100	Theft in the second degree – 9A.56.040 C
Possession of depictions of minor engaged in sexually explicit conduct – 9.68.070	Theft in the third degree – 9A.56.050 GM
Rape in the first degree – 9A.44.040	Uniform Controlled Substances Act (Illegal drugs or substances) – 69.50
Rape in the second degree – 9A.44.050	Unlawful imprisonment – 9A.40.040 C
Rape in the third degree – 9A.44.060	Unlawful use of building for drug purposes – 69.53.010
Rape of a child in the first degree – 9A.44.073	
Rape of a child in the second degree – 9A.44.076	Any felony convictions not included in 388-06-0170
Rape of a child in the third degree – 9A.44.079	Any criminal offense with a special court finding of sexual motivation- in this column – 9.68A.090
Residential burglary – 9A.52.025 B-DV	Bail jumping for any of the crimes in the column – 9 A.76.170 B,C,GM & M

BACKGROUND CHECK CRIME LIST

A. WAC 388-06-0170 – Permanently disqualified if:	B. WAC 388-06-0180 – Disqualified if less than 5 years from conviction date, if:
Registered sex offender status 9A.44.130 – (felony & non-felony offenders – in and out of state convictions)	Criminal attempt – to commit a crime in this column 9A.28.020 B,C,GM, & M
Robbery in the first degree – 9A.56.200 – violent offence A	Criminal conspiracy – to commit any crime in this column 9A.28.040. B,C,GM, & M
Robbery in the second degree – 9A.56.210- violent offence B	Criminal solicitation – to commit any crime in this column 9A.28.030 –
Selling or distributing erotic material to a minor – 9.68.060	
Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct – 9.68A.090	
Sexual exploitation of a minor – 9.68A.040	
Sexual misconduct with a minor in the first degree – 9A.44.093	
Sexual misconduct with a minor in the second degree – 9A.44.096	
Stalking – 9A.46.110 C-DV	
Unlawful imprisonment – 9A.40.040 C-DV	
Use of a machine gun in a felony – 9.41.225 A	
Vehicular assault – 46.61.522 B	
Vehicular homicide – 46.61.520 A	
Violation of a child abuse restraining order – 26.44.067	
Violation of a civil anti-harassment protection order – 10.14.170	
Violation of a protection order – 26.50.110	
Voyeurism – 9A.44.115	
Any criminal offense with a special court finding of sexual motivation – 9.68A.090	
Bail jumping (for any one of the crimes listed here), - 9A.76.170 If crime meets the criteria for this column A,B,C,GM & M	
Criminal attempt – 9A.28.020 – (an attempt conviction to commit any crime in this column) A,B,C,GM, & M	
Criminal conspiracy – 9A.28.040 – (to commit any crime in this column) A,B,C,GM, & M	
Criminal solicitation – 9A.28.030 – (to commit any crime in this column)	
Serious Violent offense – 9.4A.030(36) Includes any federal or out of state equivalent conviction	
Violent offense – 9.94A.030(44)	