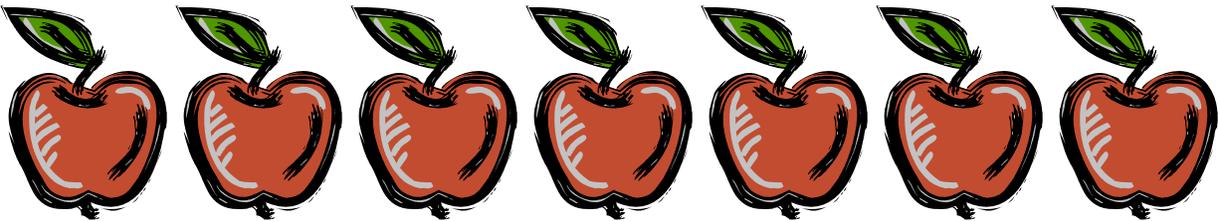




Appendix

(2) CAPTA Background Check WAC & CA Policy



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

Annual Progress and Services Report FY 2008 - FY 2009
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>

Revised DRAFT Policy – Chapter 5500 CA Operations Manual
February 25, 2008

5500. BACKGROUND CHECKS FOR PROSPECTIVE OUT-OF-HOME PLACEMENTS

5510. Authority

A. As part of determining character, competence and suitability of prospective out-of-home caregivers and other individuals to have unsupervised access to children, Children's Administration (CA) is required to conduct background checks pursuant to RCW 43.43, RCW 74.15.030, WAC 388-06 and PL 109-248.

B. For purposes of CPS investigations and emergent placement of children with unlicensed relatives and other suitable persons, CA has the authority to access criminal history information directly from the National Crime Information Center (NCIC) databases pursuant to RCW 26.44.030, RCW 74.15 and PL 109-248.

5511. Definition of Required Background Check

A. A background check must be completed for anyone living in the home, age 16 and above, excluding youth in foster care:

1. Prior to final approval of an out of home placement under the custody of CA with an unlicensed relative or other suitable person, or
2. Prior to final approval of a foster home license, or
3. Prior to final approval of an adoptive home study.

B. For all youth living in the home, ages 16 and 17 (excluding youth in foster care), and youth who age out of care and later voluntarily return to foster care, background checks must include the following:

1. A CAMIS/GUI records check, and
 2. A background check conducted by DSHS Background Check Central Unit (BCCU).
- C. For all adults living in the home, age 18 and above, background checks must include the following:
1. A CAMIS/GUI records check,
 2. A background check conducted by BCCU,
 3. An FBI/WSP fingerprint based criminal history check processed by BCCU; unless the check is for renewal of a foster home license, and
 4. For persons who have lived outside of Washington State in the preceding five years, an out of state child abuse and neglect history check from all other states where the individual has lived during that time.

5512. Persons Subject to Background Check Requirements

A. CA staff must complete the required background check, as defined in this section, of prospective caregivers and other adults who will have unsupervised access to a child in their home, including:

1. Relative caregivers as defined in RCW 74.15
2. Other suitable persons as defined in RCW 13.34.130
3. Foster parents
4. Adoptive parents approved by CA
5. All adults living in the home, age 18 and above
6. All adults who move into the out of home placement after the child is placed or license approved
7. All youth living in the home, ages 16 and 17 (excluding youth in foster care)
8. Former foster youth who return to live with a caregiver upon exiting care
9. Caregivers licensed by Washington State on behalf of child placing agencies and Tribes
10. Caregivers who reapply for a license after their license has lapsed
11. Licensed respite providers
12. Unlicensed relative respite providers
13. In-home child care providers

B. CA is responsible for conducting the background check for children under the custody of another state who are placed with a foster or unlicensed relative caregiver in Washington State through the Interstate Compact on the Placement of Children (ICPC).

C. Caregivers of children under the custody of Washington State who are placed in another state through ICPC will have their background check completed by the receiving state according to the receiving state's policy.

D. Prior to a dependent child being placed in their parents home the social worker must conduct a criminal background check on all adults residing in the home.

5513. BCCU Background Check

A. A background check conducted by BCCU is required for all adults, age 18 and above, and for all youth ages 16 and 17 living in the home. Youth in foster care are excluded from this requirement, however if a youth ages out of care and later voluntarily returns to foster care, a BCCU check is required.

B. Prior to a dependent child being placed in their parents home the social worker must conduct a BCCU check on all adults residing in the home.

C. BCCU background checks may be used to authorize unsupervised access to a child to facilitate a safety or service plan.

D. Each individual must complete and sign a Background Authorization Form (DSHS 09-653) prior to BCCU conducting a Washington State background check. For youth ages 16 and 17, a parent or guardian must also sign the authorization form.

E. The requesting CA staff must sign the completed Background Authorization Form prior to forwarding the request to BCCU.

F. A BCCU check is required at the time of re-licensing or if there is a change in the license.

G. The BCCU background check is only valid for up to one calendar year. Social workers may conduct a new BCCU background check as needed.

5514. FBI Fingerprint Based Check

- A. An FBI fingerprint based criminal history check is required for all adults, age 18 and above.
- B. Fingerprint cards must be sent with a signed Background Authorization Form (DSHS 09-653) to BCCU. If the authorization form is transmitted electronically, a corresponding BCCU tracking number must accompany the fingerprints.
- C. All fingerprints submitted to BCCU must identify under which purpose the request is being made (e.g. Purpose Code C, Purpose Code X, or DSHS Licensing/Provider).
- D. CA staff are prohibited from contacting the FBI or Washington State Patrol (WSP) for any purpose related to the completion of a background check. BCCU will provide results to CA staff.
- E. CA is required to pay for the cost of processing the FBI/WSP fingerprint check for all persons subject to fingerprints as defined in Section 5512 (A).

5515. CAMIS/GUI Records Check for Allegations of Abuse or Neglect

- A. A CAMIS/GUI records check is required for all individuals identified in Section 5512 of this policy.
- B. Founded reports of child abuse or neglect must be considered in determining whether a person is disqualified from being authorized by the department to care for children. RCW 26.44.100
- C. A CAMIS/GUI check is required at the time of re-licensing or if there is a change in the license.

5516. Out of State Child Abuse and Neglect History Check for Allegations of Child Abuse or Neglect (CA/N)

- A. If an adult, age 18 and above, has lived in another state during the preceding five years, CA is required to make a request for out-of-state records for allegations of child abuse and neglect in each state the individual has lived during that time. This applies to all individuals identified in Section 5512 of this policy
- B. The individual must sign an authorization of disclosure prior to conducting the out-of-state records check. If the other state does not have a required form, the Out of State Child Abuse and Neglect Information Request form located at: <http://ca.dshs.wa.gov/intranet/word/policy/CANHistoryForm.doc>

5517. National Crime Information Center (NCIC) Checks for Emergent Placements - Purpose Code X

CA is authorized by the FBI to access the NCIC database "to check for criminal history in limited situations when emergent circumstances exist that do not reasonably allow for immediate fingerprinting prior to placement." In Washington State, emergency placement refers to those limited instances when the Department is placing a child in the home of private individuals, including neighbors, friends, or relatives, as a result of a sudden unavailability of the child's primary caretaker. This is known as a "Purpose Code X" access check. Purpose code X checks are based on name and date of birth information and are a point in time check.

- A. NCIC requests for emergent placement must be conducted under NCIC Purpose Code X in accordance with state and federal laws. (RCW 26.44.030 and PL 109-248)

- B. NCIC checks for emergent placement will be conducted by the NCIC Unit staff at the request of the placing social worker.
- C. NCIC Unit staff will complete a *Criminal History Summary Form* and provide results of the Purpose Code X check to the requesting social worker.
- D. CA staff may not approve an emergent placement of a child with an unlicensed caregiver until the following has been completed:
1. CAMIS/GUI check on all adults in the home; and
 2. NCIC Purpose Code X check on all adults in the home.
- E. A child may not be placed in the home if any adult in the household has a disqualifying event identified in CAMIS/GUI or the NCIC database.
- F. When a placement is made, CA staff must submit the following documents to BCCU within 10 calendar days of the NCIC Purpose Code X check (see below). If the required documents are not submitted during that timeframe, the child must not remain in the home and the circumstances/person's refusal documented in the Person ID card.
1. Background Authorization Form (DSHS 09-653)
 2. Fingerprints
- G. The emergent unlicensed placement is not considered final until all background check requirements results have been completed and all other assessments for character, competence and suitability have been completed, including the Relative Home Study.
- H. Results of an NCIC Purpose Code X check for emergent unlicensed placements cannot be used for CPS investigation (Purpose Code C) (see procedures for NCIC Checks for CPS Investigations, Purpose Code C).
- I. Requests for NCIC database access information are not permitted for any reason other than an emergent placement with an unlicensed caregiver (Purpose Code X) or CPS investigation (Purpose Code C).

5518. NCIC Checks for CPS Investigations - Purpose Code C

CA is authorized to access the NCIC database for subjects of CPS investigations and other adults related to the investigations for the purpose of assessing the safety of children and CA staff conducting the investigation. Requests for NCIC checks for CPS investigations are made in accordance with state and federal laws. (RCW 26.44.030 and PL 109-248). Purpose code C checks are based on name and date of birth information and are a point in time check.

- A. NCIC requests for CPS investigation purposes are conducted under NCIC Purpose Code C.
- B. NCIC checks for CPS investigations will be conducted by the NCIC Unit staff at the request of a CPS investigator or supervisor.
- C. NCIC Unit staff will complete a *Criminal History Summary Form* and provide results of the Purpose Code C check to the requesting social worker.
- D. The CPS investigator is to document in an SER the NCIC Purpose Code C check was done and whether or not concerns were identified.
- E. If necessary, (e.g. due to multiple people with the same common name and date of birth), the CPS investigator may follow up with a request for a fingerprint based criminal history check processed by BCCU.
- F. Results of NCIC Purpose Code C checks for CPS investigations cannot be used for NCIC Purpose Code X placement purposes.
- G. Requests for NCIC database access information are not permitted for any reason other than an emergent placement with an unlicensed caregiver (Purpose Code X) or CPS investigation (Purpose Code C).

5519. Expedited Washington State Background Checks

Washington State criminal history background checks may be expedited through BCCU as approved by regional gatekeeper(s) for the following purposes:

- A. When a non-emergent placement move to a relative or other suitable person is determined to be in the best interest of a child and fingerprints have been submitted to BCCU and not yet received.
- B. To assess authorization of persons 16 years and older to have unsupervised access to children to facilitate a service or safety plan.
- C. To assess youth 16 and 17 years of age living in a home seeking approval for emergency placement.

5520. Background Check Documentation

CA staff must document background check results as follows:

- A. Records check results (CAMIS/GUI and out-of-state) in a Service Episode Record (SER).
- B. Washington State background check results for youth ages 16 and 17, living in the home where the child is placed, in the individual's Person ID Card in GUI.
- C. Washington State background check results and fingerprint results for each adult in the home where the child is placed in the individual's Person ID Card in GUI.
- D. When Washington State BCCU or fingerprint results have been collected for a possible placement and the child is not placed in this person's home, document results in an SER.
- E. When an emergency placement is made as outlined in Section 5517 above, and the individual(s) subject to background check requirements refuses to complete the required background check, document their refusal in the Person ID Card in GUI.
- F. Background check request forms and determination of qualification are to be stored in the caregiver's file. NCIC Access unit will save summary forms in a shared drive for each office. The NCIC summary form is not to be stored in a case file.

5521. Information Sharing

- A. All information received from the FBI or WSP is authorized for use by DSHS only for the purpose for which it was obtained; it cannot be used as documentation for other programs or administrations.
- B. CA staff may share summary information obtained from an NCIC Purpose Code X or Purpose Code C check within DSHS and with the court (i.e. AAG, juvenile court commissioners, and judges).
- C. If there is a disqualifying event identified in the background check, CA staff must notify the individual of the disqualification in writing within 10 days after receipt of the information.
- D. CA staff may provide a copy of conviction information from fingerprint results, e.g., "rap sheets," to the individual named in the inquiry, if the individual provides a request in writing along with proof of identity. A copy may also be obtained from the WSP. (WAC 388-06-0260)
- E. CA staff must not disclose unfounded or inconclusive findings and related reports of child abuse or neglect as defined in RCW 26.44.020 to a child placing agency, a private adoption agency, or any other provider licensed under chapter 74.15 RCW.
- F. Results of an NCIC purpose code X or C check are not subject to public disclosure or discovery requests.

5522. Evaluation and Disposition

CA staff must not license or authorize persons to provide care who has been convicted of or have charges pending for offenses (within the designated time frames) identified in the DSHS Secretary's List of Disqualifying Crimes.

For a list of disqualifying crimes and negative actions, click on the following link:

DSHS Sec List of Disqualifying Crimes & Negative Actions

Insert Link to CA Version with Reference to RCW/WAC

- A. *No Record of Crime or Negative Action:* If the background check reveals no criminal convictions, no founded finding of CA/N, no pending charges or no other negative actions, no further action is necessary.
- B. *Record of a conviction for a disqualifying crime or founded finding of CA/N:* The social worker/licensor is required to deny the license or authorization to have unsupervised access to children, if the background check reveals the individual is/has:
 - 1. Convicted of a felony offense identified as a permanent disqualifying event, or
 - 2. Convicted of a crime identified as a 5 year disqualifying event and it is less than 5 years since conviction, or
 - 3. Convicted of an equivalent crime in another jurisdiction, or

4. Pending charges for any of the above, or
5. Founded finding of abuse, neglect, exploitation, or abandonment of a vulnerable adult, juvenile or child.

C. Record of non-disqualifying offense or other negative action, including charges pending longer than one year: requires documentation of Administrative Approval, including but not limited to scrutiny of the following factors:

1. Amount of time since the conviction/negative action
2. Seriousness of the crime/behavior that led to the conviction/negative action
3. Number and types of other convictions/negative actions
4. Age at time of incident
5. Documentation of successful completion of court-ordered programs and restitutions
6. Behavior since the conviction/negative action
7. Vulnerability of child(ren) for whom the individual is authorized unsupervised contact

5523. Review and Decision-Making

- A. Prior to making a decision to authorize unsupervised access to children or an individual with developmental disabilities, the social worker/licensor is required to review and scrutinize identified convictions.
- B. The decision-making process is to be documented in the client's file.
- C. In rare circumstances, an administrative approval or waiver may be granted to authorize an exception for a person with a disqualifying crime or negative action.
 1. The requesting social worker/licensor must first determine that allowing the individual unsupervised access to a child will not jeopardize the child's health and safety.
 2. Requests for an administrative approval or waiver require written authorization using the statewide "Administrative Review for Crime and/or Negative Actions" form (*Insert DSHS Form Number*).
 3. Requests for Administrative Review and Approval are to be submitted according to the following parameters:
 - a. Once for each disqualifying crime, set of crimes, and/or negative action for each unlicensed placement. Requests are to be child (ren) specific
 - b. At the time of licensing
 - c. When a substantial change in circumstances occur, such as a subsequent arrest, conviction, CPS or Licensing referral, etc.
 - d. Requests that are denied may be re-submitted when new information or a substantial change in circumstances occur, such as the age of the child/youth, recommendations from a professional, evaluation results, significant progress achieved, etc

D. Definition of Administrative Approval and Waiver

1. Authorization of an Administrative Approval

An administrative approval is used for a disqualifying crime on the 5 Year List and it has been more than 5 years since conviction, for crimes not on the Permanent or 5 Year List, and negative actions.

2. Authorization of an Administrative Waiver

A waiver is used for a disqualifying crime on the Permanent List or the 5 Year List and it is less than 5 years since conviction. Administrative waivers require approval by the CA Assistant Secretary. CA can not claim IV-E or adoption support funds for any child placed in the home during the life of the waiver.

E. Overview of Approval Process for Crimes & Negative Actions

Criminal Conviction and/or Negative Action	Type of Approval Required	Authorization Provided by
Permanent Disqualifying Crime	Administrative Waiver	CA Assistant Secretary Send Request to Director of Field Operations
5 Year Disqualifying Crime & Less than 5 Years Since Conviction	Administrative Waiver	CA Assistant Secretary Send Request to Director of Field Operations
Finding of abuse, neglect, exploitation, or abandonment of a vulnerable adult, juvenile or child	Administrative Approval	CA Assistant Secretary or Designee Send Request to Director of Field Operations
5 Year Disqualifying Crime & More than 5 Years Since Conviction	Administrative Approval	Regional Administrator or DLR Administrator
Other Types of Negative Actions, including: <ul style="list-style-type: none"> ⌚ Termination, revocation, suspension, or denial of a license, certification, and/or State or Federal contract. ⌚ Relinquishment of a license, certification, or contract in lieu of an agency negative action ⌚ Revocation, suspension, denial or restriction placed on a professional license ⌚ Department of Health disciplining authority findings 	Administrative Approval	Regional Administrator or DLR Administrator
Crimes Not on Permanent or 5 Year List	Administrative Approval	Area Administrator or Appointing Authority

DSHS SECRETARY'S LIST OF CRIMES AND NEGATIVE ACTIONS
FOR USE BY ALL Programs Administered by DSHS, including DSHS State Employees in Covered Positions
[EXCEPT programs administered by ADSA Home & Community Services & ADSA Residential Care Services]

<p>Crimes: A person who has a crime listed below is denied unsupervised access to vulnerable adults, juveniles, and children.</p> <p>If "(5 or more years)" appears after a crime, the person is automatically denied unsupervised access unless 5 or more years has passed since the date of conviction.</p> <p>After 5 years, an overall assessment of the person's character, competence, and suitability to have unsupervised access will determine denial.</p> <p>Abandonment of a child Abandonment of a dependent person not against child (5 or more years) Abuse or neglect of a child Arson Assault 1 Assault 2 Assault 3 Domestic Violence Assault 3 not Domestic Violence (5 or more years) Assault 4/simple assault (5 or more years) Assault of a child Bail jumping Burglary (5 or more years) Carnal knowledge Child buying or selling Child molestation Coercion (5 or more years) Commercial sexual abuse of a minor/ Patronizing a juvenile prostitute Communication with a minor for immoral purposes Controlled substance homicide Criminal mistreatment Custodial assault (5 or more years)</p>	<p>Prostitution (5 or more years) Rape Rape of child Reckless endangerment (5 or more years) Registered sex offender Residential burglary (5 or more years) Robbery Selling or distributing erotic material to a minor Sending or bringing into the state depictions of a minor Sexual exploitation of minors Sexual misconduct with a minor Sexually violating human remains Stalking (5 or more years) Theft (5 or more years) Unlawful imprisonment (5 or more years) Unlawful use of bldg for drug purposes (5 or more years) Use of machine gun in a felony Vehicular assault Vehicular homicide (negligent homicide) Violation of child abuse restraining order Violation of civil anti-harassment protection order Violation of protection/contact/restraining order Violation of the Imitation Controlled Substance Act (manufacture/deliver/intent - 5 or more years) Violation of Uniform Controlled Substance Act (manufacture/deliver/intent - 5 or more years) Violation of the Uniform Legend Drug Act (manufacture/deliver/intent - 5 or more years) Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent - 5 or more years)</p> <p><u>Pending Crime</u> – A person who has a pending crime on the Secretary's List is denied unsupervised access while awaiting a decision by a court, administrative entity, or governmental entity. Upon conviction or acquittal by the court, the Secretary's List is</p>
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<p>Custodial interference Custodial sexual misconduct (5 or more years) Dealing in depictions of minor engaged in sexual explicit conduct Domestic Violence (felonies only) Drive-by shooting Extortion 1 Extortion 2 (5 or more years) Forgery (5 or more years) Harassment (5 or more years) Harassment Domestic Violence Homicide by abuse Homicide by watercraft Identity theft (5 or more years) Incendiary devices (possess, manufacture, dispose) Incest Indecent exposure/Public indecency (Felony) Indecent liberties Kidnapping Leading organized crime (5 or more years) Luring Malicious explosion 1 Malicious explosion 2 Malicious explosion 3 (5 or more years) Malicious harassment Malicious mischief (5 or more years) Malicious mischief Domestic Violence Malicious placement of an explosive 1 Malicious placement of an explosive 2 (5 or more years) Malicious placement of an explosive 3 (5 or more years) Malicious placement of imitation device 1 (5 or more years) Manslaughter Murder/Aggravated murder Patronizing a prostitute (5 or more years) Possess depictions minor engaged in sexual conduct Possess explosive device (5 or more years) Promoting pornography (5 or more years) Promoting prostitution 1 (5 or more years) Promoting prostitution 2 (5 or more years) Promoting suicide attempt (5 or more years)</p>	<p>applied.</p> <p>Attempt RCW 9A.28.020; Conspiracy RCW 9A.28.030; and Solicitation RCW 9A.28.040.</p> <p>These crimes may appear with a listed crime, such as Burglary. When the crime of attempt, conspiracy, or solicitation appears in conjunction with a crime on this list, it is treated the same as the listed crime. Example: Unsupervised access is denied for Attempted Burglary for 5 years after the conviction.</p> <p>Sexual Motivation – RCW 9.94A.835 –A person who has a court finding of sexual motivation is denied unsupervised access to vulnerable adults, juveniles, or children.</p> <p>Bail Jumping – RCW 9A.76.170 - A person who has the crime of bail jumping is denied unsupervised access until a court decision is issued for the original crime that required bail. Upon conviction or acquittal by the court, the Secretary’s List is applied.</p> <p>Negative Actions are considered under individual program law and rule and may lead to denial of unsupervised access to vulnerable adults, juveniles and children. A negative action is an administrative action taken against an individual and may include:</p> <ul style="list-style-type: none"> • A decision issued after a due process hearing by an agency or an Administrative Law Judge showing a finding of abuse, neglect, exploitation, or abandonment of a vulnerable adult, juvenile or child. • Termination, revocation, suspension, or denial of a license, certification, and/or State or Federal contract. • Relinquishment of a license, certification, or contract in lieu of an agency negative action. • Revocation, suspension, denial or restriction placed on a professional license. • Department of Health disciplining authority findings.
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