



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
(Implements RCW 34.05.360)

**Agency:** Department of Social and Health Services, Children's Administration

**Permanent Rule Only**

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.
- Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes
  - No
- If Yes, explain:

**Purpose:**

The Children's Administration and Background Check Central Unit are making joint rulemaking to rescind the Background Check WACs related to CA in chapter 388-06, sections 0010 through 0260, and establish a new chapter for CA's Background Check requirements, chapter 388-06A WAC. These changes also reflect the changes made in SSB6095 that were passed in the 2014 legislation and will align with existing state laws. Emergency rules are currently in place for WAC 388-06-0170 and WAC 388-06-0180 until the rules are final.

**Citation of existing rules affected by this order:**

Repealed: None  
Amended: None  
Suspended: None

**Statutory authority for adoption:** RCW 43.43.832

**Other authority :**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 14-23-075 on 11/18/14 (date).

Describe any changes other than editing from proposed to adopted version: No changes were made.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
 Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
 e-mail \_\_\_\_\_

**Date adopted:**

January 14, 2015

**NAME (TYPE OR PRINT)**

Katherine Vasquez

**SIGNATURE**

**TITLE**

DSHS Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: January 15, 2015**

**TIME: 2:51 PM**

**WSR 15-03-071**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	<u>18</u>	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	<u>18</u>	Amended	_____	Repealed	_____

NEW SECTION

**WAC 388-06A-0010 What is the purpose of this chapter?** This chapter establishes rules for background checks conducted by children's administration (CA) at the department of social and health services (DSHS). The department does background checks on individuals who are licensed, certified, contracted, or authorized to care for or have unsupervised access to children. Background checks are conducted to find and evaluate any history of criminal convictions or civil adjudication proceedings, including those involving abuse, abandonment, financial exploitation, or neglect of a child or vulnerable adult.

NEW SECTION

**WAC 388-06A-0020 What definitions apply to WAC 388-06A-0100 through 388-06A-0260 of this chapter?** The following definitions apply to WAC 388-06A-0100 through 388-06A-0260 of this chapter:

**"Authorized"** or **"authorization"** means not disqualified by the department to have unsupervised access to children. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

**"CA"** means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child-placing agencies, child protective services, child welfare services, and other services to children and their families.

**"Certification"** means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

(2) Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

**"Children"** means a person who is one of the following:

(1) Under eighteen years old;

(2) Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;

(3) Up to twenty-one years of age and participating in the extended foster care program;

(4) Up to twenty-one years of age and under the custody of the Washington state juvenile rehabilitation administration.

**"Civil adjudication proceeding"** is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

**"Department or DSHS"** means the department of social and health services (DSHS).

**"DLR"** means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies and licensed group care facilities.

**"I"** and **"you"** refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

**"Licensor"** means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child-placing agency who certifies or monitors foster homes supervised by the child-placing agency.

**"Unsupervised"** means will not or may not be in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check; or

(2) Another individual who has been previously approved by children's administration.

**"We"** refers to the department, including licensors and social workers.

**"WSP"** refers to the Washington state patrol.

#### NEW SECTION

**WAC 388-06A-0100 Why are background checks done?** The children's administration does background checks to help safeguard the health, safety and well-being of children in out of home care. By doing background checks, the department reduces the risk of harm to children from individuals that have been convicted of certain crimes. The department's regulations require the evaluation of your background to determine your character, suitability and competence before you are issued a license, contract, certificate, or authorized to have unsupervised access to children.

#### NEW SECTION

**WAC 388-06A-0110 Who must have background checks?** (1) Per RCW 74.15.030, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Per RCW 74.15.030, the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes, or facilities which provide care. The department requires background checks on the following people:

(a) A volunteer or intern with regular or unsupervised access to children;

(b) Any person who regularly has unsupervised access to a child. However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, per RCW 74.13.710;

(c) A relative other than a parent who may be caring for a child; and

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(3) Per RCW 13.34.138, prior to returning a dependent child home the department requires a background check on all adults residing in the home.

NEW SECTION

**WAC 388-06A-0120 Who is not affected by this chapter?** This chapter does not apply to schools, hospitals, or other facilities where the primary focus is not custodial.

NEW SECTION

**WAC 388-06A-0130 Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children?** For children's administration, these regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children that are processed by the children's administration after the effective date of this chapter.

NEW SECTION

**WAC 388-06A-0140 What happens if I don't comply with the background check requirement?** The department will deny, suspend or revoke your license, contract, certification, or disqualify you to care for children if you or someone on the premises of your home or facility having unsupervised access does not comply with the department's requirement for a background check.

NEW SECTION

**WAC 388-06A-0150 What does the background check cover?** (1) The department must review criminal convictions and pending charges based

on identifying information provided by you. The background check may include but is not limited to the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Background checks conducted for children's administration also include:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) through (2) of this section, background checks conducted by children's administration for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home:

(a) Child abuse and neglect registries in each state a person has lived in, in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(4) Except as required in WAC 388-06A-0150 (4)(b), children's administration will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

#### NEW SECTION

**WAC 388-06A-0160 Who pays for the background check?** (1) Children's administration (CA) pays the DSHS general administrative costs for background checks for foster home applicants, CA relative and other suitable caregivers, and CA adoptive home applicants.

(2) Children's administration pays the WSP and FBI fingerprint processing fees for foster home applicants, CA relative and other suitable caregivers, CA adoptive home applicants, and other adults associated with the home requiring background clearances under chapter 13.34 RCW.

(3) Children's administration does not pay WSP and FBI fingerprint processing fees or expenses for employees, contractors, or volunteers associated with facilities other than foster homes, adoptive homes proposed by the children's administration, or relative or other suitable caregiver homes.

NEW SECTION

**WAC 388-06A-0170 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, or authorized to have unsupervised access to children?** (1) There are convictions for certain crimes that will permanently prohibit you from being licensed, contracted, certified or authorized to have unsupervised access to children. Those felony convictions are as follows:

- (a) Child abuse and/or neglect;
- (b) Spousal abuse;
- (c) A crime against a child (including child pornography);
- (d) A crime involving violence (including rape, sexual assault, or homicide but not including other physical assault or battery); or
- (e) 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 in any home or facility.

(2) If you are convicted of one of the crimes listed in WAC 388-06A-0170 (1)(a) through (e) you will not be able to:

- (a) Receive a license to provide care to children;
- (b) Be approved for adoption of a child;
- (c) Be a contractor;
- (d) Be employed by a licensed agency or contractor, if you will have unsupervised access to children;
- (e) Volunteer or participate as an intern in a home or facility that offers care to children; or
- (f) Provide any type of care to children, if the care is funded by the state.

NEW SECTION

**WAC 388-06A-0180 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, or authorized to have unsupervised access to children or from working with children?** The department must disqualify you from licensing, contracting, certification, or from having unsupervised access to children if it has been less than five years from a conviction for the following crimes:

(1) Any felony physical assault or battery offense not included in WAC 388-06A-0170;

(2) Any felony violation of the following drug-related crimes:

(a) The Imitation Controlled Substances Act (for substances that are falsely represented as controlled substances (see chapter 69.52 RCW));

(b) The Legend Drug Act (prescription drugs, see chapter 69.41 RCW);

(c) The Precursor Drug Act (substances used in making controlled substances, see chapter 69.43 RCW);

(d) The Uniform Controlled Substances Act (illegal drugs or substances, see chapter 69.50 RCW); or

(e) Unlawfully manufacturing, delivering or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes.

(5) Any federal or out-of-state conviction for an offense that under the laws of Washington state would disqualify you for no less than five years from having unsupervised access to children.

NEW SECTION

**WAC 388-06A-0190 If I have a conviction, may I ever have unsupervised access to children?** (1) In two situations, DSHS may find a person with convictions able to have unsupervised access to children:

(a) If the conviction for any crime listed in WAC 388-06A-0180 occurred more than five years ago; or

(b) If the conviction was for a crime other than those listed in WAC 388-06A-0170 or 388-06A-0180.

(2) In both of these situations, DSHS must review your background to determine your character, suitability, and competence to have unsupervised access to children. In this review, DSHS must consider the following factors:

(a) The amount of time that has passed since you were convicted;

(b) The seriousness of the crime that led to the conviction;

(c) The number and types of other convictions in your background;

(d) Your age at the time of conviction;

(e) Documentation indicating you have successfully completed all court-ordered programs and restitution;

(f) Your behavior since the conviction; and

(g) The vulnerability of those that would be under your care.

NEW SECTION

**WAC 388-06A-0200 Will I be disqualified if there are pending criminal charges on my background check?** (1) The department will not license, contract, certify, or authorize a person to have unsupervised access to children who have a criminal charge pending for a disqualifying crime described in the adoption and safe families act of 1997, or a criminal charge pending for a disqualifying crime that relates directly to child safety, permanence, or well-being.

(2) You may reapply for a license, contract, certification, or approval to have unsupervised access to children by providing proof to the department that the charge against you has been dropped or that you were acquitted.

NEW SECTION

**WAC 388-06A-0210 Will you license, contract or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or I have been pardoned for a crime?** If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a convic-

tion for the purposes of licensing, contracting, certification, or authorization for unsupervised access to children.

NEW SECTION

**WAC 388-06A-0220 How will I know the status of the background check?** (1) If you have been approved by the background check:

(a) The department will notify you, and your prospective employer, or your supervisor, if you have requested a contract or approval for unsupervised access to children.

(b) The department will not directly notify you, and will instead continue the process for approving your application if you have requested a license or certification to care for children.

(2) If you have been disqualified by the background check:

(a) The department will notify you in writing and include any laws and rules that require disqualification;

(b) The department will also notify the care provider, the prospective employer, or the licensor; and

(c) You will not receive a license, contract, certification, or be authorized to have unsupervised access to children.

NEW SECTION

**WAC 388-06A-0230 What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization based on the results of the background check?** (1) If you are seeking a license, or employment with a home or facility licensed by the children's administration, you may request an administrative hearing to dispute a denial of authorization for unsupervised access to children (chapter 34.05RCW). You cannot contest the conviction or negative action in the administrative hearing.

(2) Prospective volunteers or interns, contractors or their employees, or those seeking certification do not have the right to appeal the department's decision to deny authorization for unsupervised access to children.

(3) The employer or prospective employer cannot contest the department's decision on your behalf.

(4) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings (chapter 34.05 RCW).

NEW SECTION

**WAC 388-06A-0240 Is the background check information released to my employer or prospective employer?** (1) Children's administration will share with employers or approved care providers only that:

(a) You are disqualified; or

(b) You have not been disqualified by the background check.

(2) The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter 42.17 RCW) when releasing any information.

NEW SECTION

**WAC 388-06A-0250 May I request a copy of my criminal background check results?** (1) The department will provide you a copy of your criminal background check results if you:

- (a) Make the request in writing to the department; and
- (b) Offer proof of identity, such as picture identification.

(2) A copy of your WSP criminal background check results may also be obtained from the Washington state patrol (chapter 10.97 RCW).