



**Final Report to the Legislature
Recommendations for Improving
Washington State's
Criminal Background Check Processes**

By: The Joint Task Force on Criminal Background Check Processes

January 7, 2007

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Executive Summary

The Joint Task Force on Criminal Background Check Processes was created by the passage of Engrossed Substitute House Bill (ESHB) 2556 during the 2004 legislative session and extended by the passage of Substitute House Bill 1681 during the 2005 legislative session. The legislation required the Task Force to review and make recommendations regarding how to improve the state's criminal background check processes. The Task Force was extended and expanded during the 2006 legislative session with the passage of Substitute Senate Bill 6717. The 2006 legislation required that the Task Force report its findings and recommendations to the Legislature and the Governor by December 31, 2006.

The Task Force recommends that the following matters be addressed in the 2007 legislative session:

1. Authorizing background checks for all school employees and eliminating incremental fees for classified versus non-classified employees and private versus public school employees;
2. Ensuring accurate and complete background checks;
3. Creating additional safeguards for child care;
4. Establishing a work group to ensure seamless access to information for all background checks for noncriminal justice purposes;
5. Creating a registration program for individuals who provide or offer to provide athletic coaching services to children under the age of eighteen;
6. Consolidating background check requirements for the Department of Social and Health Services (DSHS) employees and their service providers;
7. Clarifying background check requirements for DOH service providers in the health care industry.

The final report of the Joint Task Force on Criminal Background Check Processes contains the Task Force's findings and recommendations developed during six months of intensive study.

Senator Jeanne Kohl-Welles, Co-Chair

Chief Scott Smith, Co-Chair

Joint Task Force on Criminal Background Check Processes

Final Report on the Joint Task Force on Criminal Background Check Processes

Overview

Criminal history record information background checks are conducted for employment and licensing decisions and many other purposes related to the security of persons and property. In recent years, reports of abuse of children and vulnerable adults have led to increased requirements for criminal background checks for anyone who works with children or vulnerable adults. The move to protect children and vulnerable adults through criminal background checks has expanded to include volunteers.

In 2004, the Washington State Legislature passed ESHB 2556 (Chapter 41 of the Laws of 2004). This bill created a Joint Task Force on Criminal Background Check Processes to review and make recommendations to the Legislature and the Governor regarding how to improve the state's criminal background check processes. This task force was extended in 2005 with the passage of Substitute House Bill 1681 which extended the work of the Task Force through the end of the 2005. In 2006, the statute creating the Task Force was once again extended by Substitute Senate Bill 6717. The Task Force was also expanded to include a representative of the Washington State Association of Criminal Defense Lawyers. The Task Force was authorized to continue its work until December 31, 2006, and to report its findings and recommendations to the Legislature.

Senator Jeanne Kohl-Welles and Chief Scott Smith (of the Mountlake Terrace Police Department) were selected by members of the Task Force as co-chairs of the Joint Task Force on Criminal Background Check Processes.

Background

The Washington State Patrol (WSP) Identification and Criminal History Section is the state's central repository for fingerprint-based criminal history record information. Pursuant to state statutes (RCW 43.43.735 and .740), fingerprints taken by local law enforcement agencies of adults or juveniles arrested and taken into custody for felony or gross misdemeanor offenses must be submitted to the repository. Local policy determines whether misdemeanor offenses are submitted; if submitted, the misdemeanor is retained. The FBI will accept the same records as the state.

The Washington State Patrol is authorized to disseminate criminal history record information under two state statutes: The Criminal Records Privacy Act (Chapter 10.97 RCW) and the Child and Adult Abuse Information Act (RCW 43.43.830-43.43.845).

Chapter 10.97 RCW: Under Chapter 10.97 RCW, criminal background record information disseminated for criminal justice purposes includes both non-conviction and

conviction criminal history, state corrections activity, and sex and kidnapping offender registrations. For non-criminal justice purposes, the criminal background check information includes convictions, adverse findings, arrests under one year old without disposition, state corrections activity, and sex and kidnapping offender registrations.

RCW 43.43.830-845: Under RCW 43.43.830-845, law enforcement agencies, the Office of the Attorney General, prosecuting authorities, and the Department of Social and Health Services may request background check information to aid in the investigation and prosecution of cases of abuse that may have involved a child, persons with developmental disabilities, or a vulnerable adult. In addition, under RCW 43.43.834, businesses or organizations may request criminal background record information on a prospective applicant who will be working with a person with a developmental disability, persons with mental illnesses, vulnerable adults, or children under sixteen years of age.

Criminal history record information disseminated pursuant to RCW 43.43.830-845 includes all convictions, adverse findings, arrests under one year old without disposition for crimes against a person as defined in RCW 9.94A.411, and sex and kidnapping offender registrations. The business or organization making the background check inquiry must notify the applicant who has been offered a position as an employee or volunteer that a background inquiry may be made.

Civil Adjudications: Civil adjudication information is governed by a combination of state and federal statutes. The Task Force has focused its inquiry on health care providers, school employees, security guards, and individuals who work with children or vulnerable adults. A summary of the applicable laws can be found in Appendices A & B of this report. While there are federal and state laws that require background checks to be conducted for these individuals, these are limited to criminal adjudications. Civil adjudications are generally protected from dissemination and identified as confidential information.

Task Force & Its Duties

The membership of the Task Force is comprised of one member from each of the two largest caucuses of the Senate (Senators Kohl-Welles and Brandland) and the House of Representatives (Representatives Dickerson and Ahern¹); one representative from the Washington State Patrol (WSP) (Toni Korneder), the Department of Social and Health Services (DSHS) (James Carter), and the Office of the Superintendent of Public Instruction (OSPI) (Charlie Schreck); one elected sheriff or police chief selected by the Washington Association of Sheriffs and Police Chiefs (WASPC) (Chief Scott Smith, Mountlake Terrace Police Department); and, jointly appointed by the speaker of the House of Representatives and the president of the Senate, representatives from the following entities:

- A non-profit service organization that primarily serves children under sixteen years of age (Amy Bell, YMCA and Council of Youth Agencies);
- A health care provider [Robb Menaul, Washington State Hospital Association(WSHA)];
- An organization that primarily serves developmentally disabled persons or vulnerable adults (Sue Elliott, ARC of Washington State);
- A local youth athletic association (Peter Lukevich, Washington Partners in Crisis - Insurance);
- The insurance industry (vacant);
- For-profit entity that primarily serves children (Michael Watters, Kids' World Inc.);
- A business or organization that primarily serves vulnerable adults (Deb Murphy, Washington Association of Housing and Services for the Aging);
- An agency that represents the state's long-term care ombudsman (Jeff Crollard, Crollard & Associates);
- A local parks and recreation program, selected by the Association of Washington Cities (Tammy Fellin, Association of Washington Cities);
- A local parks and recreation program, selected by the Washington Association of Counties (Scott Hall, Pierce County Parks and Recreation); An organization that serves as a clearinghouse for other nonprofit organizations in the state and that recruits volunteers and trains nonprofit boards of directors, as a nonvoting ex officio member (Carolyn Cunningham, United Way of King County);
- A representative of the Washington Association of Criminal Defense Lawyers (Mark W. Muenster, Attorney at Law); and
- Two additional nonvoting ex officio members who were included at the invitation of chairs of the Task Force [Dave Magby, Department of Health (DOH) and Joel Roalkvam, Department of Early Learning (DEL)].

¹ Representative Ahern resigned from the task force in the fall. This position remained vacant for the remainder of the interim.

The Task Force was required to review the following issues:

- State and federal statutory requirements regarding criminal background checks;
- Criminal offenses that currently are reportable through the criminal background check program;
- Classes of information available through the Washington State Patrol and the Federal Bureau of Investigation criminal background check systems;
- Best practices among organizations for obtaining criminal background checks on their employees and volunteers;
- Feasibility and costs for businesses and organizations to conduct periodic background checks;
- Feasibility of requiring all businesses and organizations, including nonprofit entities, to conduct criminal background checks for all employees, contractors, agents, and volunteers who have regularly scheduled supervised or unsupervised access to children, persons with developmental disabilities, or vulnerable adults;
- Benefits and obstacles of implementing a criminal history record information background check program created by the National Child Protection Act of 1993;
- Feasibility of establishing a state registration program for private youth sports coaches under which some or all of such persons are required to obtain and disclose to prospective clients and employers a copy of the results of their fingerprint-based criminal background checks; and
- A review of the practices of the Department of Social and Health Services with respect to checking the backgrounds of its employees, applicants for employment, and candidates for promotion.

The Task Force was permitted to consult with individuals from the public and private sector and will use legislative facilities and staff from Senate Committee Services and the House of Representatives Office of Program Research.

Legislative Agenda

2004 Joint Task Force On Criminal Background Check Processes

The Task Force held six public meetings in 2004, and made five recommendations as follows:

- 1) Simplify the statutes concerning the dissemination of background checks and repeal portions of RCW 43.43, accordingly;
- 2) Create a pilot program to electronically gather and transmit fingerprint data for non-criminal justice purposes by purchasing nine electronic-scan devices to be strategically placed in the nine educational service districts throughout the state;
- 3) Authorize background checks for Washington State Parks employees & volunteers;
- 4) Support agency-request legislation from the WSP and the DSHS to increase funding for technology upgrades and staffing levels for agencies as necessary to process background check requests more quickly; and
- 5) Expand the membership and extend the life of the Task Force to consider matters that have been raised but require further analysis and discussion in order to resolve.

Three of these five recommendations were considered and approved by the Legislature.

1. Simplify the Statutes Concerning the Dissemination of Background Checks

Substitute Senate Bill 5899, 2005 (SSB 5899) passed the Legislature and was enacted as Chapter 421 Laws of 2005. This chapter simplifies and eliminates duplicative statutory provisions and establishes consistent standards for the dissemination of criminal history record information for non-criminal justice purposes.

The WSP is required to disseminate conviction data and information on pending charges of crimes against a person that are less than a year old for background checks requested for non-criminal justice purposes. SSB 5899 eliminated the requirement that the WSP redact information unrelated to crimes against children, drug crimes, and crimes relating to financial exploitation. The bill also eliminated the requirement that information regarding dependency matters and domestic relations cases be sent to WSP.

2. Authorize Background Checks for Washington State Parks Employees and Volunteers.

Substitute House Bill 1313, 2005 (SHB 1313) passed the Legislature and was enacted as Chapter 373 Laws of 2005. The Parks and Recreation Commission was required to adopt rules that may require a criminal history record information search of job applicants, volunteers, and independent contractors who will work with children or vulnerable

adults, or who will be responsible for collecting or disbursing money or processing credit card transactions. These background checks would be conducted through the WSP and could include a national check from the Federal Bureau of Investigation.

Local law enforcement agencies were authorized to use an automatic fingerprint identification system that is compatible with the WSP's fingerprint identification system. The law further required that the state fingerprint system must be able to accept electronic latent search records from any local law enforcement agency no later than January 1, 2007.

3. Expand the Membership and Extend the Life of the Task Force

Substitute House Bill 1681, 2005 (SHB 1681) passed the Legislature and was enacted as Chapter 452 Laws of 2005. The Joint Task Force on Criminal Background Check Processes was extended for one additional year. In addition, four members were added to the membership of the task force. The mandate of the task force was also expanded to include a review of the feasibility of establishing a state registration program for private youth sports coaches under which criminal background checks would be required, and a review of the practices of the DSHS with respect to checking the backgrounds of its employees.

2005 Joint Task Force On Criminal Background Check Processes

In 2005, the Task Force held six public meetings, and made five recommendations as follows:

- 1) Consideration of ratification of National Crime Prevention and Privacy Compact Act;
- 2) Consideration of conducting fingerprint checks on all child care workers and foster parents;
- 3) Revising RCW 43.43 to make language on civil adjudications consistent with the changes to RCW 43.43 that the Legislature approved in the 2005 legislative session;
- 4) Requiring background checks of all school employees, including those who are not certificated;
- 5) Extending the work of the Task Force for one additional year.

Two of these five recommendations were considered and approved by the Legislature.

1. Revising RCW 43.43 to Make Language on Civil Adjudications Consistent with the Changes to RCW 43.43 that the Legislature Approved in the 2005 Legislative Session

Senate Bill 6720, 2006 (SB 6720) passed the Legislature and was enacted as Chapter 294 Laws of 2006. This bill modified RCW 43.43 to make civil adjudication language consistent with changes that had been made in Substitute Senate Bill 5899, 2005.

2. Extending the Work of the Task Force for One Additional Year

Substitute Senate Bill 6717, 2006 (SSB 6717) passed the Legislature and was enacted as Chapter 293 Laws of 2006. A criminal defense lawyer was added to the membership of the Task Force. The group was once again authorized to meet during the interim.

2006 Joint Task Force On Criminal Background Check Processes

Meetings

The following eight meetings were held during the 2006 interim:

June 29, 2006, from 9:30 a.m. – 12:00 p.m.

House Hearing Room B - John L. O'Brien Building located in Olympia, Washington.

- Review of legislation supported by or sponsored by the Task Force (Indu Thomas, Senate Human Services and Corrections Committee staff & Yvonne Walker, House Criminal Justice & Corrections staff)
- Health Care Licensing (Brian Peyton, Department of Health & Christina Hulet, Governor's Policy Office)
- 2007 Priorities;

July 27, 2006, from 9:30 a.m. -12:00 p.m.

House Hearing Room B - John L. O'Brien Building located in Olympia, Washington.

- Information now available through the WSP and FBI criminal background checks (Joan Smith, Washington State Patrol)
- Early Learning Council Preliminary Recommendations (Karen Tvedt, Governor's Policy Office);

August 31, 2006, from 9:30 a.m. - 12:00 p.m.

House Hearing Room B - John L. O'Brien Building located in Olympia, Washington.

- Abuse and Neglect Investigations of Vulnerable Adults (Kathy Leitch, Assistant Secretary, Aging and Disability Services Administration)
- Department of Licensing Current Background Check Practices (Pat Brown, Department of Licensing);

September 28, 2006, from 9:30 a.m. - 12:00 p.m.

House Hearing Room B - John L. O'Brien Building located in Olympia, Washington.

- AOC Update/WSHA Response
(Kathy Kuriyama, Administrative Office of the Courts & Robb Menaul, Washington State Hospital Association)
- Background Checks for Bouncers
(Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs)
- Background Checks and Recreation Programs
(John Dziedzic, Staff Counsel, Labor, Commerce, Research and Development & Brit Kramer, Washington Recreation and Parks Association)
- Court Information not reflected in Background Check
(Janet Skreen, Administrative Office of the Courts)
- Fiscal Impact of WSP Charges for WATCH Checks
(Toni Korneder, Washington State Patrol)
- Uniform Access to Information for Non-Criminal Justice Purposes
(Indu Thomas, Staff Counsel, Senate Human Services and Corrections);

October 26, 2006, from 9:00 a.m. - 12:00 p.m.

House Hearing Room B - John L. O'Brien Building located in Olympia, Washington.

- Update on Current Department of Health Initiatives
(Laurie Jinkins, Assistant Secretary, Department of Health)
- Criminal Records Audit
(Robert Barnoski, Washington State Institute for Public Policy & Elizabeth Drake, Washington State Institute for Public Policy)
- Assuring the Accuracy of Data in Background Checks
(Jennifer Shaw, American Civil Liberties Union);

November 21, 2006, from 9:00 a.m. - 12:00 p.m.

House Hearing Room D - John L. O'Brien Building located in Olympia, Washington.

- Current Children's Administration Background Check Practices
(Mike Tornquist, Children's Administration, DSHS)
- DSHS Background Check Legislation
(Kathleen Brockman, DSHS, Lamona Foster, DSHS, Steve Wickmark, Children's Administration, DSHS & Joel Roalkvam, Department of Early Learning);
- Response to Assuring the Accuracy of Data in Background Checks
(Clifford Webster, Carney Badley Spellman P.S./Consumer Data Industry, Nicholas Warrick, ACRAnet, Dave Koch, ACRAnet, and Barbara Tucci, President, Sound Screening Services)

December 18, 2006, from 9:00 a.m. - 12:00 p.m.

House Hearing Room B - John L. O'Brien Building located in Olympia, Washington.

- Finalize Recommendations.

Task Force Recommendations For the 2007 Legislative Session

1. Authorization of Background Checks for All School Employees and Elimination of Incremental Fees for Classified Versus Non-Classified Employees.

Background: School districts require new applicants, who will have regularly scheduled unsupervised access to children, to obtain a background record check through the Washington State Patrol using a fingerprint card. Other employees such as school secretaries and custodial and maintenance staff, are not required to obtain such a check; although, as a practical matter, many school districts do conduct background checks on all applicants. There is currently an incremental fee schedule for classified and non-classified employees. Under this fee schedule, private school employees, contractors, classified employees and certification applicants are charged one fee while school district and educational service district employees are charged another.

Recommendation to the Legislature: The Task Force recommends that all school employees obtain a background record check through the Washington State Patrol. The Task Force further recommends the elimination of incremental fees.

2. Ensuring Accurate and Complete Background Checks.

Background: There has been an increase in new laws requiring background checks prior to employment of individuals in positions that require contact with children and vulnerable adults. There has also been an increased reliance on background information obtained from internet-based information brokers. This practice increases the possibility of inaccurate reports.

Recommendation to the Legislature: The Task Force recommends that the provisions of the Fair Credit Reporting Act relating to background checks be emphasized and enhanced to protect individuals from the dissemination of false or inflated information.

3. Creating Additional Safeguards for Child Care.

Background: Representatives from the Administrative Office of the Courts indicated to the Task Force that the courts are restricted from releasing certain classes of information for reasons of confidentiality. In addition, the Task Force learned that, while final court decisions may be recorded, specific findings may not be indexed in the courts' records.

In addition to difficulties in obtaining potentially relevant information from the courts, the Task Force found that extracting information from child welfare records might also prove problematic. State and federal laws protect the rights of children and families by maintaining the confidentiality of certain classes of records maintained in the state's child

welfare and juvenile justice systems. These laws restrict the release of information to certain agencies, such as child protective services, and to certain people, such as parents. Some of these laws are federal funding statutes, so if a state does not comply with their requirements, federal funds that would ordinarily be available for child welfare and child protective services might be at risk.

Recommendation to the Legislature: The Task Force recommends that the provisions of the Department Early Learning (DEL) statute be modified to permit parents and child care employers to receive such information as they are entitled to under current federal and state confidentiality laws.

4. Establishing a Work Group to Ensure Seamless Access to Information for All Background Checks for Noncriminal Justice Purposes.

Background: There is variation in how authorized agencies (such as the DSHS, the Department of Health, Department of Licensing, etc.) obtain criminal background records on their employees or on persons who contract or are licensed by them. Furthermore, current law is ambiguous with regard to whether agencies are authorized to perform periodic re-checks.

The members of the Task Force reviewed the numerous, complex and ever-changing federal and state laws regarding background checks for prospective employees of public and private entities who would work with vulnerable adults or children. (See Appendices A and B.) A comprehensive background check, which includes both civil and criminal information, would be a valuable tool in safeguarding vulnerable adults and children from preventable risk.

Recommendation to the Legislature: The Task Force recommends the establishment of a work group agency representatives and others to explore ways which to ensure seamless access to information for all background checks for noncriminal justice purposes. Four legislators would serve as ex-officio members.

5. Requiring a Certificate of Registration for Individuals Who Provide or Offer to Provide Athletic Coaching Services to Children Under the Age of Eighteen

Background: Currently, a person who offers private athletic coaching or training to children or youth is not required by state law to be licensed or certified. There is also no requirement that these coaches or trainers submit to a background check before offering their services.

Recommendation to the Legislature: The Task Force supports proposed legislation requiring a certificate of registration for individuals who provide commercial youth athletic coaching services.

6. *Consolidating background check requirements for DSHS employees and their service providers.*

Background: Currently, 14 different laws address the background check requirements for DSHS employees and their service providers. Due to this multiplicity, there are many different program-specific rules, varying standards for denial of unsupervised access for vulnerable adults and children, and inconsistent recheck requirements. Over the past three years, the Task Force has reviewed multiple laws governing the DSHS background check processes.

The DSHS has been working on consolidating these requirements into one chapter to handle background check processes throughout the entire department. This consolidation could require statutory changes, and contemplates the newly created Department of Early Learning (DEL) and the requirements in the federal Adam Walsh Act.

Recommendation to the Legislature: The Task Force recommends consolidating the laws which govern background checks for DSHS employees and service providers in order to provide greater consistency and reduce duplication.

The Task Force supports the DSHS proposal, which would permit the DSHS to establish consistent standards for background checks in order to deny unsupervised access to vulnerable children and adults. The proposal also includes provisions requiring DSHS employees and DSHS service providers to have regularly scheduled rechecks. It would also authorize DEL to conduct background checks for non-licensed child care providers and DEL employees and require all foster and adoptive placements to submit to fingerprint background checks.

7. *Clarifying background check requirements for DOH service providers in the health care industry.*

Background: Currently DOH is required to ensure that service providers who have unsupervised access with a vulnerable adult shall not have been: (i) convicted of a crime against persons (ii) convicted of crimes relating to financial exploitation (iii) found in any disciplinary board final decision to have abused a vulnerable adult or (iv) the subject in a protective proceeding involving a vulnerable adult.

Those criminal background checks include information such as criminal convictions, adverse findings, arrests under one year old without disposition, state corrections activity, and sex and kidnapping offender registrations. Information regarding whether an individual is the subject of a protective proceeding is not available in criminal background checks from the WSP for non-criminal justice purposes. Health care facilities must therefore turn to alternative sources for such information. The Task Force

heard from the Administrative Office of the Courts and the Washington State Hospital Association regarding the efforts of both to establish a method to make this information available in a quick, accurate, and precise way.

The Administrative Office of the Courts has created a web-based database which is searchable by name. In civil adjudications, neither fingerprinting nor the collection of vital statistics is required. Therefore, this database does not include unique identifiers. When an employee has a common name it is time consuming, daunting and occasionally not possible to confirm that the individual involved in the protective proceeding is the employee of the entity.

Recommendation to the Legislature: The Task Force recommends that RCW 43.43.842(1)(a)(iv) be modified to specifically refer to protection orders under RCW 74.34.130. Furthermore the Task Force recommends that the language in RCW 43.43.842 be clarified such that individuals who request protection orders are not prohibited from working in a health care facility.

Recommendation: In addition the Task Force recognizes the difficulty and complexity of improving access to and providing unique identifiers for court records. The Task Force requests the Administrative Office of the Courts to continue working with stakeholders to make improvements in the system.

8. Centralizing responsibility for licensed child care providers.

Background: Previously, the DSHS was the only entity required to license day care agencies. The purpose of this licensing requirement is to assure the users of those agencies, their parents, the community at large, and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children in order to safeguard the health, safety, and well-being of those children receiving care. With the creation of the DEL the responsibility for licensing of day care facilities is primarily with DEL.

Recommendation: This Task Force recommends that the DEL take the lead in developing legislation for the centralization of responsibility for licensing day care facilities. The Task Force recognizes that it is a complex concept as to which entity should take responsibility and how responsibility should be shared. Although the Task Force supports centralized responsibility, it recognizes that changes are usually made in an incremental manner.

APPENDIX A

Federal Laws regarding disclosure of Confidential Information

STATUTE	CITATION	RESTRICTED INFORMATION	ALLOWABLE COMMUNICATIONS	OTHER RELEASE MECHANISMS
Adam Walsh Child Protection and Safety Act of 2006	P.L. 109-248 § 152, 153, & 633 <i>*Code numbers and Federal Regulations not yet available.</i>	<p>United States Department of Health and Human Services (HHS) shall create a National registry of substantiated cases of child abuse or neglect.</p> <p>The registry shall collect in a central electronic registry information on persons reported to a State, Indian tribe, or political subdivision of a State as a perpetrator of a substantiated case of child abuse.</p> <p>HHS will give states a standardized form listing needed information including the name of perpetrator and the type or nature of abuse.</p>	<p>The Attorney General shall ensure access to crime databases for:</p> <p>1) The National Center for Missing and Exploited Children and 2) Government Social Service Agencies with child protection responsibilities when they are investigating or responding to reports of abuse, neglect, or exploitation.</p> <p>Information should only be accessible by Federal, State, Indian, and local government units that need to carry out duties under law to protect children from abuse and neglect.</p> <p>The federal government must do fingerprint checks at the request of:</p> <p>1) A child welfare agency for conducting background checks or investigating abuse; 2) Public/Private schools which are considering individuals for employment. If possible, state criminal databases must be checked too.</p> <p>Information may only be released to appropriate officials; violation of this section carries a maximum sentence of 10 years and/or a fine.</p>	Federal regulations not yet written.

Adoption Assistance and Child Welfare	42 USC §5103 42 USC §671(a)(8); 45 CFR §§205.50, 1340.14, 1355.21, 1355.30	Information concerning applicants or recipients (including names and addresses, social and economic conditions, medical data and agency evaluation of recipients; and amounts of assistance).	For purposes connected with: A) Administration of the program or the Supplemental Security Income (SSI) program (e.g. establishing eligibility, determining amount of assistance, and providing services for applicants and recipients); B) Any investigation, prosecution, civil or criminal proceeding related to administration of the program; C) Administration of any other federal or federally-assisted program providing cash or in-kind services on the basis of need; D) an audit of the program by a governmental entity E) Verification to Employment Security Agency or similar agency that an individual has been on Adoption Assistance for 90 days; F) Administration of the State unemployment compensation program.	Release by Consent State or local agency can disclose current address of recipient to law enforcement officer who provides a SSN and demonstrates that the recipient is a fugitive felon. If subpoena for case record or agency representative to testify, court's attention must be called to the regulations against disclosure of information.
		Name or address of any applicant or recipient to any federal, state, or local committee or legislative body.	For financial audit of program by governmental entity.	
		List or names of applicants and recipients.	In state plan for assistance under Title I, IVA, X, XIV, or XVI (AABD) of the Social Security Act, if state legislation prescribes conditions of public access to records of disbursement of funds and prohibits use of list or names for commercial or political purposes.	

<p>Child Abuse Prevention and Treatment Act (CAPTA)</p>	<p>42 USC §§ 4541-5600 45 CFR § 1340.14</p>	<p>All records concerning child abuse and neglect are confidential.</p>	<p>State may authorize disclosure to:</p> <ol style="list-style-type: none"> 1. Agencies or organizations legally mandated by any federal or state law to receive and investigate reports of known or suspected child abuse; 2. A court; 3. A grand jury; 4. A properly constituted authority investigating a child or family which is the subject of the report(including MDTs, and CPTs,); 5. A physician working with the child; 6. An agency authorized to diagnose, treat or supervise a child who is the subject of the report; 7. A person legally authorized to place the child in custody; 8. The person named in the report; 9. The child named or his/her guardian; 10. Appropriate state or local officials; 11. For research purposes without identifying information. <p>State may authorize additional disclosure for purpose of carrying out background or employment related screening of individuals working with children. Information must be subjected to additional safeguards.</p> <p>Summary of investigation to the person who reported abuse.</p>	<p>Release by Consent</p> <p>US HHS and Comptroller General or their representatives per 45 CFR 74.24</p>
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Family Education Rights and Privacy Act (FERPA)	20 USC §1232g; 34 CFR Part 99	Educational Records which contain information directly related to a student and are maintained by an educational agency or institution.	<p>To school employees within the school system who have a legitimate educational interest in the records.</p> <p>To school officials in district to which the student intends to transfer.</p> <p>To federal and state education authorities.</p> <p>Educational research organizations, providing confidentiality is assured.</p> <p>Accrediting organizations.</p> <p>Parents of dependent children.</p> <p>Appropriate individuals in health or safety emergency.</p> <p>Directory information name, date of birth, dates of attendance, etc....</p>	<p>Release by consent of parents of dependent children or individual over 18.</p> <p>Court order or subpoena.</p>
Freedom of Information Act (FOIA)	5 USC § 552(a)(2); 45 CFR Part 5b	<p>Act directs the federal executive branch agencies to make records, opinions, manuals, and other documents available to the public; except the following identifying details that would constitute a clearly unwanted invasion of personal privacy:</p> <ol style="list-style-type: none"> 1. National security or foreign policy; 2. Internal personnel rules and practices exempted by other statutes; 3. Trade secrets; confidential commercial or financial information. 	Agency information exempted from disclosure..	<p>Release requires that the request reasonably describes the records.</p> <p>Order of US District Court.</p>
Health Insurance Portability and Accountability Act (HIPAA)	42 USC § 201 et seq 45 CFR Parts 160, 162, and 164	All individually identifiable health information is confidential.	<p>For continuity of care, treatment. or payment.</p> <p>Health care oversight.</p> <p>Limited relevant disclosure as required by law, i.e. doctors to CPS or to law enforcement where crime, abuse. or neglect suspected.</p> <p>A personal representative (a person with medical decision-making authority).</p>	<p>Release by Consent</p> <p>By court order.</p>

Substance Abuse	42 USC §§ 290dd-3, 290cc-3 42 CFR § 2.1 <u>et seq.</u>	Records or other information concerning any patient in a federally-assisted alcohol or drug abuse program (including identity, diagnosis, prognosis, and treatment).	<p>Internal program communication.</p> <p>Communication that doesn't disclose patient-identifying information.</p> <p>Medical emergencies.</p> <p>Court-ordered disclosure.</p> <p>Patient crimes on program premises or against program personnel.</p> <p>Research, audit, or evaluation.</p> <p>Child Abuse and Neglect Reporting.</p>	<p>Release by consent</p> <p>Release must include:</p> <ol style="list-style-type: none"> 1. Program Name, 2. Recipient Name, 3. Patient Name, 4. Purpose or need for disclosure, 5. How much and what kind of information, 6. Patient may revoke consent, 7. Date the consent expires, 8. Signed and dated by patient.
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APPENDIX B

State Laws regarding disclosure of Confidential Information

STATUE	CITATION	RESTRICTED INFORMATION	ALLOWABLE COMMUNICATIONS	OTHER RELEASE MECHANISMS
Adoption Records	26.33 RCW	Department, agency, and court files regarding an adoption.	Reasonably available non-identifying information from the adoptive parent, the adoptee, or the birth parent.	Release by court order, through a confidential intermediary if the birth parent consents in writing or if the person is deceased.
Adult Abuse Records	74.34 RCW	<p>Report of abandonment, abuse, financial exploitation, or neglect made under 74.34 RCW;</p> <p>Identity of the person making the report; and</p> <p>Identity of the vulnerable adult.</p> <p>All files, reports, records, communications and working papers used or developed in the investigation or provision of protective services.</p>	<p>For purposes consistent with 74.34 RCW, i.e., continuity of care/protection of vulnerable adults, sometimes requiring review by Attorney General.</p> <p>As authorized by the long-term care ombudsman programs.</p> <p>In cases of substantiated complaints of neglect, abuse, exploitation, or abandonment of residents, or suspected criminal violations to law enforcement.</p> <p>The appropriate professional disciplining authority, as authorized by 74.34 RCW.</p> <p>Substance of complaint to licensee, unless such disclosure would reveal the identity of the complainant, witness, or resident who chooses to remain anonymous.</p> <p>If substantiated, investigation results may be provided to agencies and programs providing care for the individual, home health, hospice, home care agencies, in-home services agencies, health programs, and regional support networks.</p> <p>If substantiated, the alleged perpetrator shall be notified; however, the name of the vulnerable adult must not be disclosed.</p>	By court order if the disclosure is essential to the administration of justice and will not endanger the life or safety of the vulnerable adult or the individual who made the report. The release may be restricted.

STATUTE	CITATION	RESTRICTED INFORMATION	ALLOWABLE COMMUNICATIONS	OTHER RELEASE MECHANISMS
Child Protective Services	26.44 RCW	The substance of an investigative file including: investigation records, case planning and consultation records, and client information.	A person who is named an alleged perpetrator after October 1, 1998, in a founded report of child abuse or neglect may seek review.	As authorized by state and federal law.
Child Welfare Records/ Child Fatality Reviews	RCW 74.13.500 – 525	The substance or content of any psychological, psychiatric, therapeutic, clinical, or medical reports evaluations, or like materials or information pertaining to the child or the child's family.	<p>When there is an investigation of the abuse, neglect, or near fatality of a child, the name of the child and any services or determinations related to the abuse or neglect of a child if any one of the following factors is present:</p> <ul style="list-style-type: none"> • Subject of the report has been charged with a crime related to a report to Children's Administration; • Investigation has been publicly disclosed as required by the official duties of law enforcement, any other state or local investigative agency, a prosecuting attorney, or a superior court judge; • Prior knowing, voluntary disclosure by the subject of the report; • The child died and the child's death resulted from abuse and neglect or was in the care of, or receiving services from Children's Administration at the time of death or within 12 months before death. 	N/A
Dependency and Termination	13.34 RCW	Hearings are public, unless court determines that it is in the best interests of the child to close hearing; documents are confidential.	<p>Relatives, foster parents, any person requested by the parent may attend hearings even if hearing is closed to the public (again if in the best interests of the child).</p> <p>Court Appointed Special Advocate (CASA) or guardian ad litem (GAL).</p>	As authorized by law see 13.50 RCW.

STATUE	CITATION	RESTRICTED INFORMATION	ALLOWABLE COMMUNICATIONS	OTHER RELEASE MECHANISMS
Drug and Alcohol Records	70.96A RCW	Federal law requires that records or other information concerning any patient in a federally-assisted alcohol or drug abuse program (including identity, diagnosis, prognosis and treatment).	If court ordered and subject to supervision to DOC for the duration of the offender's incarceration and supervision. To parents of minor children.	Release by consent

STATUTE	CITATION	RESTRICTED INFORMATION	ALLOWABLE COMMUNICATIONS	OTHER RELEASE MECHANISMS
Mental Health Records (Adults)	71.05 RCW	The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services at public or private agencies.	<p>In communications between qualified professionals or facilities which have or will be treating the individual.</p> <p>In the course of guardianship proceedings.</p> <p>To individuals as designated by the individual, his or her guardian, or parents of minor children.</p> <p>To the extent necessary to make a claim for aid, insurance or medical assistance.</p> <p>For program research or evaluation, providing evaluators sign confidentiality agreements.</p> <p>To the courts as necessary for the administration of 71.05 or 10.77 RCW.</p> <p>To law enforcement, public health officers, or personnel of DOC or the ISRB where information is necessary to carry out responsibilities of their office, when a patient escapes, in emergent situations or where information is relating to a threat or harassment.</p> <p>To the individual's attorney.</p> <p>To the prosecuting attorney as necessary to carry out responsibilities of their office after notice is provided to the individual.</p> <p>To next of kin upon the death of the patient.</p> <p>To DOH for determining compliance with licensure.</p> <p>To mark headstones of patients in hospital cemeteries.</p>	Release by consent. Court order.

STATUE	CITATION	RESTRICTED INFORMATION	ALLOWABLE COMMUNICATIONS	OTHER RELEASE MECHANISMS
Mental Health Records (Children)	71.34 RCW		<p>In communications between qualified professionals or facilities which have or will be treating the individual.</p> <p>In the course of dependency or guardianship proceedings.</p> <p>To persons with medical responsibility for the minors.</p> <p>To the minor, minor's parent, or minor's attorney subject to RCW 13.50.100.</p> <p>To individuals designated by the minor or the minor's parents in writing.</p> <p>To the extent necessary to make a claim for aid, insurance or medical assistance.</p> <p>To courts as necessary for administration of 71.34 RCW.</p> <p>To law enforcement, public health officers, personnel of DOC or the ISRB where information is necessary to carry out responsibilities of their office.</p> <p>To the secretary for program evaluation and research.</p> <p>To the prosecuting attorney as necessary to carry out responsibilities of his/her office after notice is provided to the individual.</p> <p>To next of kin upon the serious illness or death of the patient.</p> <p>To the facility in which the minor resides or will reside.</p>	
Nursing Homes	74.42 RCW	Residents' records, including information in an automatic data bank.	Information which is authorized to be released by law. (See, e.g., Adult Abuse Records/ RCW 74.34 and HIPAA)	Release by consent of resident or resident's guardian.

STATUE	CITATION	RESTRICTED INFORMATION	ALLOWABLE COMMUNICATIONS	OTHER RELEASE MECHANISMS
Public Disclosure Act	42.56 RCW	List of at least 50 exemptions designed to protect individual's right of privacy or vital governmental functions.	<p>The Public Disclosure Act requires state, county, or local agencies to make available for public inspection and copying all public records, unless specifically exempt.</p> <p>Denial of a public disclosure request must include the specific exemption and a brief explanation of how the exemption applies to the record within.</p> <p>Any communication or recorded information that is created, collected, used, or maintained by state agencies is considered a public record.</p>	Review of decision by Superior Court. Court can fine the agency \$100 for each day the request was denied, if denied inappropriately.
Records of Juvenile Justice or Care Agencies	13.50 RCW	<p>Records retained by any juvenile justice or care agency.</p> <ul style="list-style-type: none"> • Truancy records may be entered in Judicial Information System. <p>Any information that is included in the case management (CAMIS) file for a child and his or her family.</p>	<p>Agencies participating in the investigation or which has responsibility for supervising the child.</p> <p>Custodian or legal guardian of the child.</p> <p>Non-custodial parents have the same right of access to information about the child as a custodial parent.</p> <p>Foster Parents and relative caregivers – information that would assist in care of the child.</p> <p>Attorneys representing parents or children in dependency or termination matters.</p>	Release by Consent. Court Order.
Uniform Health Care Information Act	70.02 RCW	All individually identifiable health information is confidential.	<p>Exceptions are laid out in RCW 70.02.050 (Note: There is some overlap with mental health and substance abuse records, this chapter is primarily regarding physical health).</p>	Release by consent. Court order.