CHAPTER 03
BACKGROUND CHECKS

TABLE OF CONTENTS

	Page
03.00 PROGRAM AUTHORITY	3
03.10 POLICY	3
03.11 Purpose of Service	3
03.12 Service Description	3
03.13 General Policies Related to This Service	3
03.14 Priorities Related to This Service	4
03.20 PROGRAM STANDARDS	7
03.21 Program Expectations	7
03.22 Program Outcomes	8
03.30 SERVICE PROCEDURES	8
03.97 INTERFACE WITH OTHER DSHS SERVICES	15
03.98 INTERFACE WITH NON-DSHS SERVICES	15
03.99 REQUIRED FORMS AND INSTRUCTIONS	15
ATTACHMENT	16

03.00 PROGRAM AUTHORITY

RCW 74.15, RCW 43.43, RCW 26.33.190, WAC 388-330, Department Policy 9.04

03.10 POLICY

03.11 Purpose of Service

To safeguard the well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes by investigating individuals to determine these who are unsuited to care for children or may be a hazard to children.

03.12 Service Description

1. The statute requires that the department investigate the correction record or pending charges and dependency record information under Chapter 74.15 RCW of each agency and its staff seeking licensure or relicensure.

2. Similarly the department is required to investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers and developmentally disabled persons. DCFS with concurrence of the Attorney General's Office has interpreted "authorizing a placement" as any situation where DCFS staff are called upon to make a recommendation about the suitability of a placement resource for a child.

03.13 General Policies Related to This Service

A. It is the policy of the department that background inquiries including investigations of conviction records, pending charges, child abuse records, and the Central Registry are to be made under the following circumstances:

1. Licensing

Whenever facilities are licensed or relicensed by DSHS under the authority of 74.15 RCW, the inquiry on the licensee and staff or all persons 16 years of age or older living in a foster family or family day care home is to be completed prior to the licensing or relicensing action. When a new employee is hired or volunteer accepted by facilities licensed under 74.15 RCW or a person 16 years of age or older moves into a licensed foster family or family day care home, an inquiry must be initiated within seven calendar days of the employee's or volunteer's starting date with the facility.

2. Relative Placement

If a child is placed with a relative under RCW 13.34.060 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement.

3. Child Protective Services (CPS)

CPS is designated as a law enforcement agency and as such is given access to both conviction and nonconviction information about the perpetrator or alleged perpetrator of child abuse.

4. DCFS Volunteers

Volunteers who are authorized by DCFS or DSHS to provide care or supervision for children shall have a background check per RCW 74.15.030(2)(b).

03.14 Priorities Related to This Service

A. Criminal History/Arrest Record and Central Registry (Child Abuse and Neglect Register) Checks will be done by DCFS on all applicants seeking licensure/relicensure and their employees and for all new employees hired during the period of licensure.

B. Those Not Required to be Licensed: Relative/Other Responsible Adult/Adoptive Parent

Policy

DCFS staff will request a criminal history/arrest record and central registry check when the role of the department becomes one of making a placement or making a recommendation about the suitability of a proposed or existing placement resource. Some program specific clarifications are listed as follows:

1. Indian Children

A record check will be done for placement by DCFS of an Indian child in any placement resource. See section 60.13 A. 2. above.

2. Family Reconciliation Services (FRS)

A record check will NOT be done when the role of DCFS staff is to facilitate a discussion regarding temporary respite care of the child(ren). When the child is or will be residing outside the parental home pursuant to an agreement between the parent(s) and the child, the "placement" decision is actually made by the parents rather than the department.

If the placement agreement between the parent(s) and child breaks down, thereby necessitating the filing of an Alternative Residential Placement (ARP) petition with the court to continue the out of home placement, the child would be required by the court to remain in a DSHS approved placement pending resolution of the ARP.

If the DSHS plan is for the child to continue residing in the home previously agreed to by the parent(s) and the child, there is no need to move the child, but a record check should commence immediately. If record check reveals questionable information, the worker shall initiate a supervisory consultation immediately, noting in the case record the reason for the decision to leave the child in the present home or move the child to a licensed placement.

3. Child Protective Services (CPS)

When the child(ren) has been "placed" with a relative by the parent(s) prior to CPS involvement, do not move the child(ren) but assess the risk to the child(ren) and the ability of the caretaker(s) to protect the child(ren) from further abuse and neglect. A record check shall be initiated immediately.

If the record check reveals questionable information about the placement resource, the worker will initiate a supervisory consultation. The reasons for the decision to leave the child(ren) in the present placement or move the child(ren) to a licensed home will be clearly noted in the case record.

Once CPS is involved, if the relative appears otherwise competent and suitable, a record check must be done as soon as possible after placement.

4. Adoption

RCW 26.33.190 requires that

> "All preplacement reports include an investigation of conviction record, pending charges, or disciplinary board final decisions of prospective adoptive parents. The investigation shall include an examination of state and national criminal identification date provided by Washington State patrol criminal identification system as described in Chapter 43.43 RCW."

Consequently:

a. Where there is some responsibility or involvement on the part of DCFS in an adoption placement made by a private agency, a request for a background check shall be made to DCFS on the DCFS form (DSHS 14-239(X)).

b. Where the adoptive placement is being made without DCFS involvement, the child placing agency shall have the adoptive applicant complete the Washington State Patrol form WSP-ID-430, copies of which may be obtained from WSP at:

   Washington State Patrol
   Identification and Criminal History Section
   P.O. Box 2577
   Olympia, WA 98507-2527

   The completed WSP-ID-430 is mailed by the agency on subject of the inquiry directly to Washington State Patrol.

5. Voluntary or Private Child Placing Agencies

Unless DCFS authorizes the placement, an adoptive placement made by a voluntary agency will not require a DCFS record check. The agency shall apply directly to WSP for checks on such placements.

6. Group Care

For the child ready to leave group care, where DCFS has established dependency and/or is currently making payment for the group home placement, and placement is part of an approved plan, DCFS will initiate a record check prior to making placement in unlicensed relative homes.

7. Crisis Residential Centers (CRC)

A record check will NOT be done when the role of DCFS staff is to facilitate a discussion regarding placement alternative. When the child leaves the CRC and goes to reside outside the parental home pursuant to an agreement between the parent(s) and the child, the "placement" decision was made by the parent(s).

8. Day Care

A record check need not be initiated whenever the department makes payment for care by an in-home caretaker or by a relative, where the department's only role is to make payment for such care after it has been arranged.

9. Contracted Services

DCFS staff and licensed agencies shall initiate criminal history background checks for counselors contracting with DCFS or a licensed agency for therapy and related services, including family reconciliation services, psychiatric, or psychological services. Persons under contract who do not have unsupervised access to children are not required to be licensed.

10. DCFS Volunteers

Volunteers who are directly authorized by DCFS to provide care or supervision for children shall have a background check per RCW 74.15.030(2)(b).

03.20 PROGRAM STANDARDS

03.21 Program Expectations

A. The DCFS caseworker will:

1. Assure that background inquiries are completed for all individuals required by law to have a check and individuals under investigation in CPS cases.

2. Screen inquiry forms for completeness.

3. Forward forms to DCFS headquarters within five working days of receipt of the forms.

4. Make a determination of eligibility to care for the child or of disqualification within five working days of recent information from background information inquiry services unless additional investigation or review by the DCFS administrator is required. The determination to disqualify an individual or deny a license should be made in conjunction with a supervisor.

5. Except for CPS cases, share adverse information received with the subject of the inquiry or his or her employer within five working days of return of the completed (DSHS 14-239(X)).

6. Explore sources of information which are reasonably available. It is not expected for example that caseworkers will, as a rule, do exhaustive searches for information in other states or from all local law enforcement agencies in all communities in which the applicant has resided.

03.22 Program Outcomes

Some individuals applying to care for children will be disqualified because the caseworker staff are aware of a history of offenses which indicate that they are unsuited to care for children and/or they represent a hazard for children.

03.30 SERVICE PROCEDURES

A. Inquiry Process

1. Inquiries are initiated when applicants, licensees, employees, or volunteers of licensed facilities, or those otherwise authorized to provide care, complete designated sections of the inquiry form and the properly signed form is received by the DCFS staff. DSHS 14-239(X) is used by DCFS for licensing child care facilities or authorizing child care. (DSHS 09-653(X) is used by other divisions requesting background checks.)

2. Inquiries are then screened for appropriateness and completeness by the DCFS staff. Signed inquiry forms are then submitted to DCFS headquarters.

3. Completed inquiry forms should be sent to:

   Bob McGregor
   Division of Children and Family Services Headquarters
   Office Building 2, MS OB-41, Olympia
   12th and Franklin
   Olympia, WA 98504

4. DCFS headquarters will conduct criminal history inquiries and WSP child abuse record checks. Findings will be returned to the DCFS staff who forwarded the inquiry.

   Along with check of the WSP criminal history file, the DCFS background history operator will do an initial review at the WSP abuse record information system.

   The WSP child abuse record information system contains disciplinary board final decisions and "civil adjudications" which are defined as specific court findings of sexual abuse or exploitation or physical abuse in a dependency proceeding under RCW 13.34.030(2)(b) or a domestic relations action under Chapter 26 RCW, where a party to the proceeding is identified as the perpetrator of the abuse.

B. All requests for information from the Washington State Patrol's Criminal Identification Section must bear the name of a person authorized to request and receive such information.

C. Local Law Enforcement Agency Contact

1. Because of gaps in the Washington State Patrol's criminal identification files and the central registry, staff doing criminal history checks shall also do checks with local law enforcement agencies, where possible. Supervisors shall contact local law enforcement agencies and explore methods of obtaining information from them.

2. Where it is unclear from a "rap sheet" whether or not a conviction or pending charge involved physical harm to another person, or whether or not a pending charge is still active, the licensor shall contact the law enforcement agency which submitted the information.

D. The Federal Privacy Act of 1974 allows a state or local government to use social security numbers only for the administration of any "tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction." 42 U.S.C. § 405(c)(2)(c). Consequently, all persons for or from whom we are requesting a social security number must be made aware that we will be doing a criminal history record check. Should the individual then wish to not disclose his or her social security number, the check shall be made with whatever other indicators are available (i.e., birthdate, maiden name, alias, etc.).

E. Out of State Inquiries

1. Washington State currently does not have access to national criminal history files (National Crime Information Center) for the purpose of doing background checks for licensing and placement.

2. The DCFS criminal history background check computer operator does have a listing of law enforcement information system authorities in other states. Many law enforcement agencies in other states will provide information for licensing purposes. DCFS staff making inquiries on new arrivals should attempt to contact the appropriate local law enforcement agency in the other state.

F. The subject of a background check may be required to get and pay for a local or out-of-state check (if necessary) in those situations where the licensor has reason to believe that there is information about that individual in those law enforcement files.

G. Utilizing Information Returned

1. To decipher abbreviations used in "rap sheets" consult "Criminal Justice Information Act" (CJIA) Crime Codes, a copy of which has been distributed to each DCFS office.

2. The following dispositions adverse to the subject are considered part of the conviction record:

   Deferred sentence
   Bail forfeiture
   Deferred prosecution
   Diversion, and
   Dismissal entered after a period of probation, suspension, or deferral of sentence.

3. Aside from a recent pending charge, nonconviction information cannot be used as a basis for a disciplinary action on a license. Nonconviction information may, however, create a basis for further investigation, especially queries to other law enforcement agencies.

4. Where, as the result of an initial search of the Washington State Patrol's child abuse file (this initial search is done concomitantly with the criminal history background check; see section 3.30 A. 4.), it appears that there may be information there about an individual being checked, the DCFS staff submitting the inquiry will require that individual to complete a Washington State Patrol Request for Criminal History Information form (WSP-ID-430) and submit that to WSP.

   Following a second check of the WSP child abuse file by WSP Identification Section, the additional information will be returned to the DCFS staff person who submitted the original inquiry. The findings resulting from this second search will be shared with the persons named on the original release on the DSHS 14-239(X). Individuals whose names appear on the WSP's abuse file shall not be licensed or authorized to care for children.

H. Evaluation of Findings and Disposition

DCFS staff will take action based on information resulting from the inquiry as follows:

1. If the inquiry reveals no criminal convictions, WSP child abuse record information, pending charges, or Central Registry referrals, no further action is necessary.

2. If the inquiry reveals that the subject of the inquiry is listed as a perpetrator on the Central Abuse and Neglect Registry, that person may not be licensed, employed by licensees, serve in a volunteer capacity for licensees, or otherwise be authorized by DSHS to provide care or have access to children.

3. a. If the inquiry reveals that charges are pending against the subject for any of the offenses listed in Attachment 1, or their equivalents in other jurisdictions, licensure, or authorization to provide care must be withheld until dismissal or acquittal occurs. Pending charges for other offenses may be grounds for withholding licensure or authorization to provide care. Pending charges may be reason for suspending, summarily or otherwise, the license of an already licensed agency. If the inquiry reveals that pending charges are more than one year old, further inquiry shall be made with the charging law enforcement agency to determine the disposition or status of the charge.

   b. If the inquiry reveals that the subject has been convicted of any offenses listed in Attachment 1 or their equivalents in other jurisdictions, or is listed in the WSP child abuse record information, licensure or authorization to provide care must be denied.

   c. If the inquiry reveals that the subject has been convicted of an offense not listed in Attachment 1, such information shall be considered in determining the character, suitability, and competence of the prospective caretaker as required by 74.15 RCW and WAC 388-73-030. The fact of such conviction shall not in itself be the basis for denial of licensure or authorization to provide care; the recency, seriousness, kind, and number of offenses as well as the vulnerability of the clients to be cared for shall also be considered.

d. In addition, any applicant, chief executive, owner, operator, and/or administrator of any agency who was "convicted of a felony or released from a prison within seven years of the date of application for the license shall be disqualified by reason of such conviction if such conviction is reasonably related to the competency of the person to exercise responsibilities for ownership and/or administration of an agency; and the department determines, after investigation, that such person has not been sufficiently rehabilitated subsequent to such conviction to warrant public trust." (WAC 388-73-036(1)(b))

e. Any individual (including licensees, staff, or other persons on the premises) having a history of offenses which indicates that the person is not a person of good character and/or may not have the emotional stability and personality to meet the needs of persons under care (WAC 388-73-030) shall be disqualified.

Included would be convictions for offenses which would reflect on the individual's ability to meet the needs of children in care, which indicate illegal use of drugs or excessive use of alcohol, a pattern of minor violations, a recent major violation, etc.

Unless there is a disposition within the 90-day application period, an application shall be closed or denied if there are pending charges related to an offense which would adversely effect licensure. The individual may reapply following a disposition of the charge. Pending charges which are more than a year old may not be taken as grounds for a licensing action unless the case is still active because of a continuance.

I. Sharing Information

General

Information from the background check may be shared only with the subject person. It may be shared with others if a specific authorization to do so has been signed by that person.

Information Sharing

1. The dissemination of conviction records and pending charges to individuals who have a need to know is unrestricted if it is necessary for the administration of DCFS programs. With a release of information signed by the subject, the department may share additional information if that sharing is necessary for the administration of DCFS programs. Conviction information and pending charges may provide a basis for a denial or revocation of a license (see section preceding). Nonconviction information, while it cannot be used as grounds for a denial or revocation in itself, may indicate the need for additional investigation, interviews, exploration with the applicant, etc.

2. Only inquiry information which could require disqualification of an employee or volunteer of a licensed or authorized care provider may be shared with that provider. This shall include only information necessary for the administration of the licensing program. Care providers who have been disqualified will be provided with the inquiry findings forming the basis for that disqualification if such findings are requested in writing and proof of identity is provided.

   Department staff may not give a returned inquiry form or "rap sheet" or a copy of them to a person outside the department.

Regarding the use of background information about a person being checked derived from a review of the department's own files, all information remains confidential, except that information pertaining to whether or not that person meets the requirements to provide child care may be shared with the person/agency specified on a release of information signed by the subject individual.

Exceptional Circumstances

An individual convicted of a crime not on the attached list will not automatically be prohibited from contact with children solely because of the conviction. Instead, the following factors shall be considered:

1. The type of crime for which the individual was convicted;

2. The number of crimes for which the individual was convicted;

3. The nature of the offense(s);

4. The age of the individual at the time of conviction;

5. The length of time that has elapsed since the last conviction;

6. The relationship of the crime and the capacity to care for children;

7. Evidence of rehabilitation; and

8. Opinions of community members concerning the individual in question.

Record Keeping

1. A log of persons for whom criminal history inquiries have been done is kept by the DCFS criminal history background computer operator.

2. DCFS offices shall keep sufficient information to show that appropriate required checks have been completed where required and an entry in its records that indicates who ultimately received the information or how it was disseminated.

3. Returned inquiry forms shall be kept for three years or relicensing, to be discarded when replaced with a more current check or if the subject is no longer employed at the facility.

   In the case of a relative placement the form may remain in the file indefinitely.

Appeals

Applicants or licensees who have been or would be subject to denial, suspension, revocation, or modification of a license action because of negative background information may request a fair hearing (an adjudicative proceeding).

Employees or applicants for employment who have been adversely effected by a decision based on negative background information may:

1. File an appeal with the Washington State Human Rights Commission if they feel a right has been violated,

2. Contact the Washington State Patrol, if criminal history appears erroneous, or

3. Contact the responsible DCFS regional office to request a review by that office of a disqualification or finding of unsuitability to provide care.

03.97 INTERFACE WITH OTHER DSHS SERVICES

A. DCFS Licensed Facilities Used by Other Divisions

Where the Division of Children and Family Services licenses a facility or agency which is contracted or certified by another division (e.g., Division of Developmental Disabilities), DCFS remains responsible for the background check and for submitting the completed inquiry forms to the background check computer operator at Division headquarters.

B. Facilities Not Licensed by DCFS

By agreements with DDD and DAAS, the DCFS background check computer operator does background checks forwarded to him by those divisions for staff of agencies with which they contract but are not licensed by DCFS.

03.98 INTERFACE WITH NON-DSHS SERVICES

The Division of Children and Family Services has access to Washington State Patrol computer files through a data sharing agreement. That agreement permits the division to receive only that information permitted by statute and requires the division to comply with all the obligations and restrictions involved in the use of the information system.

03.99 REQUIRED FORMS AND INSTRUCTIONS

See Chapter 99, Forms for instructions on this form:

DSHS 14-239(X) (Rev. 02/90), Criminal History and Background Inquiry

WSP-ID-430, Washington State Patrol Request for Criminal History Information

ATTACHMENT

1. Aggravated murder
2. Murder in the first degree
3. Murder in the second degree
4. Manslaughter in the first degree
5. Manslaughter in the second degree
6. Assault in the first degree
7. Assault in the second degree
8. Assault in the third degree
9. Vehicular homicide
10. Simple assault (if it involves physical harm to another person)
11. Custodial assault
12. Reckless endangerment
13. Criminal mistreatment in first degree
14. Criminal mistreatment in second degree
15. Kidnapping in the first degree
16. Kidnapping in the second degree
17. Unlawful imprisonment
18. Rape in the first degree
19. Rape in the second degree
20. Rape in the third degree
21. First degree rape of a child
22. Second degree rape of a child
23. Third degree rape of a child
24. Child molestation in the first degree
25. Child molestation in the second degree
26. Child molestation in the third degree
27. Sexual misconduct with a minor in the first degree
28. Sexual misconduct with a minor in the second degree
29. Indecent liberties
30. Arson in the first degree
31. Arson in the second degree
32. Burglary in the first degree
33. Extortion in the first degree
34. Extortion in the second degree
35. Robbery in the first degree
36. Robbery in the second degree
37. Incest in the first degree
38. Incest in the second degree
39. Sexual exploitation of a minor
40. Communication with a minor for immoral purposes
41. Child selling - child buying
42. Public indecency (if toward a person under the age of fourteen years)
43. Prostitution
44. Promoting prostitution in the first degree
45. Promoting prostitution in the second degree
46. Selling or distributing erotic material to a minor
47. Dealing in depictions of a minor engaged in sexually explicit conduct
48. Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct
49. Possession of depictions of a minor engaged in sexually explicit conduct

50. Patronizing a juvenile prostitute
51. Family abandonment
52. Child abandonment
53. Unlawfully manufacturing, delivering, or possessing, with intent to deliver, a controlled substance
54. Promoting a suicide attempt
55. Malicious harassment
56. Coercion
57. Promoting pornography
58. Child abuse or neglect as defined on RCW 26.44.020
59. Violation of child abuse restraining order
60. First or second degree custodial interference

TO: Holders of DCFS Manuals

NOTICE NO.: T-97
ISSUED: 11/08/91

FROM: Diana Roberts, Director
Division of Children & Family Services

SECTIONS REVISED:
Chapter 03.30

EFFECTIVE: UPON RECEIPT
FOR INFORMATION CALL:
234-0204 or SCAN 753-0204

IF NOT DELIVERABLE, RETURN TO: MANUAL DISTRIBUTION CENTER, MS:5807/MG-13. FOR DISTRIBUTION CHANGES, NOTIFY: MANUAL PRODUCTION, MS:5806/OB-16.

SUBJECT: WAIVERS TO DISQUALIFICATION TO PROVIDE CHILD CARE OR TO HAVE UNMONITORED ACCESS TO CHILDREN

Place this notice in front of DCFS Manual, Chapter 3, and note on the Tan Notice Control Sheet the date Notice No. T-97 was entered.

BACKGROUND

A number of DCFS staff responsible for evaluating criminal history data have questioned whether or not it is possible to grant waivers to Chapter 388-330 WAC so that persons who have been found guilty of the offenses listed in the chapter not be automatically disqualified. In particular, reference is made to changes in domestic disturbance laws which require that in such a disturbance someone be arrested. Most often, the arrested person is charged with assault.

POLICY

Section 03.30 (Background Checks), of the DCFS Manual is changed as follows:

"Exceptional Circumstances

The division may consider exceptions/waivers for crimes not on the attached list and for crimes on the list which are not specifically against children (e.g., indecent liberties) or involve exploitation of children or offenses which are blatantly violent (e.g., murder, rape, etc.). In considering a waiver to disqualification, the following factors shall be considered:

1. The type of crime for which the person was convicted;

2. The number of crimes for which the person was convicted;

3. The nature of the person's offenses;

4. The age of the person at the time of conviction;

5. The length of time that has elapsed since the person's last conviction;

6. The relationship of the crime and the person's capacity to care for children;

7. Evidence of the person's rehabilitation; and

8. Opinions of community members (including neighbors) concerning the person in question.

There should be documentation regarding the nature of the person's offense and conviction other than the applicant's description (which frequently tends to minimize the offense). Documentation may include the person's arrest reports or other reports from law enforcement agencies. Obtain statements from police or others involved in the person's probation or parole to help evaluate the person's rehabilitation.

Not disqualifying a person who has been convicted of or has a charge pending on one at the listed offenses represents an exception to WAC 388-330-030. These exceptions or waivers will be processed through the regional offices in the same manner as other waivers or exceptions to the licensing requirements are processed."

It is incumbent on the applicant or person providing care who has a criminal history record to demonstrate that it is safe to place children with and allow the person or applicant to have access to children. It is also incumbent on DSHS to be very prudent in making this determination and in requesting and granting waivers to Chapter 388-330 WAC.