

Pierce County Common Standards Project:

Background Check Policies and Procedures for Transportation Services

Produced for:

Pierce County Coordinated Transportation Coalition

Conducted by:



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Pierce County Coordinated Transportation Coalition (PCCTC)

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Executive Summary

Individuals providing transportation to vulnerable populations are subject to numerous background check requirements. The requirements depend upon the regulations of the agency funding the trip. Each agency is required to abide by federal and state laws and policies, local jurisdictional regulations, and internal business practices.

Transportation providers who provide trips for more than one agency often find the requirements to be duplicative, costly, and time consuming. These issues can result in:

- Higher than necessary administrative costs
- Inconsistent driver standards
- Inability to effectively coordinate trips with passengers funded by separate agencies

The Community Transportation Association of America (CTAA) and the Agency Council on Coordinated Transportation (ACCT) provided a technical assistance grant to the Pierce County Coordinated Transportation Coalition to conduct this study. The purpose of this study is to gather information and provide recommendations on how to best attain an efficient and effective background check process and common standards for drivers of seniors, children, people with disabilities and individuals with low incomes. The study was conducted in Pierce County but recognized as potentially applicable statewide.

Key Findings

Through interviews with 23 agencies and three different workshops, the study identified the attributes of six different background checks and the criteria by which agencies disqualify potential employees (see Appendix B-D). Barriers and opportunities for achieving more efficient and effective background checks for drivers of vulnerable populations were identified as:

Safety Gaps – DSHS and OSPI both have sophisticated, professionally managed background check systems in place. However, both could benefit by sharing components of each other's systems and processes.

Availability of Information – In order to receive the results of FBI background checks, governmental agencies must have authorization from State statute approved by the United States Attorney General.¹ Not all agencies that need the information have authority to access the information (e.g. transportation brokerages).

Duplication – Efforts are often duplicative when transportation providers or brokers are responsible for providing transportation for multiple agencies and serving multiple population groups. A different background check process may be required of an individual for each agency and for each population group.

¹ 28 U.S.C. §534, Public Law 92-544.

Inaccuracies –Agencies that rely on the individual driver applicants to take fingerprints, submit background check requests, and provide the resulting documentation can lead to results that are not a match for the intended driver, incomplete, altered, or for only one of a number of aliases that a driver uses.

Time Factors –Individuals and agencies without access to the OSPI or DSHS process typically wait up to three to four weeks for background check results. Sometimes the applicant moves on to other employment as they become impatient with the long wait.

Similar Efforts – The DSHS Background Check Advisory Group (BCAG) is working on standards that can be adopted by DSHS as a whole and applied to all administrations. In addition, the Washington State Patrol is developing a program to retain fingerprints on file and notify employers if employees commit crimes after employment.

Summary of Recommendations

The Pierce County Coordinated Transportation Coalition adopted the following recommendations. The Coalition will work with the Agency Council on Coordinated Transportation and the Community Transportation Association of the Northwest to pursue these action steps.

What	How	Who	When
Leverage current efforts	Stay abreast of the work of the DSHS Background Check Advisory Group (BCAG) and the developments of the Washington State Patrol <i>Rap Back</i> program	Agency Council on Coordinated Transportation (ACCT)	Immediately
Feasibility study for centralized clearinghouse	Identify the needed requirements (liability issues, staffing and technology needs, training needs, facility/equipment needs), and conduct a cost/benefit analysis.	Agency Council on Coordinated Transportation (ACCT)	2008
Enable more information sharing	Advocate for Washington State legislation authorizing appropriate agencies access to FBI background check results	Community Transportation Association of the Northwest (CTA-NW)	2009
Common disqualifying criteria for drivers	Recommend to ACCT disqualifying lists dependant upon the vulnerability of the passengers	Pierce County Coordinated Transportation Coalition (PCCTC)	2009

Background

Project Funders

The Community Transportation Association of America (CTAA) and the Agency Council on Coordinated Transportation (ACCT) provided a technical assistance grant to the Pierce County Coordinated Transportation Coalition (PCCTC) for this project.

PCCTC, CTAA, and ACCT have similar missions to promote the coordination of publicly funded transportation. Each pays particular attention to the provision of special needs transportation for elders, youth, people with disabilities, and people with low incomes.

- PCCTC focuses on developing coordinated transportation services and programs to achieve increased efficiencies resulting in greater service delivery for more people in Pierce County.
- ACCT is a state council that promotes transportation coordination through oversight and direction at the state level and provides a forum for discussing issues and initiating change.
- CTAA is a national program that supports the funding and provision of transportation resources through trainings, technical assistance, grants, outreach, and education.

PCCTC used the funds to hire a consulting firm, FLT Consulting, Inc., to conduct the study. The PCCTC steering committee reviewed the findings and developed recommendations. These recommendations were presented to ACCT and adopted by the PCCTC Executive Interagency Governing Assembly.

Problem Statement

Individuals providing transportation to vulnerable populations are subject to numerous background check requirements. The requirements depend upon the regulations of the agency funding the trip. Each agency is required to abide by federal and state laws and policies, local jurisdictional regulations, and internal business practices.

Transportation providers who provide trips for more than one agency often find the requirements to be duplicative, costly, and time consuming. These issues can result in:

- Higher than necessary administrative costs
- Inconsistent driver standards
- Inability to effectively coordinate trips with passengers funded by separate agencies

Project Goals

This study sought to gather information and provide recommendations on how to best attain an efficient and effective background check process and common standards for drivers of seniors, children, people with disabilities, and individuals with low incomes. While the work is focused in Pierce County, the project results are intended to be beneficial statewide.

Project Objectives

The Pierce County Coordinated Transportation Coalition narrowed the scope of the work to the following four objectives:

- 1) Define the attributes, including definition, cost, and information access of the following types of employment background checks:
 - Federal Bureau of Investigation (FBI)
 - Washington State Criminal History Check
 - Department of Social and Health Services (DSHS) Background Check Central Unit (BCCU)
 - Washington State Drivers Abstract
 - Private companies that conduct background checks
- 2) Define the criteria that federal, state, and local funders and their contracted service providers use as decision points for qualifying or disqualifying drivers. In other words, how do they use the results of the background checks?
- 3) Identify the barriers and opportunities for a more efficient and effective background check process and standards, as it relates to coordinating transportation.
- 4) Make recommendations for improved efficiencies and effectiveness in the background check process, and recommend next steps in developing common background check standards for qualifying or disqualifying drivers of seniors, children, people with disabilities, and the general public.

Overview of Background Checks

Federal law, 28 U.S.C. §534, statutorily authorizes the Federal Bureau of Investigation (FBI) to collect and disseminate criminal history record information to certain recipients. Public Law 92-544 contains further provisions and defines the FBI's ability to share criminal history record information for the purposes of employment and licensing only if they are authorized by State statute which has been approved by the United States Attorney General. The law establishes the mandatory elements of state statutes, including that the authorized government agency receive the results of the background checks.

There are approximately sixteen Washington State agencies with such authorizing statutes. These statutes require the agencies to obtain criminal history record information from the FBI for the purposes of employment and licensing. The following agencies and corresponding authorizing statutes are most relevant to background checks for drivers of special needs populations:

- Office of Superintendent of Public Instruction (OSPI) – RCW 28A.400.303
- Department of Social and Health Services (DSHS) – RCW 74.15.030
- Department of Early Learning (DEL) – WARC 74.15.030

Any agency not covered by a state statute but wanting to review FBI background check information must have the individual in question obtain their own criminal history record information from the FBI.

Resource Agencies

Several agencies provide or relay data per the procedures established by regulating agencies. The main agencies providing the criminal background and other data include:

- Washington Department of Licensing (DOL)
- Washington State Patrol (WSP)
- Washington State Department of Social and Health Services (DSHS) Background Check Central Unit (BCCU)
- Federal Bureau of Investigation (FBI)

Washington State Regulating Agencies

State and local agencies establish background policies and procedures for their contractors. Some regulating agencies which affect transportation providers in Pierce County are:

- Washington State Department of Social and Health Services (DSHS)
- Office of the Superintendent of Public Instruction (OSPI)
- State of Washington Department of Early Learning (DEL)
- Veterans Administration
- Pierce County Auditor
- Pierce County Sheriff's Department
- City of Tacoma Finance Department

DSHS and OSPI make use of the latest technology, such as extensive electronic databases and electronic exchange of information. The DSHS Background Check Central Unit (BCCU) processes over 23,000 background check requests each month. WSP has an online database, Washington Access to Criminal History (WATCH), which is available to the general public.

Methodology

The consulting team worked closely with the Pierce County Coordinated Transportation Coalition (PCCTC) to design the project methodology. PCCTC established a list of agencies and individuals to contact in order to gather a broad picture of the various background check procedures for drivers in Pierce County. The roles of each identified agency and individual were determined (e.g. decision-maker, reviewer, and/or contributor of information). Appendix A, *Agencies and People Contacted*, provides a complete list of the agencies and individuals identified by PCCTC who participated in this research project. The methodology consisted of three components:

1. Literature review
2. Interviews
3. Workshops

Literature Review

The consulting team reviewed published literature including, but not limited to, research previously conducted by PCCTC, the Agency Council on Coordinated Transportation (ACCT), the federal United We Ride program, and the Community Transportation Association of America. Additionally, the consulting team researched federal and state statutory or regulatory references. For detailed information, see Appendix D, *Legal Citations and Supporting Documents*.

Interviews

The consulting team interviewed 23 agencies identified in conjunction with PCCTC. They collected information on the agencies' reporting requirements, operational standards, definitions of terms, sources of requirements (state, federal, or contractual), and the information systems used.²

Workshops

The consultant team developed three different workshops—two for agency staff and program managers (including state and local program managers, background check information system users and contributors, technical staff, and policy staff) and another for agency management, legislators and legislative staff.

² PCCTC identified the Department of Early Learning (DEL) as one of the agencies to contact for this study. While no DEL representative was available to participate in the study, the consulting team did attempt to collect relevant information on the agency's use of background checks for drivers.

The purpose of the workshops for agency staff and program managers was to verify the work completed by the consultant team and provide recommendations for more efficient background check processes and common standards. The workshop participants reviewed the information the consulting team presented. The consultant team held two separate workshops on July 16 and 17, 2007.

The workshop for agency management, legislators and legislative staff took place on July 18, 2007 and built upon the previous workshops held with agency staff and program managers. The consulting team reported on preliminary findings and recommendations and received feedback on appropriate next steps.

Conclusion

The consulting team returned to PCCTC with the overall findings from the research, and PCCTC provided direction to shape the final findings and recommendations presented in this report. State and local agencies were provided the opportunity to comment on the draft report.

The consulting team presented the final findings and recommendations to ACCT and the executive committee of PCCTC, the Interagency Governing Assembly (IGA). The PCCTC IGA adopted the findings and recommendations September 25, 2007.

Findings

This chapter identifies the following research objectives:

1. Attributes of background checks
2. Disqualifying criteria and interpretation of results
3. Barriers and opportunities for more efficient and effective background check processes that better support coordinating transportation

Attributes of Background Checks

The results of a background check will vary depending upon the type of background check requested. Some background checks focus primarily upon crimes against persons, while others focus on driving-related infractions. Some background checks are restricted to crimes and convictions committed within the state, while others provide information about crimes and convictions in other states.

Table 2 provides a summarized comparison of the attributes of six background checks. A complete listing of the information received, who can request and receive background check results, the cost, and process time for each agency is provided in *Appendix B*.

Table 2. Attributes of Background Checks

Type of Background Check	Information Received								
	National		Washington State						
	Criminal History ³ (international, federal, state, & local)	Driving suspensions, revocations, & disqualifications ⁴	Findings of abuse, neglect, exploitation, & abandonment of vulnerable adults/children ⁵	Arrests for crimes against persons	Registered sex or kidnap offender	Felony*	Gross misdemeanor*	Driving conviction, violations, & collisions	Driving suspension, revocations, & disqualifications
Federal Bureau of Investigation (FBI)	☑	–	–	☑	☑	☑	☑	☑ ⁶	–
WA Criminal History ⁷	–	–	–	☑	☑	☑	☑	–	–
DSHS Background Check Central Unit	☑ ⁸	–	☑	☑	☑	☑	☑	☑	–
WA Abstract of Driver Record	–	–	–	–	–	–	–	☑	☑
National Driver Registry	–	☑	–	–	–	–	–	–	☑
Private Company ⁹	☑	☑	–	☑	☑	☑	☑	☑	☑

³ Includes serious traffic violations (such as driving under the influence (DUI), driving while intoxicated (DWI), vehicular manslaughter, hit and run); sex, drug, and violent crimes; and crimes against public order.

⁴ Does not contain information more than three years old, details regarding violations, or violations that are considered minor.

⁵ The term “findings” as used here means that the abuse, neglect, exploitation, and abandonment did not result in criminal conviction. If they do result in criminal convictions, they become part of a criminal history.

⁶ Includes traffic violations.

⁷ Can be conducted with or without fingerprints. Without fingerprints, confirmation of personal identity is not possible, and there is a slight possibility that records returned may not actually be for the subject.

⁸ International criminal history is usually not included in FBI background checks conducted in response to Washington State statutes.

⁹ This information is based on the background check services provided by IntelliCorp, a private company based in Beachwood, Ohio. Many other private companies provide background check services. Details of other companies’ services may vary.

* For convictions and adverse dispositions, information includes formal criminal charges, indictments, sentences, detentions, correctional supervision requirements. Arrest without conviction information is available only for pending arrest offenses under one year old without disposition. Does not contain information on civil adjudications, administrative findings, disciplinary board findings, arrests more than a year old or arrests without a conviction.

Disqualifying Criteria and Interpretation of Results

Traffic Offenses. The Office of Superintendent of Public Instruction (OSPI), Pierce Transit, and agencies that require a commercial drivers license have disqualifying offenses for traffic offenses (see Appendix D, Table 1)

Disqualifying criminal and non-criminal offenses. Department of Social and Health Services (DSHS), OSPI and public school programs have compiled disqualifying criteria for these offenses based on state and federal law. (see Appendix D, Table 2 and 3)

The DSHS list is adopted by the Secretary of DSHS and the criteria are known as the Secretary's List of Crimes and Negative Actions (Secretary's List). The list sets out minimum background criteria for individuals with unsupervised access to vulnerable adults, juveniles, and children. The Secretary's List is broken out into the following three lists:

1. Secretary's List for programs administered by Home and Community Services, Aging and Disability Services Administration for Individual Providers and Home Care Agencies¹⁰
2. Secretary's List for programs administered by Residential Care Services, Aging and Disability Services Administration for Nursing Homes, Boarding Homes, and Adult Family Homes¹¹
3. Secretary's List for programs administered by DSHS, including DSHS state employees in covered positions¹²

DSHS programs are required to use these disqualifying criteria when interpreting results of background checks. Other social service agencies make use of these same disqualification lists as guidelines. Some local agencies and private businesses utilize the DSHS-based disqualification lists as well as conduct a Character, Competence and Suitability Review at the end of the hiring process.

Other Records. General guidelines are outlined in statute for records that do not appear on disqualifying lists exist. (see Appendix D)

¹⁰ <http://www.dshs.wa.gov/word/ms/bccu/SecListHomeCommSvs.doc>

¹¹ <http://www.dshs.wa.gov/word/ms/bccu/SecListResCareSvs.doc>

¹² <http://www.dshs.wa.gov/word/ms/bccu/SecListDDDEmpAllOthers.doc>

Barriers and Opportunities

More efficient and effective background check processes could better support coordinating transportation. This study identified the following:

Safety Gaps – DSHS and OSPI both have sophisticated, professionally managed background check systems in place. However, both the DSHS and OSPI systems could benefit from components of the other. For example,

- DSHS does not currently require all of their programs which provide client transportation to include disqualifications for traffic offenses whereas OSPI does.
- OSPI benefits from WSP direct notification of convictions involving crimes against children.¹³
- DSHS benefits from the maintenance of “findings” which do not meet the strict definition of a crime.¹⁴

In addition, all of the agencies studied conduct some type of pre-employment background check. However, not all of the agencies do a post-employment check. In some cases, like OSPI, they rely on drivers self reporting disqualifying offenses. WSP is currently considering development of a *Rap Back* program which would alleviate some of these concerns. This program would retain fingerprints on file allowing WSP to notify employers if employees commit crimes after employment.

Availability of Information – In order to receive the results of FBI background checks, governmental agencies must have authorization from State statute approved by the United States Attorney General.¹⁵ There are approximately sixteen state licensing agencies with such authority in Washington State, including the Department of Social and Health Services (DSHS)¹⁶, the Office of Superintendent of Public Instruction (OSPI) (school districts, educational service districts, the state school for the deaf, the state school for the blind, and their contractors who will have regularly scheduled unsupervised access to children)¹⁷, and the Department of Early Learning.¹⁸

These authorized agencies are not permitted to share the results of the FBI background checks. Likewise, all agencies are prohibited from sharing

¹³ RCW 43.43.845

¹⁴ Findings can include violations of licensing requirements or ethics standards, reports on misconduct, and complaints from patients/clients. They might result in provider censures, fines, and/or suspensions by the boards that govern the profession. Each professional board or governing body keeps its own data and allows access based on its own criteria. Child Protective Services, Adult Protective Services, and the Department of Health all keep records of findings.

¹⁵ 28 U.S.C. §534, Public Law 92-544.

¹⁶ RCW 74.15.030

¹⁷ RCW 28A.400.303

¹⁸ RCW 74.15.030

Washington Driver Abstracts. Some agencies think they are prohibited from sharing background check results originating from WSP's online database Washington Access to Criminal History (WATCH). However, if obtained pursuant to chapter 10.97 RCW, conviction data may be disseminated without restriction and can be shared. Some agencies are hesitant about sharing information because of perceived liability issues.

Transportation brokers and providers of vulnerable populations report a need to share information about the background check results to reduce the duplication and expense, and to increase the safety of passengers.

Duplication – Efforts are often duplicative when transportation providers or brokers are responsible for providing transportation for multiple agencies and serving multiple population groups. A different background check process may be required of individuals driving for each agency and for each population group. This can result in a driver undergoing multiple background checks and being allowed to transport some population groups for some agencies but not for other agencies. At least six separate background check processes are used by transportation providers in Pierce County. Some processes maintain a simple data path with minimal feedback loops, while others are more complex with data feeding back and forth between multiple entities based upon any number of possible input criteria. (See Appendix C, *Flow-Diagrams of Background Check Processes*.)

Inaccuracies – A number of background check resources are available to the public at no charge. While WSP offers fingerprint rolling training to all agencies and individuals, not all local agencies and private businesses hiring drivers are aware of or make use of this service. Some databases accessible online, such as JIS-Link offered through the Administrative Office of the Courts¹⁹ and the Washington State Department of Health (DOH) quality assurance web page,²⁰ do not meet the needs of background checks for drivers.

Organizations with access to the OSPI or DSHS processes get faster, more accurate information because of their access to more extensive databases, the support of trained field staff to get good fingerprints, and their use of electronic exchange of information. Organizations without specific statutory authority to conduct FBI fingerprint checks must rely on the individual driver applicants to take fingerprints, submit background check requests, and provide unaltered documents. This can lead to results that are not a match for the intended driver, incomplete, altered, or for only one of a number of aliases that a driver uses.

¹⁹ <http://www.courts.wa.gov/jislink/index.cfm>

²⁰ <https://fortress.wa.gov/doh/providercredentialsearch/>

Time Factors –OSPI and DSHS have streamlined their processes, and state statute permits DSHS service providers and applicants who are required to complete fingerprint-based background checks to be hired for a one hundred twenty-day provisional period while their fingerprint-based background checks are pending.²¹

However, for those agencies without access to the OSPI or DSHS process of conducting background checks, the process can require a significant amount of time, often resulting in an applicant moving on to other employment as they become impatient with the long wait for approval or in their being hired prior to the results of a full background check being received by the hiring agency. Without appropriate training for fingerprinting, the incidences of error and increased processing time are more frequent (see above finding). For individuals requesting their own records, the FBI informs them to allow approximately three to four weeks for processing.

Similar Efforts - The DSHS Background Check Advisory Group (BCAG) is working on standards that can be adopted by DSHS as a whole and applied to all administrations. In addition, the Washington State Patrol is developing a program to retain fingerprints on file and notify employers if employees commit crimes after employment.

²¹ RCW 43.43.837(4)

Recommendations

The Coalition recommends, in association with the Agency Council on Coordinated Transportation (ACCT), and the Community Transportation Association of the Northwest (CTA-NW), to improve the process of submitting and receiving background check information, and then tackle the more contentious issue of developing a common set of driver standards for background checks.

Once an efficient and effective system is in place, perhaps multiple agencies agreeing on a common set of standards for background check disqualifiers will become a more likely reality. Table 3 summarizes the Coalition's recommendations.

Table 3. Summary of Recommendations

What	How	Who	When
Leverage current efforts	Stay abreast of the work of the DSHS Background Check Advisory Group (BCAG) and the developments of the Washington State Patrol Rap Back program	Agency Council on Coordinated Transportation (ACCT)	Immediately
Feasibility study for centralized clearinghouse	Identify the needed requirements (liability issues, staffing and technology needs, training needs, facility/equipment needs), and conduct a cost/benefit analysis.	Agency Council on Coordinated Transportation (ACCT)	2008
Enable more information sharing	Advocate for Washington State legislation authorizing appropriate agencies access to FBI background check results	Community Transportation Association of the Northwest (CTA-NW)	2009
Common disqualifying criteria for drivers	Recommend to ACCT disqualifying lists dependant upon the vulnerability of the passengers	Pierce County Coordinated Transportation Coalition (PCCTC)	2009

Process Improvements

While the Coalition believes there is merit in the State developing a centralized clearinghouse for background checks with access to state and federal criminal records, social service registers, and driving records, they are also concerned that the resources and time it would take for accomplishment would delay Pierce County in achieving their coordinated transportation goals in a timely manner. As a result, the Coalition recommends taking action on two separate approaches.

Recommendation 1: Leverage Current Efforts

The Coalition requests ACCT to stay abreast of the work of the DSHS task force known as the Background Check Advisory Group (BCAG) and the development of the WSP *Rap Back* program.

Both of these efforts have implications for transportation services. BCAG is working on common disqualifying standards that can be adopted by DSHS as a whole and applied to all administrations. *Rap Back* would allow WSP to retain fingerprints on file and notify employers if employees commit crimes after employment.

Recommendation 2: Centralized Clearinghouse

The Coalition requests ACCT to study the development of a centralized statewide clearinghouse with access to state and federal criminal records, social service registers, and driving records for background checks of drivers. This work should include:

1. Development of requirements for a centralized clearinghouse
2. Identification of the costs and benefits of a centralized clearinghouse
3. Assessment of the feasibility of implementation

The Coalition recognizes that this is a complex task and identified the following issues that need to be addressed in conducting this work.

- **Identify Support Needs** – Determine appropriate staffing levels and technology requirements to maintain or improve accurate and timely background checks. The analysis should include resources needed to transition to electronic background check form submittals.
- **Revenue/expenditure analysis** – Determine the amount of start-up capital and operating funds required to make a centralized statewide clearinghouse fully functional and ongoing.

- **Cost/benefit analysis** – Quantify the costs of establishing a fully staffed, centralized clearinghouse with appropriate support and technology, compared to the benefits achieved through increased efficiencies. This will help decision makers determine if the cost is worth the long-term reward.
- **Liability Concerns** – Determine if a centralized clearinghouse could relieve agency concerns about exposure to liability.
- **Training** – Research the feasibility of requiring agency staff and contractors to undergo periodic WSP fingerprint trainings. Incomplete or illegible fingerprints are a contributor to lengthy turnaround times.
- **Location** – Identify organizations that would be appropriate to house a centralized clearinghouse.
- **Timeliness** – Determine if a centralized statewide clearinghouse will decrease the amount of time required to conduct a thorough background check.
- **Safety** – Specify how a statewide centralized clearinghouse can preserve and enhance client safety.
- **Efficiencies** – Determine how to measure and evaluate efficiencies promoted by a centralized statewide clearinghouse.

Recommendation 3: Enable Information Sharing

The Coalition requests CTA-NW to pursue Washington State legislation authorizing more agencies to directly receive the results of FBI background checks for prospective drivers, similar to the enabling statutes for Washington's schools²² and parts of DSHS.²³ This could streamline background check processes, as well as insure that any background check results received have not been altered by a driver applicant.

Public Law 92-544 sets out the provisions that enable the FBI to share criminal history record information for the purposes of employment and licensing. The FBI can only respond to Attorney General approved state statutes. The statutes must:

1. Exist as a result of legislative enactment;
2. Require applicant fingerprinting;
3. Authorize the use of FBI records for the screening of applicants;

²² RCW 28A.400.303

²³ RCW 43.43.837

4. Identify the specific categories of licenses/employees affected;
5. Not be against public policy; and
6. Provide that an authorized government agency be the recipient of the results of the record check.²⁴

The Coalition recommends that CTA-NW work with the Coalition, ACCT and the Washington State Legislature to authorize transportation brokerages and other appropriate agencies that serve vulnerable populations to have access to background check information from the FBI.

Common Standards

This study did not find a clear consensus regarding a common set of disqualifying standards for drivers. The Coalition agrees that, in concept, the creation of one standard is preferable for the safety and security of all passengers. However, the Coalition recognizes that reaching a statewide consensus on a single list of background check disqualifiers that apply to all circumstances for all agencies is unrealistic at this time. Therefore, the Coalition recommends the following actions.

Recommendation 4: Common Disqualifiers

The Coalition should develop and recommend to ACCT disqualifying criteria for drivers. While working toward a single standard for all drivers, the Coalition will initially develop two or three disqualifying criteria lists based upon the vulnerability of the passengers. In carrying out this recommendation, the Coalition should consider the following issues:

- **Flexibility** – Preserving flexibility which allows agencies to make determinations of eligibility.
- **Liability** – Reducing or eliminating agencies' risks with a more standardized system.
- **Practicality** – Maintaining adequate numbers of qualified drivers.

²⁴ U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division; CJIS information letter; April 6, 2001; "Misuse of III Via Purpose Code C."

Appendix A: Agencies and People Contacted

The following agencies and individuals were consulted during the course of this study. While these individuals provided valuable information for this report, the consulting team assumes responsibility for any mistakes or omissions of information.

Agency	Contact
Background Check Regulating Agencies	
City of Tacoma, Police Department	Detective Daryl Higgins
Department of Social and Health Services (DSHS) - Aging & Disability Services Administration	Patty McDonald, Sue McDonough
DSHS - Developmental Disabilities Division	Jeanne Johnson
DSHS - Economic Services Administration	Ian Horlor
DSHS - Medicaid	Paul Meury
DSHS - WorkFirst	Mike Wilkins
Office of Superintendent of Public Instruction	Kim Kimbler
Pierce County Human Services - Aging & Long Term Care	John Mikel
Veterans Administration - Puget Sound Health Care System	Marilyn McPherson
Background Check Resource Agencies	
DSHS – Aging & Disability Services Administration, Adult Protective Services	Carol Sloan, Diane Rosie
DSHS – Background Check Central Unit (BCCU)	Jackie Beery
Federal Bureau of Investigation	www.fbi.gov
Washington State Department of Licensing	Kirsten Chase, Diana Jones, Tiffany Cooper
Washington State Patrol	Joan Smith, Lynette Brown
Transportation Providers	
Catholic Community Services	Penny Grellier
HopeLink	Janis Webb
JFM Transportation / Around the Sound Transportation	Steve Hutchins
Mustard Seed Project	John Nederlee
Paratransit Services, Inc.	Ann Kennedy, Mike Allen
Pierce Transit	Jean White, Tim Renfro, Lynn Cunningham, Ellen Citron
Puget Sound Educational Service District (Head Start, Early Childhood Education & Assistance Program, King/Pierce school districts)	Claire Wilson, Randy Millhollen
Transpro	Tom Young

Appendix B:

Attributes of Background Checks

FEDERAL BUREAU OF INVESTIGATION (FBI)

RESOURCE AGENCY: U.S. Department of Justice

INFORMATION RECEIVED:

- Complete criminal history (international²⁵, federal, state, and local)²⁶
- Includes serious traffic violations (such as driving under the influence (DUI), driving while intoxicated (DWI), vehicular manslaughter, hit and run); sex, drug, and violent crimes; and crimes against public order.

REQUESTING ENTITY:

- *Individual/subject:* Yes
- *Government agency:* Yes
- *Employer:* Yes, with the subject's consent.

RECEIVING RESULTS: Subject, Washington State Patrol, or government agency authorized by State statutes to require FBI background checks.

SHARING RESULTS: Requesting entity may not share results

COST (WITH FINGERPRINTS):

- *Individual:* \$18
- *Governmental agency:* \$19.25 (for electronic submissions)
- *Additional fees:* None

PROCESS TIME (WITH FINGERPRINTS): Six to eight weeks. (Some state and local agencies and private businesses interviewed reported the process taking anywhere from one day to eight months. Requests not made through the Washington State Patrol resulted in longer process times.)

²⁵ While the FBI has access to international criminal history, this history is usually not part of background checks conducted in response to Washington State statutes.

²⁶ Includes serious traffic violations (such as driving under the influence (DUI), driving while intoxicated (DWI), vehicular manslaughter, hit and run); sex, drug, and violent crimes; and crimes against public order. In the Excludes arrests and court actions for nonserious offenses such as drunkenness, vagrancy, disturbing the peace, curfew violations, false fire alarms, non specific charges of suspicions or investigation, and traffic violations. Washington State: For convictions and adverse dispositions, information includes formal criminal charges, indictments, sentences, detentions, correctional supervision requirements. Arrest without conviction information is available only for pending arrest offenses under one year old without disposition. Does not contain information on civil adjudications, administrative findings, disciplinary board findings, arrests more than a year old or arrests without a conviction.

WASHINGTON CRIMINAL HISTORY²⁷

RESOURCE AGENCY: Washington State Patrol

INFORMATION RECEIVED:²⁸

- Pursuant to chapter 10.97 RCW, all arrests without disposition in Washington State that happened within one year of the date of the arrest; pursuant to chapter 43.43 RCW, all arrests for crimes against persons without disposition in Washington State within one year of the date of the arrest
- Registered sex or kidnap offender in Washington State
- All convictions in Washington State

REQUESTING ENTITY:

- *Individual/subject:* Yes
- *Government agency:* Yes
- *Employer:* Yes; if pursuant to chapter 43.43 RCW, must notify subject.

RECEIVING RESULTS: Requesting entity

SHARING RESULTS: Only conviction information may be shared.

COST:

- *Individual:* \$30
- *Governmental agency:* \$30 with fingerprints, \$10 online without fingerprints, and \$35 by mail without fingerprints.
- *Employer:* \$30, \$10 online without fingerprints, and \$35 by mail without fingerprints.
- *Nonprofit:* Registered nonprofits can establish an account and are exempt from payments when performing searches for prospective employee and volunteers, pursuant to chapter 43.43 RCW.
- *Additional fees:* \$5 for notarized letter

PROCESS TIME: Immediate results online. Seven to ten days for requests by mail.

²⁷ Can be conducted with or without fingerprints. Without fingerprints, confirmation of personal identity is not possible, and there is a slight possibility that records returned may not actually be for the subject.

²⁸ For convictions and adverse dispositions, information includes formal criminal charges, indictments, sentences, detentions, correctional supervision requirements. Arrest without conviction information is available only for pending arrest offenses under one year old without disposition. Does not contain information on civil adjudications, administrative findings, disciplinary board findings, arrests more than a year old or arrests without a conviction.

WASHINGTON STATE DEPARTMENT OF SOCIAL & HEALTH SERVICES
BACKGROUND CHECK CENTRAL UNIT (BCCU)

RESOURCE AGENCIES: DSHS Adult and Child Protective Services, Department of Health, Washington State Patrol, Washington State Department of Corrections, Washington Nurse Assistant OBRA Registry, Washington Court System

INFORMATION RECEIVED:

- A notification that a finding has been reported to DSHS/BCCU with a telephone number to the Department of Health, Adult Protective Services, or Child Protective Services to obtain finding information or the current status.
- Department of Corrections information
- Washington State Patrol criminal convictions for felonies and misdemeanors and pending charges under 12 months old
- Washington State Patrol registered sex or kidnap offender in Washington State

REQUESTING ENTITY:

- *Individual/subject:* No
- *Government agency:* Yes
- *DSHS Service Providers, DSHS Hiring Authorities:* Agencies and individuals licensed, certified, contracted, or authorized by DSHS to provide services to vulnerable adults, juveniles, and children

RECEIVING RESULTS: Requesting entity with subject's consent

SHARING RESULTS: Requesting entity can share results based on WSP and/or FBI regulations and the specific applicable state agency guidelines.

COST:

- *Individual:* Not applicable
- *DSHS Service Providers licensed, certified, contracted, and authorized by DSHS²⁹:* No charge to the service provider. If the service provider is an employer, then their staff, volunteers, and student interns are included. The DSHS administration that authorized the provider to conduct checks through BCCU pays the cost of conducting and processing background checks. Fingerprint fees for FBI and WSP are paid by either DSHS or the provider according to program rules, policy, or state statute.
- *Additional fees:* Appropriate FBI and/or WSP fees for printing or scanning fingerprints may apply.

²⁹ Note: Not all DSHS service providers are authorized by DSHS to conduct checks through BCCU.

PROCESS TIME: Without fingerprints and processed through the mail or faxed, about five to seven business days. With fingerprints processed through the mail or faxed, about six to eight weeks. Fingerprints processed electronically, about one to two weeks.

WASHINGTON STATE ABSTRACT OF DRIVER RECORD

RESOURCE AGENCY: Washington State Department of Licensing

INFORMATION RECEIVED:

- Driving convictions, violations, and collisions in Washington State
- Washington State drivers license suspensions, revocations, and disqualifications

REQUESTING ENTITY:

- *Individual/subject:* Yes
- *Government agency:* Yes
- *Employer:* Yes, with the subject's consent.

RECEIVING RESULTS: Employers may only receive results with subject's consent

SHARING RESULTS: Only the subject may share results.

COST:

- *Individual:* \$10
- *Governmental agency:* \$10
- *Employer:* \$10
- *Nonprofit:* \$10
- *Additional fees:* None

PROCESS TIME: Two weeks

NATIONAL DRIVER REGISTRY

RESOURCE AGENCY: U.S. Department of Transportation National Highway Traffic Safety Administration

INFORMATION RECEIVED:

- Drivers license suspensions, revocations, and disqualifications for any state³⁰

REQUESTING ENTITY:

- *Individual/subject:* Yes
- *Government agency:* Yes
- *Employer:* Yes, with the subject's consent.

RECEIVING RESULTS: Requesting entity

SHARING RESULTS: Employers must share results with the driver/subject.

COST:

- *Individual:* \$5
- *Governmental agency:* State can access the database for free.
- *Employer:* \$5
- *Nonprofit:* \$5
- *Additional fees:* none

PROCESS TIME: Can be immediate.

³⁰ Does not contain information more than three years old, details regarding violations, or violations that are considered minor.

PRIVATE COMPANIES³¹

RESOURCE AGENCY: Proprietary databases containing records from hundreds of different sources from all fifty states and the District of Columbia, including national, state, and county agencies

INFORMATION RECEIVED:³²

- Statewide convictions, arrests and bookings, civil and criminal court records, and inmate records
- Felony, misdemeanor, and traffic convictions
- Sex offender and terrorist records
- Driving records
- Social Security Number verification
- Verification of professional licenses, education, and employment

REQUESTING ENTITY:

- *Individual/subject:* Yes
- *Government agency:* Yes, with the subject's consent.
- *Employer:* Yes, with the subject's consent.

RECEIVING RESULTS: Requesting entity

SHARING RESULTS: Requesting entity can share results.

COST:

- *Individual:* Cost agreements vary from approximately \$10 to \$20.
- *Governmental agency:* Cost agreements vary from approximately \$10 to \$20.
- *Employer:* Cost agreements vary from approximately \$10 to \$20.
- *Nonprofit:* Cost agreements vary from approximately \$10 to \$20.
- *Additional fees:* \$5 to \$20, depending on specific search criteria.

PROCESS TIME: Immediate results online for statewide and nationwide searches. One to five days for countywide searches.

³¹ This information is based on the background check services provided by IntelliCorp, a private company based in Beachwood, Ohio. Many other private companies provide background check services. Details of other companies' services may vary.

³² Information received varies from state to state based on availability.

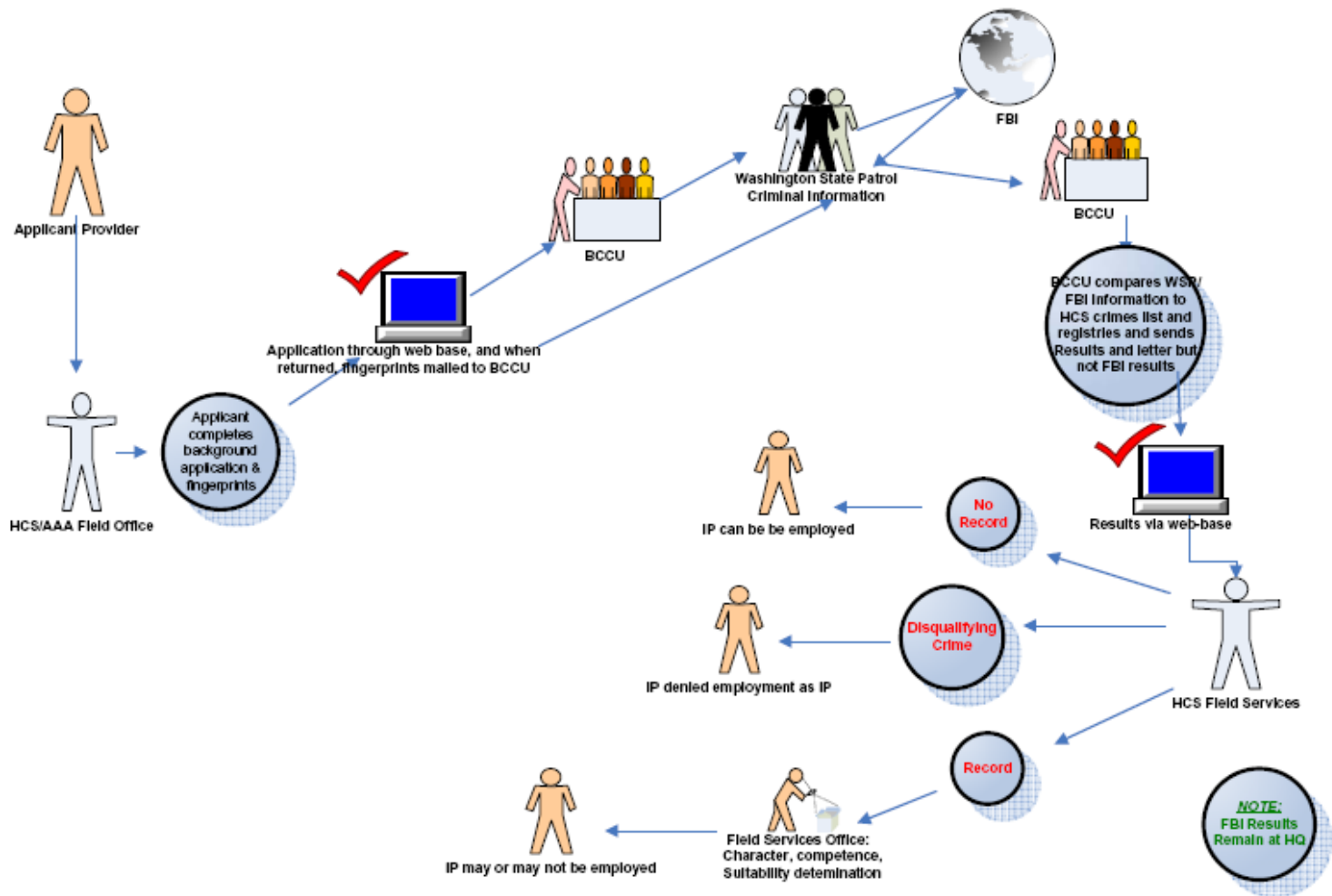
Appendix C:

Flow-Diagrams of Background Check Processes

The flow-diagrams on the following pages illustrate the background check processes undertaken by the following agencies in Pierce County:

Home and Community Services Division (HCS/AAA) (with fingerprints)	25
Home and Community Services Division (HCS/AAA) (without fingerprints)	26
Medical Assistance/Medicaid Transportation	27
Pierce Transit	28
Student Transportation	29
Volunteer Services Transportation	30
Private Transportation Providers	31

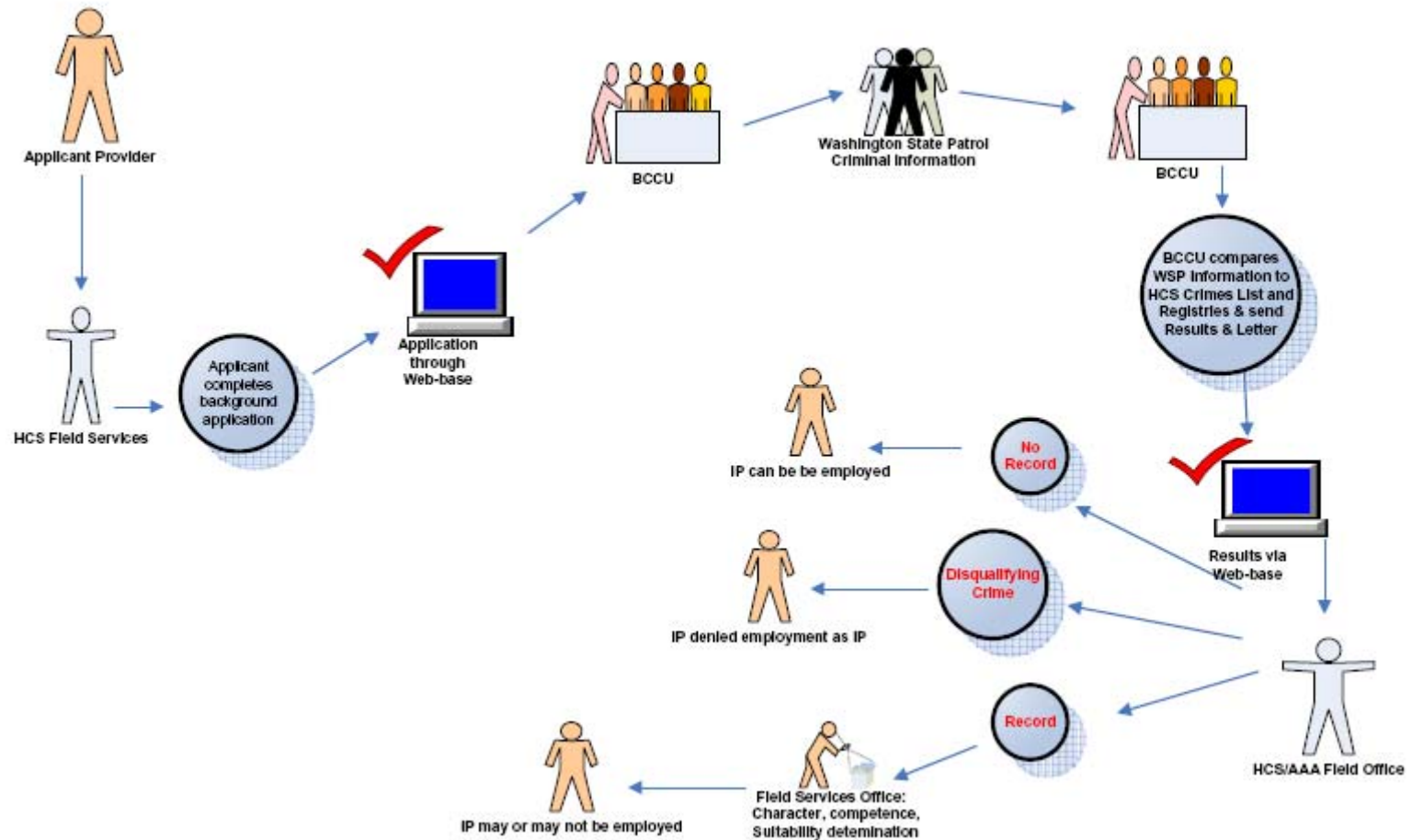
DSHS/Aging and Disability Services Administration (ADSA) Home and Community Services Division (HCS/AAA)³³ (with fingerprints)³⁴



³³ This flow chart describes the background check process for DSHS/ADSA contracted individual care providers who sometimes drive.

³⁴ An additional step not charted here: if the Washington state result shows no record, the provider may work up to 120 days while waiting for the FBI result. If the Washington state result shows a record that is not a disqualifier, the provider may work up to 120 days while waiting for the FBI result after assessment of their character, competency, and suitability.

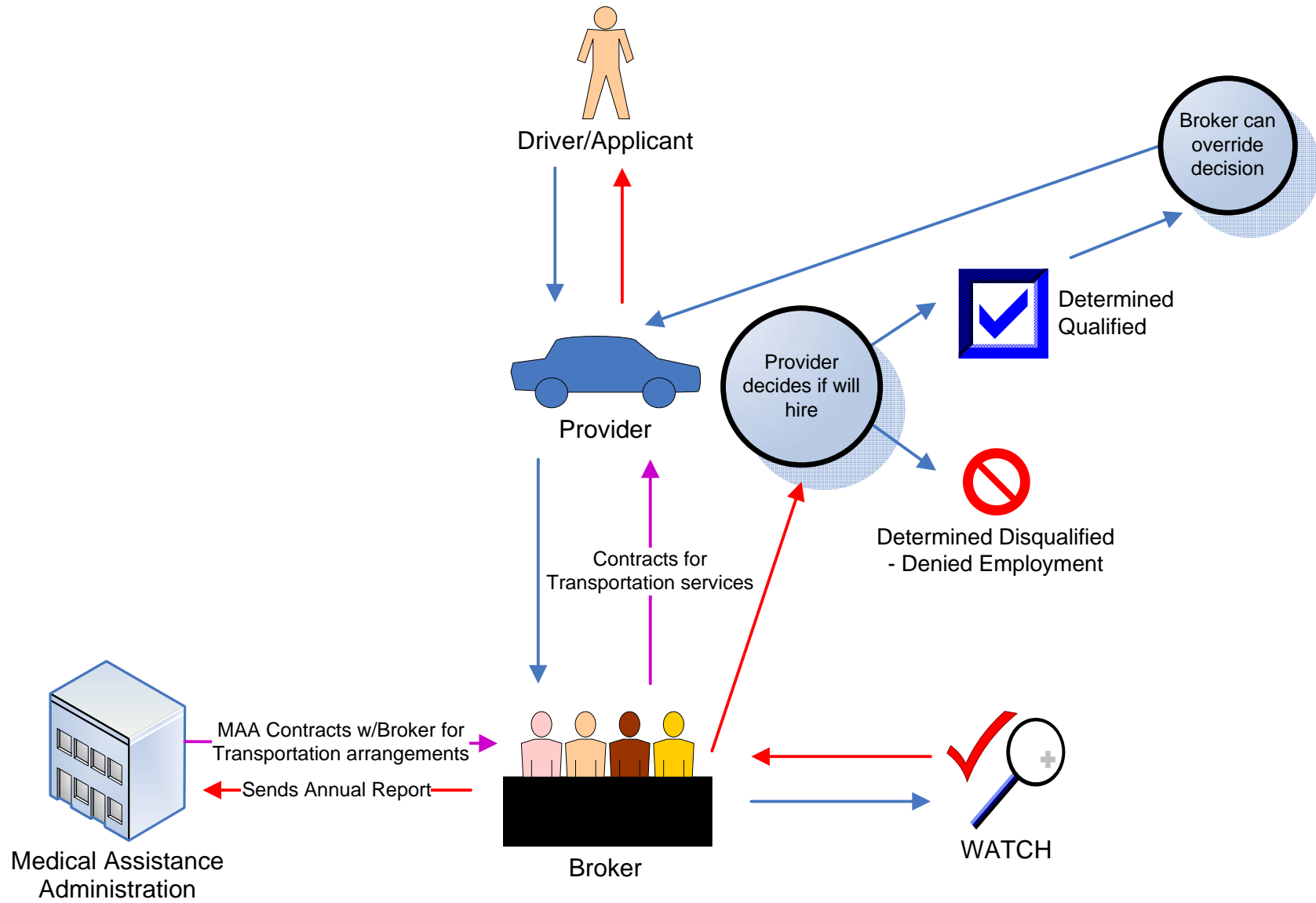
DSHS/Aging and Disability Services Administration (ADSA) Home and Community Services Division (HCS/AAA)³⁵ (without fingerprints)



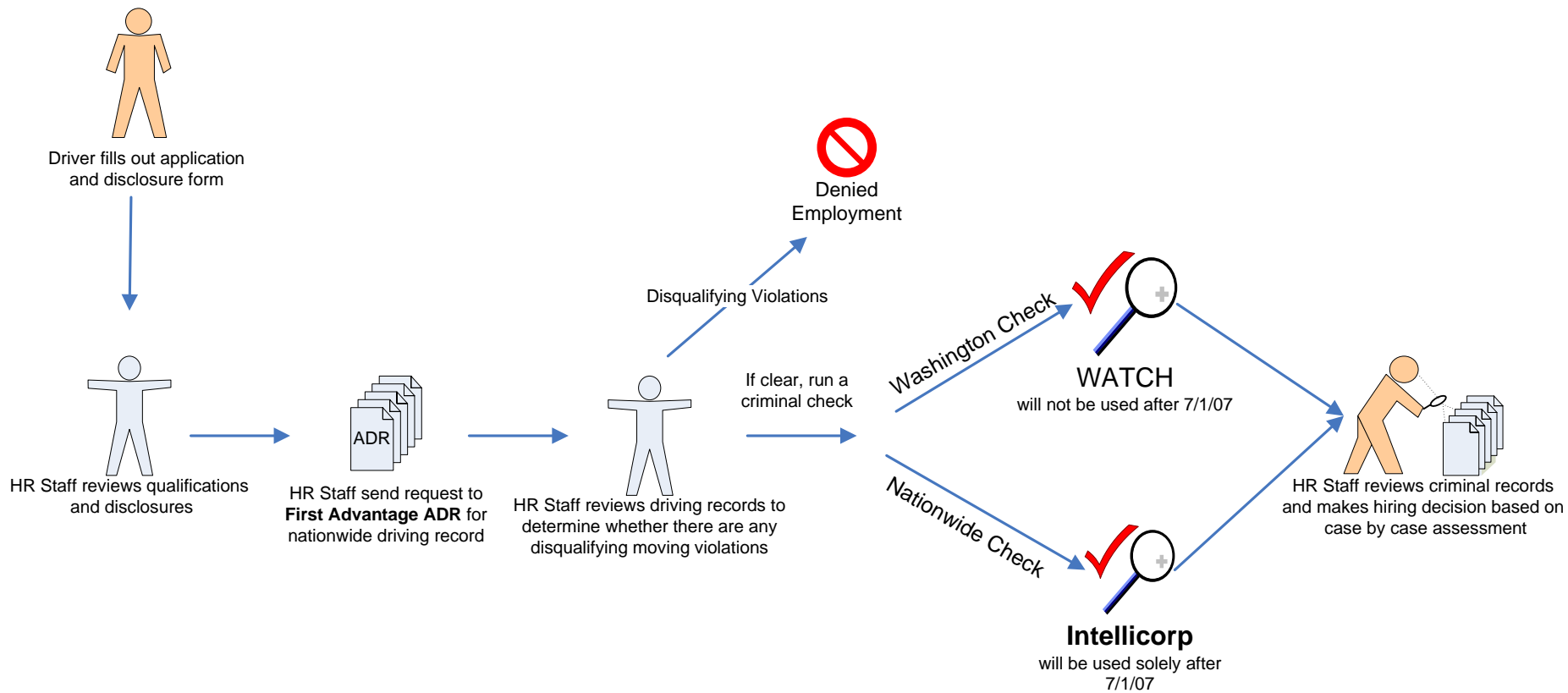
³⁵ This flow chart describes the background check process for DSHS/ADSA contracted individual care providers who sometimes drive.

Medical Assistance/Medicaid Transportation for Pierce County

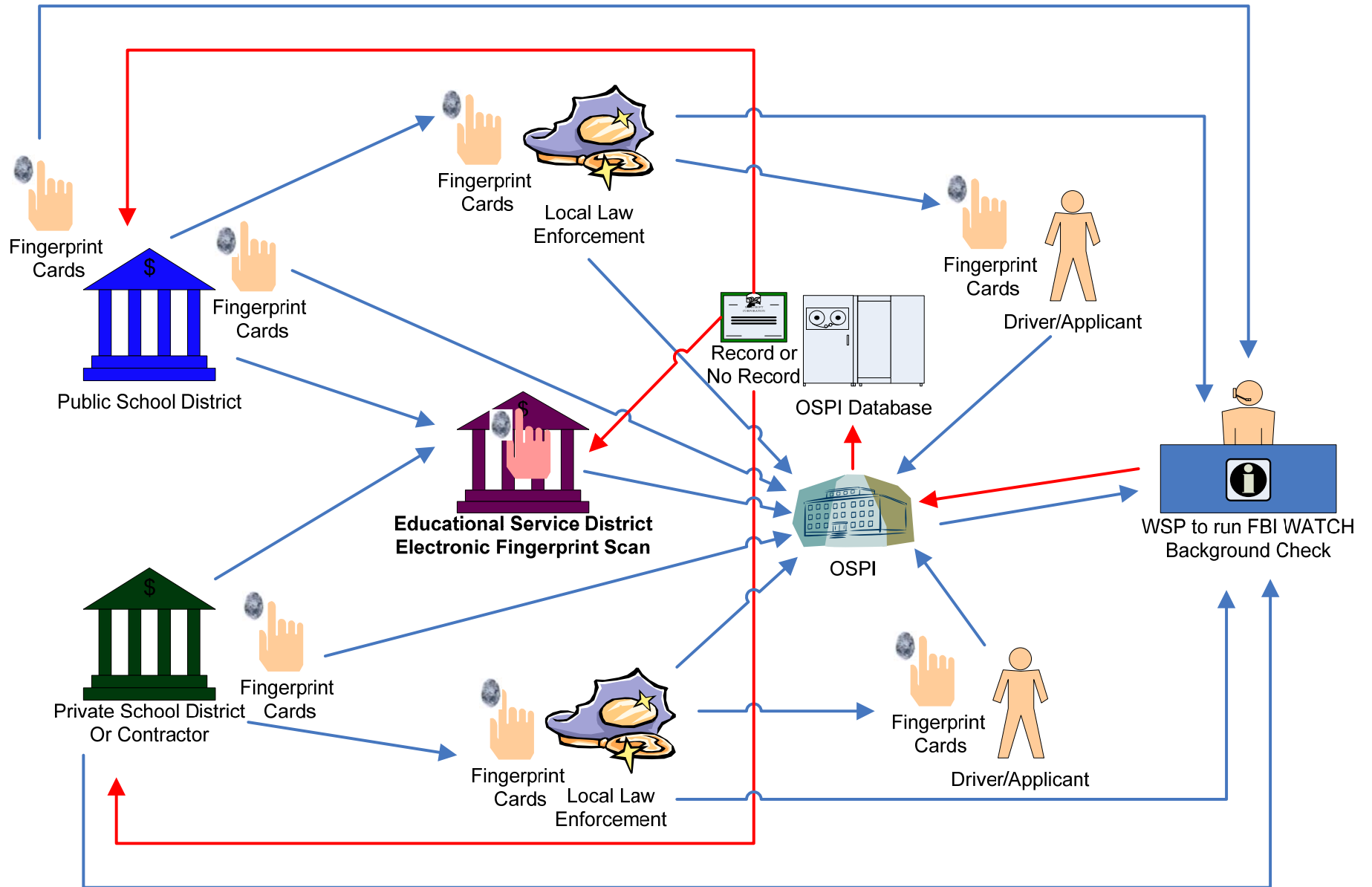
Initial Process Only



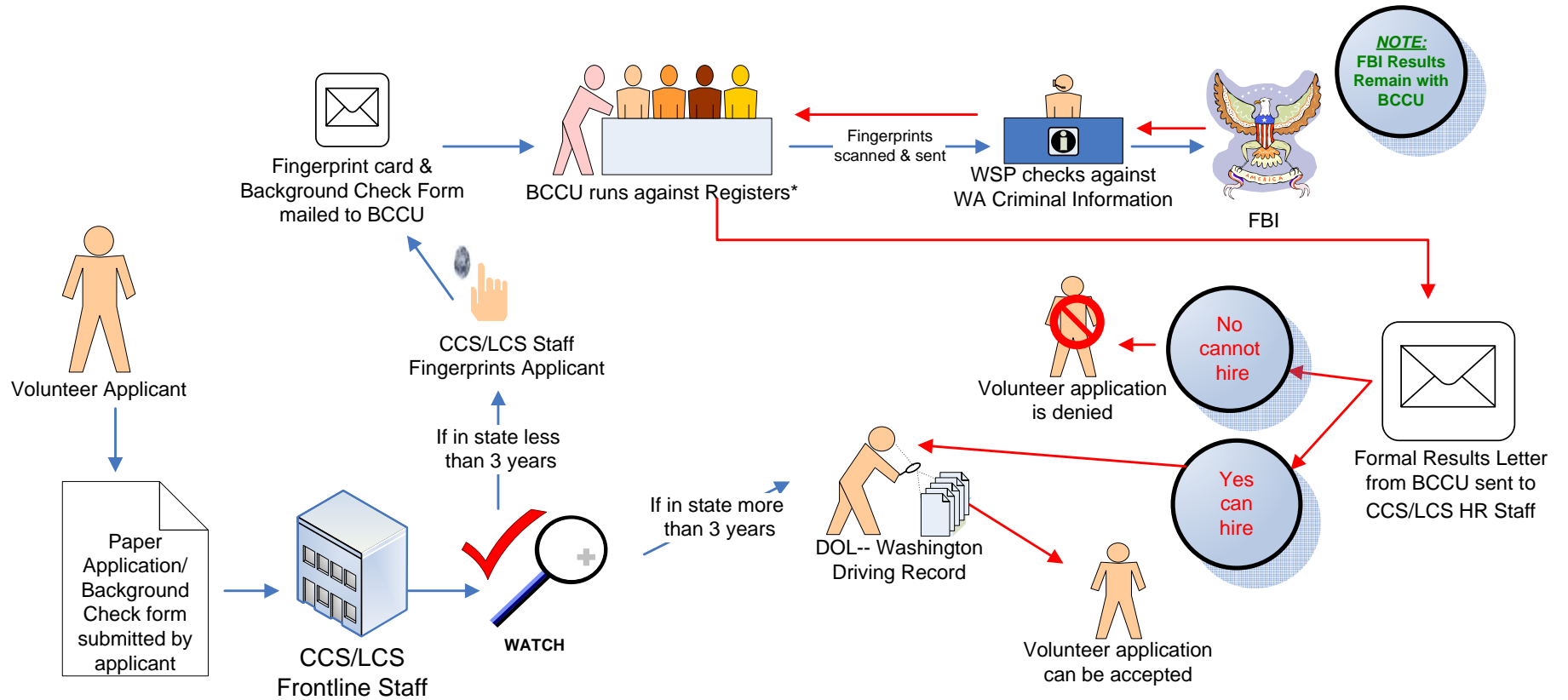
Pierce Transit



Student Transportation for Pierce County



Volunteer Services Transportation for Pierce County



NOTE:
FBI Results
Remain with
BCCU

* Registers Include:
Adult Protective Services
Child Protective Services
Department of Health
OBRA
BCCU

* Frontline staff can directly accept a volunteer if they have lived in WA for more than 3 years, and have passed both the WATCH and Driving Record review.

Frontline staff handle the WATCH and eventually the Driving Record review, but HR staff handle the fingerprints and BCCU review requests for applicants living in WA for less than 3 years.

Appendix D: Disqualifying Lists

To aid in the interpretation of background check results, some agencies in Washington State document offenses to guide disqualification from hiring or licensing. In some instances, the guidelines were not intended specifically for drivers but have been extended to apply to drivers as well.

Three tables follow which show traffic, criminal, and non-criminal offenses resulting in an applicant's disqualification for a selection of agencies and programs. A final section describes guidelines and processes used by some agencies for background check results which do not specifically appear on any of the disqualifying lists.

Note that the information contained in this section is not meant to be exhaustive of all agencies and programs. Rather, it intends to provide some examples and points of comparison.

Table 1: Disqualifying Traffic Offenses

This table lists traffic offenses and how they are interpreted by:

- Office of Superintendent of Public Instruction (OSPI)
- Pierce Transit
- Department of Licensing (DOL) for Commercial Drivers Licensing

Table 2: Disqualifying Criminal Offenses

This table lists criminal offenses and how they are interpreted by the following agencies and programs:

- All programs administered by the Department of Social and Health Services (DSHS) [except programs administered by Aging and Disability Services Administration (ADSA) Home and Community Services and ADSA Residential Care Services], including DSHS state employees in covered positions
- ADSA Home and Community Services for individual providers and home care agencies
- OSPI for authorized school bus drivers

Table 3: Non-Criminal Disqualifying Offenses

This table lists non-criminal offenses and how they are interpreted by the following agencies and programs:

- All programs administered by DSHS, including DSHS state employees in covered positions [except programs administered by Aging and Disability Services Administration (ADSA) Home & Community Services and ADSA Residential Care Services]
- Aging and Disability Services Administration Home & Community Services for individual providers and home care agencies
- OSPI and schools, including ECEAP and Head Start transportation services contracted with public schools

Process Guidelines for Other Records

This section describes guidelines and processes for background check results that are not specifically documented in the disqualifying lists. The following agencies are some that use these guidelines:

- Agencies that use DSHS Secretary's Lists of Disqualifying Crimes and Negative Actions for children, people with developmental disabilities, and vulnerable adults
- OSPI and schools

Table 1: Disqualifying Traffic Offenses

	Commercial Drivers License	Office of Superintendent of Public Instruction	Pierce Transit
A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.20.308 or 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:			
Driving a motor vehicle under the influence of alcohol or any drug;	X	X	X
Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more, or driving a noncommercial motor vehicle while the alcohol concentration in the person's system is 0.08 or more, or is 0.02 or more if the person is under age twenty-one, as determined by any testing methods approved by law in this state or any other state or jurisdiction;	X	X	X
Leaving the scene of an accident involving a motor vehicle driven by the person;	X	X	X
Using a motor vehicle in the commission of a felony;	X	X	X
Refusing to submit to a test or tests to determine the driver's alcohol concentration or the presence of any drug while driving a motor vehicle;	X	X	X
Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle;	X	X	X
Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide.	X	X	X
If any of the violations set forth above occurred while transporting hazardous material, the person is disqualified for a period of not less than three years.			
A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified above, or any combination of those offenses, arising from two or more separate incidents.			
A person is disqualified from driving a commercial motor vehicle for life who uses a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.	X	X	X
A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if:			
Convicted of or found to have committed a second serious traffic violation while driving a commercial motor vehicle; or	X	X	X
Convicted of reckless driving, where there has been a prior serious traffic violation; or	X	X	X

	Commercial Drivers License	Office of Superintendent of Public Instruction	Pierce Transit
A person is disqualified from driving a commercial motor vehicle for a period of not less than one hundred twenty days if:			
Convicted of or found to have committed a third or subsequent serious traffic violation while driving a commercial motor vehicle; or	X	X	X
Convicted of reckless driving, where there has been two or more prior serious traffic violations.	X	X	X
The disqualification period under (a)(ii) of this subsection must be in addition to any other previous period of disqualification. For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted.			
A person is disqualified from driving a commercial motor vehicle for a period of not less than ninety days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order while driving a commercial vehicle;	X	X	X
A person is disqualified from driving a commercial motor vehicle for a period of not less than one year nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders while driving a commercial motor vehicle in separate incidents;	X	X	X
A person is disqualified from driving a commercial motor vehicle for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial motor vehicles in separate incidents;	X	X	X
A person is disqualified from driving a commercial motor vehicle for a period of not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.	X	X	X
A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.	X	X	X

	Commercial Drivers License	Office of Superintendent of Public Instruction	Pierce Transit
A person is disqualified from driving a commercial motor vehicle if a report has been received by the department under RCW 46.25.125 that the person has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 C.F.R. 40. A disqualification under this subsection remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional meeting the requirements of 49 C.F.R. 40, and the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment and/or education program as recommended by the substance abuse professional, and until the person has met the requirements of RCW 46.25.100. The substance abuse professional shall forward a diagnostic evaluation and treatment recommendation to the department of licensing for use in determining the person's eligibility for driving a commercial motor vehicle. Persons who are disqualified under this subsection more than twice in a five-year period are disqualified for life.	X	X	X
A person is disqualified from driving a commercial motor vehicle for the period of time specified if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:	X	X	X
For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;	X	X	X
For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;	X	X	X
For drivers who are always required to stop, failing to stop before driving onto the crossing;	X	X	X
For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;	X	X	X
For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing;	X	X	X
For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.	X	X	X
A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation;	X	X	X
A person is disqualified from driving a commercial motor vehicle for a period of not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period;	X	X	X

	Commercial Drivers License	Office of Superintendent of Public Instruction	Pierce Transit
A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period.	X	X	X
A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously disqualified from driving a commercial motor vehicle under this subsection and under other provisions of this chapter, or under 49 C.F.R. 383.52, shall serve those disqualification periods concurrently.	X	X	X
Incurring three or more speeding tickers of ten miles per hour or more over the speed limit within the last five years		X	
Having a drivers license suspended or revoked as a result of a moving violation within the last five years or having a CDL disqualified, suspended or revoked within the preceding five years.		X	
Any of the following violations within the last two years OR two or more in five years:			
Speeding violations – No more than one speeding violation. Violations that are 15mph over the speed limit			X
Fail/Improper signal			X
Failure to stop			X
No valid license			X
Failure to yield the right of way			X
Disobey road sign			X
Improper lane travel			X
Following too close			X
Over/straddle the center lane			X
Illegal overtake/pass			X
No license on person			X

	Commercial Drivers License	Office of Superintendent of Public Instruction	Pierce Transit
Any of the following violations within the last five years:			
Reckless driving			X
Negligent driving			X
Driving while under the influence of alcohol or drugs			X
License suspended			X
Manslaughter resulting from the operation of a vehicle			X
Hit and run			X
The following violations MAY be allowed if the record is otherwise clear:			
One speeding ticket (must be less than 15mph over speed limit) within the last two years			X
No liability insurance			X
Title 46 violation – tabs			X
Illegal or defective equipment			X

Table 2: Disqualifying Criminal Offenses

	DSHS Secretary's List 3 ³⁶	DSHS Secretary's List 1 ³⁷	Office of Superintendent of Public Instruction ³⁸
Crime of Attempt– Defined in RCW 9A.28.020	X		
Crime of Conspiracy – Defined in RCW 9A.28.030	X		
Crime of Solicitation – Defined in RCW 9A.28.040	X		
Finding of Sexual Motivation – Defined in RCW 9.9A.835	X		
Abandonment of a child	X	X	X
Abandonment of a dependent person not against a child	5 or more years	X	X
Abuse or neglect of a child	X	X	X
Allowing minor on premises of live erotic performance			X
Arson	X	X	
Assault (no degree)	X	X	X
Assault 1	X	X	X
Assault 2	X	X	X
Assault 3 Domestic Violence	X		
Assault 3 not Domestic Violence	5 or more years	X	
Assault 4/simple assault	5 or more years	3 or more years	
Assault 3	X	X	X
Assault 4	5 or more years		X
Assault of a child	X	X	X
Bail jumping	X		
Burglary	5 or more years	X	
Carnal knowledge	X		
Child buying or selling	X	X	X
Child molestation	X	X	X
Coercion	5 or more years		X
Communication with a minor for immoral purposes	X	X	X
Controlled substance homicide	X		
Criminal mistreatment	X	X	
Custodial assault	5 or more years	X	
Custodial interference	X	X	

³⁶ As used by all programs administered by DSHS, including DSHS state employees in covered positions [except programs administered by Aging and Disability Services Administration (ADSA) Home & Community Services and ADSA Residential Care Services].

³⁷ As used by Aging and Disability Services Administration Home & Community Services for individual providers and home care agencies.

³⁸ As used for authorized school bus drivers.

	DSHS Secretary's List 3 ³⁹	DSHS Secretary's List 1 ⁴⁰	Office of Superintendent of Public Instruction ⁴¹
Custodial sexual misconduct	5 or more years	X	
Dealing in depictions of minor engaged in sexual explicit conduct	X	X	X
Domestic Violence (felonies only)	X		
Drive-by shooting	X		X
Driving while intoxicated in the last five years			X
Endangerment with a controlled substance			X
Extortion 1	X	X	
Extortion 2	5 or more years	X	
Extortion		X	
Forgery	5 or more years	5 or more years	
Harassment	5 or more years		
Harassment Domestic Violence	X		
Homicide by abuse	X		X
Homicide by watercraft	X		
Identity theft	5 or more years		
Incendiary devices (possess, manufacture, dispose)	X		
Incest	X	X	
Indecent exposure/Public Indecency (Felony)	X	X	
Indecent liberties	X	X	X
Kidnapping	X	X	X
Leading organized crime	5 or more years		
Leaving a child in the care of a sex offender			X
Luring	X		
Malicious explosion 1	X		
Malicious explosion 2	X		
Malicious explosion 3	5 or more years		
Malicious harassment	X	X	X
Malicious mischief	5 or more years		
Malicious mischief Domestic Violence	X		
Malicious placement of an explosive 1	X		
Malicious placement of an explosive 2	5 or more years		

³⁹ As used by all programs administered by DSHS, including DSHS state employees in covered positions [except programs administered by Aging and Disability Services Administration (ADSA) Home & Community Services and ADSA Residential Care Services].

⁴⁰ As used by Aging and Disability Services Administration Home & Community Services for individual providers and home care agencies.

⁴¹ As used for authorized school bus drivers.

	DSHS Secretary's List 3⁴²	DSHS Secretary's List 1⁴³	Office of Superintendent of Public Instruction⁴⁴
Malicious placement of an explosive 3	5 or more years		
Malicious placement of imitation device	5 or more years		
Manslaughter	X	X	X
Murder/Aggravated murder	X	X	X
Patronizing a juvenile prostitute/ Commercial sexual abuse of a minor	X	X	X
Patronizing a prostitute/	5 or more years	X	
Possess depictions minor engaged in sexual conduct	X		
Possess explosive device	5 or more years		
Promoting pornography	5 or more years	X	
Promoting prostitution 1	5 or more years	X	X
Promoting prostitution 2	5 or more years		
Promoting suicide attempt	5 or more years		X
Prostitution	5 or more years	3 or more years	
Rape	X	X	X
Rape of a child	X	X	X
Reckless endangerment	5 or more years		X
Registered sex offender	X	X	X
Residential burglary	5 or more years		
Robbery	X	X	
Selling or distributing erotic material to a minor	X	X	
Sending or bringing into the state depictions of a minor	X	X	X
Sexual exploitation of minors	X	X	X
Sexual misconduct with a minor	X	X	X
Sexually violating human remains	X		
Stalking	5 or more years		
Theft	5 or more years		
Theft 1		X	
Theft 2		5 or more years	
Theft 3		3 or more years	
Unlawful imprisonment	5 or more years	X	

⁴² As used by all programs administered by DSHS, including DSHS state employees in covered positions [except programs administered by Aging and Disability Services Administration (ADSA) Home & Community Services and ADSA Residential Care Services].

⁴³ As used by Aging and Disability Services Administration Home & Community Services for individual providers and home care agencies.

⁴⁴ As used for authorized school bus drivers.

	DSHS Secretary's List 3⁴⁵	DSHS Secretary's List 1⁴⁶	Office of Superintendent of Public Instruction⁴⁷
Unlawful use of bldg for drug purposes	5 or more years		
Use of machine gun in felony	X		
Vehicular assault	X		
Vehicular assault within last five years			X
Vehicular homicide (negligent homicide)	X	X	Within 5 years
Violation of child abuse restraining order	X	X	
Violation of civil anti-harassment protection order	X		
Violation of protection/contact/restraining order	X	X	
Violation of the Imitation Controlled Substance Act (manufacture/deliver/intent)	5 or more years	X	
Violation of Uniform Controlled Substance Act (manufacture/deliver/intent)	5 or more years	X	
Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)	5 or more years	X	
Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)	5 or more years	X	
Any crime involving the use, sale, possession, or transportation or any controlled substance within the last ten yrs			X

⁴⁵ As used by all programs administered by DSHS, including DSHS state employees in covered positions [except programs administered by Aging and Disability Services Administration (ADSA) Home & Community Services and ADSA Residential Care Services].

⁴⁶ As used by Aging and Disability Services Administration Home & Community Services for individual providers and home care agencies.

⁴⁷ As used for authorized school bus drivers.

Table 3: Non-Criminal Disqualifying Offenses

	DSHS Secretary's List 3 ⁴⁸	DSHS Secretary's List 1 ⁴⁹	Public Schools ⁵⁰
Misrepresenting or concealing a material fact in obtaining a school bus driver's authorization or in reinstatement thereof in the previous five years.			X
Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a lapsed, suspended, surrendered, or revoked school bus driver's authorization in a position for which authorization is required.			X
Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a suspended or revoked driver's license or a suspended, disqualified or revoked commercial driver's license.			X
Having refused to take a drug or alcohol test as required by the provisions of 49 CFR 382 within the preceding five years.			X
Having a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, school bus drivers, or other coworkers.			X
A decision issued after a due process hearing by an agency or an Administrative Law Judge showing a finding of abuse, neglect, exploitation, or abandonment of a vulnerable adult, juvenile or child.	X	X	
Termination, revocation, suspension, or denial of a license, certification, and/or State or Federal contract.	X	X	
Relinquishment of a license, certification, or contract in lieu of an agency negative action.	X	X	
Revocation, suspension, denial or restriction placed on a professional license.	X	X	
Disciplinary Board Final Decisions.	X	X	

⁴⁸ As considered under individual program law and rule as used by all programs administered by DSHS, including DSHS state employees in covered positions [except programs administered by Aging and Disability Services Administration (ADSA) Home & Community Services and ADSA Residential Care Services]. These negative actions *may* disqualify an individual. A character, competence, and suitability assessment is conducted of law and regulation are not clear.

⁴⁹ As considered under individual program law and rule as used by Aging and Disability Services Administration Home & Community Services for individual providers and home care agencies. These negative actions *may* disqualify an individual. A character, competence, and suitability assessment is conducted of law and regulation are not clear.

⁵⁰ Includes ECEAP and Head Start transportation services contracted with public schools.

Process Guidelines for Other Records

For those records which do not appear on the disqualifying lists the following guidelines and processes are followed.

For those who use DSHS Lists

Review conducted for character, competence, and suitability determination which considers the following issues:

- Requirements of the job
- Nature of the crime
- Date of the crime
- Relevant factors related to the crime

For Schools and OSPI

Having been convicted of any crime within the last ten years, including motor vehicle violations, which would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver. In determining whether a particular conviction would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver, the following and any other relevant considerations shall be weighed:

- Age and maturity at the time the criminal act was committed;
- The degree of culpability required for conviction of the crime and any mitigating factors, including motive for commission of the crime;
- The classification of the criminal act and the seriousness of the actual and potential harm to persons or property;
- Criminal history and the likelihood that criminal conduct will be repeated;
- The permissibility of service as an authorized school bus driver within the terms of any parole or probation;
- Proximity or remoteness in time of the criminal conviction;
- Any evidence offered which would support good moral character and personal fitness;
- If this subsection is applied to a person currently authorized as a school bus driver in a suspension or revocation action, the effect on

the school bus driving profession, including any chilling effect, shall be weighed; and

- In order to establish good moral character and personal fitness despite the criminal conviction, the applicant or authorized school bus driver has the duty to provide available evidence relative to the above considerations. The superintendent of public instruction has the right to gather and present additional evidence which may corroborate or negate that provided by the applicant or authorized school bus driver.

Appendix E:

Legal Citations and Supporting Documents

The following citations provide references to some of laws that affect background checks in Washington State, Pierce County, and the City of Tacoma. Synopses accompanying the citations describe aspects of the laws' contents most pertinent to background checks. They should not be mistaken for full legal texts.

Federal Laws

28 U.S.C. §534

Authorizes the Federal Bureau of Investigation (FBI) to collect and disseminate criminal history record information to certain recipients.

Public Law 92-544

Defines the FBI's ability to share criminal history record information (CHRI) for the purposes of employment and licensing only if they are authorized by state statute which has been approved by the Attorney General.

Washington State Statutes Approved for FBI Criminal History Record Information (CHRI) Background Checks

Subject	Statute
Washington State Insurance Commission	Chapter 48 RCW
Washington State Horse Racing Commission	Chapters 67.16 and 67.17 RCW
Washington State Gambling Commission	RCW 9.46.070
Washington State Liquor Control Board	RCW 66.08.030
Emergency Vehicle Permit	RCW 46.37.005 and 46.37.194
Unarmed/armed private security guard license	RCW 18.165.040(1)(a) and 18.165.070
Armed private investigator license	RCW 18.170.040 and 18.170.130
School District employee (with unsupervised access to children)	Chapter 28A.400 RCW
School District employee (contractor or certification)	Chapter 28A.400 RCW
Concealed pistol license	RCW 9.41.070

Subject	Statute
License to manufacture, purchase, sell, use, or store explosives	RCW 70.74.360
Department of Social and Health Services, licensing provider and volunteer	RCW 74.15.030, 43.20A.710, and 43.43.837
Department of Early Learning, licensing provider and volunteer	WARC 74.15.030 and 43.20A.710
Department of Social and Health Services, Special Commitment Center employment	RCW 71.09 Chapter 27 and 43.43.837
Department of Licensing, issuing motor vehicle/special fuel licenses (supplier, distributor, exporter, importer, and blender)	RCW 82.36.060, 82.36.080, 82.38.090, and 82.38.110
Washington State Investment Board (WSIB), finalist candidate for board staff position (with authority for access to funds under jurisdiction or responsibility of WSIB or data or security systems of WSIB, or designs for such systems)	RCW 43.33A.025
Private School applicants and employees, and volunteers with unsupervised access to children	RCW 28A.195.080
Driver training instructors	Chapter 46.82 RCW
Washington State Lottery	RCW 67.73.03
Washington State Department of Services for the Blind, employees or contractors	Chapter 74.18 RCW
Alien firearm license	RCW 9.41.170
Bail bond agents	RCW 18.185.040
Department of Personnel, Governor appointed agency head applicants	RCW 43.06.013

Subject	Statute
Department of Financial Institutions, mortgage broker/loan originator	RCW 19.146
Washington State Parks and Recreation Commission, job applicants, volunteers, and independent contractors who have unsupervised access to children or vulnerable adults, or who will be responsible for collecting or disbursing cash or processing credit/debit card transactions	RCW 79A.05.030
Washington State Patrol, State Commission on Equipment, emergency vehicle permit	WARC 46.37.005 and 46.37.194

Other Pertinent Washington State Laws

Chapter 10.97 RCW Washington State Criminal Records Privacy Act.

Specifies criminal history dissemination guidelines.

RCW 28A.400.303 Record checks for employees

Directs school districts, educational service districts, the state school for the deaf, the state school for the blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to children to require a background check through the Washington State Patrol and the Federal Bureau of Investigation before hiring an employee.

RCW 41.06.475 Employees with unsupervised access to children — Rules for background investigation.

Directs the Director of Personnel in cooperation with the Director of the Department of Early Learning to adopt rules for conducting background checks for current employees and applicants who will have unsupervised access to children.

RCW 41.06.480 Background check disqualification--Policy recommendations.

Directed the Personnel Resources Board to develop policy recommendations addressing the action taken if a background check result disqualifies an employee from his or her current position.

RCW 43.43.830 Background checks — Access to children or vulnerable persons — Definitions.

Provides definitions for terms used in RCW 43.43.830 through 43.43.845 and provides the basis for disqualifying lists.

RCW 43.43.832 Background checks — Disclosure of information — Sharing of criminal background information by health care facilities.

Permits sharing of background check information among health care facilities (defined as a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW). Also includes background check directives to the Department of Early Learning, Washington Professional Educator Standards Board, law enforcement agencies, Office of the Attorney General, prosecuting authorities, Department of Social and Health Services, businesses or organizations (as defined by RCW 43.43.830), people with developmental disabilities, or vulnerable adults or their guardians (as defined by RCW 43.43.830).

RCW 43.43.834 Background checks by business, organization, or insurance company — Limitations — Civil liability.

Specifies conditions for a business or organization (as defined by RCW.43.43.830) to conduct background checks on applicants.

RCW 43.43.837 Fingerprint-based background checks — Requirements for applicants and service providers — Fees — Rules to establish financial responsibility.

Directs the Department of Social and Health Services to require fingerprint-based background checks for certain applicants or service providers who have resided in the state less than three consecutive years before application. Specifies the conditions under which service providers and applicants may be hired for a provisional period. Directs the Department of Social and Health Services to develop rules identifying the financial responsibility for paying fees associated with fingerprint-based background checks as charged by law enforcement.

RCW 43.43.839 Fingerprint identification account.

Applies to the Washington State Patrol. Creates an account in which all receipts from incremental charges of fingerprint checks requested for non-criminal justice purposes and electronic background requests are deposited. Requires that expenditures from the account only be used for the cost of record checks.

RCW 43.43.842 Vulnerable adults — Additional licensing requirements for agencies, facilities, and individuals providing services.

Specifies criminal offenses and conditions which disqualify an applicant by reference to RCW 43.43.830.

RCW 43.43.845 Crimes against children — Sexual offenses under chapter 9A.44 RCW — Notification of conviction or guilty plea of school employee.

Directs the Washington State Patrol to notify the superintendent of public instruction of guilty pleas or convictions of crimes against children, and directs the superintendent of public instruction to identify whether the person holds a certificate or permit or is employed by a school district, and provide this information to the Washington professional educator standards board and the school district employing the individual who pled guilty or was convicted of the crimes.

RCW 43.215.215 Character, suitability, and competence to provide child care and early learning services – Fingerprint criminal history record checks.

Directs the Department of Early Learning to conduct fingerprint criminal history record checks through the Washington State Patrol and the Federal Bureau of Investigation to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care and who have not resided in the State of Washington during the three-year period before being authorized to care for children. Also permits the Department of Early Learning to consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, of welfare of a child.

RCW 46.25.090 Disqualification — Grounds for, period of — Records.

Specifies the offenses which disqualify someone from carrying a Commercial Drivers License.

RCW 46.52.130 Abstract of driving record — Access — Fees — Penalty.

Specifies the information contained in a Drivers Abstract and the dissemination guidelines.

RCW 74.15.030 Powers and duties of secretary.

Directs the Department of Social and Health Services to submit a fingerprint-based background check through the Washington State Patrol and through the Federal Bureau of Investigation for agencies that provide care of children, expectant mothers, and people with developmental disabilities.

RCW 74.34.063 Response to reports — Timing — Reports to law enforcement agencies — Notification to licensing authority.

Directs the Department of Social and Health Services to notify the proper licensing authority concerning any report received that alleges that a person who is professionally licensed, certified, or registered has abandoned, abused, financially exploited, or neglected a vulnerable adult.

RCW 74.34.095 Confidential information — Disclosure.

Specifies the dissemination guidelines for reports concerning the abuse of vulnerable adults.

WAC 388-06 Background checks.

Establishes rules for background checks conducted by Children's Administration and the Division of Developmental Disabilities at the Department of Social and Health Services (DSHS). Includes disqualifying offenses specific to Children's Administration federal requirements.

Chapter 388-71 WAC Home and community services and programs.

Establishes the qualifications for individual providers, home care agency providers, and adult day health providers and specifies the background check processes and disqualifying offenses.

WAC 388-76-10155 to 10185 Criminal history background check.

Specifies the background check process and disqualifying offenses for people with unsupervised access to residents of adult family homes.

WAC 388-78A-2470 Criminal history background checks.

Specifies the background check process and disqualifying offenses for employees at boarding homes licensed by the Department of Social and Health Services.

WAC 388-97-202 Criminal history disclosure and background inquiries.

Requires nursing homes licensed under chapter 18.51 RCW to conduct background checks and specifies processes to follow.

WAC 388-97-203 Disqualification from nursing home employment.

Specifies disqualifying offenses for employees of nursing homes licensed under chapter 18.51 RCW.

WAC 392-144-101 Initial requirements for school bus drivers.

Requires school bus drivers to submit to a background check according to chapter 28A.400 RCW.

WAC 392-144-103 Disqualifying conditions for authorized school bus drivers.

Specifies the disqualifying offenses for school bus drivers.

Pierce County Code

5.02.030 Requirements for Issuance or Renewal of License.

Requires applicants for those licenses which require the Sheriff's investigation to consent to fingerprinting. Also specifies the disqualifying offenses for applicants.

5.02.090 Suspension or Revocation of License.

Specifies disqualifying offenses for license holders.

5.26.080 Permit to Drive Taxicabs.

Directs the Pierce County Sheriff to conduct an investigation and recommend approval or denial of a license to drive a taxicab.

5.26.110 Revocation of Permit to Operate Taxicabs.

Specifies disqualifying offenses additional to those in Chapter 5.02.

City of Tacoma

6B.10.190 Investigations and background checks.

Specifies that all applicants for a license may be subject to a criminal background check, and the results of such check may be sufficient grounds for denial of a license.

6B.220.205 Taxicab and owners – Investigation.

Requires applicants for a taxicab vehicle license to consent to be fingerprinted for a criminal background check.

6B.220.210 Taxicab vehicle license –Standards for license denial.

Specifies disqualifying offenses for applicants.

6B.220.300 Taxicab driver license application.

Requires applications to include criminal history from last ten years.

6B.220.305 Criminal backgroundcheck/Fingerprints/Photograph.

Requires applicants for a taxicab driver's license to consent to be fingerprinted for a criminal background check.

6B.220.320 Taxicab driver – Standards for license denial.

Specifies disqualifying criminal offenses.

6B.220.325 Taxicab driver license expiration and renewal.

Requires taxicab drivers to consent to a new criminal background check every five years.

Supporting Documents

The Joint Task Force on Criminal Background Check Processes. *Final Report to the Legislature: Recommendations fro Improving Washington State's Background Check Processes*. January 7, 2007.

http://www.leg.wa.gov/documents/opr/2007/PSEP_CBCP_TF2006.pdf

U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division. *CJIS Information Letter: Misuse of III Via Purpose Code C*. April 6, 2001.

www.doj.state.wi.us/les/law/docs/20010406_infoletter1.doc