



Background Checks Feasibility Study

Preliminary Report to the Legislature | December 9, 2022

Prepared for the Office of Financial Management

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Introduction

[ESSB 5693, Sec. 130\(17\)](#) directed the Office of Financial Management (OFM) to contract with a third-party facilitator to convene an interagency work group charged with “review[ing] existing requirements and processes for conducting applicant background checks for impacted individuals, and to provide a feasibility study and implementation plan for establishing a state office to centrally manage criminal background check processes for impacted individuals.” See box on the right for a definition of “impacted individuals” and the sidebar on the following page for a summary of work group membership.

OFM has contracted with BERK Consulting to help the work group conduct the study. This will include understanding current processes and researching the proviso questions to understand potential structure and process options. Once options are identified, an implementation plan will accompany the final report which will be transmitted to the governor and Legislature by June 1, 2023, as directed in the proviso.

The work group has met three times since it first convened in July 2022, and BERK began work in September. This preliminary report describes completed work to date and the plan to address proviso questions through the remainder of the study timeline.

Project background

A background check is a general term for a search into an individual’s past actions and records. Many entities, including state and local agencies, state and local contractors, and private employers, are required to conduct criminal background checks for individuals seeking certain jobs, volunteer positions, or licenses per federal and/or state law. The primary objective is to protect the physical safety, financial security and privacy of the public, especially vulnerable populations including children, older adults and individuals with disabilities. This study is intended to evaluate opportunities to maintain this focus on safety and security while providing predictable and equitable timelines for requesters, agencies, applicants or individuals subject to a background check.

Currently, background check processes are decentralized: agencies and private entities have their own processes for conducting background checks and for evaluating the suitability of an individual seeking a position or license. This lack of centralization has raised some questions to be explored in this study:

- How well does the current system work for the requesters and entities conducting background checks and the individuals subject to them?
- Are there ways to increase the efficiency of the current process to save time and resources for all involved?
- Is the process creating unnecessary barriers for individuals and leading some to abandon the hiring or licensure process due to the time it takes?
- Is it possible to make any changes that would allow an individual’s fingerprint check results to qualify for employment or licensure with multiple entities?

‘Impacted individuals’ defined

Applicants for state employment, current state employees, and individuals for whom an applicant background check is required as a condition of employment or to provide state services, including but not limited to individuals subject to RCW 26.44.240, 28A.400.303, 43.43.830 through 43.43.845, 43.101.095, 43.216.270, 74.15.030, and 74.39A.056.

This study aims to explore these questions by considering a range of structure and process options. This spans from greater interagency and interdepartmental coordination to a possible centralization of all state- and federally required background checks for jobs, volunteer positions, and licenses within a single state office. This study will **not** evaluate the actual criteria that agencies use to determine suitability for specific positions or licenses; however, it will outline what the criteria are and how decisions are made.

Work group

The Office of Financial Management designated Ross Hunter, Secretary at the Washington State Department of Children, Youth, and Families (DCYF) to chair the work group, which includes representatives from the five agencies named in the proviso. The Health Care Authority (HCA) and Washington Technology Solutions (WaTech) also were asked to participate, due to their role with background check and technology systems, respectively. See the sidebar for a full list of agencies represented in the work group. Together these agencies account for most of the fingerprint-based, criminal background checks conducted for state employment or licensure.

The initial meetings of the work group have been used to orient members to the study proviso questions and their responsibilities as participants. Given the critical role that the Federal Bureau of Investigations (FBI) plays in setting the rules and regulations related to use of fingerprints and their role in processing them, an early priority of the work group has been to develop a list of questions for the FBI to better understand where there might be flexibility or ability to make certain changes. The Washington State Patrol will submit these questions on behalf of the work group before the end of the year.

BERK conducted an initial interview with staff from each work group agency to understand their current processes and reasons for conducting background checks.

Work group agencies

The Work group includes representatives from the following agencies:

- DCYF - Department of Children, Youth, and Families
 - DOC - Department of Corrections
 - DSHS - Department of Social and Health Services
 - HCA - Health Care Authority
 - OFM - Office of Financial Management
 - OSPI - Office of Superintendent of Public Instruction
 - WaTech - Washington Technology Solutions
 - WSP - Washington State Patrol
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Study foundations

Study objectives

OFM, partner agencies and the consultant team developed the following objectives to guide this study:

1. Employ a racial equity and social justice lens throughout the project.
2. Center on the end-user experience (in this case, the impacted individuals).
3. Develop criteria to assess the current system and base the proposed improvements upon those criteria.

Evaluation criteria for changes to the background check system

An early objective of this study was to develop evaluation criteria to assess the current system and evaluate any potential outcomes and trade-offs of recommended options. The draft criteria shown in Exhibit 1 were created based on the proviso questions, early research, and work group interviews and meetings. These criteria will be finalized in early 2023 after further discussion with the work group.

Exhibit 1. Draft evaluation criteria (Under development)

Criteria	Sample questions
Public safety, financial security and privacy	<ul style="list-style-type: none">▪ Would the proposed change meet the primary objective of conducting a background check, which is to protect public safety, financial security and privacy?
Racial equity and social justice	<ul style="list-style-type: none">▪ Would the proposed change reduce barriers to employment or licensure by shortening background check processing time?▪ Would the proposed change result in disparate impacts for any protected classes?
Risk and liability	<ul style="list-style-type: none">▪ Would the proposed change meet all FBI and other applicable federal rules and regulations?▪ Would the proposed change align between the entity making the suitability determination and the entity with the liability for hiring or licensure?
Agency/requester experience	<ul style="list-style-type: none">▪ Would the proposed change improve the agency/requester experience by increasing accuracy, timeliness, ease of use and quality of customer service?▪ Is the proposed change feasible from a staffing and scope perspective?▪ Would the proposed change decrease or increase costs at the agency level?▪ Would the proposed change require significant public outreach to help individuals understand the new process?
Impacted individual's experience	<ul style="list-style-type: none">▪ Would the proposed change improve the experience of impacted individuals by increasing timeliness, ease of use and quality of customer service, and reducing costs, travel time or other barriers?▪ Would the proposed change enhance portability of results?
Implications for other policy objectives	<ul style="list-style-type: none">▪ Would the proposed change have positive or negative impacts on other policy objectives?

Source: BERK, 2022.

The Work Ahead

The following sections describe four areas of work that will be the focus of the remaining months of this project.

1. Work group meetings (through May 2023)

The work group will continue to meet every 4-6 weeks to discuss findings and evaluate options based on the above criteria. More frequent meetings with individual agency staff and/or subcommittees will focus on current and future mechanics of background check policies and practices. The work group will be kept abreast of all findings and potential options and will help shape any recommendations.

2. Stakeholder and partner engagement

This work will also include engagement with partners and stakeholders to achieve the following objectives:

1. Ensure a transparent study process.
2. Inform the recommendations to be developed by the project work group by understanding implications of the current system and potential changes.
3. Engagement with advocacy groups that work on and/or have testified on background related issues in the past may also be included to understand their perspectives.

Exhibit 2 shows a summary of partner and stakeholder groups that will be engaged during this study.

Exhibit 2. Summary of partner and stakeholder engagement groups

Partner Groups

Partner Group	Approach	Timeline
Tribes	Approach to be developed in coordination with Governor's Office of Indian Affairs	Planning in 2022, and consultation in 2023
FBI	Interviews	Early 2023

Stakeholder Groups

Stakeholder Group	Approach	Timeline
End users	<ul style="list-style-type: none"> Includes people who apply for positions requiring background checks Engagement strategy to be developed – may include engagement with intermediaries of end users 	Planning in 2022, with early 2023 engagement
State agencies	<ul style="list-style-type: none"> Agency representative to participate in Workgroup Additional engagement via interviews and participation in topic-specific technical work groups 	Beginning in Q4 2022
Other governments	<ul style="list-style-type: none"> Local governments and agencies that engage with the background check system Interviews 	Planning in 2022, with early 2023 engagement

Source: BERK, 2022.

3. Landscape analysis

Washington State

BERK will compile and summarize information on the current state of background checks at the agencies mentioned in the proviso. This will include:

- Relevant RCWs and WACs across all affected agencies.
- Current agency processes and requirements (e.g., the purpose of the check, who conducts the check, what is included, the timeframe considered in a check, and the duration of each step in the process).
- Comparison of various background check reports (e.g., the information included in the report, the data sources checked, the geographic boundaries used and the timeframe considered).
- Factors considered in a character, competence and suitability determination.
- Potential opportunities for alignment among the agencies (e.g., several agencies use IDEMIA as a service provider).

BERK will summarize the information so the reader can quickly grasp the current background check landscape and the history and reasons for existing federal and state requirements.

Broader research

In addition to summarizing Washington's current processes and requirements, BERK has begun and will continue to explore background check processes in other states and services and tools that might be useful in Washington.

Out-of-state research to-date has included:

- Interviews with representatives from Oregon's Department of Human Services and Idaho's Department of Health and Welfare about their organizational structure, processes and infrastructure.
- Confirmation that no state has completely centralized its background check process.

Future out-of-state research will include:

- Research on centralized systems used and policy goals (where applicable) in other states (e.g., lessons learned, trade-offs).
- Research on technology and software solutions, including information-sharing agreements, especially for any states or large agencies with a centralized approach.

4. Options and report development

BERK will develop recommendations for improvements to the background check system and processes by workshopping a range of options with the work group. All analysis, findings, and recommendations will be synthesized and organized into a concise, readable report that is oriented toward policymakers and agency staff. As directed in the proviso, the report will address the following topics:

- A review of current background check requirements and processes for impacted individuals, including:
 - A list of all state positions and purposes that require a criminal background check as a condition of employment, certification, licensure, or unsupervised access to vulnerable persons.
 - An analysis of any "character, suitability and competence" components.
 - A review of current costs of applicant background checks for state agencies and impacted individuals, including a comparison of current vendor contracts for fingerprint background checks.

- A review of topics of interest listed in the proviso, including:
 - Feasibility of establishing a central state office to manage applicant background check processes.
 - Comparable solutions and processes in other states.
 - Potential use of the federal Rap Back system, including steps necessary to join the system and associated costs and potential benefits.
 - Processes and considerations to increase the portability of criminal background check results for impacted individuals.
 - Steps necessary to meet federal regulatory requirements and ensure federal approval of state criminal background check processes.
 - The effects of the proposed process changes for impacted individuals who are members of historically disadvantaged populations.
 - Any statutory changes that may be necessary to ensure clarity and consistency.

BERK will share the draft report with the work group for feedback from the work group, OFM staff, and any other reviewers to ensure that final recommendations are strong, well-supported, and presented in a way that will best inform decision making and action by policymakers. Once the study identifies structure or process changes and options, a companion implementation plan will also be developed. The final report will be delivered by June 1, 2023.