



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report
Department of Social and Health
Services

Published March 23, 2017

Report No. 1018820





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March 23, 2017

Patricia Lashway, Secretary
Department of Social and Health Services

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 16-020 at the Department of Social and Health Services.

The State Auditor's Office received an assertion of improper governmental activity at the Department. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

cc: Governor Jay Inslee
Andrew Colvin, Public Disclosure/Ethics Administrator
Kate Reynolds, Executive Director, Executive Ethics Board
Jacque Hawkins-Jones, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertion and results

Our Office received a whistleblower complaint asserting eight Department of Social and Health Services (Department) employees (subject(s)) in supervisory and management positions allowed the children to be placed in out-of-home care before required background checks were completed. The complaint also asserted the subjects allowed placement of children knowing the background check revealed crimes that would disqualify the applicant.

We found no reasonable cause to believe the subjects committed improper governmental actions. However, we found instances when Department policies regarding background checks and administrative reviews were not followed¹.

Background

The Department's Division of Children and Family Services, within Children's Administration, works with families to ensure children's safety in their own homes and in out-of-home care. Its goal, whenever possible, is to reunify the children with their family. Child and Family Welfare Services social workers assist these families.

When the Department places a child in out-of-home care, state law requires background checks for all adults, 16 or older, having unsupervised access to a child within that home. There are two types of background checks completed for each adult: a name and date of birth (NDOB) check and a fingerprint-based check. The Department uses federal databases to perform both checks.

Whether the placement involves voluntary or protective custody, the Department must conduct a NDOB check before placing a child in an unlicensed home. Once an adult clears a NDOB check, state law requires the Department provide, within 14 calendar days, the adult's fingerprints to the Federal Bureau of Investigation. Department policy allows a child to remain in a home while the federal background check is being processed.

Background checks are not required when a court has ordered the placement of the child or children.

The scope of this investigation related to the Department's Region 2 background check process. Region 2 had a background check unit staffed by social workers who did not carry a caseload. A case social worker initiated the process by providing the unit the required NDOB information. The unit conducted the check and informed the social worker of the results. A fingerprint check was initiated after the adult passed the check. If the adult failed the NDOB check, the social worker found another placement for the child.

¹ Improper governmental action is defined by law as a violation of federal law, state law or Washington Administrative Code (rule).

When a fingerprint check was needed, the unit mailed information to the adult describing how to schedule an appointment with the state-contracted vendor to have their fingerprints taken. Once that was accomplished, the vendor provided the fingerprints to the Federal Bureau of Investigation, which processed them and provided the unit with the results. The unit notified the social worker and the adult of the results.

If the background check revealed a criminal history, including non-conviction data, the unit reviewed the information and flagged potentially disqualifying activities. Depending on the activities, the social worker:

- Removed the child from the home
- Ensured the adult left the home
- Requested an administrative review

Department managers conducted administrative reviews. Depending on the circumstances, a child may still be placed in a home even though the adult had a criminal history.

Additionally, Children's Administration may have internal findings based on prior interactions with clients. An adult must have an administrative review if they have an internal finding.

About the Investigation

We requested the Department provide a list of all cases requiring a background check between July 1 and December 31, 2015, which the subjects directly and indirectly supervised. We were provided a list of 1,620 cases and randomly selected 33 to review, in addition to seven provided in the whistleblower's complaint.

We met with a Department administrator, who is an expert on the background check process, to discuss the details of each case. During our review, we found case notes that were difficult to understand or inaccurate, or that contradicted other notes in the system. In some instances, we were unable to determine whether the adult had passed the background check.

The administrator said the old process was full of inconsistencies and lacked quality assurance. He said employees would not update client records in the system so it was not always clear whether background checks were completed. On April 18, 2016, the Department officially launched a centralized background check unit.

Based on the review with the administrator, we identified 13 cases that warranted further review. We interviewed the subjects regarding their involvement with each case. In seven cases, the circumstances did not require background checks to be completed; two cases were initially assigned to social workers outside of this region who failed to complete background checks. When those two cases were reassigned to this region and under the subjects' direction, the newly assigned social workers completed the background checks. In four cases, we found required background checks or administrative reviews were not completed as Department policies require.

Background checks

In these cases, the “courtesy” social workers, although supervised by two of the subjects, were not the assigned social workers. Courtesy social workers conduct face-to-face visits with the child when an assigned social worker does not live near the child.

We found two instances in which children were in homes with adults who did not have background checks completed. In one case, the background check was completed one year after placement. In the other, the child moved to another placement after seven months, at which time the background check still was not completed.

We spoke with two subjects related to these cases who explained that the courtesy social workers are not responsible for the cases. One subject said it is the responsibility of the courtesy social worker to communicate with the assigned social worker, but it is the assigned social worker’s responsibility to complete the background check.

Department policy states it is the responsibility of the assigned social worker to ensure the background checks are completed; however, policy also states that the courtesy social worker is responsible to “[i]dentify and verify all individuals living in the home and assess for safety threats.” We did not find any documentation that either courtesy social worker identified the absence of a background check.

Administrative reviews

In the remaining two cases, we found the Department placed a child in a home under a safety stipulation. These safety stipulations placed the children in the homes under the sole supervision of one adult. The other adults living in the homes were not allowed unsupervised contact with the children until background checks or administrative reviews were complete.

In one of the cases, we found the non-supervising adult had committed a crime, which would permanently disqualify them from having a child placed in their home. Notwithstanding the crime, the Department may place a child in their home after conducting an administrative review.

According to one subject, the Department knew one of the adults would not pass a background check; however, as required, a background was initiated. In the interim, the placement was granted to the other adult in the home, with the stipulation that the disqualified adult not be allowed unsupervised contact with the children. Seven months after placement, the background check results confirmed the permanent disqualifier.

We spoke with a deputy regional administrator who said that in this type of situation, placement might occur even though there is a permanent disqualifier, if approved through an administrative review. She explained that when they identify a permanent disqualifying crime, placement is denied in 99.9 percent of the cases. Approval is rare and comes directly from the Assistant

Secretary of Children's Administration through an administrative review. A review was not conducted in this case, and the children remain in the home.

In the second case, we found the non-supervising adult had a Children's Administration finding, which required an administrative review.

The Department placed a child under the care of an adult in the home who had passed a background check with a stipulation that the other adult in the home not be allowed unsupervised contact with the child until his background check was completed. Although there were no negative actions flagged on the background check, it was noted by the regional background check unit that the adult had a Children's Administration finding. The administrative review was initiated three months after placement and was completed two months later.

The Department does not have a policy regarding how quickly an administrative review needs to be completed. However, the subject responsible for conducting that area's administrative reviews said her goal is to have administrative reviews completed within 24 hours. She said there are various reasons why it might take longer, such as lack of communication from the regional background check unit and the social worker, or simply human error. Due to the lack of information in the case file, we were unable to determine why the child remained in the home for approximately six months before the administrative review was completed.

The subjects said it is the assigned social worker's responsibility to ensure background checks are completed. However, two of the subjects said they had oversight responsibility.

One subject said the regional background check unit did not always communicate the results or status of the background check to the social workers who were responsible for the child's safety. She said children were placed in homes with adults who had not completed background checks, but Department policy allowed this. She also said the unit was taking approximately six months to finish background checks. If additional steps were needed, the regional background check unit would advise the social worker that it would take care of it, and a few months later the social worker would be out of compliance because the unit had not completed the needed tasks.

Subjects said there was no quality assurance in place to ensure the background checks were completed timely.

We found a breakdown in communication between the social workers and the regional background check unit. Information needed to ensure all requirements were met before placement was not readily available to social workers because they could not access the background check system. Although the regional background check unit could access information entered by the social workers in the case management system, not all social workers kept their case files up-to-date, resulting in a breakdown in the process.

The Department's background check administrator said while centralizing the background check unit, they found 5,000 clients for whom they could not determine the status of the fingerprint

checks. Based on the lack of information in the case files, the Department was unable to determine whether children had been placed with these clients. Subsequently, Department staff were eventually able to determine that no children had been at risk.

Conclusion

Although we found instances when Department policy was not followed, we did not find a violation of state laws or rules. Therefore, we found no reasonable cause to believe an improper governmental action occurred.

State Auditor's Office Concluding Remarks

We thank Department officials and personnel for their assistance and cooperation during the investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 26.44.240 - Out-of-home care—Emergency placement—Criminal history record check.

(1) During an emergency situation when a child must be placed in out-of-home care due to the absence of appropriate parents or custodians, the department shall request a federal name-based criminal history record check of each adult residing in the home of the potential placement resource. Upon receipt of the results of the name-based check, the department shall provide a complete set of each adult resident's fingerprints to the Washington state patrol for submission to the federal bureau of investigation within fourteen calendar days from the date the name search was conducted. The child shall be removed from the home immediately if any adult resident fails to provide fingerprints and written permission to perform a federal criminal history record check when requested.

RCW 42.40.020 Definitions

(6)(a) "Improper governmental action" means any action by an employee undertaken in the performance of the employee's official duties:

(iii) Which is of substantial and specific danger to the public health or safety;

(8) "Substantial and specific danger" means a risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.