

STATE AUDITOR'S OFFICE PERFORMANCE AUDIT

Protecting Children from Sex Offenders in Child Care, Foster Care, and Schools

August 1, 2012

Report No. 1008110



WASHINGTON
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Executive Summary

Why we did this audit

The U.S. Department of Justice's statistics show sexual assault is the most commonly reported violent crime against children. Children are the victims in 70 percent of all reported sexual assaults.

Washington's state-regulated facilities and programs are designed to safeguard the public's health and welfare, and to protect the state's most vulnerable populations, such as children in child care, foster care, and schools. Criminal background checks are required for licensed, certified, and authorized child care providers, foster care providers, and school employees. State laws and agency administrative rules prohibit people who have committed certain crimes from living or working in schools and homes where children are in care.

Audits conducted in other states found a child care provider or caregiver could meet the requirements of a background check, yet still allow a sex offender to live or work within the home or facility without reporting it to the regulating agency. Those audits compared a database of sex offender addresses to child and foster care provider addresses, and discovered sex offenders living in both these settings.

We conducted this audit to determine if matching the state's sex offender registry to information on child and foster care providers and school employees would reveal similar results in Washington.

Audit question

Washington state law requires the Office of Superintendent of Public Instruction (OSPI) to conduct criminal background checks for all new school employees, and to monitor all school employees for criminal convictions quarterly using conviction data provided by the Washington State Patrol Identification and Criminal History System (WASIS).

Washington's child and foster care programs are generally required by law to conduct criminal background checks on all providers, as well as anyone aged 16 or older who lives or works in these settings. In addition, the Department of Early Learning (DEL) and the Department of Social and Health Services (DSHS) conduct regular monitoring and/or social worker visits to these providers. However, unlike OSPI, DEL and DSHS are not required to and do not conduct quarterly matching using WASIS or sex offender data.

This audit was designed to answer the following question:

Can Washington's sex offender database be used to enhance monitoring of state-regulated facilities with children?

Answer in brief

We found that even with required criminal background checks, monitoring, and/or regular social worker visits, offenders still lived in child and foster care homes undetected. By periodically comparing sex offender addresses to child and foster care homes, the state could strengthen program monitoring and better protect children in these programs.

We found neither OSPI nor the State Patrol properly implemented the statutory monitoring process. Since 2005, OSPI failed to monitor all school employees and the State Patrol did not provide OSPI with all necessary criminal conviction data, including sex offenders convicted outside of Washington. In this instance, using a separate sex offender database is not necessary, provided the State Patrol dataset is complete and all school employees are monitored.

Audit results

28 sex offenders lived in DEL or DSHS regulated or subsidized child care settings between 2002 and 2012.

- Of the 28 cases, 13 sex offenders lived in DEL or DSHS regulated homes and 15 lived in state-subsidized, but unregulated, child care settings.
- In 25 of the 28 cases, agency records indicated children were in care while sex offenders lived in the home.
- In 9 of the 28 cases, sex offenders lived undetected in providers' homes at the time of our audit.
- In 24 of the 28 cases, sex offenders went undetected because providers failed to inform agencies offenders lived in their homes. The remaining four cases involved the subsidized care program, Working Connections. In these cases, offenders did not receive background checks and were able to live in the home because administrative rules did not address situations where the child and provider share a home.

One sex offender worked as a high school janitor undetected for nine years.

- Neither OSPI nor the State Patrol completely followed the current statutory monitoring process, resulting in a school employee working as a high school janitor for nine years after he was convicted of a sex offense.
- Between 2005 and 2011, OSPI did not review all school employees in its quarterly criminal conviction monitoring, as required by law. OSPI monitored only certificated school district employees (teachers, counselors, nurses) but not classified employees (administrative or maintenance staff). Classified staff accounted for 48 percent of school district employees during the 2010-2011 school year, or about 62,000 people.
- Even if OSPI had monitored all school employees, the conviction data it received from the State Patrol was mistakenly incomplete: it did not include all offenders prohibited from working in schools or sex offenders convicted outside Washington.

Agencies reacted quickly to protect children and improve processes

When we notified DSHS, DEL, and OSPI of the matches found during this audit, they worked quickly to investigate the situation, terminate employees, remove children when necessary, revoke licenses, or discontinue subsidy payments. If a match occurred for an individual who no longer lived in a child or foster care provider's home, agencies either permanently disqualified caregivers from providing services in the future or flagged caregivers' files to show they previously allowed an offender to live in their home. Flagged providers will receive additional scrutiny if they reapply to provide services in the future.

As a result of this audit, agencies took the following actions:

- DEL and DSHS convened a workgroup to establish a quarterly address matching process. The Office of Fraud and Accountability within DSHS is working with the State Patrol to regularly compare the addresses of registered sex offenders to those of all providers serving vulnerable populations, including children but also elderly and developmentally disabled people.
- The State Patrol updated its conviction data to include revised crime codes, new crime codes of qualifying laws, and registered sex offenders, which will include offenders convicted outside of Washington.
- In April 2012, OSPI officials began checking criminal convictions of certificated and classified school employees employed since 2005. After completing the data match with the complete list of convictions from State Patrol, OSPI reported it did not identify additional employees with disqualifying convictions.

Recommendations

1. DEL and DSHS should continue to work together and develop and put in place a strategy for periodically matching registered sex offender addresses, provided by either the Washington Association of Sheriffs and Police Chiefs or the State Patrol, to those who provide care for vulnerable children and adults.
2. DEL and DSHS should ensure the databases used to identify child and foster care provider addresses for the quarterly matching process are complete and accurate.
3. DEL and DSHS should continue to work together and clarify administrative rules in the Working Connections child care program to specify who in the household is required to undergo a background check when unregulated child care providers and children receiving care live in the same home.
4. OSPI's quarterly criminal conviction monitoring must include all school employees, including certificated and classified employees.
5. The State Patrol must give OSPI complete and updated information on all convictions and guilty pleas that prohibit individuals from working in schools, including sex offenders living in Washington but convicted in other states.

What's next?

Our performance audits of state programs and services are reviewed by JLARC and by other legislative committees whose members wish to consider findings and recommendations on specific topics.

Representatives of the State Auditor's Office will review this audit with JLARC's Initiative 900 Subcommittee in Olympia. The public will have the opportunity to comment at this hearing. Please check the JLARC website for the exact date, time and location (www.leg.wa.gov/JLARC).

The State Auditor's Office conducts periodic follow-up evaluations to assess the status of recommendations and may conduct follow-up audits at its discretion.

Introduction

Audit question

Can Washington's sex offender database be used to enhance monitoring of state-regulated facilities with children?

Background

Several Washington state agencies are responsible for child care programs and keeping children safe from harm, whether at home or at school. They include the Department of Early Learning (DEL), the Department of Social and Health Services (DSHS), and the Office of Superintendent of Public Instruction (OSPI). Law enforcement agencies and the Washington Association of Sheriffs and Police Chiefs (WASPC), track and verify sex offender residences utilizing Offender Watch and the Registered Sex Offender and Kidnapping Offender Address and Residency Verification Grant Program. The Washington State Patrol (State Patrol) maintains finger-print based criminal history records, and is responsible for preparing and supplying data to OSPI that allows OSPI to conduct criminal conviction monitoring of school employees.

Offender Watch is the state's Registered Sex Offender Management and Community Notification tool.

Washington's 1990 Community Protection Act included a requirement that sex offenders register a home address with law enforcement. It also authorized law enforcement to release certain information to the public.

To help streamline the system for collecting, maintaining, and verifying offender registration information, WASPC purchased Offender Watch from a private vendor in 2008. This web-based, management and notification system allows local law enforcement agencies across the state to enter and store registered sex offender and kidnapper information in a single, automatically updated database. Offender Watch allows agencies and citizens to search for a specific offender or for offenders living near a specific address. Citizens can also receive email alerts if an offender moves near an address they specify.

Today, Offender Watch tracks more than 18,000 offenders registered in Washington. Offender Watch is used on a statewide basis by Washington and ten other states, and by hundreds of local law enforcement jurisdictions across the country.

In addition to Offender Watch, the State Patrol separately maintains its own sex offender Central Registry. The Central Registry is a finger-print based system that helps assure authentication of offenders' identities. State law requires that county sheriff's offices forward sex and kidnapping offender registration information, including changes of addresses and fingerprints, to the State Patrol. The State Patrol electronically receives this information and manually enters this data into the Central Registry, reconciling it to Offender Watch monthly. We did not review reconciliation procedures to ensure data in the State Patrol Central Registry matches data in Offender Watch.

Exhibit 1 details the various agency roles related to tracking sex offenders.

Exhibit 1 Agency roles for tracking sex offender addresses		
WASPC	State Patrol	Local law enforcement
Maintains the Offender Watch sex offender database, which includes offender addresses and social security numbers.	Maintains state criminal history information. Maintains sex offender information in the Central Registry, which is reconciled to Offender Watch.	Obtains and verifies sex offender registration information, which they enter into Offender Watch. Forwards offender registration information to the State Patrol Central Registry.

Offender Watch was strengthened by the 2009 Registered Sex Offender and Kidnapping Offender Address and Residency Verification Grant Program.

Beginning in 2009, the Legislature allocated \$5 million annually for the Registered Sex Offender and Kidnapping Offender Address and Residency Verification Grant Program (RCW 36.28A.230). It pays local law enforcement agencies, based on the number of sex offenders in the county, to conduct address verifications for all registered sex offenders. State law requires this verification every three, six, or 12 months, depending on an offender’s risk level. Before 2009, registered sex offenders were only required to check in at the local sheriff’s office on a scheduled basis.

During the audit, we interviewed a county sheriff’s program manager responsible for tracking sex offenders. This manager stated these home visits greatly improved the reliability of the address registration information in Offender Watch. Additionally, according to WASPC, the verifications done in 2009 found more than 1,400 offenders (about 8 percent of sex offenders registered statewide) did not live at the address they gave law enforcement, resulting in 835 arrests for failing to register properly. In 2010, law enforcement officers found 814 offenders did not live at their registered address, resulting in 487 arrests.

Three agencies are responsible for child welfare and education.

Our audit included three state agencies that share in the education, oversight, and protection of children in Washington. DEL and two divisions of DSHS regulate child and foster care homes, and administer unlicensed, subsidized child care programs. OSPI is the primary oversight agency for K-12 public education.

Exhibit 2, on page 9, illustrates the kinds of child care settings these agencies oversee, the level of oversight they give each program, and their recourse if caregivers or school employees fail to follow rules and regulations.

Exhibit 2 Agencies responsible for child welfare and education

Department of Early Learning

Licensing Oversight Division

In-home child care (licensed)	Child care centers (licensed)	
Provider background checks: Completed upon licensing and every three years thereafter.	Provider background checks: Completed upon licensing and every three years thereafter.	Policy development for the <i>Working Connections</i> program of unlicensed, subsidized child care, administered by DSHS's Economic Services Administration.
Provider monitoring: Completed every 18 months.	Provider monitoring: Completed annually.	
Recourse for noncompliance: Can remove children, revoke license, close facility.	Recourse for noncompliance: Can remove children, revoke license, close facility.	

Department of Social and Health Services

Children's Administration

Economic Services Administration

Unlicensed foster care (Relative care)	Licensed foster care (includes group homes)	Pre-adoptive homes	Working Connections (unlicensed, subsidized child care)
Provider background checks: One check completed upon application.	Provider background checks: Completed upon application and every three years thereafter.	Pre-adoptive homes are either licensed or unlicensed foster care homes. Provider background checks, monitoring, and agency recourse for noncompliance mirror those of the applicable provider.	Provider background checks: Completed upon application and every two years thereafter.
Provider monitoring: Monthly visits by social worker to home.	Provider monitoring: Ten percent of providers monitored annually. Monthly visits by social worker to home.		Provider monitoring: No provider monitoring.
Recourse for noncompliance: Can remove children, flag provider for further scrutiny.	Recourse for noncompliance: Can remove children, revoke license, close facility.		Recourse for noncompliance: Cannot remove children. Can withdraw subsidy, flag provider for further scrutiny, or bar from program.

Office of Superintendent of Public Instruction

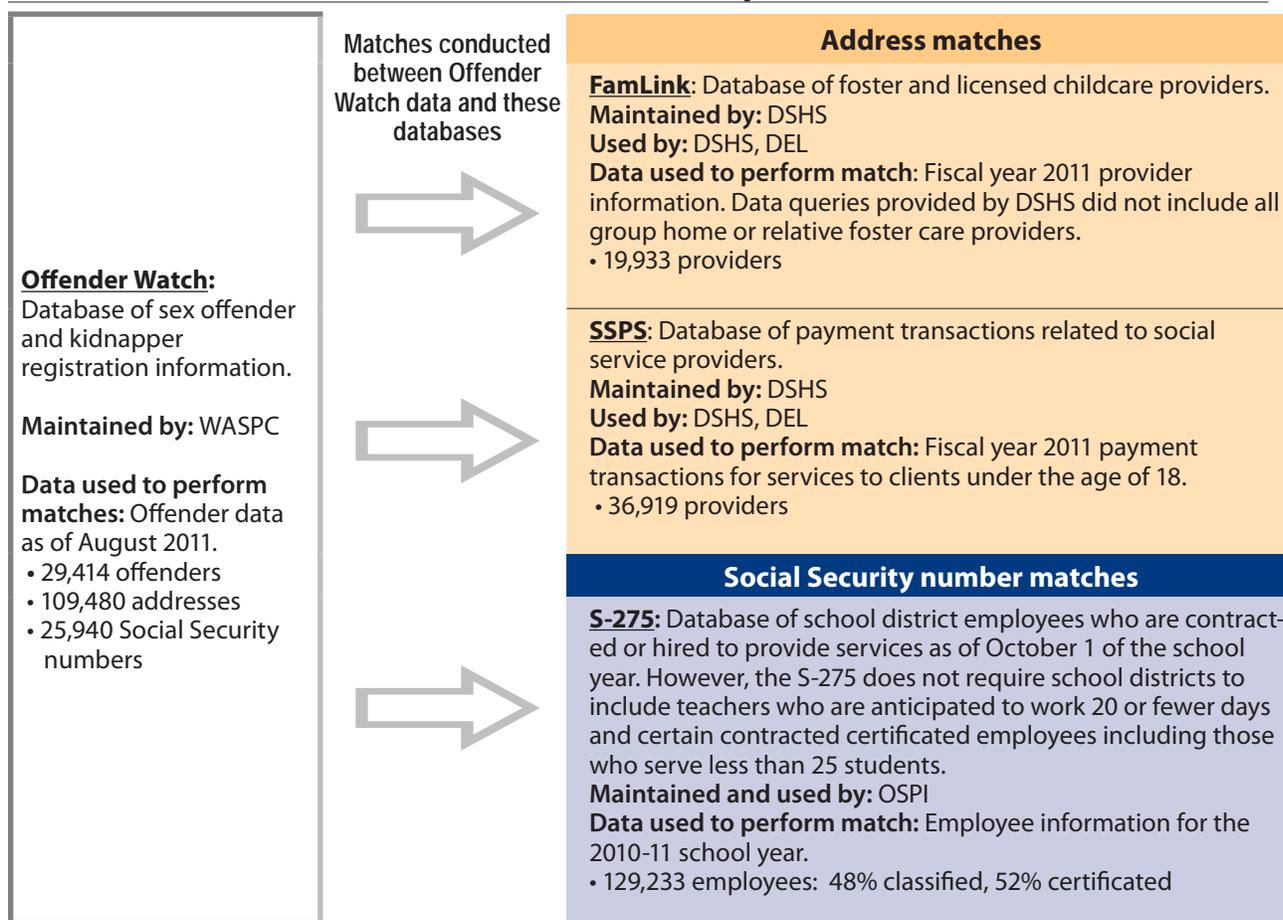
Office of Professional Practices

Type of employee: Certificated school district employees (teachers, counselors, nurses).	Type of employee: Classified school district employees (administrative, maintenance).
Employee background checks: Completed upon application for a certificate or when changing districts if the background check is more than two years old.	Employee background checks: Completed upon application for a job or when changing districts if the background check is more than two years old.
Employee monitoring: Quarterly criminal record data match.	Employee monitoring: Quarterly criminal record data match.
Recourse for noncompliance: Revoke certification, notify employee's district for investigation and dismissal.	Recourse for noncompliance: Notify employee's district for investigation and dismissal.

Audit scope and methodology

We obtained sex offender and kidnapping registration data (Offender Watch) from WASPC, which included reported offender addresses from 1990 through August 2011, and conducted an electronic data match against the data sources shown in **Exhibit 3** to determine if offenders currently or previously worked or lived in child or foster care settings or schools.

Exhibit 3 Databases and data used to perform matches



For each of the databases in **Exhibit 3**, we gained an understanding of the database and tested key data elements but determined it was not feasible to conduct tests for completeness and accuracy.

Nevertheless, we used these databases for our analyses since they were the best available source for this information. Based on our analysis, the main audit risk was that our audit would not identify all possible instances in which sex offenders lived or worked undetected in child and foster care settings and schools.

For identified matches, we did not rely solely on the data from the computer systems; we worked collaboratively with the audited agencies, WASPC, and local law enforcement. The matches served as a starting point for further investigation into whether a sex offender currently or previously lived or worked in a state facility with access to children. We relied on numerous sources of corroborating information and investigations by child care regulating agencies, school districts, and local law enforcement, which provided crucial support for our findings, conclusions, and recommendations.

For example, agencies provided the dates child and foster care providers were authorized to care for children, which we then compared to offender registration dates from WASPC. We also worked with local law enforcement agencies to confirm offender registration dates and to obtain the dates when they conducted address verifications. We confirmed school employee matches by verifying offenders' identifying information from WASPC with data from OSPI.

When we began our audit, we established protocols for how we and the audited agencies would respond to and investigate any matches we discovered. The agencies agreed to immediately investigate matches if it appeared offenders currently lived or worked with children. They also agreed to tell us the results of all investigations and about any action they took.

The Department of Corrections (Corrections) was contacted to find out if any of the offenders included in confirmed matches were under supervision while living at these addresses. Often, correctional supervision includes specific stipulations that prohibit offenders from living or having contact with children. Five offenders were under Corrections' supervision at the time of the match but did not violate their conditions of supervision.

We conducted the audit under the authority of state law (RCW 43.09.470), approved as Initiative 900 by Washington voters in 2005, and in accordance with generally accepted government auditing standards, prescribed by the U.S. Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A describes the provisions of Initiative 900 and how the audit addressed these provisions.

Audit Results

This audit examined whether the current system for protecting children in child and foster care settings and schools could be enhanced by using the state's sex offender database. We found two issues during our audit.

1. Sex offenders were able to live undetected in child and foster care settings despite DEL's and DSHS's precautions to prevent them from doing so; this was true of both state regulated and unregulated care settings. Using Washington's sex offender database to compare the addresses of registered sex offenders to the addresses of child and foster care providers could reduce the opportunities for this to happen.

2. Neither OSPI nor the State Patrol took steps to ensure the current statutory monitoring process was properly implemented, as required by state law, resulting in a school employee continuing to work as a high school janitor for nine years after he was convicted of a sex offense. In this case, using a separate sex offender database is not necessary, provided the dataset used by OSPI is complete and all school employees are monitored.

ISSUE 1: Sex offenders lived undetected in state regulated and state subsidized child or foster care settings

Issue summary

Our audit found and confirmed 28 sex offenders lived in child or foster care homes between 2002 and 2012 by matching the addresses of registered sex offenders to the addresses of caregivers. Even with required criminal background checks, regular social worker visits to regulated homes, and agency monitoring, we found that offenders still lived in child and foster care homes undetected.

In most cases, this occurred because providers did not tell DEL or DSHS staff that sex offenders lived in their home, thus avoiding required criminal background checks. In a few cases, the agency did not conduct background checks on everyone in an unregulated child care home because program rules did not address situations where the child and provider share a home. By periodically comparing sex offender addresses to addresses of child and foster care homes, the state could strengthen program monitoring and better protect children in these programs.

When we notified DEL and DSHS of the matches we found during this audit, they worked quickly to investigate the situation, terminate employees, remove children when necessary, revoke licenses, or discontinue subsidy payments. If a match occurred regarding an offender who lived at a home in the past, agencies either permanently disqualified caregivers from providing services in the future or flagged caregivers' files to show they previously allowed an offender to live in their home so they would receive additional scrutiny if they reapplied to provide services in the future.

DEL and DSHS are working to clarify administrative rules governing DSHS's unregulated child care programs. They also convened a workgroup to initiate a quarterly data match process, similar to the one used in this audit, to enhance monitoring.

Regulated vs. unregulated child care

For the purposes of this report, we categorized different care settings as regulated or unregulated.

Regulated care includes licensed child care, licensed foster care, and unlicensed foster care (relative care).

If the state discovers a regulated care setting violated program rules, options include removing the children, revoking the caregiver's license, or closing the facility. These types of care settings are regularly monitored or visited by the state.

Unregulated care includes unlicensed, subsidized care in either the child's own home or the home of a family member. Clients eligible for a subsidy can choose who will care for their child; caregivers need not be licensed by the state. Unlicensed caregivers receiving state money do not receive the same level of oversight as licensed caregivers. Although background checks are required, there is no agency monitoring.

If the state determines an unregulated caregiver violated program rules, the only recourse is to stop subsidy payments (WAC 170-290-0155 (5)). The agency cannot remove a child from an unregulated home or prevent care from continuing.

We confirmed 13 sex offenders lived in state-regulated facilities.

We confirmed that 13 sex offenders lived in state-regulated facilities, including different types of foster care settings and licensed child care homes. As shown in **Exhibit 4**, agency records indicate 11 of these sex offenders were present in the homes at the same time as children. In four cases, offenders were found in the home at the time of the audit.

Exhibit 4
Offenders found living in state-regulated child and foster care settings

Care setting	Number of offenders found	Children present when offenders lived in the home?		Oversight agency
		Yes	No	
Licensed foster care, including 1 group home and 1 pre-adoptive home	7	5	2	DSHS, Children's Administration
Unlicensed foster care (relative care), including 1 pre-adoptive home	4	4	-	
Licensed in-home child care	2	2	-	DEL
Total	13*	11	2	

Source: DSHS and DEL investigations combined with WASPC and local law enforcement information.

*In four of these cases, offenders lived in the home at the time of the audit.

Agency investigations revealed instances where sex offenders were registered as living at the home of a parent or sibling while the parent or sibling was licensed or authorized to provide child or foster care. Our matches also included instances where adult offenders returned to the homes where they were foster children, as discussed in **Example 1**.

Example 1: An offender returned to the foster home he lived in as a child

A residential group home housing six foster children allowed a former foster care resident, a 25-year-old man convicted of a sex offense, to live in the home. After the match was identified by our audit, DSHS officials spoke to the provider who told officials the man had not lived at the home since he was a foster child.

However, WASPC and local law enforcement reported the offender was registered to the address and the local sheriff's office verified his presence in the home. Based on this additional information, DSHS visited the group home to investigate further and saw the offender in the home with the foster children, who told the investigator they thought the offender worked there.

DSHS immediately closed the home pending an investigation, and relocated all six foster children. DSHS is in the process of revoking this license.

We confirmed 15 sex offenders lived in unregulated child care homes.

As shown in **Exhibit 5**, 15 sex offenders lived in unregulated homes while caregivers received state subsidies through the Working Connections program. DSHS records confirmed that 14 of the 15 offenders lived at a home while children were present. In five of those cases, offenders lived in the home during the audit, and the agency is working to permanently disqualify these caregivers from child and foster care programs and from receiving subsidies in the future.

Exhibit 5
Offenders found living in unregulated child care settings

Care setting	Number of offenders found	Children present when offender lived in the home?		Oversight Agency
		Yes	No	
Unregulated child care homes	15*	14	1	DSHS, Economic Services Administration

Source: DSHS investigations combined with WASPC and local law enforcement information.

*In five of these cases, offenders lived in the home at the time of the audit.

Children served by the Working Connections program are not in the care of the state. The program, administered by DSHS’s Economic Services Administration, helps eligible families pay for child care while parents work or attend job training and educational programs. The program does not require that child care providers be licensed if a parent chooses child care provided in the caregiver’s or child’s home.

In several of these cases, the caregiver and the offender were related, as illustrated by **Example 2**.

Example 2: Caregivers are often related to the offender

We matched the address of an offender to an unregulated home while children were in care: the caregiver was also the offender’s mother. After we reported the match to DSHS, they launched an investigation, during which the caregiver told DSHS investigators her son did not live at her home.

However, when local law enforcement asked her to give a statement confirming the offender was not living at the address, she admitted he did live in her home.

DSHS stopped the subsidy and the caregiver is not eligible to receive subsidies for providing child care in the future.

In all cases, the agencies reacted quickly.

When we notified DSHS and DEL of the matches we found during this audit, they investigated the situation and, if necessary, removed children. Depending on the results of their investigations and the rules governing the child or foster care setting, agencies suspended or revoked the provider’s license, or discontinued subsidy payments. Where the match indicated an offender still lived at a home, the agency contacted the provider and, in some cases, visited the home.

For cases where caregivers were no longer licensed or providing services, the agencies flagged caregivers' files and records to note that an offender had lived in the home in the past. These flags signal that these caregivers must receive additional scrutiny should they ever reapply as a child or foster care provider, or note that they are permanently disqualified from the agencies' child and foster care programs.

In three of the foster care setting matches, DSHS either did not revoke a license or could not remove children.

- In the first case, two offenders lived in a foster home where they had been foster children. Both offenders had recently aged out of foster care, but the provider allowed them to register at the address and visit the home. DSHS staff discussed the issue with the foster parents, who signed a compliance agreement stating they would not allow offenders to live or stay in the home if they have aged out of the foster care system. DSHS decided not to suspend the license.
- In the second case, we discovered a sex offender lived in a licensed foster home for nine months with a foster child. The foster child was eventually adopted. Shortly after the adoption was made final, the adoptive mother married the offender, who is now the child's stepfather. DSHS revoked the foster care provider's license, but was unable to remove the child because the adoption is final. DSHS reported the ensuing investigation did not indicate that the child's safety was in jeopardy. DSHS has no authority to remove children from their adoptive families without such indication.
- In the third case, the agency placed a child in an unlicensed relative foster care home while a sex offender lived there. The child was eventually adopted by the family. Even though the offender still lives at the home with the child, DSHS cannot remove the child because the adoption is final. DSHS reported the ensuing investigation did not indicate that the child's safety was in jeopardy. DSHS has no authority to remove children from their adoptive families without such indication.

In most cases, caregivers failed to tell DEL or DSHS sex offenders lived in their homes.

For most of the cases we reviewed, offenders were able to live in child and foster care settings because providers did not tell DSHS and DEL sex offenders lived in their homes. According to administrative rules and agency policies, all providers who care for children outside the child's home must tell DEL or DSHS when anyone aged 16 or older* lives in or moves into the home so required criminal background checks can be conducted. However, when providers do not accurately report all household members, agencies may inadvertently authorize child or foster care in the home even if a disqualifying person is present. The caregiver's failure to comply with the terms of the license or subsidy agreement compromises the state's ability to keep children safe.

** Effective March 31, 2012, administrative rules for licensed child care homes changed to include background checks for all household members aged 13 years or older.*

In four instances, administrative rules did not address situations where child and provider share a home.

In these instances, sex offenders lived undetected in unregulated subsidized homes because administrative rules did not address situations where child and provider share a home. Administrative rules are clear that when the caregiver comes to the child's home, only the caregiver must be checked, and when the child goes to the caregiver's home, background checks are required for all household members 16 and older. It was unclear what rule should apply when child and provider share the home. DEL and DSHS are currently considering potential changes to clarify rules regarding subsidized child care homes.

As a result of this audit, DEL and DSHS are working together to improve the way they check applicants and monitor providers.

DEL and DSHS convened a workgroup to establish a quarterly address matching process. The Office of Fraud and Accountability within DSHS is working with the State Patrol to regularly compare the addresses of registered sex offenders with all providers serving vulnerable populations, including child and foster care providers and those caring for elderly and developmentally disabled adults. While the background check process helps keep offenders out of care settings if providers are honest with agencies, the quarterly address match can provide extra assurance that sex offenders do not live in providers' homes.

DEL and DSHS also developed procedures that allow them to electronically flag provider files for future eligibility considerations. They apply this flag to providers with a history of dishonest or disqualifying behavior, such as allowing a sex offender to live in their homes while providing child or foster care. According to DEL, it reviews each flagged provider on a case-by-case basis to determine continued eligibility. DEL and DSHS already have the ability to permanently disqualify providers from receiving subsidies. They have disqualified many noncompliant caregivers found in the course of this audit.

Recommendations

Despite a required criminal background check process and monitoring, we found that offenders can live undetected in child and foster care homes. Even when a program calls for regular monitoring, if new household members are not present during a monitoring visit, the social worker or agency monitor must rely on the provider to tell them an offender is living in the home. By periodically comparing sex offender addresses to child and foster care homes, the state could better protect children in these programs.

To ensure that children are safe from sex offenders in child and foster care settings, DEL and DSHS should continue to work together and:

- 1. Develop and put in place a strategy for periodically matching registered sex offender addresses, provided by either WASPC or the State Patrol, to those who provide care for vulnerable children and adults.**
- 2. Ensure the databases used to identify child and foster care provider addresses for the quarterly matching process are complete and accurate.**
- 3. Clarify administrative rules in the Working Connections child care program to specify who in the household is required to undergo a background check when unregulated child care providers and children receiving care live in the same home.**

ISSUE 2: A sex offender worked undetected in a school for nine years

Issue summary

A sex offender worked as a high school janitor for nine years because OSPI and State Patrol failed to fully follow processes in state law designed to detect school employees whose convictions take place after they are hired. This happened for two reasons. First, OSPI's quarterly criminal conviction monitoring was incomplete: the agency understood the law applied only to certificated staff instead of all school employees. Second, the State Patrol supplied incomplete data for OSPI to use for their monitoring checks: it did not include all convictions that disqualify someone from working in a school or sex offenders living in Washington but convicted in another state.

When we told OSPI about the employee, the school district was notified immediately. It placed the employee on administrative leave and later terminated the employee from the position.

As a result of this audit, the State Patrol updated conviction data it sends to OSPI to include revised crime codes, new crime codes of qualifying laws, and registered sex offenders, which will include offenders convicted outside of Washington. It is therefore unnecessary for OSPI to use a separate sex offender database in its monitoring.

A sex offender worked undetected in a high school for nine years.

By comparing the Social Security numbers of registered sex offenders in Offender Watch to those of all Washington public school employees, we found a convicted sex offender working as a classified employee in a high school. According to OSPI, the school district hired him as a janitor in 2000 after a clean criminal background check. In 2002, he was convicted of voyeurism but continued working until our audit identified him in 2011. When we told OSPI of our discovery, school district officials promptly placed him on administrative leave and later terminated his employment, as state law requires.

Changes to state law transferred the responsibility for identifying prohibited employees to OSPI.

In 2002, the year the janitor was convicted, the process and responsibility for identifying school employees with criminal convictions that prohibit continued employment were different than they are today. In 2002, prosecuting attorneys were responsible for determining if a convicted offender was a school district employee, and informing the State Patrol. The State Patrol then passed the information to OSPI, which informed the school district and the State Board of Education.

In 2005, the Legislature amended the law (RCW 43.43.845) and made OSPI responsible for identifying school employees with prohibited criminal backgrounds. In today's process, the prosecuting attorney informs the State Patrol of all relevant guilty pleas and convictions, and the State Patrol passes these electronic database records to OSPI. OSPI is responsible for using the Patrol's information to complete quarterly criminal conviction reviews to discover current school district employees with prohibiting convictions.

Between 2005 and 2011, OSPI did not check all school employees for criminal convictions.

OSPI officials told us that since 2005, they operated with the understanding that state law required quarterly criminal conviction reviews of only certificated employees (teachers, nurses, and counselors), but not classified employees (administrative and maintenance staff). About 48 percent of school employees are classified staff, which means OSPI did not monitor almost half of all employees as required by law since 2005. The State Attorney General's Office confirmed the law requires OSPI to review all school employees.

The data supplied by the State Patrol did not include all required convictions.

When OSPI reviewed the criminal convictions data it received from the State Patrol for school employees dating back to 2005, it was unable to find the janitor. State Patrol officials said the list of convictions sent to OSPI between 2005 and 2011 was incomplete because the data query did not include revised crime codes or new crime codes of qualifying laws. In the case of the janitor, that particular conviction was not included because it was a revised code.

The State Patrol reported the incomplete criminal conviction data sent to OSPI prior to our audit only included 61,893 charges related to 47,150 individuals for 142 laws. The updated criminal conviction data now includes 460,040 charges related to 262,180 individuals for 568 laws.

As a result of our audit, in April 2012, OSPI officials began checking criminal convictions of certificated and classified school employees employed since 2005. After completing the data match with the complete list of convictions from the State Patrol, OSPI did not identify additional employees with disqualifying convictions.

Recommendations

To comply with state law and ensure sex offenders and individuals with prohibited criminal convictions do not work in schools:

1. **OSPI's quarterly criminal conviction monitoring must include all school employees including certificated and classified employees.**
2. **The State Patrol must give OSPI complete and updated information on all convictions and guilty pleas that prohibit individuals from working in schools, including sex offenders living in Washington but convicted in other states.**



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

July 27, 2012

The Honorable Brian Sonntag
Washington State Auditor
P.O. Box 40021
Olympia, WA 98504-0021

Dear Auditor Sonntag:

Thank you for the opportunity to respond to the State Auditor's Office performance audit report on *Protecting Children from Sex Offenders in Child Care, Foster Care, and Schools* that we received on July 13, 2012. The Office of Financial Management worked with the Department of Social and Health Services (DSHS), Department of Early Learning (DEL) and the Washington State Patrol (WSP) to provide a consolidated response. The Office of Superintendent of Public Instruction (OSPI) will respond separately.

We are committed to making sure that Washington's sex offender databases are used as effectively as possible to strengthen monitoring of state-regulated or licensed facilities where children are present. For context, it is important to note that DSHS is responsible for more than 8,000 children in foster care and 5,794 children in unregulated (exempt from licensing) child care. In addition, DEL monitors licensed care providers serving up to 170,000 children.

The safety of children has been one of Governor Gregoire's top priorities since her days as Attorney General. Agencies are dedicated to correcting any deficiencies noted in the findings of the performance audit. In fact, as you noted in your report, "agencies reacted quickly to protect children and improve processes." DSHS, DEL and OSPI worked quickly to investigate the cases identified in your audit. They then took appropriate actions, including terminating employees, removing children when necessary, revoking licenses or discontinuing subsidy payments. In addition, WSP has made significant process changes to improve the reliability of data used by OSPI.

We take very seriously our responsibility to ensure that no child's safety is ever jeopardized while he or she is in child care or foster care. As noted in your audit and detailed in the attached response, agencies worked together diligently and swiftly to carry out the recommendations outlined in your report. These actions — combined with numerous other safeguards already in place — will help in our efforts to ensure the safety of children in child care and foster care.



The Honorable Brian Sonntag
July 27, 2012
Page 2 of 2

On behalf of the Cabinet agencies audited in this report, I thank the staff of the State Auditor's Office. It is clear that many hours of work were performed during this audit, and we appreciate the collaborative nature in which it was conducted.

Sincerely,



Marty Brown
Director

Attachment

cc: Marty Loesch, Chief of Staff, Office of the Governor
Fred Olson, Deputy Chief of Staff, Office of the Governor
Bette Hyde, Director, Department of Early Learning
Robin Arnold-Williams, Secretary, Department of Social and Health Services
John Batiste, Chief, Washington State Patrol
The Honorable Randy Dorn, Superintendent of Public Instruction
Bernie Warner, Secretary, Department of Corrections
Stan Marshburn, Deputy Director, Office of Financial Management
Kari Burrell, Director, Executive Policy Office, Office of the Governor
Wendy Korthuis-Smith, Director, Accountability & Performance, Office of the Governor
Sheri Sawyer, Performance Audit Liaison, Accountability & Performance, Office of the Governor

OFFICIAL STATE CABINET AGENCY RESPONSE TO THE PERFORMANCE AUDIT ON PROTECTING CHILDREN FROM SEX OFFENDERS IN CHILD CARE, FOSTER CARE, AND SCHOOLS

JULY 27, 2012

This coordinated management response is provided by the Office of Financial Management for the audit report received July 13, 2012, on behalf of the following Governor's Cabinet agencies: Department of Early Learning (DEL), Department of Social and Health Services (DSHS) and Washington State Patrol (WSP).

ISSUE 1: Sex offenders lived undetected in state-regulated and state-subsidized child or foster care settings.

RECOMMENDATION: DEL and DSHS should work together to develop and put in place a strategy for periodically matching registered sex offenders' addresses provided by either the Washington Association of Sheriffs & Police Chiefs or the WSP to those who provide care for vulnerable children and adults.

RESPONSE

As stated in the audit report, DEL and DSHS immediately convened a workgroup to establish a quarterly address-matching process. The Office of Fraud and Accountability in DSHS worked directly with the WSP to compare the addresses of registered sex offenders with all providers serving vulnerable populations, including child and foster care providers and those caring for elderly and people with developmental disabilities.

The first automated match was completed in July 2012 and will be conducted quarterly. The October 2012 match will be expanded to include foster care addresses.

If a provider address matches a reported sex offender address, DEL and/or the DSHS's Office of Fraud and Accountability will immediately investigate the match and take appropriate action, including removing children when necessary, revoking licenses and/or stopping subsidy payments.

DEL and DSHS have the authority to permanently disqualify providers from receiving subsidies, and have already disqualified noncompliant caregivers found in the course of this audit.

This automated quarterly match, one of many tools DSHS uses to ensure child and vulnerable adult safety, will help ensure sex offenders do not live in a care provider's home.

Action Steps and Time Frame

- DEL and DSHS immediately convened a workgroup to establish a quarterly address-matching process. Implemented and ongoing.

RECOMMENDATION: DSHS and DEL should work together to ensure the databases they use to identify child care and foster care addresses for the quarterly matching process are complete and accurate.

RESPONSE

We believe this recommendation applies only to DSHS because, as noted in your report, DSHS maintains both the FamLink and SSPS databases. DSHS identified several data processing issues when sharing database information with the State Auditor's Office during this audit. The issues were remedied immediately, and DSHS submitted accurate, complete data to assist with the audit work. The revised process will be used in subsequent automated matches, and verified by DSHS prior to certifying results. DSHS will continue to improve its processes as the department gains experience with the information and related nuances connected to matching large data sources.

Action Steps and Time Frame

- As noted above, DSHS has put in place an improved process to help ensure the use of complete and accurate databases. Implemented and ongoing.

RECOMMENDATION: DEL and DSHS should work together to clarify the administrative rules in the Working Connections Child Care program to specify who in the household is required to undergo a background check when unregulated child care providers and children receiving care live in the same home.

RESPONSE

Your report states there were four instances where a sex offender lived undetected in unregulated subsidized homes. In one of these situations, the provider was the biological parent of the child. It is important to note that during the past several years, there has been an average of 10,000 exempt-care providers (relative and non-relative caregivers — referred to as unregulated care in this report) annually. The current rule is clear as to who is required to undergo a background check; however, it does not take into account every possible scenario. DEL, in cooperation with DSHS, has already started working to develop clarifying changes to the administrative rules in Working Connections Child Care.

Action Steps and Time Frame

- DEL, working with DSHS, will expand the rule to include policy on background checks when the provider is a member of the parent's and child's household. March 2013.

ISSUE 2: A sex offender worked undetected in a school for nine years.

RECOMMENDATION: OSPI's quarterly criminal conviction monitoring must include all school employees, including certificated and classified employees, and all part-time and contracted employees.

RESPONSE

Please see separate response from the Office of Superintendent of Public Instruction (OSPI).

RECOMMENDATION: WSP must give OSPI complete information on all convictions and guilty pleas that prohibit individuals from working in schools, including sex offenders living in Washington but convicted in other states.

RESPONSE

Although WSP was providing OSPI a quarterly data extract file as outlined in state law, it was revealed during this audit that WSP was not including expired crime codes and/or new crime codes for qualifying offenses since implementation in 2005. We acknowledge that although WSP was not providing the sex and kidnapping offender registry, it was not required to do so because such action was not specifically outlined in statute.

Action Steps and Time Frame

- WSP updated its quarterly data-extract process to include all current, expired and new crime codes and the sex and kidnapping offender registry in the quarterly data extract file sent to OSPI. Procedures have been updated to ensure all new and expired crime codes will remain part of the data file extract on an annual basis after each legislative session. Implemented and ongoing.
- WSP provided OSPI with an updated data extract file that included all subsets of each qualifying Revised Code of Washington as outlined in statute, including expired crime codes and the sex and kidnapping offender registry. Implemented and ongoing.
- WSP worked with OSPI and updated the agreement between the two agencies for the quarterly data-extract file to include the sex and kidnapping offender registry information as part of the file, in addition to a few additional fields. Implemented and ongoing.



SUPERINTENDENT OF PUBLIC INSTRUCTION

Randy I. Dorn Old Capitol Building · PO BOX 47200 · Olympia, WA 98504-7200 · <http://www.k12.wa.us>

July 25, 2012

Brian Sonntag, State Auditor
Insurance Building – Capital Campus
302 Sid Snyder Ave. SW
Olympia, WA 98504-0021

Dear Auditor Sonntag:

Thank you for the opportunity to provide a response to your performance audit, “Protecting Children from Sex Offenders in Child Care, Foster Care and Schools.” I appreciate the importance of this work. Student safety has always been—and remains—a top priority. Nothing is more important than children being safe in our schools.

It is my strong belief that the current system is working as intended and that children are safe at school. Fingerprinting is required for all school district employees and the Office of Superintendent of Public Instruction (OSPI) monitors the criminal conviction database provided by the Washington State Patrol (WSP) and alerts school districts if a match is found in their employee database.

Your report noted one recommendation for OSPI. The recommendation stated that OSPI’s quarterly criminal conviction monitoring must include all school employees—certificated and classified. When it was identified that the data set that had been matched included only certificated employees, I immediately directed my staff to review all employee records back to 2005.

There are over 120,000 employees working in our schools each year. We have reviewed all reported employees who have worked in schools at some point between 2005 and 2012, regardless of their current employment. This means that every record from the WSP was compared with over 650,000 employee records. No instances of convicted sex offenders were found.

I have also directed my staff to meet with WSP staff on an ongoing, regular basis to review the coordination of data and the corresponding processing of that data between our two agencies. I appreciate the responsiveness and cooperation we have received from the WSP throughout this audit.

Sincerely,

Randy I. Dorn
State Superintendent
of Public Instruction

Appendix A: Initiative 900

Initiative 900, approved by Washington voters in 2005 and enacted into state law in 2006, authorized the State Auditor’s Office to conduct independent, comprehensive performance audits of state and local governments.

Specifically, the law directs the Auditor’s Office to “review and analyze the economy, efficiency, and effectiveness of the policies, management, fiscal affairs, and operations of state and local governments, agencies, programs, and accounts.” Performance audits are to be conducted according to U.S. General Accountability Office government auditing standards.

In addition, the law identifies nine elements that are to be considered within the scope of each performance audit. The State Auditor’s Office evaluates the relevance of all nine elements to each audit. The table below indicates which elements are addressed in the Protecting Children from Sex Offenders in Child Care, Foster Care, and Schools audit. Specific issues are discussed in the Audit Results and Recommendations sections of this report.

I-900 Element	Addressed in the Audit
1. Identification of cost savings	No. The report identifies whether sex offenders lived or worked undetected in homes or facilities where children were present, and whether the sex offender database could be used to enhance existing monitoring or background checks.
2. Identification of services that can be reduced or eliminated	No. The purpose of the audit was to determine if the monitoring of state regulated facilities could be enhanced and did not consider the reduction or elimination of services.
3. Identification of programs or services that can be transferred to the private sector	No. The practices we recommend to enhance existing provider monitoring and background checks are carried out by state agencies.
4. Analysis of gaps or overlaps in programs or services and recommendations to correct gaps or overlaps	Yes. This audit found the current monitoring and background checks completed to ensure the safety of children in schools, foster care, and child care could be enhanced to better protect children through periodic data matching using the sex offender registry.
5. Feasibility of pooling information technology systems within the department	No. The practices we recommend to enhance existing provider monitoring and background checks do not require the pooling of information systems.
6. Analysis of the roles and functions of the department, and recommendations to change or eliminate departmental roles or functions	Yes. We recommend the Office of Fraud and Accountability at DSHS complete periodic matches of sex offender and provider addresses for vulnerable populations served through DSHS and DEL. We also recommend OSPI include all school district employees in their quarterly criminal conviction monitoring of school district employees.
7. Recommendations for statutory or regulatory changes that may be necessary for the department to properly carry out its functions	No. The practices we recommend to enhance existing provider monitoring and background checks do not require statutory or regulatory changes at this time.
8. Analysis of departmental performance data, performance measures, and self-assessment systems	No. This was not in the scope of the audit.
9. Identification of best practices	Yes. The audit identifies leading practices to enhance provider monitoring and background checks to better protect children in the state.

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The State Auditor's Office Mission

The State Auditor's Office independently serves the citizens of Washington by promoting accountability, fiscal integrity and openness in state and local government. Working with these governments and with citizens, we strive to ensure the efficient and effective use of public resources.