
HOUSE BILL 2055

State of Washington 52nd Legislature 1991 Regular Session

By Representative Braddock.

Read first time February 20, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to criminal history background checks; amending RCW
2 43.43.834, 43.43.842, and 9.94A.230; creating a new section; providing
3 an effective date; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that some
6 individuals who have been convicted of certain crimes listed in RCW
7 43.43.830 should have the opportunity to be gainfully employed if they
8 have become rehabilitated.

9 **Sec. 2.** RCW 43.43.834 and 1990 c 3 s 1103 are each amended to read
10 as follows:

11 (1) A business or organization shall not make an inquiry to the
12 Washington state patrol under RCW 43.43.832 or an equivalent inquiry to
13 a federal law enforcement agency unless the business or organization

1 has notified the applicant who has been offered a position as an
2 employee or volunteer, that an inquiry may be made.

3 (2) A business or organization shall require each applicant to
4 disclose to the business or organization whether the applicant has
5 been:

6 (a) Convicted of any crime against children or other persons;

7 (b) Convicted of crimes relating to financial exploitation if the
8 victim was a vulnerable adult;

9 (c) Found in any dependency action under RCW 13.34.040 to have
10 sexually assaulted or exploited any minor or to have physically abused
11 any minor;

12 (d) Found by a court in a domestic relations proceeding under Title
13 26 RCW to have sexually abused or exploited any minor or to have
14 physically abused any minor;

15 (e) Found in any disciplinary board final decision to have sexually
16 or physically abused or exploited any minor or developmentally disabled
17 person or to have abused or financially exploited any vulnerable adult;
18 or

19 (f) Found by a court in a protection proceeding under chapter 74.34
20 RCW, to have abused or financially exploited a vulnerable adult.

21 The disclosure shall be made in writing and signed by the applicant
22 and sworn under penalty of perjury. The disclosure sheet shall specify
23 all crimes against children or other persons and all crimes relating to
24 financial exploitation as defined in RCW 43.43.830 in which the victim
25 was a vulnerable adult.

26 (3) The business or organization shall pay such reasonable fee for
27 the records check as the state patrol may require under RCW 43.43.838.

28 (4) The business or organization shall notify the applicant of the
29 state patrol's response within ten days after receipt by the business

1 or organization. The employer shall provide a copy of the response to
2 the applicant and shall notify the applicant of such availability.

3 (5) The business or organization shall use this record only in
4 making the initial employment or engagement decision. Further
5 dissemination or use of the record is prohibited. A business or
6 organization violating this subsection is subject to a civil action for
7 damages.

8 (6) An insurance company shall not require a business or
9 organization to request background information on any employee before
10 issuing a policy of insurance.

11 (7) The business and organization shall be immune from civil
12 liability for failure to request background information on an applicant
13 unless the failure to do so constitutes gross negligence.

14 (8)(a) A business or organization that is considering the hire of
15 prospective employees or volunteers may determine that the prospective
16 employee or volunteer convicted of a crime, eligible for review under
17 RCW 43.43.830, is rehabilitated.

18 (b) The crimes that are eligible for review under RCW 43.43.830, by
19 a business or organization, are assault third degree, simple assault,
20 malicious harassment, prostitution, unlawful imprisonment,
21 communication with a minor, custodial interference second degree, and
22 vehicular homicide.

23 (c) The department of health in cooperation with the department of
24 corrections shall develop the standards for determining rehabilitation.

25 (d) A prospective employee or volunteer convicted of more than one
26 of the eligible crimes is not determined to have been rehabilitated.

27 (e) A business or organization that makes a good faith effort to
28 determine that a prospective employee or volunteer, convicted of one of
29 the eligible crimes, has been rehabilitated is immune from civil
30 liability for employing the prospective employee or volunteer.

1 **Sec. 3.** RCW 43.43.842 and 1989 c 334 s 11 are each amended to read
2 as follows:

3 The secretary of social and health services shall adopt additional
4 requirements for the licensure or relicensure of agencies or facilities
5 which provide care and treatment to vulnerable adults(~~(-)~~): PROVIDED,
6 That, these additional requirements shall ensure that any person
7 associated with a licensed agency or facility (~~(having direct contact~~
8 with a vulnerable adult)) shall not within the past ten years for a
9 class B felony, or within the past five years for a class C felony, or
10 within the past three years for a misdemeanor have been: (1) Convicted
11 of a crime against persons as defined in RCW 43.43.830, except that a
12 facility that determines, pursuant to RCW 43.43.834, that a prospective
13 employee or volunteer is rehabilitated is not subject to fines or
14 sanctions by the secretary of social and health services for employing
15 the prospective employee or volunteer; (2) convicted of crimes relating
16 to financial exploitation of a vulnerable adult as defined in RCW
17 43.43.830; (3) found in any disciplinary board final decision to have
18 abused a vulnerable adult under RCW 43.43.830; or (4) the subject in a
19 protective proceeding under chapter 74.34 RCW.

20 In consultation with law enforcement personnel, the secretary of
21 social and health services shall investigate the conviction record and
22 the protection proceeding record information under chapter 43.43 RCW of
23 each agency or facility and its staff seeking licensure or relicensure.
24 The secretary shall use the information solely for the purpose of
25 determining eligibility for licensure or relicensure. Criminal justice
26 agencies shall provide the secretary such information as they may have
27 and that the secretary may require for such purpose.

28 **Sec. 4.** RCW 9.94A.230 and 1987 c 486 s 7 are each amended to read
29 as follows:

1 (1) Every offender who has been discharged under RCW 9.94A.220 may
2 apply to the sentencing court for a vacation of the offender's record
3 of conviction. If the court finds the offender meets the tests
4 prescribed in subsection (2) of this section, the court may clear the
5 record of conviction by: (a) Permitting the offender to withdraw the
6 offender's plea of guilty and to enter a plea of not guilty; or (b) if
7 the offender has been convicted after a plea of not guilty, by the
8 court setting aside the verdict of guilty; and (c) by the court
9 dismissing the information or indictment against the offender.

10 (2) An offender may not have the record of conviction cleared if:
11 (a) There are any criminal charges against the offender pending in any
12 court of this state or another state, or in any federal court; (b) the
13 offense was a violent offense as defined in RCW 9.94A.030; (c) ~~((the~~
14 ~~offense was a crime against persons as defined in RCW 43.43.830; (d))~~
15 the offender has been convicted of a new crime in this state, another
16 state, or federal court since the date of the offender's discharge
17 under RCW 9.94A.220; ~~((+e))~~ (d) the offense is a class B felony and
18 less than ten years have passed since the date the applicant was
19 discharged under RCW 9.94A.220; and ~~((+f))~~ (e) the offense was a class
20 C felony and less than five years have passed since the date the
21 applicant was discharged under RCW 9.94A.220.

22 (3) Once the court vacates a record of conviction under subsection
23 (1) of this section, the fact that the offender has been convicted of
24 the offense shall not be included in the offender's criminal history
25 for purposes of determining a sentence in any subsequent conviction,
26 and the offender shall be released from all penalties and disabilities
27 resulting from the offense. For all purposes, including responding to
28 questions on employment applications, an offender whose conviction has
29 been vacated may state that the offender has never been convicted of

1 that crime. Nothing in this section affects or prevents the use of an
2 offender's prior conviction in a later criminal prosecution.

3 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and shall take
6 effect July 1, 1991.