
HOUSE BILL 3103

State of Washington 60th Legislature 2008 Regular Session

By Representative Darneille

Read first time 01/22/08. Referred to Committee on Education.

1 AN ACT Relating to crimes that require dismissal or certificate
2 revocation for school employees; amending RCW 28A.400.320, 28A.400.330,
3 28A.405.470, 28A.410.090, 28A.410.110, 9.96A.020, and 43.43.845; and
4 adding a new section to chapter 28A.400 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.400
7 RCW to read as follows:

8 (1) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3),
9 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or
10 conviction occurring after July 23, 1989, and before the effective date
11 of this section, for any of the following felony crimes:

12 (a) Any felony crime involving the physical neglect of a child
13 under chapter 9A.42 RCW;

14 (b) The physical injury or death of a child under chapter 9A.32 or
15 9A.36 RCW, except motor vehicle violations under chapter 46.61 RCW;

16 (c) Sexual exploitation of a child under chapter 9.68A RCW;

17 (d) Sexual offenses under chapter 9A.44 RCW where a minor is the
18 victim;

19 (e) Promoting prostitution of a minor under chapter 9A.88 RCW;

1 (f) The sale or purchase of a minor child under RCW 9A.64.030;

2 (g) Violation of laws of another jurisdiction that are similar to
3 those specified in (a) through (f) of this subsection.

4 (2) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3),
5 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or
6 conviction occurring on or after the effective date of this section,
7 for any of the following felony crimes or attempts, conspiracies, or
8 solicitations to commit any of the following felony crimes:

9 (a) A felony violation of chapter 9A.42 RCW involving physical
10 neglect;

11 (b) A felony violation of chapter 9A.32 RCW;

12 (c) A violation of RCW 9A.36.011, assault 1; 9A.36.021, assault 2;
13 9A.36.120, assault of a child 1; 9A.36.130, assault of a child 2; or
14 any other felony violation of chapter 9A.36 RCW involving physical
15 injury;

16 (d) A sex offense as defined in RCW 9.94A.030;

17 (e) A violation of RCW 9A.40.020, kidnapping 1; or 9A.40.030,
18 kidnapping 2;

19 (f) A violation of RCW 9A.64.030, child selling or child buying;

20 (g) A violation of RCW 9A.88.070, promoting prostitution 1;

21 (h) A violation of RCW 9A.56.200, robbery 1; or

22 (i) A violation of laws of another jurisdiction that are similar to
23 those specified in (a) through (h) of this subsection.

24 **Sec. 2.** RCW 28A.400.320 and 1990 c 33 s 383 are each amended to
25 read as follows:

26 (1) The school district board of directors shall immediately
27 terminate the employment of any classified employee who has contact
28 with children during the course of his or her employment upon a guilty
29 plea or conviction of any felony crime (~~(involving the physical neglect~~
30 ~~of a child under chapter 9A.42 RCW, the physical injury or death of a~~
31 ~~child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations~~
32 ~~under chapter 46.61 RCW), sexual exploitation of a child under chapter~~
33 ~~9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the~~
34 ~~victim, promoting prostitution of a minor under chapter 9A.88 RCW, the~~
35 ~~sale or purchase of a minor child under RCW 9A.64.030, or violation of~~
36 ~~similar laws of another jurisdiction)) specified under section 1 of
37 this act.~~

1 (2) The employee shall have a right of appeal under chapter 28A.645
2 RCW including any right of appeal under a collective bargaining
3 agreement.

4 **Sec. 3.** RCW 28A.400.330 and 1989 c 320 s 4 are each amended to
5 read as follows:

6 The school district board of directors shall include in any
7 contract for services with an entity or individual other than an
8 employee of the school district a provision requiring the contractor to
9 prohibit any employee of the contractor from working at a public school
10 who has contact with children at a public school during the course of
11 his or her employment and who has pled guilty to or been convicted of
12 any felony crime (~~((involving the physical neglect of a child under
13 chapter 9A.42 RCW, the physical injury or death of a child under
14 chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under
15 chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A
16 RCW, sexual offenses under chapter 9A.44 RCW where a minor is the
17 victim, promoting prostitution of a minor under chapter 9A.88 RCW, the
18 sale or purchase of a minor child under RCW 9A.64.030, or violation of
19 similar laws of another jurisdiction))~~ specified under section 1 of
20 this act. The contract shall also contain a provision that any failure
21 to comply with this section shall be grounds for the school district
22 immediately terminating the contract.

23 **Sec. 4.** RCW 28A.405.470 and 1990 c 33 s 405 are each amended to
24 read as follows:

25 The school district shall immediately terminate the employment of
26 any person whose certificate or permit authorized under chapter 28A.405
27 or 28A.410 RCW is subject to revocation under RCW 28A.410.090(~~((2))~~)
28 (3) upon a guilty plea or conviction of any felony crime (~~((involving
29 the physical neglect of a child under chapter 9A.42 RCW, the physical
30 injury or death of a child under chapter 9A.32 or 9A.36 RCW (except
31 motor vehicle violations under chapter 46.61 RCW), sexual exploitation
32 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44
33 RCW where a minor is the victim, promoting prostitution of a minor
34 under chapter 9A.88 RCW, the sale or purchase of a minor child under
35 RCW 9A.64.030, or violation of similar laws of another jurisdiction))~~)
36 specified under section 1 of this act. Employment shall remain

1 terminated unless the employee successfully prevails on appeal. This
2 section shall only apply to employees holding a certificate or permit
3 who have contact with children during the course of their employment.

4 **Sec. 5.** RCW 28A.410.090 and 2005 c 461 s 2 are each amended to
5 read as follows:

6 (1)(a) Any certificate or permit authorized under the provisions of
7 this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may
8 be revoked or suspended by the authority authorized to grant the same
9 based upon a criminal records report authorized by law, or upon the
10 complaint of any school district superintendent, educational service
11 district superintendent, or private school administrator for
12 immorality, violation of written contract, unprofessional conduct,
13 intemperance, or crime against the law of the state.

14 (b) If the superintendent of public instruction has reasonable
15 cause to believe that an alleged violation of this chapter or rules
16 adopted under it has occurred based on a written complaint alleging
17 physical abuse or sexual misconduct by a certificated school employee
18 filed by a parent or another person, but no complaint has been
19 forwarded to the superintendent by a school district superintendent,
20 educational service district superintendent, or private school
21 administrator, and that a school district superintendent, educational
22 service district superintendent, or private school administrator has
23 sufficient notice of the alleged violation and opportunity to file a
24 complaint, the superintendent of public instruction may cause an
25 investigation to be made of the alleged violation, together with such
26 other matters that may be disclosed in the course of the investigation
27 related to certificated personnel.

28 (2) A parent or another person may file a written complaint with
29 the superintendent of public instruction alleging physical abuse or
30 sexual misconduct by a certificated school employee if:

31 (a) The parent or other person has already filed a written
32 complaint with the educational service district superintendent
33 concerning that employee;

34 (b) The educational service district superintendent has not caused
35 an investigation of the allegations and has not forwarded the complaint
36 to the superintendent of public instruction for investigation; and

1 (c) The written complaint states the grounds and factual basis upon
2 which the parent or other person believes an investigation should be
3 conducted.

4 (3)(a) Any such certificate or permit authorized under this chapter
5 or chapter 28A.405 RCW shall be revoked by the authority authorized to
6 grant the certificate upon a guilty plea or the conviction of any
7 felony crime (~~((involving the physical neglect of a child under chapter
8 9A.42 RCW, the physical injury or death of a child under chapter 9A.32
9 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61
10 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual
11 offenses under chapter 9A.44 RCW where a minor is the victim, promoting
12 prostitution of a minor under chapter 9A.88 RCW, the sale or purchase
13 of a minor child under RCW 9A.64.030, or violation of similar laws of
14 another jurisdiction))~~ specified under section 1 of this act, in
15 accordance with this section. The person whose certificate is in
16 question shall be given an opportunity to be heard.

17 (b) Mandatory permanent revocation upon a guilty plea or the
18 conviction of felony crimes specified under (~~(this subsection))~~ section
19 1(1) of this act shall apply to such convictions or guilty pleas which
20 occur after July 23, 1989, and before the effective date of section 1
21 of this act.

22 (c) Mandatory permanent revocation upon a guilty plea or conviction
23 of felony crimes specified under section 1(2) of this act shall apply
24 to such convictions or guilty pleas that occur on or after the
25 effective date of section 1 of this act.

26 (d) Revocation of any certificate or permit authorized under this
27 chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction
28 of a crime specified under section 1 of this act occurring prior to
29 July 23, 1989, shall be subject to the provisions of subsection (1) of
30 this section.

31 (4)(a) Any such certificate or permit authorized under this chapter
32 or chapter 28A.405 RCW shall be suspended or revoked, according to the
33 provisions of this subsection, by the authority authorized to grant the
34 certificate upon a finding that an employee has engaged in an
35 unauthorized use of school equipment to intentionally access material
36 depicting sexually explicit conduct or has intentionally possessed on
37 school grounds any material depicting sexually explicit conduct; except
38 for material used in conjunction with established curriculum. A first

1 time violation of this subsection shall result in either suspension or
2 revocation of the employee's certificate or permit as determined by the
3 office of the superintendent of public instruction. A second violation
4 shall result in a mandatory revocation of the certificate or permit.

5 (b) In all cases under this subsection (4), the person whose
6 certificate is in question shall be given an opportunity to be heard
7 and has the right to appeal as established in RCW 28A.410.100.
8 Certificates or permits shall be suspended or revoked under this
9 subsection only if findings are made on or after July 24, 2005. For
10 the purposes of this subsection, "sexually explicit conduct" has the
11 same definition as provided in RCW 9.68A.011.

12 **Sec. 6.** RCW 28A.410.110 and 1990 c 33 s 410 are each amended to
13 read as follows:

14 In case any certificate or permit authorized under this chapter or
15 chapter 28A.405 RCW is revoked, the holder shall not be eligible to
16 receive another certificate or permit for a period of twelve months
17 after the date of revocation. However, if the certificate or permit
18 authorized under this chapter or chapter 28A.405 RCW was revoked
19 because of a guilty plea or the conviction of a felony crime
20 (~~(involving the physical neglect of a child under chapter 9A.42 RCW,~~
21 ~~the physical injury or death of a child under chapter 9A.32 or 9A.36~~
22 ~~RCW (except motor vehicle violations under chapter 46.61 RCW), sexual~~
23 ~~exploitation of a child under chapter 9.68A RCW, sexual offenses under~~
24 ~~chapter 9A.44 RCW where a minor is the victim, promoting prostitution~~
25 ~~of a minor under chapter 9A.88 RCW, the sale or purchase of a minor~~
26 ~~child under RCW 9A.64.030, or violation of similar laws of another~~
27 ~~jurisdiction)) specified under section 1 of this act, the certificate
28 or permit shall not be reinstated.~~

29 **Sec. 7.** RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read
30 as follows:

31 (1) Subject to the exceptions in subsections (3) and (4) of this
32 section, and unless there is another provision of law to the contrary,
33 a person is not disqualified from employment by the state of Washington
34 or any of its counties, cities, towns, municipal corporations, or
35 quasi-municipal corporations, nor is a person disqualified to practice,
36 pursue or engage in any occupation, trade, vocation, or business for

1 which a license, permit, certificate or registration is required to be
2 issued by the state of Washington or any of its counties, cities,
3 towns, municipal corporations, or quasi-municipal corporations solely
4 because of a prior conviction of a felony. However, this section does
5 not preclude the fact of any prior conviction of a crime from being
6 considered.

7 (2) A person may be denied employment by the state of Washington or
8 any of its counties, cities, towns, municipal corporations, or quasi-
9 municipal corporations, or a person may be denied a license, permit,
10 certificate or registration to pursue, practice or engage in an
11 occupation, trade, vocation, or business by reason of the prior
12 conviction of a felony if the felony for which he or she was convicted
13 directly relates to the position of employment sought or to the
14 specific occupation, trade, vocation, or business for which the
15 license, permit, certificate or registration is sought, and the time
16 elapsed since the conviction is less than ten years. However, for
17 positions in the county treasurer's office, a person may be
18 disqualified from employment because of a prior guilty plea or
19 conviction of a felony involving embezzlement or theft, even if the
20 time elapsed since the guilty plea or conviction is ten years or more.

21 (3) A person is disqualified for any certificate required or
22 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior
23 guilty plea or the conviction of a felony (~~(involving sexual
24 exploitation of a child under chapter 9.68A RCW, sexual offenses under
25 chapter 9A.44 RCW where a minor is the victim, promoting prostitution
26 of a minor under chapter 9A.88 RCW, or a violation of similar laws of
27 another jurisdiction))~~ crime specified under section 1 of this act,
28 even if the time elapsed since the guilty plea or conviction is ten
29 years or more.

30 (4) A person is disqualified from employment by school districts,
31 educational service districts, and their contractors hiring employees
32 who will have regularly scheduled unsupervised access to children,
33 because of a prior guilty plea or conviction of a felony (~~(involving
34 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses
35 under chapter 9A.44 RCW where a minor is the victim, promoting
36 prostitution of a minor under chapter 9A.88 RCW, or a violation of
37 similar laws of another jurisdiction))~~ crime specified under section 1

1 of this act, even if the time elapsed since the guilty plea or
2 conviction is ten years or more.

3 (5) Subsections (3) and (4) of this section (~~(only)~~) as they
4 pertain to felony crimes specified under section 1(1) of this act apply
5 to a person applying for a certificate or for employment on or after
6 July 25, 1993, and before the effective date of section 1 of this act.
7 Subsections (3) and (4) of this section as they pertain to all felony
8 crimes specified under section 1(2) of this act apply to a person
9 applying for a certificate or for employment on or after the effective
10 date of section 1 of this act.

11 **Sec. 8.** RCW 43.43.845 and 2006 c 263 s 828 are each amended to
12 read as follows:

13 (1) Upon a guilty plea or conviction of a person of any felony
14 crime (~~(involving the physical neglect of a child under chapter 9A.42~~
15 ~~RCW, the physical injury or death of a child under chapter 9A.32 or~~
16 ~~9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),~~
17 ~~sexual exploitation of a child under chapter 9.68A RCW, sexual offenses~~
18 ~~under chapter 9A.44 RCW, promoting prostitution of a minor under~~
19 ~~chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW~~
20 ~~9A.64.030)) specified under section 1 of this act, the prosecuting
21 attorney shall notify the state patrol of such guilty pleas or
22 convictions.~~

23 (2) When the state patrol receives (~~(information that a person has~~
24 ~~pled guilty to or been convicted of one of the felony crimes)) the
25 notice required under subsection (1) of this section, the state patrol
26 shall transmit that information to the superintendent of public
27 instruction. It shall be the duty of the superintendent of public
28 instruction to identify whether the person holds a certificate or
29 permit issued under chapters 28A.405 and 28A.410 RCW or is employed by
30 a school district, and provide this information to the Washington
31 professional educator standards board and the school district employing
32 the (~~(individual who pled guilty or was convicted of the crimes~~
33 ~~identified in subsection (1) of this section)) person.~~~~

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