
HOUSE BILL 1160

State of Washington

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1995 Regular Session

By Representatives Valle and Cole

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1 AN ACT Relating to background checks of caretakers of children,
2 vulnerable adults, and developmentally disabled persons; and amending
3 RCW 43.43.830, 43.43.832, 43.43.834, and 43.43.838.

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

5 **Sec. 1.** RCW 43.43.830 and 1994 c 108 s 1 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout RCW 43.43.830 through 43.43.840.

9 (1) "Applicant" means:

10 (a) Any prospective employee who will or may have unsupervised
11 access to children under sixteen years of age or developmentally
12 disabled persons or vulnerable adults during the course of his or her
13 employment or involvement with the business ~~((or))~~, organization, or
14 guardian;

15 (b) Any prospective volunteer or student who will have regularly
16 scheduled unsupervised access to children under sixteen years of age,
17 developmentally disabled persons, or vulnerable adults during the
18 course of his or her educational program, employment, or involvement
19 with the business ~~((or))~~, organization, or guardian under circumstances

1 where such access will or may involve groups of (i) five or fewer
2 children under twelve years of age, (ii) three or fewer children
3 between twelve and sixteen years of age, (iii) developmentally disabled
4 persons, or (iv) vulnerable adults; or

5 (c) Any prospective adoptive parent, as defined in RCW 26.33.020.

6 (2) "Business or organization" means a business or organization
7 licensed in this state, any agency of the state, or other governmental
8 entity, that educates, trains, treats, supervises, houses, or provides
9 recreation to developmentally disabled persons, vulnerable adults, or
10 children under sixteen years of age, including but not limited to
11 public housing authorities, school districts, and educational service
12 districts.

13 (3) "Civil adjudication" means a specific court finding of sexual
14 abuse or exploitation or physical abuse in a dependency action under
15 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In
16 the case of vulnerable adults, civil adjudication means a specific
17 court finding of abuse or financial exploitation in a protection
18 proceeding under chapter 74.34 RCW. It does not include administrative
19 proceedings. The term "civil adjudication" is further limited to court
20 findings that identify as the perpetrator of the abuse a named
21 individual, over the age of eighteen years, who was a party to the
22 dependency or dissolution proceeding or was a respondent in a
23 protection proceeding in which the finding was made and who contested
24 the allegation of abuse or exploitation.

25 (4) "Conviction record" means "conviction record" information as
26 defined in RCW 10.97.030(3) relating to a crime against children or
27 other persons committed by either an adult or a juvenile. It does not
28 include a conviction for an offense that has been the subject of an
29 expungement, pardon, annulment, certificate of rehabilitation, or other
30 equivalent procedure based on a finding of the rehabilitation of the
31 person convicted, or a conviction that has been the subject of a
32 pardon, annulment, or other equivalent procedure based on a finding of
33 innocence. It does include convictions for offenses for which the
34 defendant received a deferred or suspended sentence, unless the record
35 has been expunged according to law.

36 (5) "Crime against children or other persons" means a conviction of
37 any of the following offenses: Aggravated murder; first or second
38 degree murder; first or second degree kidnaping; first, second, or
39 third degree assault; first, second, or third degree assault of a

1 child; first, second, or third degree rape; first, second, or third
2 degree rape of a child; first or second degree robbery; first degree
3 arson; first degree burglary; first or second degree manslaughter;
4 first or second degree extortion; indecent liberties; incest; vehicular
5 homicide; first degree promoting prostitution; communication with a
6 minor; unlawful imprisonment; simple assault; sexual exploitation of
7 minors; first or second degree criminal mistreatment; child abuse or
8 neglect as defined in RCW 26.44.020; first or second degree custodial
9 interference; malicious harassment; first, second, or third degree
10 child molestation; first or second degree sexual misconduct with a
11 minor; first or second degree rape of a child; patronizing a juvenile
12 prostitute; child abandonment; promoting pornography; selling or
13 distributing erotic material to a minor; custodial assault; violation
14 of child abuse restraining order; child buying or selling;
15 prostitution; felony indecent exposure; or any of these crimes as they
16 may be renamed in the future.

17 (6) "Crimes relating to financial exploitation" means a conviction
18 for first, second, or third degree extortion; first, second, or third
19 degree theft; first or second degree robbery; forgery; or any of these
20 crimes as they may be renamed in the future.

21 (7) "Disciplinary board final decision" means any final decision
22 issued by the disciplinary board or the director of the department of
23 licensing for the following businesses or professions:

- 24 (a) Chiropractic;
- 25 (b) Dentistry;
- 26 (c) Dental hygiene;
- 27 (d) Massage;
- 28 (e) Midwifery;
- 29 (f) Naturopathy;
- 30 (g) Osteopathy;
- 31 (h) Physical therapy;
- 32 (i) Physicians;
- 33 (j) Practical nursing;
- 34 (k) Registered nursing;
- 35 (l) Psychology; and
- 36 (m) Real estate brokers and salesmen.

37 (8) "Unsupervised" means not in the presence of:

- 38 (a) Another employee or volunteer from the same business or
39 organization as the applicant; or

1 (b) Any relative or guardian of any of the children or
2 developmentally disabled persons to which the applicant has access
3 during the course of his or her employment or involvement with the
4 business or organization.

5 (9) "Vulnerable adult" means a person sixty years of age or older
6 who has the functional, mental, or physical inability to care for
7 himself or herself or a patient in a state hospital as defined in
8 chapter 72.23 RCW.

9 (10) "Financial exploitation" means the illegal or improper use of
10 a vulnerable adult or that adult's resources for another person's
11 profit or advantage.

12 (11) "Agency" means any person, firm, partnership, association,
13 corporation, or facility which receives, provides services to, houses
14 or otherwise cares for vulnerable adults.

15 (12) "Guardian" means a person who is a parent or guardian of a
16 child under age sixteen, a developmentally disabled person, or a
17 vulnerable adult, and who wants to employ an applicant as a babysitter
18 or caretaker of the child, developmentally disabled person, or
19 vulnerable adult.

20 **Sec. 2.** RCW 43.43.832 and 1993 c 281 s 51 are each amended to read
21 as follows:

22 (1) The legislature finds that businesses and organizations
23 providing services to children, developmentally disabled persons, and
24 vulnerable adults need adequate information to determine which
25 employees or licensees to hire or engage. Therefore, the Washington
26 state patrol criminal identification system may disclose, upon the
27 request of a business or organization as defined in RCW 43.43.830, an
28 applicant's record for convictions of offenses against children or
29 other persons, convictions for crimes relating to financial
30 exploitation, but only if the victim was a vulnerable adult,
31 adjudications of child abuse in a civil action, the issuance of a
32 protection order against the respondent under chapter 74.34 RCW, and
33 disciplinary board final decisions and any subsequent criminal charges
34 associated with the conduct that is the subject of the disciplinary
35 board final decision. When necessary, applicants may be employed on a
36 conditional basis pending completion of such a background
37 investigation.

1 (2) The legislature also finds that the state board of education
2 may request of the Washington state patrol criminal identification
3 system information regarding a certificate applicant's record for
4 convictions under subsection (1) of this section.

5 (3) The legislature also finds that law enforcement agencies, the
6 office of the attorney general, prosecuting authorities, and the
7 department of social and health services may request this same
8 information to aid in the investigation and prosecution of child,
9 developmentally disabled person, and vulnerable adult abuse cases and
10 to protect children and adults from further incidents of abuse.

11 (4) The legislature also finds that guardians of children,
12 developmentally disabled persons, and vulnerable adults also need
13 information to determine which employees to hire as babysitters or
14 caretakers of the guardians's children, developmentally disabled
15 persons, or vulnerable adults. Upon request of a guardian, the
16 Washington state patrol criminal identification system may disclose the
17 same information delineated in subsection (1) of this section to aid
18 the guardian in making employment decisions regarding caretakers.

19 (5) The legislature further finds that the department of social and
20 health services, when considering persons for state positions directly
21 responsible for the care, supervision, or treatment of children,
22 developmentally disabled persons, or vulnerable adults or when
23 licensing or authorizing such persons or agencies pursuant to its
24 authority under chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any
25 later-enacted statute which purpose is to license or regulate a
26 facility which handles vulnerable adults, must consider the information
27 listed in subsection (1) of this section. However, when necessary,
28 persons may be employed on a conditional basis pending completion of
29 the background investigation. The Washington personnel resources board
30 shall adopt rules to accomplish the purposes of this subsection as it
31 applies to state employees.

32 (6) The legislature further finds that educational programs that
33 provide students with access to children, developmentally disabled
34 persons, or vulnerable adults must consider the information listed in
35 subsection (1) of this section.

36 **Sec. 3.** RCW 43.43.834 and 1990 c 3 s 1103 are each amended to read
37 as follows:

1 (1) A business ~~((or))~~, organization, guardian, or educational
2 program shall not make an inquiry to the Washington state patrol under
3 RCW 43.43.832 or an equivalent inquiry to a federal law enforcement
4 agency unless the business ~~((or))~~, organization, guardian, or
5 educational program has notified the applicant who has been offered a
6 position as an employee or volunteer, that an inquiry may be made.

7 (2) A business or organization shall require each applicant to
8 disclose to the business or organization whether the applicant has
9 been:

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

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

13 (c) Found in any dependency action under RCW 13.34.040 to have
14 sexually assaulted or exploited any minor or to have physically abused
15 any minor;

16 (d) Found by a court in a domestic relations proceeding under Title
17 26 RCW to have sexually abused or exploited any minor or to have
18 physically abused any minor;

19 (e) Found in any disciplinary board final decision to have sexually
20 or physically abused or exploited any minor or developmentally disabled
21 person or to have abused or financially exploited any vulnerable adult;
22 or

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

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

30 (3) A guardian may require an applicant to disclose to the guardian
31 the same information as specified in subsection (2) of this section.

32 (4) An educational program may require a student to disclose to the
33 educational program the same information as specified in subsection (2)
34 of this section.

35 (5) The business ~~((or))~~, organization, guardian, or educational
36 program shall pay such reasonable fee for the records check as the
37 state patrol may require under RCW 43.43.838.

38 ~~((+4))~~ (6) The business ~~((or))~~, organization, guardian, or
39 educational program shall notify the applicant of the state patrol's

1 response within ten days after receipt by the business ~~((or))~~,
2 organization, guardian, or educational program. The employer or
3 guardian shall provide a copy of the response to the applicant and
4 shall notify the applicant of such availability.

5 ~~((+5))~~ (7) The business ~~((or))~~, organization, guardian, or
6 educational program shall use this record only in making the initial
7 employment or engagement decision. Further dissemination or use of the
8 record is prohibited. A business ~~((or))~~, organization, guardian, or
9 educational program violating this subsection is subject to a civil
10 action for damages.

11 ~~((+6))~~ (8) An insurance company shall not require a business
12 ~~((or))~~, organization, or guardian to request background information on
13 any employee before issuing a policy of insurance.

14 ~~((+7))~~ (9) The business ~~((and))~~, organization, guardian, or
15 educational program shall be immune from civil liability for failure to
16 request background information on an applicant or student unless the
17 failure to do so constitutes gross negligence.

18 **Sec. 4.** RCW 43.43.838 and 1992 c 159 s 7 are each amended to read
19 as follows:

20 (1) After January 1, 1988, and notwithstanding any provision of RCW
21 43.43.700 through 43.43.810 to the contrary, the state patrol shall
22 furnish a transcript of the conviction record, disciplinary board final
23 decision and any subsequent criminal charges associated with the
24 conduct that is the subject of the disciplinary board final decision,
25 or civil adjudication record pertaining to any person for whom the
26 state patrol or the federal bureau of investigation has a record upon
27 the written request of:

28 (a) The subject of the inquiry;

29 (b) Any business ~~((or))~~, organization, guardian, or educational
30 program for the purpose of conducting evaluations under RCW 43.43.832;

31 (c) The department of social and health services;

32 (d) Any law enforcement agency, prosecuting authority, or the
33 office of the attorney general; or

34 (e) The department of social and health services for the purpose of
35 meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or
36 72.23 RCW, or any later-enacted statute which purpose is to regulate or
37 license a facility which handles vulnerable adults. However, access to
38 conviction records pursuant to this subsection (1)(e) does not limit or

1 restrict the ability of the department to obtain additional information
2 regarding conviction records and pending charges as set forth in RCW
3 74.15.030(2)(b).

4 After processing the request, if the conviction record,
5 disciplinary board final decision and any subsequent criminal charges
6 associated with the conduct that is the subject of the disciplinary
7 board final decision, or adjudication record shows no evidence of a
8 crime against children or other persons or, in the case of vulnerable
9 adults, no evidence of crimes relating to financial exploitation in
10 which the victim was a vulnerable adult, an identification declaring
11 the showing of no evidence shall be issued to the applicant by the
12 state patrol and shall be issued within fourteen working days of the
13 request. Possession of such identification shall satisfy future record
14 check requirements for the applicant for a two-year period unless the
15 prospective employee is any current school district employee who has
16 applied for a position in another school district or is an applicant
17 for a caretaking or babysitting position for a guardian who has not
18 requested a record check on the applicant within the last two years.

19 (2) The state patrol shall by rule establish fees for disseminating
20 records under this section to recipients identified in subsection
21 (1)(a) and (b) of this section. The state patrol shall also by rule
22 establish fees for disseminating records in the custody of the national
23 crime information center. The revenue from the fees shall cover, as
24 nearly as practicable, the direct and indirect costs to the state
25 patrol of disseminating the records: PROVIDED, That no fee shall be
26 charged to a nonprofit organization for the records check: PROVIDED
27 FURTHER, That in the case of record checks using fingerprints requested
28 by school districts and educational service districts, the state patrol
29 shall charge only for the incremental costs associated with checking
30 fingerprints in addition to name and date of birth. Record checks
31 requested by school districts and educational service districts using
32 only name and date of birth shall continue to be provided free of
33 charge.

34 (3) No employee of the state, employee of a business or
35 organization, ~~((or))~~ the business ~~((or))~~, organization, guardian, or
36 educational program is liable for defamation, invasion of privacy,
37 negligence, or any other claim in connection with any lawful
38 dissemination of information under RCW 43.43.830 through 43.43.840 or
39 43.43.760.

1 (4) Before July 26, 1987, the state patrol shall adopt rules and
2 forms to implement this section and to provide for security and privacy
3 of information disseminated under this section, giving first priority
4 to the criminal justice requirements of this chapter. The rules may
5 include requirements for users, audits of users, and other procedures
6 to prevent use of civil adjudication record information or criminal
7 history record information inconsistent with this chapter.

8 (5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an
9 employer or a guardian to make an inquiry not specifically authorized
10 by this chapter, or be construed to affect the policy of the state
11 declared in chapter 9.96A RCW.

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