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SECOND SUBSTITUTE SENATE BILL 5528

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State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Kohl, Long, Thibaudeau, Franklin, Patterson, Fairley, Winsley, Oke and Rasmussen)

Read first time 03/10/97.

1 AN ACT Relating to protecting children and vulnerable adults by  
2 using background checks; amending RCW 9.96A.020, 41.06.475, and  
3 43.20A.710; adding new sections to chapter 43.20A RCW; adding new  
4 sections to chapter 43.43 RCW; adding a new section to chapter 2.04  
5 RCW; adding a new section to chapter 2.06 RCW; and repealing RCW  
6 72.23.035.

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

8 **Sec. 1.** RCW 9.96A.020 and 1993 c 71 s 1 are each amended to read  
9 as follows:

10 (1) Subject to the exceptions in subsections (3) (~~and (4)~~)  
11 through (6) of this section, and unless there is another provision of  
12 law to the contrary, a person is not disqualified from employment by  
13 the state of Washington or any of its counties, cities, towns,  
14 municipal corporations, or quasi-municipal corporations, nor is a  
15 person disqualified to practice, pursue or engage in any occupation,  
16 trade, vocation, or business for which a license, permit, certificate  
17 or registration is required to be issued by the state of Washington or  
18 any of its counties, cities, towns, municipal corporations, or quasi-  
19 municipal corporations solely because of a prior conviction of a

1 felony. However, this section does not preclude the fact of any prior  
2 conviction of a crime from being considered.

3 (2) A person may be denied employment by the state of Washington or  
4 any of its counties, cities, towns, municipal corporations, or quasi-  
5 municipal corporations, or a person may be denied a license, permit,  
6 certificate or registration to pursue, practice or engage in an  
7 occupation, trade, vocation, or business by reason of the prior  
8 conviction of a felony if the felony for which he or she was convicted  
9 directly relates to the position of employment sought or to the  
10 specific occupation, trade, vocation, or business for which the  
11 license, permit, certificate or registration is sought, and the time  
12 elapsed since the conviction is less than ten years.

13 (3) A person is disqualified for any certificate required or  
14 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior  
15 guilty plea or the conviction of a felony involving sexual exploitation  
16 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44  
17 RCW where a minor is the victim, promoting prostitution of a minor  
18 under chapter 9A.88 RCW, or a violation of similar laws of another  
19 jurisdiction, even if the time elapsed since the guilty plea or  
20 conviction is ten years or more.

21 (4) A person is disqualified from employment by school districts,  
22 educational service districts, and their contractors hiring employees  
23 who will have regularly scheduled unsupervised access to children,  
24 because of a prior guilty plea or conviction of a felony involving  
25 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses  
26 under chapter 9A.44 RCW where a minor is the victim, promoting  
27 prostitution of a minor under chapter 9A.88 RCW, or a violation of  
28 similar laws of another jurisdiction, even if the time elapsed since  
29 the guilty plea or conviction is ten years or more.

30 (5) Subsections (3) and (4) of this section only apply to a person  
31 applying for a certificate or for employment on or after July 25, 1993.

32 (6) A person is subject to disqualification from being hired,  
33 engaged, or authorized by the department of social and health services  
34 and its contractors or licensees, and from being licensed, registered,  
35 or certified by the department of social and health services, if the  
36 person has a conviction record of a crime listed in section 4 of this  
37 act even if the time elapsed since the guilty plea or conviction is ten  
38 years or more.

1       **Sec. 2.** RCW 41.06.475 and 1993 c 281 s 38 are each amended to read  
2 as follows:

3       (1) The Washington personnel resources board shall adopt rules, in  
4 cooperation with the secretary of social and health services, for the  
5 background investigation of persons being considered for state  
6 employment in positions (~~directly responsible for the supervision,~~  
7 ~~care, or treatment of~~) that have unsupervised access to children or  
8 (~~developmentally disabled persons~~) vulnerable adults.

9       (2) The Washington personnel resources board shall adopt rules  
10 consistent with section 4 of this act, in cooperation with the  
11 secretary of social and health services, for persons employed and being  
12 considered for state employment by the department of social and health  
13 services in fiscally responsible positions and in positions that may  
14 allow unsupervised access to children or vulnerable adults.

15       NEW SECTION. **Sec. 3.** A new section is added to chapter 43.20A RCW  
16 to read as follows:

17       Unless the context clearly requires otherwise, the definitions in  
18 this section apply to RCW 43.20A.710.

19       (1) "Business or organization" means a business or organization  
20 licensed in this state, agency of the state, other governmental entity,  
21 natural person, firm, partnership, corporation, or facility, that  
22 educates, trains, treats, supervises, houses, or provides recreation to  
23 vulnerable adults or children regardless of whether the education,  
24 training, treatment, supervision, housing, or recreation is provided in  
25 the normal course of business or otherwise.

26       (2) "Child" means a person under the age of eighteen years.

27       (3) "Crimes" means those crimes against children or other persons  
28 as defined in RCW 43.43.830(5) and crimes relating to financial  
29 exploitation as defined in RCW 43.43.830(6).

30       (4) "Disciplinary board final decision" means a specific finding of  
31 abuse, abandonment, neglect, or exploitation in:

32       (a) A stipulated finding of fact, conclusion of law, and agreed  
33 order issued by a disciplining authority under chapter 18.130 RCW;

34       (b) A finding of fact, conclusion of law, and final order issued by  
35 a disciplining authority under chapter 18.130 RCW;

36       (c) Any final decision issued by the personnel appeals board; or

37       (d) Any final decision issued by the director of the department of  
38 licensing.

1 (5) "Fiscally responsible position" means department positions that  
2 have authority for or access to negotiable items or systems that would  
3 result in the issuance of negotiable items.

4 (6)(a) "Hired, engaged, or authorized" means:

5 (i) Employed by a business or organization;

6 (ii) Accepted as a volunteer, intern, student, or trainee by a  
7 business or organization; or

8 (iii) Otherwise granted access to vulnerable adults, children, or  
9 negotiable items or systems by a business or organization.

10 (b) "Hired, engaged, or authorized" does not include:

11 (i) Allowing unsupervised access by family and friends of a  
12 vulnerable adult or child who do not provide care or treatment to the  
13 vulnerable adult or child; or

14 (ii) Individual providers receiving background checks under RCW  
15 43.20A.710.

16 (7) "Individual" means any natural person including, but not  
17 limited to, an employee, job applicant, trainee, intern, volunteer,  
18 student, or personal service contractor, who may have unsupervised  
19 access to children or vulnerable adults during the course of his or her  
20 employment or involvement with a business or organization or who is in  
21 a fiscally responsible position.

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

23 (a) Another individual, over the age of eighteen years, from the  
24 same business or organization as the individual; or

25 (b) Any relative or guardian of any of the children or vulnerable  
26 adults to which the individual has access during the course of his or  
27 her employment or involvement with the business or organization.

28 (9) "Vulnerable adult" has the same meaning as in RCW 74.34.020.

29 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.20A RCW  
30 to read as follows:

31 (1) By July 1, 1998, the department shall require that all  
32 individuals in positions, as determined by an appointing authority, who  
33 have unsupervised access to children or vulnerable adults or who have  
34 fiscally responsible positions and were hired after July 1, 1995, or  
35 resided in the state less than three years, undergo a record check  
36 through the Washington state patrol criminal identification system,  
37 under RCW 43.43.830 through 43.43.838, and through the federal bureau  
38 of investigation. The record check must include a fingerprint check

1 using a complete Washington state criminal identification fingerprint  
2 card. The department shall provide a copy of the record report to the  
3 employee. Individuals subject to this section are required to undergo  
4 Washington state patrol record checks every three years.

5 (2) Subject to available funding, individuals may not be required  
6 by the department to pay for the record check required in subsection  
7 (1) of this section.

8 (3) The record checks required in this section must be in process  
9 no later than July 1, 1998.

10 (4)(a) An individual shall be permanently disqualified from being  
11 hired, engaged, or authorized into a position that may provide  
12 unsupervised access to a child or vulnerable adult if the record check  
13 required under subsection (1) of this section indicates a conviction of  
14 one or more of the following crimes:

- 15 (i) Aggravated murder;
- 16 (ii) First degree murder;
- 17 (iii) First degree kidnapping;
- 18 (iv) First or second degree assault;
- 19 (v) First, second, or third degree assault of a child;
- 20 (vi) First, second, or third degree rape;
- 21 (vii) First, second, or third degree rape of a child;
- 22 (viii) First or second degree robbery;
- 23 (ix) First degree arson;
- 24 (x) First degree burglary;
- 25 (xi) Indecent liberties;
- 26 (xii) First degree extortion;
- 27 (xiii) Incest;
- 28 (xiv) First degree promoting prostitution;
- 29 (xv) Sexual exploitation of minors;
- 30 (xvi) First degree criminal mistreatment;
- 31 (xvii) Child abuse or neglect as defined in RCW 26.44.020;
- 32 (xviii) First, second, or third degree child molestation;
- 33 (xix) First or second degree sexual misconduct with a minor;
- 34 (xx) Child buying or selling; and
- 35 (xxi) Felony indecent exposure.

36 (b) If a record check required under subsection (1) of this section  
37 indicates that an individual has been convicted of a crime other than  
38 those listed in (a) of this subsection or has pending charges, civil  
39 adjudications, disciplinary board final decisions, or licensing

1 findings that relate to the individual's functions or the individual's  
2 unsupervised access to children or vulnerable adults, the employer  
3 shall consider the following when making employment decisions  
4 pertaining to the individual:

- 5 (i) Character, suitability, and competence of the individual;
- 6 (ii) The seriousness of the crime and any mitigating factors; and
- 7 (iii) Other appropriate factors.

8 (c) A review procedure must be established for state employees  
9 disqualified by the listings established under (a) of this subsection.

10 (5) Any classified employee dismissed or otherwise adversely  
11 affected as a result of a conviction identified in the record required  
12 under subsection (1) of this section must be allowed to appeal under  
13 the appropriate statutes, including but not limited to chapters 41.06  
14 and 41.64 RCW.

15 (6) The secretary may, by rule, determine appropriate circumstances  
16 for the conditional hiring, engagement, or authorization of individuals  
17 who are subject to the criminal record check requirements of this  
18 section. Hiring, engagement, or authorization may be conditional  
19 pending completion of the national conviction record check only after  
20 the applicant has completed the fingerprint-based state background  
21 check through the state patrol.

22 **Sec. 5.** RCW 43.20A.710 and 1993 c 210 s 1 are each amended to read  
23 as follows:

24 The secretary shall investigate the conviction records, pending  
25 charges or disciplinary board final decisions of: (1) Persons being  
26 considered for state employment in positions (~~directly responsible for~~  
27 ~~the supervision, care, or treatment of~~) with unsupervised access to  
28 children or (~~individuals with mental illness or developmental~~  
29 ~~disabilities~~) vulnerable adults; and (2) individual providers who are  
30 paid by the state for in-home services and hired by individuals with  
31 physical disabilities, developmental disabilities, mental illness, or  
32 mental impairment. The investigation may include an examination of  
33 state and national criminal identification data and the child abuse and  
34 neglect register established under chapter 26.44 RCW. The secretary  
35 shall provide the results of the state background check on individual  
36 providers to the individuals with physical disabilities, developmental  
37 disabilities, mental illness, or mental impairment who hired them and  
38 to their legal guardians, if any. The secretary shall use the

1 information solely for the purpose of determining the character,  
2 suitability, and competence of these applicants except that in the case  
3 of individuals with physical disabilities, developmental disabilities,  
4 mental illness, or mental impairment who employ individual providers,  
5 the determination of character, suitability, and competence of  
6 applicants shall be made by the individual with a physical disability,  
7 developmental disability, mental illness, or mental impairment.  
8 Criminal justice agencies shall provide the secretary such information  
9 as they may have and that the secretary may require for such purpose.  
10 If necessary, persons may be employed on a conditional basis pending  
11 completion of the background investigation.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.43 RCW  
13 to read as follows:

14 (1) An individual employed by the state in a position allowing  
15 unsupervised access to children or vulnerable adults shall report to  
16 his or her supervisor any conviction occurring after the effective date  
17 of this section for an offense set forth in RCW 43.43.830. The report  
18 must be made within seven days of the conviction.

19 (2) Failure by an individual to report a conviction shall be  
20 considered in any subsequent disciplinary action.

21 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.43 RCW  
22 to read as follows:

23 (1) An individual with a state credential issued under chapter  
24 18.130 or 28A.410 RCW shall report to the credentialing authority any  
25 conviction occurring after the effective date of this section for an  
26 offense set forth in RCW 43.43.830. The report must be made within  
27 seven days of the conviction.

28 (2) Failure by an individual to report a conviction shall be  
29 considered by the credentialing authority in any application for  
30 renewal or reinstatement of the credential.

31 (3) When an individual required to report under subsection (1) of  
32 this section is employed, the individual shall also report the  
33 conviction to his or her employer within seven days of the conviction.

34 NEW SECTION. **Sec. 8.** A new section is added to chapter 2.04 RCW  
35 to read as follows:

1        If the court reaches a final determination of a criminal appeal and  
2 the determination results in a dismissal, reversal, or vacation of a  
3 conviction, the court shall furnish notice of its determination to the  
4 identification section of the Washington state patrol.

5        NEW SECTION.    **Sec. 9.**    A new section is added to chapter 2.06 RCW  
6 to read as follows:

7        If the court reaches a final determination of a criminal appeal and  
8 the determination results in a dismissal, reversal, or vacation of a  
9 conviction, the court shall furnish notice of its determination to the  
10 identification section of the Washington state patrol.

11        NEW SECTION.    **Sec. 10.**    RCW 72.23.035 and 1989 c 334 s 12 are each  
12 repealed.

13        NEW SECTION.    **Sec. 11.**    If any provision of this act or its  
14 application to any person or circumstance is held invalid, the  
15 remainder of the act or the application of the provision to other  
16 persons or circumstances is not affected.

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