

ESHB 1741 - S COMM AMD

By Committee on Early Learning & K-12 Education

ADOPTED 04/07/2009

1 Strike everything after the enacting clause and insert the
2 following:

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

5 (1) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3),
6 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or
7 conviction occurring after July 23, 1989, and before the effective date
8 of this section, for any of the following felony crimes:

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

11 (b) The physical injury or death of a child under chapter 9A.32 or
12 9A.36 RCW, except motor vehicle violations under chapter 46.61 RCW;

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

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

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

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

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

20 (2) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3),
21 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or
22 conviction occurring on or after the effective date of this section,
23 for any of the following felony crimes or attempts, conspiracies, or
24 solicitations to commit any of the following felony crimes:

25 (a) A felony violation of RCW 9A.88.010, indecent exposure;

26 (b) A felony violation of chapter 9A.42 RCW involving physical
27 neglect;

28 (c) A felony violation of chapter 9A.32 RCW;

29 (d) A violation of RCW 9A.36.011, assault 1; 9A.36.021, assault 2;
30 9A.36.120, assault of a child 1; 9A.36.130, assault of a child 2; or

1 any other felony violation of chapter 9A.36 RCW involving physical
2 injury except assault 3 where the victim is eighteen years of age or
3 older;

- 4 (e) A sex offense as defined in RCW 9.94A.030;
- 5 (f) A violation of RCW 9A.40.020, kidnapping 1; or 9A.40.030,
6 kidnapping 2;
- 7 (g) A violation of RCW 9A.64.030, child selling or child buying;
- 8 (h) A violation of RCW 9A.88.070, promoting prostitution 1;
- 9 (i) A violation of RCW 9A.56.200, robbery 1; or
- 10 (j) A violation of laws of another jurisdiction that are similar to
11 those specified in (a) through (i) of this subsection.

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

14 (1) The school district board of directors shall immediately
15 terminate the employment of any classified employee who has contact
16 with children during the course of his or her employment upon a guilty
17 plea or conviction of any felony crime (~~(involving the physical neglect
18 of a child under chapter 9A.42 RCW, the physical injury or death of a
19 child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations
20 under chapter 46.61 RCW), sexual exploitation of a child under chapter
21 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the
22 victim, promoting prostitution of a minor under chapter 9A.88 RCW, the
23 sale or purchase of a minor child under RCW 9A.64.030, or violation of
24 similar laws of another jurisdiction)) specified under section 1 of
25 this act.~~

26 (2) The employee shall have a right of appeal under chapter 28A.645
27 RCW including any right of appeal under a collective bargaining
28 agreement. A school district board of directors is entitled to recover
29 from the employee any salary or other compensation that may have been
30 paid to the employee for the period between such time as the employee
31 was placed on administrative leave, based upon criminal charges that
32 the employee committed a felony crime specified under section 1 of this
33 act, and the time termination becomes final.

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

36 The school district board of directors shall include in any

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

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

19 The school district shall immediately terminate the employment of
20 any person whose certificate or permit authorized under chapter 28A.405
21 or 28A.410 RCW is subject to revocation under RCW 28A.410.090(~~((+2))~~)
22 (3) upon a guilty plea or conviction of any felony crime (~~((involving
23 the physical neglect of a child under chapter 9A.42 RCW, the physical
24 injury or death of a child under chapter 9A.32 or 9A.36 RCW (except
25 motor vehicle violations under chapter 46.61 RCW), sexual exploitation
26 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44
27 RCW where a minor is the victim, promoting prostitution of a minor
28 under chapter 9A.88 RCW, the sale or purchase of a minor child under
29 RCW 9A.64.030, or violation of similar laws of another jurisdiction))
30 specified under section 1 of this act. Employment shall remain
31 terminated unless the employee successfully prevails on appeal. A
32 school district board of directors is entitled to recover from the
33 employee any salary or other compensation that may have been paid to
34 the employee for the period between such time as the employee was
35 placed on administrative leave, based upon criminal charges that the
36 employee committed a felony crime specified under section 1 of this~~

1 act, and the time termination becomes final. This section shall only
2 apply to employees holding a certificate or permit who have contact
3 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. School district
14 superintendents, educational service district superintendents, or
15 private school administrators may file a complaint concerning any
16 certificated employee of a school district, educational service
17 district, or private school and this filing authority is not limited to
18 employees of the complaining superintendent or administrator. Such
19 written complaint shall state the grounds and summarize the factual
20 basis upon which a determination has been made that an investigation by
21 the superintendent of public instruction is warranted.

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

36 (2) A parent or another person may file a written complaint with

1 the superintendent of public instruction alleging physical abuse or
2 sexual misconduct by a certificated school employee if:

3 (a) The parent or other person has already filed a written
4 complaint with the educational service district superintendent
5 concerning that employee;

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

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

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

25 (b) Mandatory permanent revocation upon a guilty plea or the
26 conviction of felony crimes specified under (~~this subsection~~) section
27 1(1) of this act shall apply to such convictions or guilty pleas which
28 occur after July 23, 1989, and before the effective date of section 1
29 of this act.

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

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

1 (4)(a) Any such certificate or permit authorized under this chapter
2 or chapter 28A.405 RCW shall be suspended or revoked, according to the
3 provisions of this subsection, by the authority authorized to grant the
4 certificate upon a finding that an employee has engaged in an
5 unauthorized use of school equipment to intentionally access material
6 depicting sexually explicit conduct or has intentionally possessed on
7 school grounds any material depicting sexually explicit conduct; except
8 for material used in conjunction with established curriculum. A first
9 time violation of this subsection shall result in either suspension or
10 revocation of the employee's certificate or permit as determined by the
11 office of the superintendent of public instruction. A second violation
12 shall result in a mandatory revocation of the certificate or permit.

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

20 (5) Any such certificate or permit authorized under this chapter or
21 chapter 28A.405 RCW shall be revoked by the authority authorized to
22 grant the certificate upon a finding that the certificate holder
23 obtained the certificate through fraudulent means, including fraudulent
24 misrepresentation of required academic credentials or prior criminal
25 record. In all cases under this subsection, the person whose
26 certificate is in question shall be given an opportunity to be heard
27 and has the right to appeal as established in RCW 28A.410.100.
28 Certificates or permits shall be revoked under this subsection only if
29 findings are made on or after the effective date of this section.

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

32 In case any certificate or permit authorized under this chapter or
33 chapter 28A.405 RCW is revoked, the holder shall not be eligible to
34 receive another certificate or permit for a period of twelve months
35 after the date of revocation. However, if the certificate or permit
36 authorized under this chapter or chapter 28A.405 RCW was revoked
37 because of a guilty plea or the conviction of a felony crime

1 (~~involving the physical neglect of a child under chapter 9A.42 RCW,~~
2 ~~the physical injury or death of a child under chapter 9A.32 or 9A.36~~
3 ~~RCW (except motor vehicle violations under chapter 46.61 RCW), sexual~~
4 ~~exploitation of a child under chapter 9.68A RCW, sexual offenses under~~
5 ~~chapter 9A.44 RCW where a minor is the victim, promoting prostitution~~
6 ~~of a minor under chapter 9A.88 RCW, the sale or purchase of a minor~~
7 ~~child under RCW 9A.64.030, or violation of similar laws of another~~
8 ~~jurisdiction)) specified under section 1 of this act, the certificate
9 or permit shall not be reinstated.~~

10 **Sec. 7.** RCW 9.96A.020 and 2008 c 134 s 26 are each amended to read
11 as follows:

12 (1) Subject to the exceptions in subsections (3) through (5) of
13 this section, and unless there is another provision of law to the
14 contrary, a person is not disqualified from employment by the state of
15 Washington or any of its counties, cities, towns, municipal
16 corporations, or quasi-municipal corporations, nor is a person
17 disqualified to practice, pursue or engage in any occupation, trade,
18 vocation, or business for which a license, permit, certificate or
19 registration is required to be issued by the state of Washington or any
20 of its counties, cities, towns, municipal corporations, or quasi-
21 municipal corporations solely because of a prior conviction of a
22 felony. However, this section does not preclude the fact of any prior
23 conviction of a crime from being considered.

24 (2) A person may be denied employment by the state of Washington or
25 any of its counties, cities, towns, municipal corporations, or quasi-
26 municipal corporations, or a person may be denied a license, permit,
27 certificate or registration to pursue, practice or engage in an
28 occupation, trade, vocation, or business by reason of the prior
29 conviction of a felony if the felony for which he or she was convicted
30 directly relates to the position of employment sought or to the
31 specific occupation, trade, vocation, or business for which the
32 license, permit, certificate or registration is sought, and the time
33 elapsed since the conviction is less than ten years. However, for
34 positions in the county treasurer's office, a person may be
35 disqualified from employment because of a prior guilty plea or
36 conviction of a felony involving embezzlement or theft, even if the
37 time elapsed since the guilty plea or conviction is ten years or more.

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

10 (4) A person is disqualified from employment by school districts,
11 educational service districts, and their contractors hiring employees
12 who will have regularly scheduled unsupervised access to children,
13 because of a prior guilty plea or conviction of a felony (~~((involving
14 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses
15 under chapter 9A.44 RCW where a minor is the victim, promoting
16 prostitution of a minor under chapter 9A.88 RCW, or a violation of
17 similar laws of another jurisdiction))~~ crime specified under section 1
18 of this act, even if the time elapsed since the guilty plea or
19 conviction is ten years or more.

20 (5) The provisions of this chapter do not apply to issuance of
21 licenses or credentials for professions regulated under chapter 18.130
22 RCW.

23 (6) Subsections (3) and (4) of this section (~~((only))~~) as they
24 pertain to felony crimes specified under section 1(1) of this act apply
25 to a person applying for a certificate or for employment on or after
26 July 25, 1993, and before the effective date of section 1 of this act.
27 Subsections (3) and (4) of this section as they pertain to all felony
28 crimes specified under section 1(2) of this act apply to a person
29 applying for a certificate or for employment on or after the effective
30 date of section 1 of this act. Subsection (5) of this section only
31 applies to a person applying for a license or credential on or after
32 June 12, 2008.

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

35 (1) Upon a guilty plea or conviction of a person of any felony
36 crime (~~((involving the physical neglect of a child under chapter 9A.42
37 RCW, the physical injury or death of a child under chapter 9A.32 or~~

1 ~~9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),~~
2 ~~sexual exploitation of a child under chapter 9.68A RCW, sexual offenses~~
3 ~~under chapter 9A.44 RCW, promoting prostitution of a minor under~~
4 ~~chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW~~
5 ~~9A.64.030)) specified under section 1 of this act, the prosecuting~~
6 attorney shall notify the state patrol of such guilty pleas or
7 convictions.

8 (2) When the state patrol receives (~~information that a person has~~
9 ~~pled guilty to or been convicted of one of the felony crimes~~) the
10 notice required under subsection (1) of this section, the state patrol
11 shall transmit that information to the superintendent of public
12 instruction. It shall be the duty of the superintendent of public
13 instruction, on at least a quarterly basis, to identify whether the
14 person holds a certificate or permit issued under chapters 28A.405 and
15 28A.410 RCW or is employed by a school district, and provide this
16 information to the Washington professional educator standards board and
17 the school district employing the (~~individual who pled guilty or was~~
18 ~~convicted of the crimes identified in subsection (1) of this section~~)
19 person.

20 NEW SECTION. Sec. 9. A new section is added to chapter 28A.405
21 RCW to read as follows:

22 (1) A school district superintendent shall immediately notify the
23 office of the superintendent of public instruction when the district
24 terminates the employment contract of a certificated employee on the
25 basis of a guilty plea or a conviction of any felony crime specified
26 under section 1 of this act.

27 (2) The office of the superintendent of public instruction shall
28 maintain a record of the notices received under this section.

29 (3) This section applies only to employees holding a certificate or
30 permit authorized under this chapter or chapter 28A.410 RCW who have
31 contact with children during the course of employment.

32 NEW SECTION. Sec. 10. A new section is added to chapter 41.59 RCW
33 to read as follows:

34 Nothing in this chapter may be construed to grant employers or
35 employees the right to reach agreements that are in conflict with the
36 termination provisions of RCW 28A.405.470.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 41.56 RCW
2 to read as follows:

3 Nothing in this chapter may be construed to grant school district
4 employers or classified school district employees the right to reach
5 agreements that are in conflict with the termination provisions of RCW
6 28A.400.320."

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ADOPTED 04/07/2009

7 On page 1, line 2 of the title, after "employees;" strike the
8 remainder of the title and insert "amending RCW 28A.400.320,
9 28A.400.330, 28A.405.470, 28A.410.090, 28A.410.110, 9.96A.020, and
10 43.43.845; adding a new section to chapter 28A.400 RCW; adding a new
11 section to chapter 28A.405 RCW; adding a new section to chapter 41.59
12 RCW; and adding a new section to chapter 41.56 RCW."

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