

# HOUSE BILL REPORT

## ESHB 1741

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### As Passed Legislature

**Title:** An act relating to crimes that require dismissal or certificate revocation for school employees.

**Brief Description:** Expanding the list of crimes that require dismissal or certificate revocation for school employees.

**Sponsors:** House Committee on Education (originally sponsored by Representatives Darneille, Quall, Lias, Santos, Van De Wege, Goodman, Dickerson, Jacks, Hurst, Haigh, Pettigrew, Kenney, Dammeier and Morrell).

#### **Brief History:**

##### **Committee Activity:**

Education: 2/10/09, 2/18/09 [DPS].

##### **Floor Activity:**

Passed House: 3/9/09, 95-0.

Senate Amended.

Passed Senate: 4/8/09, 44-0.

House Concurred.

Passed House: 4/18/09, 97-0.

Passed Legislature.

#### **Brief Summary of Engrossed Substitute Bill**

- Adds many additional crimes to the list of crimes which result in mandatory termination of certificated and classified school employees, mandatory permanent certificate revocation, and the barring of contractor's employees from school grounds.
- Provides that, in the event of a final termination for certain felony crimes, school districts may seek to recover salary and other compensation paid to a classified or certificated employee between such time as the employee was placed on administrative leave and the time his or her termination becomes final.
- Requires mandatory revocation when the certificate was obtained through fraudulent means.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Requires the Office of the Superintendent of Public Instruction (OSPI) to review, on a quarterly basis, information provided by the Washington State Patrol regarding convictions and guilty pleas.
- Allows superintendents and administrators to file complaints with the OSPI regarding certificated individuals, regardless of whether the individual is employed by the complainant.
- Requires school district superintendents to notify the OSPI when the district terminates the employment of a certificated employee on the basis of a guilty plea or conviction for enumerated felony crimes and requires the OSPI to maintain a record of such notices.

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## HOUSE COMMITTEE ON EDUCATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Quall, Chair; Probst, Vice Chair; Priest, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Cox, Dammeier, Hunt, Johnson, Liias, Maxwell, Orwall, Santos and Sullivan.

**Staff:** Cece Clynch (786-7195)

### **Background:**

#### Mandatory Termination for Certain Crimes.

A school district must immediately terminate the employment of any certificated or classified employee upon conviction or a guilty plea to certain specified crimes against minors, such as physical injury or death of a child and promoting prostitution of a child. The employee has a right of appeal.

#### Discharge for Probable Cause.

School districts may discharge certificated school employees for probable cause. Examples of conduct for which an employee could be discharged for probable cause include immorality, sexual misconduct with children, supplying alcohol to minors, abusive behavior toward children, and insubordination. Employees discharged for probable cause have a right of appeal.

#### Revocation of Certificate.

A certificate must be permanently revoked by the Office of the Superintendent of Public Instruction (OSPI) upon a guilty plea or the conviction of any of the same crimes against children for which a certificated employee must be terminated. This permanent mandatory revocation provision applies to pleas or convictions after July 23, 1989. A person whose certificate has been permanently revoked has a right of appeal.

In addition, upon a finding that an employee has engaged in an unauthorized use of school equipment to intentionally access material depicting sexually explicit conduct or has intentionally possessed on school grounds any material depicting sexually explicit conduct, the certificate must be suspended or revoked. A first time violation results in either

suspension or revocation, as determined by the OSPI. A second violation results in mandatory revocation.

Certificates may also be revoked for immorality, violation of written contract, unprofessional conduct, intemperance, or crimes against the law of the state. A due process hearing is available.

#### Contractor's Employees Barred From School.

Any contract for services entered into by a school district must provide that any of the contractor's employees convicted or pleading guilty to these same specified crimes against children must be prohibited from working at a public school.

#### Notification.

Upon a person's conviction or plea of guilty for any of the specified crimes which result in mandatory termination and revocation, a prosecuting attorney must notify the Washington State Patrol (WSP). The WSP, in turn, is required to notify the OSPI. The OSPI is required to review the information provided by the WSP to determine whether the person holds a certificate issued by the OSPI. If so, the OSPI must provide this information to the Professional Educator Standards Board and the employing school district.

#### **Summary of Engrossed Substitute Bill:**

The list of crimes, for which convictions or pleas of guilty result in mandatory termination, is expanded to include crimes such as any felony with sexual motivation, felony indecent exposure, incest, kidnapping, and robbery. The victim of the crime need not be a child or minor. Attempts, conspiracies, or solicitations to commit any of the crimes on the list are also cause for mandatory termination. The new provisions apply to convictions or pleas of guilty which occur on or after the effective date.

In the event that a classified or certificated employee is terminated by reason of a plea or conviction for the specified felony crimes, a school district board of directors is entitled to recover from the employee any salary or other compensation that may have been paid to the employee for the period between such time as the employee was placed on administrative leave, following criminal charges being filed, and the time that the termination becomes final.

Certificates must be revoked upon a guilty plea or conviction for any of the crimes on the expanded list. Contractor's employees who have been convicted of any of these crimes are prohibited from the school.

Mandatory revocation must also occur upon a finding that the certificate holder obtained the certificate through fraudulent means, including misrepresentation of required academic credentials or prior criminal record.

The list of crimes which must be reported by the prosecutor to the WSP, and by the WSP to the OSPI, are similarly expanded to include the new crimes as well as the crimes against children already specified in law. The OSPI must review the information provided by the WSP on at least a quarterly basis.

School districts are prohibited from reaching agreements which are in conflict with the termination and notice provisions.

School superintendents and administrators are permitted to file complaints with the OSPI regarding certificated individuals, regardless of whether the certificated individual is employed by the complainant. Such written complaints must state the grounds and summarize the factual basis upon which a determination has been made that an OSPI investigation is warranted.

Upon termination of a certificated employee on grounds of a guilty plea or conviction for any of the enumerated felony crimes, a school district superintendent must notify the OSPI. The OSPI is required to keep a record of such notices.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Not too long ago, a principal was convicted of rape but because the victim was over 18 the mandatory termination provisions did not apply. This bill adds to the list of crimes for which termination is mandatory. Additional crimes against children as well as felony crimes regardless of the age of the victim are added. This bill also addresses the problem of certificates obtained through fraudulent means. It also permits communication between school superintendents, administrators, and the OSPI so additional children are not victimized by a perpetrator that moves from district to district. School boards are frustrated by situations in which considerable money has to be spent on settlements and administrative leave where the person to whom the money is paid has been criminally convicted. Even where there has been a criminal conviction, if the crime is not one for which termination is mandatory, the termination proceedings can be very lengthy and very expensive. Boundary invasions are not covered in this bill but should be. Schools need to be made aware of inappropriate boundary invasions and how to address such situations before the grooming escalates. Another means for expediting the process and decreasing the expense would be to include a provision that an employee charged with one of these crimes is entitled to leave with pay for only 30 days. If the employee posts a bond, then the pay continues. If no bond is posted, pay ceases until and unless the employee is acquitted at which time the district would reimburse the employee. This bill, with no amendments, is supported because it only applies upon a guilty plea or conviction. At that point, the employee has been afforded due process. There is a nexus between the crimes listed and fitness to teach in our schools. The Washington Education Association currently offers its members and school districts training regarding sexual predators and will continue to offer this training to schools that commit to requiring attendance by all adults in the building. This bill deals with the few bad actors.

(Opposed) None.

**Persons Testifying:** Representative Darneille, prime sponsor; Susan Schreurs, Tacoma Public Schools; Don Austin, Patterson Buchanan; Lucinda Young, Washington Education Association; Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs; Jerry Bender, Association of Washington School Principals; and Dan Steele, Washington State School Directors Association.

**Persons Signed In To Testify But Not Testifying:** None.