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SENATE BILL 6167

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State of Washington

62nd Legislature

2012 Regular Session

By Senators Kohl-Welles, Padden, Roach, and Chase

Read first time 01/13/12. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to criminal identification system information for  
2 entities providing emergency shelter, interim housing, or transitional  
3 housing; amending RCW 43.43.832; and reenacting and amending RCW  
4 43.43.830.

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

6 **Sec. 1.** RCW 43.43.830 and 2011 c 253 s 5 are each reenacted and  
7 amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout RCW 43.43.830 through 43.43.845.

10 (1) "Agency" means any person, firm, partnership, association,  
11 corporation, or facility which receives, provides services to, houses  
12 or otherwise cares for vulnerable adults, juveniles, or children, or  
13 which provides child day care, early learning, or early childhood  
14 education services.

15 (2) "Applicant" means:

16 (a) Any prospective employee who will or may have unsupervised  
17 access to children under sixteen years of age or developmentally  
18 disabled persons or vulnerable adults during the course of his or her  
19 employment or involvement with the business or organization;

1 (b) Any prospective volunteer who will have regularly scheduled  
2 unsupervised access to children under sixteen years of age,  
3 developmentally disabled persons, or vulnerable adults during the  
4 course of his or her employment or involvement with the business or  
5 organization under circumstances where such access will or may involve  
6 groups of (i) five or fewer children under twelve years of age, (ii)  
7 three or fewer children between twelve and sixteen years of age, (iii)  
8 developmentally disabled persons, or (iv) vulnerable adults;

9 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;  
10 or

11 (d) Any prospective custodian in a nonparental custody proceeding  
12 under chapter 26.10 RCW.

13 (3) "Business or organization" means a person, business, or  
14 organization licensed in this state, any agency of the state, or other  
15 governmental entity, that educates, trains, treats, supervises, houses,  
16 or provides recreation to developmentally disabled persons, vulnerable  
17 adults, or children under sixteen years of age, or that provides child  
18 day care, early learning, or early learning childhood education  
19 services, including but not limited to public housing authorities,  
20 school districts, and educational service districts.

21 (4) "Civil adjudication proceeding" is a judicial or administrative  
22 adjudicative proceeding that results in a finding of, or upholds an  
23 agency finding of, domestic violence, abuse, sexual abuse, neglect,  
24 abandonment, violation of a professional licensing standard regarding  
25 a child or vulnerable adult, or exploitation or financial exploitation  
26 of a child or vulnerable adult under any provision of law, including  
27 but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted  
28 under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"  
29 also includes judicial or administrative findings that become final due  
30 to the failure of the alleged perpetrator to timely exercise a legal  
31 right to administratively challenge such findings.

32 (5) "Client" or "resident" means a child, person with developmental  
33 disabilities, or low-income or vulnerable adult applying for housing  
34 assistance from a business or organization.

35 (6) "Conviction record" means "conviction record" information as  
36 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by  
37 either an adult or a juvenile. It does not include a conviction for an  
38 offense that has been the subject of an expungement, pardon, annulment,

1 certificate of rehabilitation, or other equivalent procedure based on  
2 a finding of the rehabilitation of the person convicted, or a  
3 conviction that has been the subject of a pardon, annulment, or other  
4 equivalent procedure based on a finding of innocence. It does include  
5 convictions for offenses for which the defendant received a deferred or  
6 suspended sentence, unless the record has been expunged according to  
7 law.

8 ((+6)) (7) "Crime against children or other persons" means a  
9 conviction of any of the following offenses: Aggravated murder; first  
10 or second degree murder; first or second degree kidnapping; first,  
11 second, or third degree assault; first, second, or third degree assault  
12 of a child; first, second, or third degree rape; first, second, or  
13 third degree rape of a child; first or second degree robbery; first  
14 degree arson; first degree burglary; first or second degree  
15 manslaughter; first or second degree extortion; indecent liberties;  
16 incest; vehicular homicide; first degree promoting prostitution;  
17 communication with a minor; unlawful imprisonment; simple assault;  
18 sexual exploitation of minors; first or second degree criminal  
19 mistreatment; endangerment with a controlled substance; child abuse or  
20 neglect as defined in RCW 26.44.020; first or second degree custodial  
21 interference; first or second degree custodial sexual misconduct;  
22 malicious harassment; first, second, or third degree child molestation;  
23 first or second degree sexual misconduct with a minor; commercial  
24 sexual abuse of a minor; child abandonment; promoting pornography;  
25 selling or distributing erotic material to a minor; custodial assault;  
26 violation of child abuse restraining order; child buying or selling;  
27 prostitution; felony indecent exposure; criminal abandonment; or any of  
28 these crimes as they may be renamed in the future.

29 ((+7)) (8) "Crimes relating to drugs" means a conviction of a  
30 crime to manufacture, delivery, or possession with intent to  
31 manufacture or deliver a controlled substance.

32 ((+8)) (9) "Crimes relating to financial exploitation" means a  
33 conviction for first, second, or third degree extortion; first, second,  
34 or third degree theft; first or second degree robbery; forgery; or any  
35 of these crimes as they may be renamed in the future.

36 ((+9)) (10) "Financial exploitation" means "financial  
37 exploitation" as defined in RCW 74.34.020.

1       (~~(10)~~) (11) "Peer counselor" means a nonprofessional person who  
2 has equal standing with another person, providing advice on a topic  
3 about which the nonprofessional person is more experienced or  
4 knowledgeable, and who is a counselor for a peer counseling program  
5 that contracts with or is otherwise approved by the department, another  
6 state or local agency, or the court.

7       (~~(11)~~) (12) "Unsupervised" means not in the presence of:

8       (a) Another employee or volunteer from the same business or  
9 organization as the applicant; or

10       (b) Any relative or guardian of any of the children or  
11 developmentally disabled persons or vulnerable adults to which the  
12 applicant has access during the course of his or her employment or  
13 involvement with the business or organization.

14       With regard to peer counselors, "unsupervised" does not include  
15 incidental contact with children under age sixteen at the location at  
16 which the peer counseling is taking place. "Incidental contact" means  
17 minor or casual contact with a child in an area accessible to and  
18 within visual or auditory range of others. It could include passing a  
19 child while walking down a hallway but would not include being alone  
20 with a child for any period of time in a closed room or office.

21       (~~(12)~~) (13) "Vulnerable adult" means "vulnerable adult" as  
22 defined in chapter 74.34 RCW, except that for the purposes of  
23 requesting and receiving background checks pursuant to RCW 43.43.832,  
24 it shall also include adults of any age who lack the functional,  
25 mental, or physical ability to care for themselves.

26       **Sec. 2.** RCW 43.43.832 and 2011 c 253 s 6 are each amended to read  
27 as follows:

28       (1) The legislature finds that businesses and organizations  
29 providing services to children, developmentally disabled persons, and  
30 vulnerable adults need adequate information to determine which  
31 employees or licensees to hire or engage. The legislature further  
32 finds that many developmentally disabled individuals and vulnerable  
33 adults desire to hire their own employees directly and also need  
34 adequate information to determine which employees or licensees to hire  
35 or engage. Therefore, the Washington state patrol identification and  
36 criminal history section shall disclose, upon the request of a business  
37 or organization as defined in RCW 43.43.830, a developmentally disabled

1 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her  
2 guardian, an applicant's conviction record as defined in chapter 10.97  
3 RCW.

4 (2) The legislature also finds that the Washington professional  
5 educator standards board may request of the Washington state patrol  
6 criminal identification system information regarding a certificate  
7 applicant's conviction record under subsection (1) of this section.

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

14 (4) The legislature also finds that businesses and organizations  
15 that provide emergency shelter, interim housing, or transitional  
16 housing for children, persons with developmental disabilities, and low-  
17 income or vulnerable adults may request criminal identification system  
18 information regarding a prospective client's or resident's conviction  
19 record.

20 (5) The legislature further finds that the secretary of the  
21 department of social and health services must establish rules and set  
22 standards to require specific action when considering the information  
23 listed in subsection (1) of this section, and when considering  
24 additional information including but not limited to civil adjudication  
25 proceedings as defined in RCW 43.43.830 and any out-of-state  
26 equivalent, in the following circumstances:

27 (a) When considering persons for state employment in positions  
28 directly responsible for the supervision, care, or treatment of  
29 children, vulnerable adults, or individuals with mental illness or  
30 developmental disabilities;

31 (b) When considering persons for state positions involving  
32 unsupervised access to vulnerable adults to conduct comprehensive  
33 assessments, financial eligibility determinations, licensing and  
34 certification activities, investigations, surveys, or case management;  
35 or for state positions otherwise required by federal law to meet  
36 employment standards;

37 (c) When licensing agencies or facilities with individuals in  
38 positions directly responsible for the care, supervision, or treatment

1 of children, developmentally disabled persons, or vulnerable adults,  
2 including but not limited to agencies or facilities licensed under  
3 chapter 74.15 or 18.51 RCW;

4 (d) When contracting with individuals or businesses or  
5 organizations for the care, supervision, case management, or treatment,  
6 including peer counseling, of children, developmentally disabled  
7 persons, or vulnerable adults, including but not limited to services  
8 contracted for under chapter 18.20, 70.127, 70.128, 72.36, or 74.39A  
9 RCW or Title 71A RCW;

10 (e) When individual providers are paid by the state or providers  
11 are paid by home care agencies to provide in-home services involving  
12 unsupervised access to persons with physical, mental, or developmental  
13 disabilities or mental illness, or to vulnerable adults as defined in  
14 chapter 74.34 RCW, including but not limited to services provided under  
15 chapter 74.39 or 74.39A RCW.

16 ~~((+5))~~ (6) The director of the department of early learning shall  
17 investigate the conviction records, pending charges, and other  
18 information including civil adjudication proceeding records of current  
19 employees and of any person actively being considered for any position  
20 with the department who will or may have unsupervised access to  
21 children, or for state positions otherwise required by federal law to  
22 meet employment standards. "Considered for any position" includes  
23 decisions about (a) initial hiring, layoffs, reallocations, transfers,  
24 promotions, or demotions, or (b) other decisions that result in an  
25 individual being in a position that will or may have unsupervised  
26 access to children as an employee, an intern, or a volunteer.

27 ~~((+6))~~ (7) The director of the department of early learning shall  
28 adopt rules and investigate conviction records, pending charges, and  
29 other information including civil adjudication proceeding records, in  
30 the following circumstances:

31 (a) When licensing or certifying agencies with individuals in  
32 positions that will or may have unsupervised access to children who are  
33 in child day care, in early learning programs, or receiving early  
34 childhood education services, including but not limited to licensees,  
35 agency staff, interns, volunteers, contracted providers, and persons  
36 living on the premises who are sixteen years of age or older;

37 (b) When authorizing individuals who will or may have unsupervised  
38 access to children who are in child day care, in early learning

1 programs, or receiving early childhood learning education services in  
2 licensed or certified agencies, including but not limited to licensees,  
3 agency staff, interns, volunteers, contracted providers, and persons  
4 living on the premises who are sixteen years of age or older;

5 (c) When contracting with any business or organization for  
6 activities that will or may have unsupervised access to children who  
7 are in child day care, in early learning programs, or receiving early  
8 childhood learning education services;

9 (d) When establishing the eligibility criteria for individual  
10 providers to receive state paid subsidies to provide child day care or  
11 early learning services that will or may involve unsupervised access to  
12 children.

13 (~~(7)~~) (8) Whenever a state conviction record check is required by  
14 state law, persons may be employed or engaged as volunteers or  
15 independent contractors on a conditional basis pending completion of  
16 the state background investigation. Whenever a national criminal  
17 record check through the federal bureau of investigation is required by  
18 state law, a person may be employed or engaged as a volunteer or  
19 independent contractor on a conditional basis pending completion of the  
20 national check. The Washington personnel resources board shall adopt  
21 rules to accomplish the purposes of this subsection as it applies to  
22 state employees.

23 (~~(8)~~) (9)(a) For purposes of facilitating timely access to  
24 criminal background information and to reasonably minimize the number  
25 of requests made under this section, recognizing that certain health  
26 care providers change employment frequently, health care facilities  
27 may, upon request from another health care facility, share copies of  
28 completed criminal background inquiry information.

29 (b) Completed criminal background inquiry information may be shared  
30 by a willing health care facility only if the following conditions are  
31 satisfied: The licensed health care facility sharing the criminal  
32 background inquiry information is reasonably known to be the person's  
33 most recent employer, no more than twelve months has elapsed from the  
34 date the person was last employed at a licensed health care facility to  
35 the date of their current employment application, and the criminal  
36 background information is no more than two years old.

37 (c) If criminal background inquiry information is shared, the  
38 health care facility employing the subject of the inquiry must require

1 the applicant to sign a disclosure statement indicating that there has  
2 been no conviction or finding as described in RCW 43.43.842 since the  
3 completion date of the most recent criminal background inquiry.

4 (d) Any health care facility that knows or has reason to believe  
5 that an applicant has or may have a disqualifying conviction or finding  
6 as described in RCW 43.43.842, subsequent to the completion date of  
7 their most recent criminal background inquiry, shall be prohibited from  
8 relying on the applicant's previous employer's criminal background  
9 inquiry information. A new criminal background inquiry shall be  
10 requested pursuant to RCW 43.43.830 through 43.43.842.

11 (e) Health care facilities that share criminal background inquiry  
12 information shall be immune from any claim of defamation, invasion of  
13 privacy, negligence, or any other claim in connection with any  
14 dissemination of this information in accordance with this subsection.

15 (f) Health care facilities shall transmit and receive the criminal  
16 background inquiry information in a manner that reasonably protects the  
17 subject's rights to privacy and confidentiality.

18 (g) For the purposes of this subsection, "health care facility"  
19 means a nursing home licensed under chapter 18.51 RCW, a boarding home  
20 licensed under chapter 18.20 RCW, or an adult family home licensed  
21 under chapter 70.128 RCW.

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