
SUBSTITUTE HOUSE BILL 2554

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Education (originally sponsored by Representatives Cole, Poulsen, Chopp, Dickerson, Murray, Sheldon, Tokuda, Patterson, Conway, Regala, Linville and Costa)

Read first time 02/02/96.

1 AN ACT Relating to record checks of educational employees and
2 applicants; amending RCW 28A.400.303, 43.43.845, 43.43.830, and
3 28A.410.090; adding new sections to chapter 28A.400 RCW; creating a new
4 section; and declaring an emergency.

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

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

8 (1) In accordance with the time line established under subsection
9 (3) of this section, school districts shall require that all employees
10 who have not had a record check under RCW 28A.400.303 apply for a
11 record check through the Washington state patrol criminal
12 identification system under RCW 43.43.830 through 43.43.838, 10.97.030,
13 and 10.97.050 and through the federal bureau of investigation.
14 Employees of school district contractors and educational service
15 districts who have regularly scheduled unsupervised access to children
16 in public schools who have not had a record check under RCW 28A.400.303
17 also shall have the record check. The record check shall include a
18 fingerprint check using a complete Washington state criminal
19 identification fingerprint card. The superintendent of public

1 instruction shall provide a copy of the record report to the employee.
2 Once an employee has a record check as required under this section,
3 additional record checks shall not be required of the employee unless
4 required by other provisions of law.

5 (2) Employees, school districts, and educational service districts
6 shall not be required by the state patrol or superintendent of public
7 instruction to pay for the record check required in subsection (1) of
8 this section.

9 (3) Notwithstanding other provisions of law, the state patrol and
10 superintendent of public instruction shall complete the record checks
11 required in this section no later than July 31, 1999. The state patrol
12 and the superintendent of public instruction shall establish a time
13 line for the submission of fingerprint identification cards and for
14 completion of the record checks, and shall notify the legislature,
15 school districts, and educational service districts of the time line.
16 The time line shall ensure that all of the record checks required by
17 this section are completed by July 31, 1999.

18 (4) When a record check required under this section indicates that
19 a classified employee has been convicted of a crime, the employer shall
20 consider the following when making employment decisions pertaining to
21 the individual: The age and maturity of the individual at the time the
22 crime was committed; the seriousness of the crime and any mitigating
23 factors; the likelihood that the crime will be repeated; the proximity
24 in time of the crime; evidence that would support good moral character
25 and personal fitness; and other appropriate factors. A classified
26 employee dismissed or otherwise adversely affected as a result of a
27 conviction identified in the record check may appeal pursuant to RCW
28 28A.400.320 or 28A.400.340, whichever is applicable or under any right
29 to appeal granted to the employee through a collective bargaining
30 agreement.

31 (5) A certificated employee dismissed or otherwise adversely
32 affected as a result of a conviction identified in the record check may
33 appeal pursuant to RCW 28A.400.340 or chapter 28A.405 RCW, whichever is
34 applicable or under any right to appeal granted to the employee through
35 a collective bargaining agreement.

36 **Sec. 2.** RCW 28A.400.303 and 1992 c 159 s 2 are each amended to
37 read as follows:

1 School districts(~~(, educational service districts, and their~~
2 ~~contractors)~~) hiring employees (~~(who will have regularly scheduled~~
3 ~~unsupervised access to children)~~) shall require a record check through
4 the Washington state patrol criminal identification system under RCW
5 43.43.830 through (~~(43.43.834)~~) 43.43.838, 10.97.030, and 10.97.050 and
6 through the federal bureau of investigation before hiring an employee.
7 School district contractors and educational service districts hiring
8 employees who will have regularly scheduled unsupervised access to
9 children also shall require the record check. The record check shall
10 include a fingerprint check using a complete Washington state criminal
11 identification fingerprint card. The (~~(requesting entity)~~)
12 superintendent of public instruction shall provide a copy of the record
13 report to the applicant. When necessary, applicants may be employed on
14 a conditional basis pending completion of the (~~(investigation)~~) record
15 check. If the applicant has had a record check within the previous two
16 years, the district or contractor may waive the requirement. The
17 district, pursuant to chapter 41.59 or 41.56 RCW, or contractor hiring
18 the employee shall determine who shall pay costs associated with the
19 record check.

20 NEW SECTION. Sec. 3. A new section is added to chapter 28A.400
21 RCW to read as follows:

22 The superintendent of public instruction shall adopt rules
23 regarding the access to record check files. The rules shall include
24 provisions for written processes and procedures delineating an
25 employee's or applicant's access to and review of state agency files
26 regarding record check information. The rules shall also provide
27 written processes and procedures that ensure that access to the
28 superintendent of public instruction record check data base shall
29 remain with only those individuals processing record check information
30 at the office of the superintendent of public instruction, school
31 districts, and educational service districts.

32 **Sec. 4.** RCW 43.43.845 and 1990 c 33 s 577 are each amended to read
33 as follows:

34 (~~((1))~~) Upon a guilty plea or conviction of a person of any
35 (~~(felony crime involving the physical neglect of a child under chapter~~
36 ~~9A.42 RCW, the physical injury or death of a child under chapter 9A.32~~
37 ~~or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),~~

1 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses
2 under chapter 9A.44 RCW where a minor is the victim, promoting
3 prostitution of a minor under chapter 9A.88 RCW, or the sale or
4 purchase of a minor child under RCW 9A.64.030)) crime against children
5 or other persons as defined in RCW 43.43.830(5) including any felony
6 crime involving a controlled substance, the prosecuting attorney shall
7 determine whether the person holds a certificate or permit issued under
8 chapter((s 28A.405 and)) 28A.410 RCW or is employed by a school
9 district, school district contractor, or educational service district.
10 If the person is employed by a school district, school district
11 contractor, or educational service district or holds a certificate or
12 permit issued under chapter((s 28A.405 and)) 28A.410 RCW, the
13 prosecuting attorney shall notify ((the state patrol of such guilty
14 pleas or convictions.

15 (2) ~~When the state patrol receives information that a person who~~
16 ~~has a certificate or permit issued under chapters 28A.405 and 28A.410~~
17 ~~RCW or is employed by a school district has pled guilty to or been~~
18 ~~convicted of one of the felony crimes under subsection (1) of this~~
19 ~~section, the state patrol shall immediately transmit that information~~
20 ~~to)) the superintendent of public instruction. It shall be the duty of~~
21 ~~the superintendent of public instruction to provide this information to~~
22 ~~((the state board of education and)) the school district, school~~
23 ~~district contractor, or educational service district employing the~~
24 ~~individual who pled guilty or was convicted of ((the crimes identified~~
25 ~~in subsection (1) of this section)) a crime against children or other~~
26 ~~persons including any felony crime involving a controlled substance.~~

27 **Sec. 5.** RCW 43.43.830 and 1995 c 250 s 1 are each amended to read
28 as follows:

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

31 (1) "Applicant" means:

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

36 (b) Any prospective volunteer who will have regularly scheduled
37 unsupervised access to children under sixteen years of age,
38 developmentally disabled persons, or vulnerable adults during the

1 course of his or her employment or involvement with the business or
2 organization under circumstances where such access will or may involve
3 groups of (i) five or fewer children under twelve years of age, (ii)
4 three or fewer children between twelve and sixteen years of age, (iii)
5 developmentally disabled persons, or (iv) vulnerable adults; ((or))

6 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
7 or

8 (d) Any employee of a school district, educational service
9 district, or school district contractor.

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

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

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

1 (5) "Crime against children or other persons" means a conviction of
2 any of the following offenses: Aggravated murder; first or second
3 degree murder; first or second degree kidnaping; first, second, or
4 third degree assault; first, second, or third degree assault of a
5 child; first, second, or third degree rape; first, second, or third
6 degree rape of a child; first or second degree robbery; first degree
7 arson; first degree burglary; first or second degree manslaughter;
8 first or second degree extortion; indecent liberties; incest; vehicular
9 homicide; first degree promoting prostitution; communication with a
10 minor; unlawful imprisonment; simple assault; sexual exploitation of
11 minors; first or second degree criminal mistreatment; child abuse or
12 neglect as defined in RCW 26.44.020; first or second degree custodial
13 interference; malicious harassment; first, second, or third degree
14 child molestation; first or second degree sexual misconduct with a
15 minor; first or second degree rape of a child; patronizing a juvenile
16 prostitute; child abandonment; promoting pornography; selling or
17 distributing erotic material to a minor; custodial assault; violation
18 of child abuse restraining order; child buying or selling;
19 prostitution; felony indecent exposure; criminal abandonment; or any of
20 these crimes as they may be renamed in the future. For the purposes of
21 section 4 of this act, a "crime against children or other persons"
22 shall include any felony crime involving a controlled substance.

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

27 (7) "Disciplinary board final decision" means any final decision
28 issued by a disciplining authority under chapter 18.130 RCW or the
29 secretary of the department of health for the following businesses or
30 professions:

- 31 (a) Chiropractic;
- 32 (b) Dentistry;
- 33 (c) Dental hygiene;
- 34 (d) Massage;
- 35 (e) Midwifery;
- 36 (f) Naturopathy;
- 37 (g) Osteopathy;
- 38 (h) Physical therapy;
- 39 (i) Physicians;

- 1 (j) Practical nursing;
- 2 (k) Registered nursing; and
- 3 (l) Psychology.

4 "Disciplinary board final decision," for real estate brokers and
5 salespersons, means any final decision issued by the director of the
6 department of licensing for real estate brokers and salespersons.

7 (8) "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 (9) "Vulnerable adult" means "vulnerable adult" as defined in
15 chapter 74.34 RCW, except that for the purposes of requesting and
16 receiving background checks pursuant to RCW 43.43.832, it shall also
17 include adults of any age who lack the functional, mental, or physical
18 ability to care for themselves.

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

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

25 **Sec. 6.** RCW 28A.410.090 and 1992 c 159 s 4 are each amended to
26 read as follows:

27 (1) Any certificate or permit authorized under the provisions of
28 this chapter, chapter 28A.405 RCW, or rules and regulations promulgated
29 thereunder may be revoked or suspended by the authority authorized to
30 grant the same based upon a criminal records report authorized by law,
31 or upon the complaint of any school district superintendent,
32 educational service district superintendent, or private school
33 administrator for immorality, violation of written contract,
34 unprofessional conduct, intemperance, or crime against the law of the
35 state.

36 If the superintendent of public instruction has reasonable cause to
37 believe that an alleged violation of this chapter or rules adopted
38 under it has occurred, but no complaint has been filed pursuant to this

1 chapter, and that a school district superintendent, educational service
2 district superintendent, or private school administrator has sufficient
3 notice of the alleged violation and opportunity to file a complaint,
4 the superintendent of public instruction may cause an investigation to
5 be made of the alleged violation, together with such other matters that
6 may be disclosed in the course of the investigation related to
7 certificated personnel.

8 (2) Any such certificate or permit authorized under this chapter or
9 chapter 28A.405 RCW shall be revoked by the authority authorized to
10 grant the certificate upon a guilty plea or the conviction of any
11 felony crime involving the physical neglect of a child under chapter
12 9A.42 RCW, the physical injury or death of a child under chapter 9A.32
13 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61
14 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual
15 offenses under chapter 9A.44 RCW where a minor is the victim, promoting
16 prostitution of a minor under chapter 9A.88 RCW, the sale or purchase
17 of a minor child under RCW 9A.64.030, or violation of similar laws of
18 another jurisdiction. The person whose certificate or permit is in
19 question shall be given an opportunity to be heard and a right to
20 appeal under RCW 28A.410.100. Mandatory permanent revocation upon a
21 guilty plea or the conviction of felony crimes specified under this
22 subsection shall apply to such convictions or guilty pleas which occur
23 after July 23, 1989. Revocation of any certificate or permit
24 authorized under this chapter or chapter 28A.405 RCW for a guilty plea
25 or criminal conviction occurring prior to July 23, 1989, shall be
26 subject to the provisions of subsection (1) of this section.

27 NEW SECTION. **Sec. 7.** If specific funding for the purposes of this
28 act, referencing this act by bill or chapter number, is not provided by
29 June 30, 1996, in the omnibus appropriations act, this act is null and
30 void.

31 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of the
33 state government and its existing public institutions, and shall take
34 effect immediately.

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