

2 **ESHB 2518** - S COMM AMD
3 By Committee on Education

4 ADOPTED 3/5/92

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that additional
8 safeguards are necessary to ensure the safety of Washington's school
9 children. The legislature further finds that the results from state
10 patrol record checks are more complete when fingerprints of individuals
11 are provided, and that information from the federal bureau of
12 investigation also is necessary to obtain information on out-of-state
13 criminal records. The legislature further finds that confidentiality
14 safeguards in state law are in place to ensure that the rights of
15 applicants for certification or jobs and newly hired employees are
16 protected."

17 "NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.400
18 RCW to read as follows:

19 School districts, educational service districts, and their
20 contractors hiring employees who will have regularly scheduled
21 unsupervised access to children shall require a record check through
22 the Washington state patrol criminal identification system under RCW
23 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the
24 federal bureau of investigation before hiring an employee. The record
25 check shall include a fingerprint check using a complete Washington
26 state criminal identification fingerprint card. The requesting entity
27 shall provide a copy of the record report to the applicant. When

1 necessary, applicants may be employed on a conditional basis pending
2 completion of the investigation. If the applicant has had a record
3 check within the previous two years, the district or contractor may
4 waive the requirement. The district, pursuant to chapter 41.59 or
5 41.56 RCW, or contractor hiring the employee shall determine who shall
6 pay costs associated with the record check."

7 "Sec. 3. RCW 28A.410.010 and 1988 c 172 s 3 and 1988 c 97 s 1 are
8 each reenacted and amended to read as follows:

9 The state board of education shall establish, publish, and enforce
10 rules and regulations determining eligibility for and certification of
11 personnel employed in the common schools of this state, including
12 certification for emergency or temporary, substitute or provisional
13 duty and under such certificates or permits as the board shall deem
14 proper or as otherwise prescribed by law. (~~Except for applicants who~~
15 ~~are applying for certificates which restrict the holder of the~~
16 ~~certificate to the teaching of students who are sixteen years of age or~~
17 ~~older,~~) The rules shall require that the initial application for
18 certification shall require a ((background)) record check of the
19 applicant through the Washington state patrol criminal identification
20 system and through the federal bureau of investigation at the
21 applicant's expense. The record check shall include a fingerprint
22 check using a complete Washington state criminal identification
23 fingerprint card. The superintendent of public instruction may waive
24 the record check for any applicant who has had a record check within
25 the two years before application.

26 In establishing rules pertaining to the qualifications of
27 instructors of sign language the state board shall consult with the
28 national association of the deaf, "sign instructors guidance network"

1 (s.i.g.n.), and the Washington state association of the deaf for
2 evaluation and certification of sign language instructors.

3 The superintendent of public instruction shall act as the
4 administrator of any such rules and regulations and have the power to
5 issue any certificates or permits and revoke the same in accordance
6 with board rules and regulations."

7 "Sec. 4. RCW 28A.410.090 and 1990 c 33 s 408 are each amended to
8 read as follows:

9 (1) Any certificate or permit authorized under the provisions of
10 this chapter, chapter 28A.405 RCW, or rules and regulations promulgated
11 thereunder may be revoked or suspended by the authority authorized to
12 grant the same upon complaint of any school district superintendent
13 ((or)), educational service district superintendent, or private school
14 administrator for immorality, violation of written contract,
15 unprofessional conduct, intemperance, or crime against the law of the
16 state.

17 If the superintendent of public instruction has reasonable cause to
18 believe that an alleged violation of this chapter or rules adopted
19 under it has occurred, but no complaint has been filed pursuant to this
20 chapter, and that a school district superintendent, educational service
21 district superintendent, or private school administrator has sufficient
22 notice of the alleged violation and opportunity to file a complaint,
23 the superintendent of public instruction may cause an investigation to
24 be made of the alleged violation, together with such other matters that
25 may be disclosed in the course of the investigation related to
26 certificated personnel.

27 (2) Any such certificate or permit authorized under this chapter or
28 chapter 28A.405 RCW shall be revoked by the authority authorized to
29 grant the certificate upon a guilty plea or the conviction of any

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

17 "NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.410
18 RCW to read as follows:

19 (1) The superintendent of public instruction may initiate and
20 conduct investigations as may be reasonably necessary to establish the
21 existence of any alleged violations of or noncompliance with this
22 chapter or any rules adopted under it. For the purpose of any
23 investigation or proceeding under this chapter, the superintendent or
24 any officer designated by the superintendent may administer oaths and
25 affirmations, subpoena witnesses and compel their attendance, take
26 evidence, and require the production of any books, papers,
27 correspondence, memoranda, agreements, or other documents or records
28 that the superintendent deems relevant and material to the inquiry.

1 (2) If any person fails to obey a subpoena or obeys a subpoena but
2 refuses to give evidence, any court of competent jurisdiction, upon
3 application by the superintendent, may issue to that person an order
4 requiring him or her to appear before the court and to show cause why
5 he or she should not be compelled to obey the subpoena, and give
6 evidence material to the matter under investigation. The failure to
7 obey an order of the court may be punishable as contempt."

8 "Sec. 6. RCW 28A.410.100 and 1990 c 33 s 409 are each amended to
9 read as follows:

10 Any teacher whose certificate to teach has been questioned (~~by the~~
11 ~~filing of a complaint by a school district superintendent or~~
12 ~~educational service district superintendent~~) under RCW 28A.410.090
13 shall have a right to be heard by the issuing authority before his or
14 her certificate is revoked. Any teacher whose certificate to teach has
15 been revoked shall have a right of appeal to the state board of
16 education if notice of appeal is given by written affidavit to the
17 board within thirty days after the certificate is revoked.

18 An appeal to the state board of education within the time specified
19 shall operate as a stay of revocation proceedings until the next
20 regular or special meeting of said board and until the board's decision
21 has been rendered."

22 "Sec. 7. RCW 43.43.838 and 1990 c 3 s 1104 are each amended to
23 read as follows:

24 (1) After January 1, 1988, and notwithstanding any provision of RCW
25 43.43.700 through 43.43.810 to the contrary, the state patrol shall
26 furnish a transcript of the conviction record, disciplinary board final
27 decision and any subsequent criminal charges associated with the
28 conduct that is the subject of the disciplinary board final decision,

1 or civil adjudication record pertaining to any person for whom the
2 state patrol or the federal bureau of investigation has a record upon
3 the written request of:

4 (a) The subject of the inquiry;

5 (b) Any business or organization for the purpose of conducting
6 evaluations under RCW 43.43.832;

7 (c) The department of social and health services;

8 (d) Any law enforcement agency, prosecuting authority, or the
9 office of the attorney general; or

10 (e) The department of social and health services for the purpose of
11 meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or
12 72.23 RCW, or any later-enacted statute which purpose is to regulate or
13 license a facility which handles vulnerable adults. However, access to
14 conviction records pursuant to this subsection (1)(e) does not limit or
15 restrict the ability of the department to obtain additional information
16 regarding conviction records and pending charges as set forth in RCW
17 74.15.030(2)(b).

18 After processing the request, if the conviction record,
19 disciplinary board final decision and any subsequent criminal charges
20 associated with the conduct that is the subject of the disciplinary
21 board final decision, or adjudication record shows no evidence of a
22 crime against children or other persons or, in the case of vulnerable
23 adults, no evidence of crimes relating to financial exploitation in
24 which the victim was a vulnerable adult, an identification declaring
25 the showing of no evidence shall be issued to the applicant by the
26 state patrol and shall be issued within fourteen working days of the
27 request. Possession of such identification shall satisfy future
28 ((background)) record check requirements for the applicant for a two-
29 year period unless the prospective employee is any current school

1 district employee who has applied for a position in another school
2 district.

3 (2) The state patrol shall by rule establish fees for disseminating
4 records under this section to recipients identified in subsection
5 (1)(a) and (b) of this section. The state patrol shall also by rule
6 establish fees for disseminating records in the custody of the national
7 crime information center. The revenue from the fees shall cover, as
8 nearly as practicable, the direct and indirect costs to the state
9 patrol of disseminating the records: PROVIDED, That no fee shall be
10 charged to a nonprofit organization(~~(, including school districts and~~
11 ~~educational service districts,~~) for the records check: PROVIDED
12 FURTHER, That in the case of record checks using fingerprints requested
13 by school districts and educational service districts, the state patrol
14 shall charge only for the incremental costs associated with checking
15 fingerprints in addition to name and date of birth. Record checks
16 requested by school districts and educational service districts using
17 only name and date of birth shall continue to be provided free of
18 charge.

19 (3) No employee of the state, employee of a business or
20 organization, or the business or organization is liable for defamation,
21 invasion of privacy, negligence, or any other claim in connection with
22 any lawful dissemination of information under RCW 43.43.830 through
23 43.43.840 or 43.43.760.

24 (4) Before July 26, 1987, the state patrol shall adopt rules and
25 forms to implement this section and to provide for security and privacy
26 of information disseminated under this section, giving first priority
27 to the criminal justice requirements of this chapter. The rules may
28 include requirements for users, audits of users, and other procedures
29 to prevent use of civil adjudication record information or criminal
30 history record information inconsistent with this chapter.

1 (5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an
2 employer to make an inquiry not specifically authorized by this
3 chapter, or be construed to affect the policy of the state declared in
4 chapter 9.96A RCW."

5 "NEW SECTION. **Sec. 8.** A new section is added to chapter 43.43 RCW
6 to read as follows:

7 The fingerprint identification account is created in the custody of
8 the state treasurer. All receipts from incremental charges of
9 fingerprint checks requested by school districts shall be deposited in
10 the account. Receipts for fingerprint checks by the federal bureau of
11 investigation may also be deposited in the account. Expenditures from
12 the account may be used only for the cost of record checks. Only the
13 chief of the state patrol or the chief's designee may authorize
14 expenditures from the account. The account is subject to allotment
15 procedures under chapter 43.88 RCW. No appropriation is required for
16 expenditures prior to July 1, 1995. After June 30, 1995, the account
17 shall be subject to appropriation."

18 "NEW SECTION. **Sec. 9.** A new section is added to chapter 28A.400
19 RCW to read as follows:

20 The state patrol shall accept fingerprints obtained under this
21 chapter only if it can ensure that the patrol will not retain a record
22 of the fingerprints after the check is complete. It shall not forward
23 fingerprints obtained under this chapter to the federal bureau of
24 investigation unless it can ensure that the federal bureau of
25 investigation will not retain a record of the fingerprints after the
26 check is complete. The state patrol shall report to the house of
27 representatives appropriations committee and the senate ways and means

1 committee on measures taken to implement this section before accepting
2 any fingerprints obtained under this chapter."

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6 On page 1, line 1 of the title, after "employees;" strike the
7 remainder of the title and insert "amending RCW 28A.410.090,
8 28A.410.100, and 43.43.838; reenacting and amending RCW 28A.410.010;
9 adding new sections to chapter 28A.400 RCW; adding a new section to
10 chapter 28A.410 RCW; adding a new section to chapter 43.43 RCW; and
11 creating a new section."