
HOUSE BILL 2936

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By Representatives Sullivan, Wallace, Blake, O'Brien, Wood, Lovick, Santos, Rockefeller and Kenney

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1 AN ACT Relating to criminal history checks for persons having
2 supervised and unsupervised contact with minors, developmentally
3 disabled persons, or vulnerable adults; amending RCW 43.43.830,
4 43.43.834, and 43.43.838; and adding new sections to chapter 43.43 RCW.

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

6 **Sec. 1.** RCW 43.43.830 and 2003 c 105 s 5 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout RCW 43.43.830 through 43.43.840, and
10 sections 2 and 5 of this act.

11 (1) "Applicant" means:

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

16 (b) Any prospective volunteer who will have regularly scheduled
17 unsupervised access to children under sixteen years of age,
18 developmentally disabled persons, or vulnerable adults during the
19 course of his or her employment or involvement with the business or

1 organization ((~~under circumstances where such access will or may~~
2 ~~involve groups of (i) five or fewer children under twelve years of age,~~
3 ~~(ii) three or fewer children between twelve and sixteen years of age,~~
4 ~~(iii) developmentally disabled persons, or (iv) vulnerable adults));~~

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

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

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

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

28 (4) "Conviction record" means "conviction record" information as
29 defined in RCW 10.97.030(3) relating to a crime against children or
30 other persons committed by either an adult or a juvenile. It does not
31 include a conviction for an offense that has been the subject of an
32 expungement, pardon, annulment, certificate of rehabilitation, or other
33 equivalent procedure based on a finding of the rehabilitation of the
34 person convicted, or a conviction that has been the subject of a
35 pardon, annulment, or other equivalent procedure based on a finding of
36 innocence. It does include convictions for offenses for which the
37 defendant received a deferred or suspended sentence, unless the record
38 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; endangerment with
12 a controlled substance; child abuse or neglect as defined in RCW
13 26.44.020; first or second degree custodial interference; first or
14 second degree custodial sexual misconduct; malicious harassment; first,
15 second, or third degree child molestation; first or second degree
16 sexual misconduct with a minor; patronizing a juvenile prostitute;
17 child abandonment; promoting pornography; selling or distributing
18 erotic material to a minor; custodial assault; violation of child abuse
19 restraining order; child buying or selling; prostitution; felony
20 indecent exposure; criminal abandonment; or any of these crimes as they
21 may be renamed in the future.

22 (6) "Crimes relating to drugs" means a conviction of a crime to
23 manufacture, delivery, or possession with intent to manufacture or
24 deliver a controlled substance.

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

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

- 33 (a) Chiropractic;
- 34 (b) Dentistry;
- 35 (c) Dental hygiene;
- 36 (d) Massage;
- 37 (e) Midwifery;
- 38 (f) Naturopathy;

- 1 (g) Osteopathic medicine and surgery;
- 2 (h) Physical therapy;
- 3 (i) Physicians;
- 4 (j) Practical nursing;
- 5 (k) Registered nursing; and
- 6 (l) Psychology.

7 "Disciplinary board final decision," for real estate brokers and
8 salespersons, means any final decision issued by the director of the
9 department of licensing for real estate brokers and salespersons.

10 (9) "Unsupervised" means not in the presence of:

11 (a) Another employee or volunteer from the same business or
12 organization as the applicant; or

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

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

22 (11) "Financial exploitation" means the illegal or improper use of
23 a vulnerable adult or that adult's resources for another person's
24 profit or advantage.

25 (12) "Agency" means any person, firm, partnership, association,
26 corporation, or facility which receives, provides services to, houses
27 or otherwise cares for vulnerable adults.

28 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.43 RCW
29 to read as follows:

30 (1) A business or organization shall investigate the conviction
31 records of any person acting on behalf of, or serving, the business or
32 organization who will, or may have, supervised or unsupervised access
33 to a child, developmentally disabled person, or vulnerable adult.

34 (a) "Person acting on behalf of, or serving, the business or
35 organization" includes:

- 36 (i) Current employees of the business or organization;

1 (ii) Applicants seeking or being considered for any position with
2 the business or organization; and

3 (iii) Any service provider, contractor, student intern, volunteer,
4 or other individual acting on behalf of, or serving, the business or
5 organization.

6 (b) The investigation shall consist of a criminal background check
7 as allowed through the Washington state criminal records privacy act
8 under RCW 10.97.050, the Washington state patrol criminal
9 identification system under RCW 43.43.832 through 43.43.834, or the
10 federal bureau of investigation. The background check may include a
11 fingerprint check using a complete Washington state criminal
12 identification fingerprint card. If the applicant or service provider
13 has had a background check within the previous two years, the business
14 or organization may waive the requirement.

15 (c) When necessary, applicants may be employed or engaged on a
16 conditional basis pending completion of the background check.

17 (2) If the criminal background check indicates the employee or
18 applicant has been convicted of any crimes against children or other
19 persons, crimes relating to drugs, or crimes relating to financial
20 exploitation, and the business or organization elects to accept or
21 retain the employee or volunteer in a position in which that person
22 will have supervised or unsupervised access to a child, developmentally
23 disabled person, or vulnerable adult, the business or organization
24 shall notify the parent or guardian of each child, developmentally
25 disabled person, or vulnerable adult for whom it provides services.
26 All notifications shall be made in writing and shall be made on or
27 before the date the child, developmentally disabled person, or
28 vulnerable adult commences participation in services provided by the
29 organization or entity, or in the case of continuing employees or
30 volunteers, within two weeks of the date the business or organization
31 receives the conviction information.

32 **Sec. 3.** RCW 43.43.834 and 1999 c 21 s 2 are each amended to read
33 as follows:

34 (1) A business or organization shall not make an inquiry to the
35 Washington state patrol under RCW 43.43.832, section 2 of this act, or
36 an equivalent inquiry to a federal law enforcement agency unless the
37 business or organization has notified the current employee, person

1 acting on behalf of the business or organization, or applicant who has
2 been offered a position as an employee or volunteer((7)) that an
3 inquiry may be made.

4 (2) A business or organization shall require each current employee,
5 person acting on behalf of the business or organization, or applicant
6 to disclose to the business or organization whether the current
7 employee, person acting on behalf of the business or organization, or
8 applicant has been:

9 (a) Convicted of any crime against children or other persons;

10 (b) Convicted of crimes relating to financial exploitation if the
11 victim was a vulnerable adult;

12 (c) Convicted of crimes related to drugs as defined in RCW
13 43.43.830;

14 (d) Found in any dependency action under RCW 13.34.040 to have
15 sexually assaulted or exploited any minor or to have physically abused
16 any minor;

17 (e) Found by a court in a domestic relations proceeding under Title
18 26 RCW to have sexually abused or exploited any minor or to have
19 physically abused any minor;

20 (f) Found in any disciplinary board final decision to have sexually
21 or physically abused or exploited any minor or developmentally disabled
22 person or to have abused or financially exploited any vulnerable adult;
23 or

24 (g) Found by a court in a protection proceeding under chapter 74.34
25 RCW, to have abused or financially exploited a vulnerable adult.

26 The disclosure shall be made in writing and signed by the current
27 employee, person acting on behalf of the business or organization, or
28 applicant and sworn under penalty of perjury. The disclosure sheet
29 shall specify all crimes against children or other persons and all
30 crimes relating to financial exploitation as defined in RCW 43.43.830
31 in which the victim was a vulnerable adult.

32 (3) The business or organization shall pay such reasonable fee for
33 the records check as the state patrol may require under RCW 43.43.838.

34 (4) The business or organization shall notify the current employee,
35 person acting on behalf of the business or organization, or applicant
36 of the state patrol's response within ten days after receipt by the
37 business or organization. The employer shall provide a copy of the
38 response to the current employee, person acting on behalf of the

1 business or organization, or applicant and shall notify the current
2 employee, person acting on behalf of the business or organization, or
3 applicant of such availability.

4 (5) The business or organization shall use this record only in
5 making the initial employment ~~((or))~~, engagement, or retention
6 decision. Further dissemination or use of the record is prohibited,
7 except as provided in RCW 28A.320.155. A business or organization
8 violating this subsection is subject to a civil action for damages.

9 (6) An insurance company shall not require a business or
10 organization to request background information on any employee before
11 issuing a policy of insurance.

12 (7) The business and organization shall be immune from civil
13 liability for failure to request background information on an applicant
14 unless the failure to do so constitutes gross negligence.

15 **Sec. 4.** RCW 43.43.838 and 1995 c 29 s 1 are each amended to read
16 as follows:

17 (1) After January 1, 1988, and notwithstanding any provision of RCW
18 43.43.700 through 43.43.810 to the contrary, the state patrol shall
19 furnish a transcript of the conviction record, disciplinary board final
20 decision and any subsequent criminal charges associated with the
21 conduct that is the subject of the disciplinary board final decision,
22 or civil adjudication record pertaining to any person for whom the
23 state patrol or the federal bureau of investigation has a record upon
24 the written request of:

- 25 (a) The subject of the inquiry;
- 26 (b) Any business or organization for the purpose of conducting
27 evaluations under RCW 43.43.832 or section 2 of this act;
- 28 (c) The department of social and health services;
- 29 (d) Any law enforcement agency, prosecuting authority, or the
30 office of the attorney general; or
- 31 (e) The department of social and health services for the purpose of
32 meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or
33 72.23 RCW, or any later-enacted statute which purpose is to regulate or
34 license a facility which handles vulnerable adults. However, access to
35 conviction records pursuant to this subsection (1)(e) does not limit or
36 restrict the ability of the department to obtain additional information

1 regarding conviction records and pending charges as set forth in RCW
2 74.15.030(2)(b).

3 After processing the request, if the conviction record,
4 disciplinary board final decision and any subsequent criminal charges
5 associated with the conduct that is the subject of the disciplinary
6 board final decision, or adjudication record shows no evidence of a
7 crime against children or other persons or, in the case of vulnerable
8 adults, no evidence of crimes relating to financial exploitation in
9 which the victim was a vulnerable adult, an identification declaring
10 the showing of no evidence shall be issued to the business or
11 organization by the state patrol and shall be issued within fourteen
12 working days of the request. The business or organization shall
13 provide a copy of the identification declaring the showing of no
14 evidence to the applicant. Possession of such identification shall
15 satisfy future record check requirements for the applicant for a two-
16 year period unless the prospective employee is any current school
17 district employee who has applied for a position in another school
18 district.

19 (2) The state patrol shall by rule establish fees for disseminating
20 records under this section to recipients identified in subsection
21 (1)(a) and (b) of this section. The state patrol shall also by rule
22 establish fees for disseminating records in the custody of the national
23 crime information center. The revenue from the fees shall cover, as
24 nearly as practicable, the direct and indirect costs to the state
25 patrol of disseminating the records: PROVIDED, That no fee shall be
26 charged to a nonprofit organization for the records check: PROVIDED
27 FURTHER, That in the case of record checks using fingerprints requested
28 by school districts and educational service districts, the state patrol
29 shall charge only for the incremental costs associated with checking
30 fingerprints in addition to name and date of birth. Record checks
31 requested by school districts and educational service districts using
32 only name and date of birth shall continue to be provided free of
33 charge.

34 (3) No employee of the state, employee of a business or
35 organization, or the business or organization is liable for defamation,
36 invasion of privacy, negligence, or any other claim in connection with
37 any lawful dissemination of information under RCW 43.43.830 through
38 43.43.840 or 43.43.760.

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

8 (5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an
9 employer to make an inquiry not specifically authorized by this
10 chapter, or be construed to affect the policy of the state declared in
11 chapter 9.96A RCW.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.43 RCW
13 to read as follows:

14 The Washington state commission on national and community service
15 shall adopt, and make available through its web site, recommended best
16 practices for businesses and organizations to follow when one or more
17 volunteers of the business or organization have unsupervised access to
18 one or more children, developmentally disabled persons, or vulnerable
19 adults. The recommended best practices shall focus on, but shall not
20 be limited to, ensuring the safety of children, developmentally
21 disabled persons, and vulnerable adults, best methods of screening and
22 supervising volunteers, how to obtain criminal records checks, and
23 recordkeeping regarding the reports. The recommended best practices
24 shall be adopted not later than six months after the effective date of
25 this act.

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