
HOUSE BILL 2215

State of Washington

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2005 Regular Session

By Representatives B. Sullivan and Ahern

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1 AN ACT Relating to background checks; amending RCW 43.43.830,
2 43.43.832, 43.43.834, 43.43.836, 43.43.838, 43.43.840, and 43.43.845;
3 and repealing RCW 43.43.835.

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

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

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout RCW 43.43.830 through ~~((43.43.840))~~
9 43.43.845.

10 (1) "Applicant" means:

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

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

1 groups of (i) five or fewer children under twelve years of age, (ii)
2 three or fewer children between twelve and sixteen years of age, (iii)
3 developmentally disabled persons, or (iv) vulnerable adults;

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

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

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

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

27 (4)) "Conviction record" means "conviction record" information as
28 defined in RCW 10.97.030(~~(+3))~~) and 10.97.050 relating to a crime
29 (~~(against children or other persons)~~) committed by either an adult or
30 a juvenile. It does not include a conviction for an offense that has
31 been the subject of an expungement, pardon, annulment, certificate of
32 rehabilitation, or other equivalent procedure based on a finding of the
33 rehabilitation of the person convicted, or a conviction that has been
34 the subject of a pardon, annulment, or other equivalent procedure based
35 on a finding of innocence. It does include convictions for offenses
36 for which the defendant received a deferred or suspended sentence,
37 unless the record has been expunged according to law.

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

22 ~~((+6))~~ (5) "Crimes relating to drugs" means a conviction of a
23 crime to manufacture, delivery, or possession with intent to
24 manufacture or deliver a controlled substance.

25 ~~((+7))~~ (6) "Crimes relating to financial exploitation" means a
26 conviction for first, second, or third degree extortion; first, second,
27 or third degree theft; first or second degree robbery; forgery; or any
28 of these 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))~~ (7) "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))~~ (8) "Vulnerable adult" means "vulnerable adult" as defined
18 in 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~~
23 ~~of a vulnerable adult or that adult's resources for another person's~~
24 ~~profit or advantage.~~

25 ~~(12))~~ (9) "Agency" means any person, firm, partnership,
26 association, corporation, or facility which receives, provides services
27 to, houses or otherwise cares for vulnerable adults.

28 **Sec. 2.** RCW 43.43.832 and 2000 c 87 s 1 are each amended to read
29 as follows:

30 (1) The legislature finds that businesses and organizations
31 providing services to children, developmentally disabled persons, and
32 vulnerable adults need adequate information to determine which
33 employees or licensees to hire or engage. The legislature further
34 finds that many developmentally disabled individuals and vulnerable
35 adults desire to hire their own employees directly and also need
36 adequate information to determine which employees or licensees to hire
37 or engage. Therefore, the Washington state patrol ~~((criminal))~~

1 identification (~~system~~) and criminal history section shall disclose,
2 upon the request of a business or organization as defined in RCW
3 43.43.830, a developmentally disabled person, or a vulnerable adult as
4 defined in RCW 43.43.830 or his or her guardian, an applicant's record
5 for convictions (~~of offenses against children or other persons,~~
6 ~~convictions for crimes relating to financial exploitation, but only if~~
7 ~~the victim was a vulnerable adult, adjudications of child abuse in a~~
8 ~~civil action, the issuance of a protection order against the respondent~~
9 ~~under chapter 74.34 RCW, and disciplinary board final decisions and any~~
10 ~~subsequent criminal charges associated with the conduct that is the~~
11 ~~subject of the disciplinary board final decision~~) as defined in
12 chapter 10.97 RCW.

13 (2) The legislature also finds that the state board of education
14 may request of the Washington state patrol criminal identification
15 system information regarding a certificate applicant's record for
16 convictions under subsection (1) of this section.

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

23 (4) The legislature further finds that the department of social and
24 health services must consider the information listed in subsection (1)
25 of this section in the following circumstances:

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

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

36 (c) When licensing agencies or facilities with individuals in
37 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 of children, developmentally disabled persons, or vulnerable adults,
7 including but not limited to services contracted for under chapter
8 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

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

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

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

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

1 (c) If criminal background inquiry information is shared, the
2 health care facility employing the subject of the inquiry must require
3 the applicant to sign a disclosure statement indicating that there has
4 been no conviction or finding as described in RCW 43.43.842 since the
5 completion date of the most recent criminal background inquiry.

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

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

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

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

24 (7) If a federal bureau of investigation check is required in
25 addition to the state background check by the department of social and
26 health services, an applicant who is not disqualified based on the
27 results of the state background check shall be eligible for a one
28 hundred twenty day provisional approval to hire, pending the outcome of
29 the federal bureau of investigation check. The department may extend
30 the provisional approval until receipt of the federal bureau of
31 investigation check. If the federal bureau of investigation check
32 disqualifies an applicant, the department shall notify the requestor
33 that the provisional approval to hire is withdrawn and the applicant
34 may be terminated.

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

37 (1) A business or organization shall not make an inquiry to the

1 Washington state patrol under RCW 43.43.832 or an equivalent inquiry to
2 a federal law enforcement agency unless the business or organization
3 has notified the applicant who has been offered a position as an
4 employee or volunteer, that an inquiry may be made.

5 (2) A business or organization shall require each applicant to
6 disclose to the business or organization whether the applicant has
7 been(~~(+~~

8 ~~(a))~~ convicted of ((any)) a crime ((against children or other
9 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 applicant~~
27 ~~and sworn under penalty of perjury. The disclosure sheet shall specify~~
28 ~~all crimes against children or other persons and all crimes relating to~~
29 ~~financial exploitation as defined in RCW 43.43.830 in which the victim~~
30 ~~was a vulnerable adult)).~~

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

33 (4) The business or organization shall notify the applicant of the
34 state patrol's response within ten days after receipt by the business
35 or organization. The employer shall provide a copy of the response to
36 the applicant and shall notify the applicant of such availability.

37 (5) The business or organization shall use this record only in
38 making the initial employment or engagement decision. Further

1 dissemination or use of the record is prohibited, except as provided in
2 RCW 28A.320.155. A business or organization violating this subsection
3 is subject to a civil action for damages.

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

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

10 **Sec. 4.** RCW 43.43.836 and 1987 c 486 s 4 are each amended to read
11 as follows:

12 An individual may contact the state patrol to ascertain whether
13 ~~((that same))~~ an individual has a ~~((civil adjudication, disciplinary
14 board final decision, or))~~ conviction record. The state patrol shall
15 disclose such information, subject to the fee established under RCW
16 43.43.838.

17 **Sec. 5.** RCW 43.43.838 and 1995 c 29 s 1 are each amended to read
18 as follows:

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

27 (a) The subject of the inquiry;

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

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

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

33 (e) The department of social and health services for the purpose of
34 meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or
35 72.23 RCW, or any later-enacted statute which purpose is to regulate or
36 license a facility which handles vulnerable adults. However, access to

1 conviction records pursuant to this subsection (1)(e) does not limit or
2 restrict the ability of the department to obtain additional information
3 regarding conviction records and pending charges as set forth in RCW
4 74.15.030(2)(b).

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

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

35
36 (3) No employee of the state, employee of a business or
37 organization, or the business or organization is liable for defamation,

1 invasion of privacy, negligence, or any other claim in connection with
2 any lawful dissemination of information under RCW 43.43.830 through
3 43.43.840 or 43.43.760.

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

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

15 **Sec. 6.** RCW 43.43.840 and 1997 c 386 s 40 are each amended to read
16 as follows:

17 ~~((1) The supreme court shall by rule require the courts of the
18 state to notify the state patrol of any dependency action under RCW
19 13.34.040, domestic relations action under Title 26 RCW, or protection
20 action under chapter 74.34 RCW, in which the court makes specific
21 findings of physical abuse or sexual abuse or exploitation of a child
22 or abuse or financial exploitation of a vulnerable adult.~~

23 ~~(2) The department of licensing shall notify the state patrol of
24 any disciplinary board final decision that includes specific findings
25 of physical abuse or sexual abuse or exploitation of a child or abuse
26 or financial exploitation of a vulnerable adult.~~

27 ~~(3))~~ When a business or an organization terminates, fires,
28 dismisses, fails to renew the contract, or permits the resignation of
29 an employee because of crimes against children or other persons or
30 because of crimes relating to the financial exploitation of a
31 vulnerable adult, and if that employee is employed in a position
32 requiring a certificate or license issued by a licensing agency such as
33 the state board of education, the business or organization shall notify
34 the licensing agency of such termination of employment.

35 **Sec. 7.** RCW 43.43.845 and 1990 c 33 s 577 are each amended to read
36 as follows:

1 (1) Upon a guilty plea or conviction of a person of any felony
2 crime involving the physical neglect of a child under chapter 9A.42
3 RCW, the physical injury or death of a child under chapter 9A.32 or
4 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),
5 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses
6 under chapter 9A.44 RCW where a minor is the victim, promoting
7 prostitution of a minor under chapter 9A.88 RCW, or the sale or
8 purchase of a minor child under RCW 9A.64.030, the prosecuting attorney
9 shall determine whether the person holds a certificate or permit issued
10 under chapters 28A.405 and 28A.410 RCW or is employed by a school
11 district. If the person is employed by a school district or holds a
12 certificate or permit issued under chapters 28A.405 and 28A.410 RCW,
13 the prosecuting attorney shall notify the ~~((state patrol))~~
14 superintendent of public instruction of such guilty pleas or
15 convictions.

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

26 NEW SECTION. Sec. 8. RCW 43.43.835 (Background checks--Drug-
27 related conviction information) and 1998 c 10 s 2 are each repealed.

--- END ---