

HB 1419 - S AMD 326

By Senators Hargrove, Stevens

ADOPTED 04/12/2011

1 On page 9, after line 12, insert the following:

2 "Sec. 5. RCW 43.43.830 and 2007 c 387 s 9 are each amended to read
3 as follows:

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

6 (1) "Applicant" means:

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

11 (b) Any prospective volunteer who will have regularly scheduled
12 unsupervised access to children under sixteen years of age,
13 developmentally disabled persons, or vulnerable adults during the
14 course of his or her employment or involvement with the business or
15 organization under circumstances where such access will or may involve
16 groups of (i) five or fewer children under twelve years of age, (ii)
17 three or fewer children between twelve and sixteen years of age, (iii)
18 developmentally disabled persons, or (iv) vulnerable adults;

19 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
20 or

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

23 (2) "Business or organization" means a person, business, or
24 organization licensed in this state, any agency of the state, or other
25 governmental entity, that educates, trains, treats, supervises, houses,
26 or provides recreation to developmentally disabled persons, vulnerable
27 adults, or children under sixteen years of age, or that provides child
28 day care, early learning, or early learning childhood education
29 services, including but not limited to public housing authorities,
30 school districts, and educational service districts.

1 (3) "Civil adjudication proceeding" is a judicial or administrative
2 adjudicative proceeding that results in a finding of, or upholds an
3 agency finding of, domestic violence, abuse, sexual abuse, neglect,
4 abandonment, violation of a professional licensing standard regarding
5 a child or vulnerable adult, or exploitation or financial exploitation
6 of a child or vulnerable adult under any provision of law, including
7 but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted
8 under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"
9 also includes judicial or administrative findings that become final due
10 to the failure of the alleged perpetrator to timely exercise a legal
11 right to administratively challenge such findings.

12 (4) "Conviction record" means "conviction record" information as
13 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by
14 either an adult or a juvenile. It does not include a conviction for an
15 offense that has been the subject of an expungement, pardon, annulment,
16 certificate of rehabilitation, or other equivalent procedure based on
17 a finding of the rehabilitation of the person convicted, or a
18 conviction that has been the subject of a pardon, annulment, or other
19 equivalent procedure based on a finding of innocence. It does include
20 convictions for offenses for which the defendant received a deferred or
21 suspended sentence, unless the record has been expunged according to
22 law.

23 (5) "Crime against children or other persons" means a conviction of
24 any of the following offenses: Aggravated murder; first or second
25 degree murder; first or second degree kidnapping; first, second, or
26 third degree assault; first, second, or third degree assault of a
27 child; first, second, or third degree rape; first, second, or third
28 degree rape of a child; first or second degree robbery; first degree
29 arson; first degree burglary; first or second degree manslaughter;
30 first or second degree extortion; indecent liberties; incest; vehicular
31 homicide; first degree promoting prostitution; communication with a
32 minor; unlawful imprisonment; simple assault; sexual exploitation of
33 minors; first or second degree criminal mistreatment; endangerment with
34 a controlled substance; child abuse or neglect as defined in RCW
35 26.44.020; first or second degree custodial interference; first or
36 second degree custodial sexual misconduct; malicious harassment; first,
37 second, or third degree child molestation; first or second degree
38 sexual misconduct with a minor; (~~patronizing a juvenile prostitute~~)

1 commercial sexual abuse of a minor; child abandonment; promoting
2 pornography; selling or distributing erotic material to a minor;
3 custodial assault; violation of child abuse restraining order; child
4 buying or selling; prostitution; felony indecent exposure; criminal
5 abandonment; or any of these crimes as they may be renamed in the
6 future.

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

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

14 (8) "Unsupervised" means not in the presence of:

15 (a) Another employee or volunteer from the same business or
16 organization as the applicant; or

17 (b) Any relative or guardian of any of the children or
18 developmentally disabled persons or vulnerable adults to which the
19 applicant has access during the course of his or her employment or
20 involvement with the business or organization.

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

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

33 (10) "Financial exploitation" means "financial exploitation" as
34 defined in RCW 74.34.020.

35 (11) "Agency" means any person, firm, partnership, association,
36 corporation, or facility which receives, provides services to, houses
37 or otherwise cares for vulnerable adults, juveniles, or children, or

1 which provides child day care, early learning, or early childhood
2 education services.

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

9 **Sec. 6.** RCW 43.43.832 and 2007 c 387 s 10 are each amended to read
10 as follows:

11 (1) The legislature finds that businesses and organizations
12 providing services to children, developmentally disabled persons, and
13 vulnerable adults need adequate information to determine which
14 employees or licensees to hire or engage. The legislature further
15 finds that many developmentally disabled individuals and vulnerable
16 adults desire to hire their own employees directly and also need
17 adequate information to determine which employees or licensees to hire
18 or engage. Therefore, the Washington state patrol identification and
19 criminal history section shall disclose, upon the request of a business
20 or organization as defined in RCW 43.43.830, a developmentally disabled
21 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her
22 guardian, an applicant's conviction record as defined in chapter 10.97
23 RCW.

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

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

34 (4) The legislature further finds that the secretary of the
35 department of social and health services must establish rules and set
36 standards to require specific action when considering the information
37 listed in subsection (1) of this section, and when considering

1 additional information including but not limited to civil adjudication
2 proceedings as defined in RCW 43.43.830 and any out-of-state
3 equivalent, in the following circumstances:

4 (a) When considering persons for state employment in positions
5 directly responsible for the supervision, care, or treatment of
6 children, vulnerable adults, or individuals with mental illness or
7 developmental disabilities;

8 (b) When considering persons for state positions involving
9 unsupervised access to vulnerable adults to conduct comprehensive
10 assessments, financial eligibility determinations, licensing and
11 certification activities, investigations, surveys, or case management;
12 or for state positions otherwise required by federal law to meet
13 employment standards;

14 (c) When licensing agencies or facilities with individuals in
15 positions directly responsible for the care, supervision, or treatment
16 of children, developmentally disabled persons, or vulnerable adults,
17 including but not limited to agencies or facilities licensed under
18 chapter 74.15 or 18.51 RCW;

19 (d) When contracting with individuals or businesses or
20 organizations for the care, supervision, case management, or treatment,
21 including peer counseling, of children, developmentally disabled
22 persons, or vulnerable adults, including but not limited to services
23 contracted for under chapter 18.20, (~~(18.48)~~) 70.127, 70.128, 72.36,
24 or 74.39A RCW or Title 71A RCW;

25 (e) When individual providers are paid by the state or providers
26 are paid by home care agencies to provide in-home services involving
27 unsupervised access to persons with physical, mental, or developmental
28 disabilities or mental illness, or to vulnerable adults as defined in
29 chapter 74.34 RCW, including but not limited to services provided under
30 chapter 74.39 or 74.39A RCW.

31 (5) The director of the department of early learning shall
32 investigate the conviction records, pending charges, and other
33 information including civil adjudication proceeding records of current
34 employees and of any person actively being considered for any position
35 with the department who will or may have unsupervised access to
36 children, or for state positions otherwise required by federal law to
37 meet employment standards. "Considered for any position" includes
38 decisions about (a) initial hiring, layoffs, reallocations, transfers,

1 promotions, or demotions, or (b) other decisions that result in an
2 individual being in a position that will or may have unsupervised
3 access to children as an employee, an intern, or a volunteer.

4 (6) The director of the department of early learning shall adopt
5 rules and investigate conviction records, pending charges, and other
6 information including civil adjudication proceeding records, in the
7 following circumstances:

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

14 (b) When authorizing individuals who will or may have unsupervised
15 access to children who are in child day care, in early learning
16 programs, or receiving early childhood learning education services in
17 licensed or certified agencies, including but not limited to licensees,
18 agency staff, interns, volunteers, contracted providers, and persons
19 living on the premises who are sixteen years of age or older;

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

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

28 (7) Whenever a state conviction record check is required by state
29 law, persons may be employed or engaged as volunteers or independent
30 contractors on a conditional basis pending completion of the state
31 background investigation. Whenever a national criminal record check
32 through the federal bureau of investigation is required by state law,
33 a person may be employed or engaged as a volunteer or independent
34 contractor on a conditional basis pending completion of the national
35 check. The Washington personnel resources board shall adopt rules to
36 accomplish the purposes of this subsection as it applies to state
37 employees.

1 (8)(a) For purposes of facilitating timely access to criminal
2 background information and to reasonably minimize the number of
3 requests made under this section, recognizing that certain health care
4 providers change employment frequently, health care facilities may,
5 upon request from another health care facility, share copies of
6 completed criminal background inquiry information.

7 (b) Completed criminal background inquiry information may be shared
8 by a willing health care facility only if the following conditions are
9 satisfied: The licensed health care facility sharing the criminal
10 background inquiry information is reasonably known to be the person's
11 most recent employer, no more than twelve months has elapsed from the
12 date the person was last employed at a licensed health care facility to
13 the date of their current employment application, and the criminal
14 background information is no more than two years old.

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

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

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

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

34 (g) For the purposes of this subsection, "health care facility"
35 means a nursing home licensed under chapter 18.51 RCW, a boarding home
36 licensed under chapter 18.20 RCW, or an adult family home licensed
37 under chapter 70.128 RCW."

ADOPTED 04/12/2011

1 On page 1, beginning on line 3 of the title, after "43.215.200,"
2 strike the remainder of the title and insert "43.215.215, 43.43.830,
3 and 43.43.832."

EFFECT: A peer counselor is not considered to have unsupervised contact with a child under the age of 16 when the contact is incidental contact and the contact occurs at the location where the peer counseling takes place. Incidental contact means minor or casual contact with a child in an area accessible to and within visual and auditory range of others. Incidental contact could include passing a child while walking down a hallway but would not include being alone with a child for any period of time in a closed room or office. A peer counselor is defined as a nonprofessional person who has equal standing with another person and provides advice on a topic about which the nonprofessional person is more experienced or knowledgeable. A peer counselor must be a counselor for a peer counseling program that contracts with or is otherwise approved by DSHS, another state or local agency, or the court.

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