

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6167

62nd Legislature
2012 Regular Session

Passed by the Senate February 14, 2012
YEAS 47 NAYS 2

President of the Senate

Passed by the House March 1, 2012
YEAS 96 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6167** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

1 (b) Any prospective volunteer who will have regularly scheduled
2 unsupervised access to children under sixteen years of age,
3 developmentally disabled persons, or vulnerable adults during the
4 course of his or her employment or involvement with the business or
5 organization under circumstances where such access will or may involve
6 groups of (i) five or fewer children under twelve years of age, (ii)
7 three or fewer children between twelve and sixteen years of age, (iii)
8 developmentally disabled persons, or (iv) vulnerable adults;

9 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
10 or

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

13 (3) "Business or organization" means a person, business, or
14 organization licensed in this state, any agency of the state, or other
15 governmental entity, that educates, trains, treats, supervises, houses,
16 or provides recreation to developmentally disabled persons, vulnerable
17 adults, or children under sixteen years of age, or that provides child
18 day care, early learning, or early learning childhood education
19 services, including but not limited to public housing authorities,
20 school districts, and educational service districts.

21 (4) "Civil adjudication proceeding" is a judicial or administrative
22 adjudicative proceeding that results in a finding of, or upholds an
23 agency finding of, domestic violence, abuse, sexual abuse, neglect,
24 abandonment, violation of a professional licensing standard regarding
25 a child or vulnerable adult, or exploitation or financial exploitation
26 of a child or vulnerable adult under any provision of law, including
27 but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted
28 under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"
29 also includes judicial or administrative findings that become final due
30 to the failure of the alleged perpetrator to timely exercise a legal
31 right to administratively challenge such findings.

32 (5) "Client" or "resident" means a child, person with developmental
33 disabilities, or vulnerable adult applying for housing assistance from
34 a business or organization.

35 (6) "Conviction record" means "conviction record" information as
36 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by
37 either an adult or a juvenile. It does not include a conviction for an
38 offense that has been the subject of an expungement, pardon, annulment,

1 certificate of rehabilitation, or other equivalent procedure based on
2 a finding of the rehabilitation of the person convicted, or a
3 conviction that has been the subject of a pardon, annulment, or other
4 equivalent procedure based on a finding of innocence. It does include
5 convictions for offenses for which the defendant received a deferred or
6 suspended sentence, unless the record has been expunged according to
7 law.

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

29 ((+7)) (8) "Crimes relating to drugs" means a conviction of a
30 crime to manufacture, delivery, or possession with intent to
31 manufacture or deliver a controlled substance.

32 ((+8)) (9) "Crimes relating to financial exploitation" means a
33 conviction for first, second, or third degree extortion; first, second,
34 or third degree theft; first or second degree robbery; forgery; or any
35 of these crimes as they may be renamed in the future.

36 ((+9)) (10) "Financial exploitation" means "financial
37 exploitation" as defined in RCW 74.34.020.

1 ((+10)) (11) "Health care facility" means a nursing home licensed
2 under chapter 18.51 RCW, a boarding home licensed under chapter 18.20
3 RCW, or an adult family home licensed under chapter 70.128 RCW.

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

10 ((+11)) (13) "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 With regard to peer counselors, "unsupervised" does not include
18 incidental contact with children under age sixteen at the location at
19 which the peer counseling is taking place. "Incidental contact" means
20 minor or casual contact with a child in an area accessible to and
21 within visual or auditory range of others. It could include passing a
22 child while walking down a hallway but would not include being alone
23 with a child for any period of time in a closed room or office.

24 ((+12)) (14) "Vulnerable adult" means "vulnerable adult" as
25 defined in chapter 74.34 RCW, except that for the purposes of
26 requesting and receiving background checks pursuant to RCW 43.43.832,
27 it shall also include adults of any age who lack the functional,
28 mental, or physical ability to care for themselves.

29 **Sec. 2.** RCW 43.43.832 and 2011 c 253 s 6 are each amended to read
30 as follows:

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

1 ~~adequate information to determine which employees or licenses to hire~~
2 ~~or engage. Therefore,))~~ The Washington state patrol identification and
3 criminal history section shall disclose conviction records as follows:

4 (a) An applicant's conviction record, upon the request of a
5 business or organization as defined in RCW 43.43.830, a developmentally
6 disabled person, or a vulnerable adult as defined in RCW 43.43.830 or
7 his or her guardian(~~(, an applicant's conviction record as defined in~~
8 ~~chapter 10.97 RCW.~~

9 ~~(2) The legislature also finds that))~~);

10 (b) The conviction record of an applicant for certification, upon
11 the request of the Washington professional educator standards board
12 ~~((may request of the Washington state patrol criminal identification~~
13 ~~system information regarding a certificate applicant's conviction~~
14 ~~record under subsection (1) of this section.~~

15 ~~(3) The legislature also finds that law enforcement agencies))~~);

16 (c) Any conviction record to aid in the investigation and
17 prosecution of child, developmentally disabled person, and vulnerable
18 adult abuse cases and to protect children and adults from further
19 incidents of abuse, upon the request of a law enforcement agency, the
20 office of the attorney general, prosecuting ~~((authorities, and))~~
21 authority, or the department of social and health services ~~((may~~
22 ~~request this same information to aid in the investigation and~~
23 ~~prosecution of child, developmentally disabled person, and vulnerable~~
24 ~~adult abuse cases and to protect children and adults from further~~
25 ~~incidents of abuse.~~

26 ~~(4))~~); and

27 (d) A prospective client's or resident's conviction record, upon
28 the request of a business or organization that qualifies for exemption
29 under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C.
30 Sec. 501(c)(3)) and that provides emergency shelter or transitional
31 housing for children, persons with developmental disabilities, or
32 vulnerable adults.

33 (2) The ~~((legislature further finds that the))~~ secretary of the
34 department of social and health services must establish rules and set
35 standards to require specific action when considering the information
36 ~~((listed in))~~ received pursuant to subsection (1) of this section, and
37 when considering additional information including but not limited to

1 civil adjudication proceedings as defined in RCW 43.43.830 and any out-
2 of-state equivalent, in the following circumstances:

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

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

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

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

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

30 ((+5)) (3) The director of the department of early learning shall
31 investigate the conviction records, pending charges, and other
32 information including civil adjudication proceeding records of current
33 employees and of any person actively being considered for any position
34 with the department who will or may have unsupervised access to
35 children, or for state positions otherwise required by federal law to
36 meet employment standards. "Considered for any position" includes
37 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+))~~ (4) The director of the department of early learning shall
5 adopt rules and investigate conviction records, pending charges, and
6 other information including civil adjudication proceeding records, in
7 the 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+))~~ (5) Whenever a state conviction record check is required by
29 state law, persons may be employed or engaged as volunteers or
30 independent contractors on a conditional basis pending completion of
31 the state background investigation. Whenever a national criminal
32 record check through the federal bureau of investigation is required by
33 state law, a person may be employed or engaged as a volunteer or
34 independent contractor on a conditional basis pending completion of the
35 national check. The Washington personnel resources board shall adopt
36 rules to accomplish the purposes of this subsection as it applies to
37 state employees.

1 ~~((8))~~ (6)(a) For purposes of facilitating timely access to
2 criminal background information and to reasonably minimize the number
3 of requests made under this section, recognizing that certain health
4 care providers change employment frequently, health care facilities
5 may, 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~~

1 ~~under chapter 70.128 RCW.))~~

--- END ---