

**ESHB 1565** - S COMM AMD

By Committee on Human Services, Reentry & Rehabilitation

**NOT CONSIDERED 12/23/2019**

1 Strike everything after the enacting clause and insert the  
2 following:

3 **"Sec. 1.** RCW 43.43.830 and 2017 c 272 s 5 are each amended to  
4 read as follows:

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

7 (1) "Agency" means any person, firm, partnership, association,  
8 corporation, or facility which receives, provides services to, houses  
9 or otherwise cares for vulnerable adults, juveniles, or children, or  
10 which provides child day care, early learning, or early childhood  
11 education services.

12 (2) "Applicant" means:

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

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

26 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;  
27 or

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

30 (3) "Business or organization" means a person, business, or  
31 organization licensed in this state, any agency of the state, or

1 other governmental entity, that educates, trains, treats, supervises,  
2 houses, or provides recreation to developmentally disabled persons,  
3 vulnerable adults, or children under sixteen years of age, or that  
4 provides child day care, early learning, or early learning childhood  
5 education services, including but not limited to public housing  
6 authorities, school districts, and educational service districts.

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

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

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

33 (7) "Crime against children or other persons" means a conviction  
34 of any of the following offenses: Aggravated murder; first or second  
35 degree murder; first or second degree kidnapping; first, second, or  
36 third degree assault; fourth degree assault (if a violation of RCW  
37 9A.36.041(3)); first, second, or third degree assault of a child;  
38 first, second, or third degree rape; first, second, or third degree  
39 rape of a child; first or second degree robbery; first degree arson;  
40 first degree burglary; first or second degree manslaughter; first or

1 second degree extortion; indecent liberties; incest; vehicular  
2 homicide; first degree promoting prostitution; communication with a  
3 minor; unlawful imprisonment; simple assault; sexual exploitation of  
4 minors; first or second degree criminal mistreatment; endangerment  
5 with a controlled substance; child abuse or neglect as defined in RCW  
6 26.44.020; first or second degree custodial interference; first or  
7 second degree custodial sexual misconduct; malicious harassment;  
8 first, second, or third degree child molestation; first or second  
9 degree sexual misconduct with a minor; commercial sexual abuse of a  
10 minor; child abandonment; promoting pornography; selling or  
11 distributing erotic material to a minor; custodial assault; violation  
12 of child abuse restraining order; child buying or selling;  
13 prostitution; felony indecent exposure; criminal abandonment; or any  
14 of these crimes as they may be renamed in the future.

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

18 (9) "Crimes relating to financial exploitation" means a  
19 conviction for first, second, or third degree extortion; first,  
20 second, or third degree theft; first or second degree robbery;  
21 forgery; or any of these crimes as they may be renamed in the future.

22 (10) "Criminal background inquiry information" means only the  
23 results from a processed background check, including criminal history  
24 record information that may be disclosed without restriction under  
25 RCW 10.97.050. "Criminal background inquiry information" does not  
26 include any commercial records or financial records of an individual  
27 or any criminal history record information that is confidential under  
28 state or federal law.

29 (11) "Financial exploitation" means "financial exploitation" as  
30 defined in RCW 74.34.020.

31 (~~(11)~~) (12) "Health care facility" means a nursing home  
32 licensed under chapter 18.51 RCW, (~~(a—[an])~~) an assisted living  
33 facility licensed under chapter 18.20 RCW, (~~(or)~~) an adult family  
34 home licensed under chapter 70.128 RCW, or an enhanced services  
35 facility licensed under chapter 70.97 RCW.

36 (~~(12)~~) (13) "Peer counselor" means a nonprofessional person who  
37 has equal standing with another person, providing advice on a topic  
38 about which the nonprofessional person is more experienced or  
39 knowledgeable, and who is a counselor for a peer counseling program

1 that contracts with or is otherwise approved by the department,  
2 another state or local agency, or the court.

3 ~~((13))~~ (14) "Provider" means the following types of entities:

4 (a) A health care facility, as defined in this section;

5 (b) An in-home services agency, as defined in RCW 70.127.010;

6 (c) A community residential service business, as defined in RCW  
7 74.39A.009; and

8 (d) A consumer directed employer, as defined in RCW 74.39A.009.

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

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

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

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

23 ~~((14))~~ (16) "Vulnerable adult" means "vulnerable adult" as  
24 defined in chapter 74.34 RCW, except that for the purposes of  
25 requesting and receiving background checks pursuant to RCW 43.43.832,  
26 it shall also include adults of any age who lack the functional,  
27 mental, or physical ability to care for themselves.

28 **Sec. 2.** RCW 43.43.832 and 2017 3rd sp.s. c 20 s 5 and 2017 3rd  
29 sp.s. c 6 s 224 are each reenacted and amended to read as follows:

30 (1) The Washington state patrol identification and criminal  
31 history section shall disclose conviction records as follows:

32 (a) An applicant's conviction record, upon the request of a  
33 business or organization as defined in RCW 43.43.830, a  
34 developmentally disabled person, or a vulnerable adult as defined in  
35 RCW 43.43.830 or his or her guardian;

36 (b) The conviction record of an applicant for certification, upon  
37 the request of the Washington professional educator standards board;

38 (c) Any conviction record to aid in the investigation and  
39 prosecution of child, developmentally disabled person, and vulnerable

1 adult abuse cases and to protect children and adults from further  
2 incidents of abuse, upon the request of a law enforcement agency, the  
3 office of the attorney general, prosecuting authority, or the  
4 department of social and health services; and

5 (d) A prospective client's or resident's conviction record, upon  
6 the request of a business or organization that qualifies for  
7 exemption under section 501(c)(3) of the internal revenue code of  
8 1986 (26 U.S.C. Sec. 501(c)(3)) and that provides emergency shelter  
9 or transitional housing for children, persons with developmental  
10 disabilities, or vulnerable adults.

11 (2) The secretary of the department of social and health services  
12 and the secretary of children, youth, and families must establish  
13 rules and set standards to require specific action when considering  
14 the information received pursuant to subsection (1) of this section,  
15 and when considering additional information including but not limited  
16 to civil adjudication proceedings as defined in RCW 43.43.830 and any  
17 out-of-state equivalent, in the following circumstances:

18 (a) When considering persons for state employment in positions  
19 directly responsible for the supervision, care, or treatment of  
20 children, vulnerable adults, or individuals with mental illness or  
21 developmental disabilities provided that: For persons residing in a  
22 home that will be utilized to provide foster care for dependent  
23 youth, a criminal background check will be required for all persons  
24 aged sixteen and older and the department of social and health  
25 services may require a criminal background check for persons who are  
26 younger than sixteen in situations where it may be warranted to  
27 ensure the safety of youth in foster care;

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

34 (c) When licensing agencies or facilities with individuals in  
35 positions directly responsible for the care, supervision, or  
36 treatment of children, developmentally disabled persons, or  
37 vulnerable adults, including but not limited to agencies or  
38 facilities licensed under chapter 74.15 or 18.51 RCW;

39 (d) When contracting with individuals or businesses or  
40 organizations for the care, supervision, case management, or

1 treatment, including peer counseling, of children, developmentally  
2 disabled persons, or vulnerable adults, including but not limited to  
3 services contracted for under chapter 18.20, 70.127, 70.128, 72.36,  
4 or 74.39A RCW or Title 71A RCW;

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

11 (3) The secretary of the department of children, youth, and  
12 families shall investigate the conviction records, pending charges,  
13 and other information including civil adjudication proceeding records  
14 of current employees and of any person actively being considered for  
15 any position with the department who will or may have unsupervised  
16 access to children, or for state positions otherwise required by  
17 federal law to meet employment standards. "Considered for any  
18 position" includes decisions about (a) initial hiring, layoffs,  
19 reallocations, transfers, promotions, or demotions, or (b) other  
20 decisions that result in an individual being in a position that will  
21 or may have unsupervised access to children as an employee, an  
22 intern, or a volunteer.

23 (4) The secretary of the department of children, youth, and  
24 families shall adopt rules and investigate conviction records,  
25 pending charges, and other information including civil adjudication  
26 proceeding records, in the following circumstances:

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

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

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

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

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

19 (6) (a) For purposes of facilitating timely access to criminal  
20 background information and to reasonably minimize the number of  
21 requests made under this section, recognizing that certain ~~((health  
22 care))~~ providers have staff who change employment frequently,  
23 ~~((health care facilities))~~ providers may ~~((, upon request from another  
24 health care facility,))~~ share copies of completed criminal background  
25 inquiry information.

26 (b) Completed criminal background inquiry information may be  
27 shared by a willing ~~((health care facility))~~ provider as defined in  
28 RCW 43.43.830 only if the following conditions are satisfied: The  
29 ~~((licensed health care facility))~~ provider sharing the criminal  
30 background inquiry information is reasonably known to be the person's  
31 most recent employer, no more than twelve months has elapsed from the  
32 date the person was last employed ~~((at a licensed health care  
33 facility))~~ by the provider to the date of their current employment  
34 application, and the criminal background information is no more than  
35 two years old.

36 (c) If criminal background inquiry information is shared, the  
37 ~~((health care facility))~~ provider employing the subject of the  
38 inquiry must require the applicant to sign a disclosure statement  
39 indicating that there has been no conviction or finding as described

1 in RCW 43.43.842 since the completion date of the most recent  
2 criminal background inquiry.

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

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

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

20 (7) The department of social and health services may maintain a  
21 background check database. The background check database shall be a  
22 web-based background check system for the use of authorized internal  
23 and statutorily authorized external entities to submit background  
24 check requests; receive results of background checks based on name,  
25 date of birth, fingerprint identification, or any other method of  
26 positive identification; review state and federal criminal history  
27 records; and process the results of background checks. A business or  
28 organization required to complete background checks for long-term  
29 care workers under RCW 74.39A.056 may satisfy that requirement by  
30 using the results of the background check database in accordance with  
31 rules adopted by the department of social and health services."

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32 On page 1, line 1 of the title, after "checks;" strike the  
33 remainder of the title and insert "amending RCW 43.43.830; and  
34 reenacting and amending RCW 43.43.832."



EFFECT: Technical fix to cite correct statutory location for types of providers listed who may share criminal background inquiry information.

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