
SUBSTITUTE SENATE BILL 5568

State of Washington

66th Legislature

2019 Regular Session

By Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Wilson, C., Darneille, and Nguyen; by request of Department of Social and Health Services)

READ FIRST TIME 02/14/19.

1 AN ACT Relating to certain providers sharing background checks;
2 amending RCW 43.43.830; and reenacting and amending RCW 43.43.832.

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

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

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

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

13 (2) "Applicant" means:

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

18 (b) Any prospective volunteer who will have regularly scheduled
19 unsupervised access to children under sixteen years of age,
20 developmentally disabled persons, or vulnerable adults during the
21 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
3 age, (ii) three or fewer children between twelve and sixteen years of
4 age, (iii) developmentally disabled persons, or (iv) vulnerable
5 adults;

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

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

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

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

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

33 (6) "Conviction record" means "conviction record" information as
34 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed
35 by either an adult or a juvenile. It does not include a conviction
36 for an offense that has been the subject of an expungement, pardon,
37 annulment, certificate of rehabilitation, or other equivalent
38 procedure based on a finding of the rehabilitation of the person
39 convicted, or a conviction that has been the subject of a pardon,
40 annulment, or other equivalent procedure based on a finding of

1 innocence. It does include convictions for offenses for which the
2 defendant received a deferred or suspended sentence, unless the
3 record has been expunged according to law.

4 (7) "Crime against children or other persons" means a conviction
5 of any of the following offenses: Aggravated murder; first or second
6 degree murder; first or second degree kidnapping; first, second, or
7 third degree assault; fourth degree assault (if a violation of RCW
8 9A.36.041(3)); first, second, or third degree assault of a child;
9 first, second, or third degree rape; first, second, or third degree
10 rape of a child; first or second degree robbery; first degree arson;
11 first degree burglary; first or second degree manslaughter; first or
12 second degree extortion; indecent liberties; incest; vehicular
13 homicide; first degree promoting prostitution; communication with a
14 minor; unlawful imprisonment; simple assault; sexual exploitation of
15 minors; first or second degree criminal mistreatment; endangerment
16 with a controlled substance; child abuse or neglect as defined in RCW
17 26.44.020; first or second degree custodial interference; first or
18 second degree custodial sexual misconduct; malicious harassment;
19 first, second, or third degree child molestation; first or second
20 degree sexual misconduct with a minor; commercial sexual abuse of a
21 minor; child abandonment; promoting pornography; selling or
22 distributing erotic material to a minor; custodial assault; violation
23 of child abuse restraining order; child buying or selling;
24 prostitution; felony indecent exposure; criminal abandonment; or any
25 of these crimes as they may be renamed in the future.

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

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

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

35 (11) "Health care facility" means a nursing home licensed under
36 chapter 18.51 RCW, (~~(a-[an])~~) an assisted living facility licensed
37 under chapter 18.20 RCW, (~~(e)~~) an adult family home licensed under
38 chapter 70.128 RCW, or an enhanced services facility licensed under
39 chapter 70.97 RCW.

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

7 (13) "Unsupervised" means not in the presence of:

8 (a) Another employee or volunteer from the same business or
9 organization as the applicant; or

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

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

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

26 (15) "Background check database" means a web-based background
27 check system maintained by the department of social and health
28 services and used by authorized internal and external entities to
29 submit background check requests; receive results based on name and
30 date of birth, fingerprint identification, or any other method of
31 positive identification; review state and federal criminal history
32 records; and process the results of background checks (criminal
33 background inquiry information).

34 (16) "Completed criminal background check information" means the
35 results only from a processed background check and does not include
36 any criminal records, commercial records, or financial records of an
37 individual.

38 (17) "Provider" means any one of the following types of entities:
39 A health care facility, as defined in RCW 43.43.830; an in-home
40 services agency, as defined in chapter 70.127 RCW; a community

1 residential service business as defined in RCW 74.39A.009; a
2 consumer-directed employer, as defined in RCW 74.39A.009; or an
3 enhanced services facility as defined in RCW 70.97.010.

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

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

8 (a) An applicant's conviction record, upon the request of a
9 business or organization as defined in RCW 43.43.830, a
10 developmentally disabled person, or a vulnerable adult as defined in
11 RCW 43.43.830 or his or her guardian;

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

14 (c) Any conviction record to aid in the investigation and
15 prosecution of child, developmentally disabled person, and vulnerable
16 adult abuse cases and to protect children and adults from further
17 incidents of abuse, upon the request of a law enforcement agency, the
18 office of the attorney general, prosecuting authority, or the
19 department of social and health services; and

20 (d) A prospective client's or resident's conviction record, upon
21 the request of a business or organization that qualifies for
22 exemption under section 501(c)(3) of the internal revenue code of
23 1986 (26 U.S.C. Sec. 501(c)(3)) and that provides emergency shelter
24 or transitional housing for children, persons with developmental
25 disabilities, or vulnerable adults.

26 (2) The secretary of the department of social and health services
27 and the secretary of children, youth, and families must establish
28 rules and set standards to require specific action when considering
29 the information received pursuant to subsection (1) of this section,
30 and when considering additional information including but not limited
31 to civil adjudication proceedings as defined in RCW 43.43.830 and any
32 out-of-state equivalent, in the following circumstances:

33 (a) When considering persons for state employment in positions
34 directly responsible for the supervision, care, or treatment of
35 children, vulnerable adults, or individuals with mental illness or
36 developmental disabilities provided that: For persons residing in a
37 home that will be utilized to provide foster care for dependent
38 youth, a criminal background check will be required for all persons
39 aged sixteen and older and the department of social and health

1 services may require a criminal background check for persons who are
2 younger than sixteen in situations where it may be warranted to
3 ensure the safety of youth in foster care;

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

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

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

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

27 (3) The secretary of the department of children, youth, and
28 families shall investigate the conviction records, pending charges,
29 and other information including civil adjudication proceeding records
30 of current employees and of any person actively being considered for
31 any position with the department who will or may have unsupervised
32 access to children, or for state positions otherwise required by
33 federal law to meet employment standards. "Considered for any
34 position" includes decisions about (a) initial hiring, layoffs,
35 reallocations, transfers, promotions, or demotions, or (b) other
36 decisions that result in an individual being in a position that will
37 or may have unsupervised access to children as an employee, an
38 intern, or a volunteer.

39 (4) The secretary of the department of children, youth, and
40 families shall adopt rules and investigate conviction records,

1 pending charges, and other information including civil adjudication
2 proceeding records, in the following circumstances:

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

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

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

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

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

34 (6) (a) For purposes of facilitating timely access to criminal
35 background information and to reasonably minimize the number of
36 requests made under this section, recognizing that certain (~~health~~
37 ~~care~~) providers have staff who change employment frequently,
38 (~~health care facilities~~) the following types of providers may (~~7~~
39 ~~upon request from another health care facility,~~) share copies of
40 completed criminal background inquiry information: Health care

1 facilities as defined in RCW 43.43.830, in-home services agencies as
2 defined in chapter 70.127 RCW, community residential service
3 businesses as defined in RCW 74.39A.009, and consumer directed
4 employers as defined in RCW 74.39A.009.

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

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

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

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

34 (f) (~~Health care facilities~~) Providers shall transmit and
35 receive the criminal background inquiry information in a manner that
36 reasonably protects the subject's rights to privacy and
37 confidentiality.

38 (7) The department of social and health services may maintain a
39 background check database. A business or organization required to
40 complete background checks for long-term care workers under RCW

1 74.39A.056 may satisfy that requirement by using the background check
2 database in accordance with rules adopted by the department of social
3 and health services.

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