
HOUSE BILL 2258

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By Representatives Valle, Cooke, Patterson, Brown, Wineberry, King, Campbell, L. Johnson and J. Kohl

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1 AN ACT Relating to background checks of caretakers of children,
2 vulnerable adults, and developmentally disabled persons; and amending
3 RCW 43.43.830, 43.43.832, 43.43.834, and 43.43.838.

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

5 **Sec. 1.** RCW 43.43.830 and 1992 c 145 s 16 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 (1) "Applicant" means:

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

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 or guardian under circumstances where such access will or

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

5 (c) Any prospective adoptive parent, as defined in RCW 26.33.020.

6 (2) "Business or organization" means a business or organization
7 licensed in this state, any agency of the state, or other governmental
8 entity, that educates, trains, treats, supervises, or provides
9 recreation to developmentally disabled persons, vulnerable adults, or
10 children under sixteen years of age, including school districts and
11 educational service districts.

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

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

35 (5) "Crime against children or other persons" means a conviction of
36 any of the following offenses: Aggravated murder; first or second
37 degree murder; first or second degree kidnaping; first, second, or
38 third degree assault; first, second, or third degree assault of a
39 child; first, second, or third degree rape; first, second, or third

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

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

20 (7) "Disciplinary board final decision" means any final decision
21 issued by the disciplinary board or the director of the department of
22 licensing for the following businesses or professions:

- 23 (a) Chiropractic;
- 24 (b) Dentistry;
- 25 (c) Dental hygiene;
- 26 (d) Massage;
- 27 (e) Midwifery;
- 28 (f) Naturopathy;
- 29 (g) Osteopathy;
- 30 (h) Physical therapy;
- 31 (i) Physicians;
- 32 (j) Practical nursing;
- 33 (k) Registered nursing;
- 34 (l) Psychology; and
- 35 (m) Real estate brokers and salesmen.

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

- 37 (a) Another employee or volunteer from the same business or
38 organization as the applicant; or

1 (b) Any relative or guardian of any of the children or
2 developmentally disabled persons to which the applicant has access
3 during the course of his or her employment or involvement with the
4 business or organization.

5 (9) "Vulnerable adult" means a person sixty years of age or older
6 who has the functional, mental, or physical inability to care for
7 himself or herself or a patient in a state hospital as defined in
8 chapter 72.23 RCW.

9 (10) "Financial exploitation" means the illegal or improper use of
10 a vulnerable adult or that adult's resources for another person's
11 profit or advantage.

12 (11) "Agency" means any person, firm, partnership, association,
13 corporation, or facility which receives, provides services to, houses
14 or otherwise cares for vulnerable adults.

15 (12) "Guardian" means a person who is a parent or guardian of a
16 child under age sixteen, a developmentally disabled person, or a
17 vulnerable adult, and who wants to employ an applicant as a babysitter
18 or caretaker of the child, developmentally disabled person, or
19 vulnerable adult.

20 **Sec. 2.** RCW 43.43.832 and 1993 c 281 s 51 are each amended to read
21 as follows:

22 (1) The legislature finds that businesses and organizations
23 providing services to children, developmentally disabled persons, and
24 vulnerable adults need adequate information to determine which
25 employees or licensees to hire or engage. Therefore, the Washington
26 state patrol criminal identification system may disclose, upon the
27 request of a business or organization as defined in RCW 43.43.830, an
28 applicant's record for convictions of offenses against children or
29 other persons, convictions for crimes relating to financial
30 exploitation, but only if the victim was a vulnerable adult,
31 adjudications of child abuse in a civil action, the issuance of a
32 protection order against the respondent under chapter 74.34 RCW, and
33 disciplinary board final decisions and any subsequent criminal charges
34 associated with the conduct that is the subject of the disciplinary
35 board final decision. When necessary, applicants may be employed on a
36 conditional basis pending completion of such a background
37 investigation.

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

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

11 (4) The legislature also finds that guardians of children,
12 developmentally disabled persons, and vulnerable adults also need
13 information to determine which employees to hire as babysitters or
14 caretakers of the guardians's children, developmentally disabled
15 persons, or vulnerable adults. Upon request of a guardian, the
16 Washington state patrol criminal identification system may disclose the
17 same information delineated in subsection (1) of this section to aid
18 the guardian in making employment decisions regarding caretakers.

19 (5) The legislature further finds that the department of social and
20 health services, when considering persons for state positions directly
21 responsible for the care, supervision, or treatment of children,
22 developmentally disabled persons, or vulnerable adults or when
23 licensing or authorizing such persons or agencies pursuant to its
24 authority under chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any
25 later-enacted statute which purpose is to license or regulate a
26 facility which handles vulnerable adults, must consider the information
27 listed in subsection (1) of this section. However, when necessary,
28 persons may be employed on a conditional basis pending completion of
29 the background investigation. The Washington personnel resources board
30 shall adopt rules to accomplish the purposes of this subsection as it
31 applies to state employees.

32 **Sec. 3.** RCW 43.43.834 and 1990 c 3 s 1103 are each amended to read
33 as follows:

34 (1) A business or organization or guardian shall not make an
35 inquiry to the Washington state patrol under RCW 43.43.832 or an
36 equivalent inquiry to a federal law enforcement agency unless the
37 business or organization or guardian has notified the applicant who has

1 been offered a position as an employee or volunteer, that an inquiry
2 may be made.

3 (2) A business or organization shall require each applicant to
4 disclose to the business or organization whether the applicant has
5 been:

6 (a) Convicted of any crime against children or other persons;

7 (b) Convicted of crimes relating to financial exploitation if the
8 victim was a vulnerable adult;

9 (c) Found in any dependency action under RCW 13.34.040 to have
10 sexually assaulted or exploited any minor or to have physically abused
11 any minor;

12 (d) Found by a court in a domestic relations proceeding under Title
13 26 RCW to have sexually abused or exploited any minor or to have
14 physically abused any minor;

15 (e) Found in any disciplinary board final decision to have sexually
16 or physically abused or exploited any minor or developmentally disabled
17 person or to have abused or financially exploited any vulnerable adult;
18 or

19 (f) Found by a court in a protection proceeding under chapter 74.34
20 RCW, to have abused or financially exploited a vulnerable adult.

21 The disclosure shall be made in writing and signed by the applicant
22 and sworn under penalty of perjury. The disclosure sheet shall specify
23 all crimes against children or other persons and all crimes relating to
24 financial exploitation as defined in RCW 43.43.830 in which the victim
25 was a vulnerable adult.

26 (3) A guardian may require an applicant to disclose to the guardian
27 the same information as specified in subsection (2) of this section.

28 (4) The business or organization or guardian shall pay such
29 reasonable fee for the records check as the state patrol may require
30 under RCW 43.43.838.

31 ~~((+4))~~ (5) The business or organization or guardian shall notify
32 the applicant of the state patrol's response within ten days after
33 receipt by the business or organization or guardian. The employer or
34 guardian shall provide a copy of the response to the applicant and
35 shall notify the applicant of such availability.

36 ~~((+5))~~ (6) The business or organization or guardian shall use this
37 record only in making the initial employment or engagement decision.
38 Further dissemination or use of the record is prohibited. A business

1 or organization or guardian violating this subsection is subject to a
2 civil action for damages.

3 ~~((+6))~~ (7) An insurance company shall not require a business or
4 organization or guardian to request background information on any
5 employee before issuing a policy of insurance.

6 ~~((+7))~~ (8) The business and organization or guardian shall be
7 immune from civil liability for failure to request background
8 information on an applicant unless the failure to do so constitutes
9 gross negligence.

10 **Sec. 4.** RCW 43.43.838 and 1992 c 159 s 7 are each amended to read
11 as follows:

12 (1) After January 1, 1988, and notwithstanding any provision of RCW
13 43.43.700 through 43.43.810 to the contrary, the state patrol shall
14 furnish a transcript of the conviction record, disciplinary board final
15 decision and any subsequent criminal charges associated with the
16 conduct that is the subject of the disciplinary board final decision,
17 or civil adjudication record pertaining to any person for whom the
18 state patrol or the federal bureau of investigation has a record upon
19 the written request of:

20 (a) The subject of the inquiry;

21 (b) Any business or organization or guardian for the purpose of
22 conducting evaluations under RCW 43.43.832;

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

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

26 (e) The department of social and health services for the purpose of
27 meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or
28 72.23 RCW, or any later-enacted statute which purpose is to regulate or
29 license a facility which handles vulnerable adults. However, access to
30 conviction records pursuant to this subsection (1)(e) does not limit or
31 restrict the ability of the department to obtain additional information
32 regarding conviction records and pending charges as set forth in RCW
33 74.15.030(2)(b).

34 After processing the request, if the conviction record,
35 disciplinary board final decision and any subsequent criminal charges
36 associated with the conduct that is the subject of the disciplinary
37 board final decision, or adjudication record shows no evidence of a
38 crime against children or other persons or, in the case of vulnerable

1 adults, no evidence of crimes relating to financial exploitation in
2 which the victim was a vulnerable adult, an identification declaring
3 the showing of no evidence shall be issued to the applicant by the
4 state patrol and shall be issued within fourteen working days of the
5 request. Possession of such identification shall satisfy future record
6 check requirements for the applicant for a two-year period unless the
7 prospective employee is any current school district employee who has
8 applied for a position in another school district or is an applicant
9 for a caretaking or babysitting position for a guardian who has not
10 requested a record check on the applicant within the last two years.

11 (2) The state patrol shall by rule establish fees for disseminating
12 records under this section to recipients identified in subsection
13 (1)(a) and (b) of this section. The state patrol shall also by rule
14 establish fees for disseminating records in the custody of the national
15 crime information center. The revenue from the fees shall cover, as
16 nearly as practicable, the direct and indirect costs to the state
17 patrol of disseminating the records: PROVIDED, That no fee shall be
18 charged to a nonprofit organization for the records check: PROVIDED
19 FURTHER, That in the case of record checks using fingerprints requested
20 by school districts and educational service districts, the state patrol
21 shall charge only for the incremental costs associated with checking
22 fingerprints in addition to name and date of birth. Record checks
23 requested by school districts and educational service districts using
24 only name and date of birth shall continue to be provided free of
25 charge.

26 (3) No employee of the state, employee of a business or
27 organization, ~~((or))~~ the business or organization, or a guardian is
28 liable for defamation, invasion of privacy, negligence, or any other
29 claim in connection with any lawful dissemination of information under
30 RCW 43.43.830 through 43.43.840 or 43.43.760.

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

38 (5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an
39 employer or a guardian to make an inquiry not specifically authorized

1 by this chapter, or be construed to affect the policy of the state
2 declared in chapter 9.96A RCW.

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