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SENATE BILL 6052

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State of Washington

55th Legislature

1997 Regular Session

By Senators Kohl, Long, Patterson and Rasmussen; by request of Department of Social and Health Services

Read first time 03/06/97. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to background reviews of persons with access to  
2 children and vulnerable adults; amending RCW 9.96A.020, 41.06.475, and  
3 43.20A.710; adding new sections to chapter 43.20A RCW; and repealing  
4 RCW 72.23.035.

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

6 **Sec. 1.** RCW 9.96A.020 and 1993 c 71 s 1 are each amended to read  
7 as follows:

8 (1) Subject to the exceptions in subsections (3) (~~and (4)~~)  
9 through (6) of this section, and unless there is another provision of  
10 law to the contrary, a person is not disqualified from employment by  
11 the state of Washington or any of its counties, cities, towns,  
12 municipal corporations, or quasi-municipal corporations, nor is a  
13 person disqualified to practice, pursue or engage in any occupation,  
14 trade, vocation, or business for which a license, permit, certificate  
15 or registration is required to be issued by the state of Washington or  
16 any of its counties, cities, towns, municipal corporations, or quasi-  
17 municipal corporations solely because of a prior conviction of a  
18 felony. However, this section does not preclude the fact of any prior  
19 conviction of a crime from being considered.

1 (2) A person may be denied employment by the state of Washington or  
2 any of its counties, cities, towns, municipal corporations, or quasi-  
3 municipal corporations, or a person may be denied a license, permit,  
4 certificate or registration to pursue, practice or engage in an  
5 occupation, trade, vocation, or business by reason of the prior  
6 conviction of a felony if the felony for which he or she was convicted  
7 directly relates to the position of employment sought or to the  
8 specific occupation, trade, vocation, or business for which the  
9 license, permit, certificate or registration is sought, and the time  
10 elapsed since the conviction is less than ten years.

11 (3) A person is disqualified for any certificate required or  
12 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior  
13 guilty plea or the conviction of a felony involving sexual exploitation  
14 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44  
15 RCW where a minor is the victim, promoting prostitution of a minor  
16 under chapter 9A.88 RCW, or a violation of similar laws of another  
17 jurisdiction, even if the time elapsed since the guilty plea or  
18 conviction is ten years or more.

19 (4) A person is disqualified from employment by school districts,  
20 educational service districts, and their contractors hiring employees  
21 who will have regularly scheduled unsupervised access to children,  
22 because of a prior guilty plea or conviction of a felony involving  
23 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses  
24 under chapter 9A.44 RCW where a minor is the victim, promoting  
25 prostitution of a minor under chapter 9A.88 RCW, or a violation of  
26 similar laws of another jurisdiction, even if the time elapsed since  
27 the guilty plea or conviction is ten years or more.

28 (5) Subsections (3) and (4) of this section only apply to a person  
29 applying for a certificate or for employment on or after July 25, 1993.

30 (6) A person is subject to disqualification from being hired,  
31 engaged, or authorized by the department of social and health services  
32 and its contractors or licensees hiring employees and from licensure,  
33 registration, or certification by the department of social and health  
34 services, if the person has a conviction record of a crime listed in  
35 section 4 of this act even if the time elapsed since the guilty plea or  
36 conviction is ten years or more.

37 **Sec. 2.** RCW 41.06.475 and 1993 c 281 s 38 are each amended to read  
38 as follows:

1       (1) The Washington personnel resources board shall adopt rules, in  
2 cooperation with the secretary of social and health services, for the  
3 background investigation of persons being considered for state  
4 employment in positions (~~directly responsible for the supervision,~~  
5 ~~care, or treatment of~~) that have unsupervised access to children or  
6 (developmentally disabled persons) vulnerable adults.

7       (2) The Washington personnel resources board shall adopt rules  
8 consistent with section 4 of this act, in cooperation with the  
9 secretary of social and health services, for persons employed and being  
10 considered for state employment by the department of social and health  
11 services in fiscally responsible positions and in positions that may  
12 allow unsupervised access to children or vulnerable adults.

13       NEW SECTION. Sec. 3. A new section is added to chapter 43.20A RCW  
14 to read as follows:

15       Unless the context clearly requires otherwise, the definitions in  
16 this section apply to RCW 43.20A.710.

17       (1) "Business or organization" means a business or organization  
18 licensed in this state, agency of the state, other governmental entity,  
19 natural person, firm, partnership, corporation, or facility, that  
20 educates, trains, treats, supervises, houses, or provides recreation to  
21 vulnerable adults or children regardless of whether the education,  
22 training, treatment, supervision, housing, or recreation is provided in  
23 the normal course of business or otherwise.

24       (2) "Child" means a person under the age of eighteen years.

25       (3) "Crimes" means those crimes against children or other persons  
26 as defined in RCW 43.43.830(5) and crimes relating to financial  
27 exploitation as defined in RCW 43.43.830(6).

28       (4) "Disciplinary board final decision" means a specific finding of  
29 abuse, abandonment, neglect, or exploitation in:

30       (a) A stipulated finding of fact, conclusion of law, and agreed  
31 order issued by a disciplining authority under chapter 18.130 RCW;

32       (b) A finding of fact, conclusion of law, and final order issued by  
33 a disciplining authority under chapter 18.130 RCW;

34       (c) Any final decision issued by the personnel appeals board; or

35       (d) Any final decision issued by the director of the department of  
36 licensing.

1 (5) "Fiscally responsible position" means department positions that  
2 have authority for or access to negotiable items or systems that would  
3 result in the issuance of negotiable items.

4 (6)(a) "Hired, engaged, or authorized" means:

5 (i) Employed by a business or organization;

6 (ii) Accepted as a volunteer, intern, student, or trainee by a  
7 business or organization; or

8 (iii) Otherwise granted access to vulnerable adults, children, or  
9 negotiable items or systems by a business or organization.

10 (b) "Hired, engaged, or authorized" does not include:

11 (i) Allowing unsupervised access by family and friends of a  
12 vulnerable adult or child who do not provide care or treatment to the  
13 vulnerable adult or child; or

14 (ii) Individual providers receiving background checks under RCW  
15 43.20A.710.

16 (7) "Individual" means any natural person including, but not  
17 limited to, an employee, job applicant, trainee, intern, volunteer,  
18 student, or personal service contractor, who may have unsupervised  
19 access to children or vulnerable adults during the course of his or her  
20 employment or involvement with a business or organization or who is in  
21 a fiscally responsible position.

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

23 (a) Another individual, over the age of eighteen years, from the  
24 same business or organization as the individual; or

25 (b) Any relative or guardian of any of the children or vulnerable  
26 adults to which the individual has access during the course of his or  
27 her employment or involvement with the business or organization.

28 (9) "Vulnerable adult" has the same meaning as in RCW 74.34.020.

29 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.20A RCW  
30 to read as follows:

31 (1) By July 1, 1998, the department of social and health services  
32 shall require that all individuals in positions, as determined by an  
33 appointing authority, who have unsupervised access to children or  
34 vulnerable adults or who have fiscally responsible positions and were  
35 hired after July 1, 1995, or resided in the state less than three  
36 years, undergo a record check through the Washington state patrol  
37 criminal identification system, under RCW 43.43.830 through 43.43.838,  
38 and through the federal bureau of investigation. The record check must

1 include a fingerprint check using a complete Washington state criminal  
2 identification fingerprint card. The department of social and health  
3 services shall provide a copy of the record report to the employee.  
4 Individuals subject to this section are required to undergo Washington  
5 state patrol record checks every three years.

6 (2) Individuals may not be required by the department of social and  
7 health services to pay for the record check required in subsection (1)  
8 of this section.

9 (3) The record checks required in this section must be in process  
10 no later than July 1, 1998.

11 (4)(a) An individual shall be permanently disqualified from being  
12 hired, engaged, or authorized into a position that may provide  
13 unsupervised access to a child or vulnerable adult if the record check  
14 required under subsection (1) of this section indicates a conviction of  
15 one or more of the following crimes:

- 16 (i) Aggravated murder;
- 17 (ii) First degree murder;
- 18 (iii) First degree kidnapping;
- 19 (iv) First or second degree assault;
- 20 (v) First, second, or third degree assault of a child;
- 21 (vi) First, second, or third degree rape;
- 22 (vii) First, second, or third degree rape of a child;
- 23 (viii) First or second degree robbery;
- 24 (ix) First degree arson;
- 25 (x) First degree burglary;
- 26 (xi) Indecent liberties;
- 27 (xii) First degree extortion;
- 28 (xiii) Incest;
- 29 (xiv) First degree promoting prostitution;
- 30 (xv) Sexual exploitation of minors;
- 31 (xvi) First degree criminal mistreatment;
- 32 (xvii) Child abuse or neglect as defined in RCW 26.44.020;
- 33 (xviii) First, second, or third degree child molestation;
- 34 (xix) First or second degree sexual misconduct with a minor;
- 35 (xx) Child buying or selling; and
- 36 (xxi) Felony indecent exposure.

37 (b) If a record check required under subsection (1) of this section  
38 indicates that an individual has been convicted of a crime other than  
39 those listed in (a) of this subsection or has pending charges, civil

1 adjudications, disciplinary board final decisions, or licensing  
2 findings that relate to the individual's functions or the individual's  
3 unsupervised access to children or vulnerable adults, the employer  
4 shall consider the following when making employment decisions  
5 pertaining to the individual:

- 6 (i) Character, suitability, and competence of the individual;
- 7 (ii) The seriousness of the crime and any mitigating factors; and
- 8 (iii) Other appropriate factors.

9 (c) A review procedure must be established for state employees  
10 disqualified by the listings established under (a) of this subsection.

11 (5) Any classified employee dismissed or otherwise adversely  
12 affected as a result of a conviction identified in the record required  
13 under subsection (1) of this section must be allowed to appeal under  
14 the appropriate statutes, including but not limited to chapters 41.06  
15 and 41.64 RCW.

16 **Sec. 5.** RCW 43.20A.710 and 1993 c 210 s 1 are each amended to read  
17 as follows:

18 The secretary shall investigate the conviction records, pending  
19 charges or disciplinary board final decisions of: (1) Persons being  
20 considered for state employment in positions (~~directly responsible for~~  
21 ~~the supervision, care, or treatment of~~) with unsupervised access to  
22 children or (~~individuals with mental illness or developmental~~  
23 ~~disabilities~~) vulnerable adults; and (2) individual providers who are  
24 paid by the state for in-home services and hired by individuals with  
25 physical disabilities, developmental disabilities, mental illness, or  
26 mental impairment. The investigation may include an examination of  
27 state and national criminal identification data and the child abuse and  
28 neglect register established under chapter 26.44 RCW. The secretary  
29 shall provide the results of the state background check on individual  
30 providers to the individuals with physical disabilities, developmental  
31 disabilities, mental illness, or mental impairment who hired them and  
32 to their legal guardians, if any. The secretary shall use the  
33 information solely for the purpose of determining the character,  
34 suitability, and competence of these applicants except that in the case  
35 of individuals with physical disabilities, developmental disabilities,  
36 mental illness, or mental impairment who employ individual providers,  
37 the determination of character, suitability, and competence of  
38 applicants shall be made by the individual with a physical disability,

1 developmental disability, mental illness, or mental impairment.  
2 Criminal justice agencies shall provide the secretary such information  
3 as they may have and that the secretary may require for such purpose.  
4 If necessary, persons may be employed on a conditional basis pending  
5 completion of the background investigation.

6 NEW SECTION. **Sec. 6.** RCW 72.23.035 and 1989 c 334 s 12 are each  
7 repealed.

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