

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6136

55th Legislature
1998 Regular Session

Passed by the Senate February 11, 1998
YEAS 46 NAYS 0

President of the Senate

Passed by the House February 27, 1998
YEAS 95 NAYS 0

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6136** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6136

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Oke and Long)

Read first time 02/06/98.

1 AN ACT Relating to drug offenses in background checks; amending RCW
2 43.43.830, 43.43.834, and 43.43.842; and adding a new section to
3 chapter 43.43 RCW.

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

5 **Sec. 1.** RCW 43.43.830 and 1996 c 178 s 12 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;

14 (b) Any prospective volunteer who will have regularly scheduled
15 unsupervised access to children under sixteen years of age,
16 developmentally disabled persons, or vulnerable adults during the
17 course of his or her employment or involvement with the business or
18 organization under circumstances where such access will or may involve
19 groups of (i) five or fewer children under twelve years of age, (ii)

1 three or fewer children between twelve and sixteen years of age, (iii)
2 developmentally disabled persons, or (iv) vulnerable adults; or

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

4 (2) "Business or organization" means a business or organization
5 licensed in this state, any agency of the state, or other governmental
6 entity, that educates, trains, treats, supervises, houses, or provides
7 recreation to developmentally disabled persons, vulnerable adults, or
8 children under sixteen years of age, including but not limited to
9 public housing authorities, school districts, and educational service
10 districts.

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

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

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

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

15 (6) "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 (7) "Crimes relating to financial exploitation" means a conviction
19 for first, second, or third degree extortion; first, second, or third
20 degree theft; first or second degree robbery; forgery; or any of these
21 crimes as they may be renamed in the future.

22 (~~(7)~~) (8) "Disciplinary board final decision" means any final
23 decision issued by a disciplining authority under chapter 18.130 RCW or
24 the secretary of the department of health for the following businesses
25 or professions:

- 26 (a) Chiropractic;
- 27 (b) Dentistry;
- 28 (c) Dental hygiene;
- 29 (d) Massage;
- 30 (e) Midwifery;
- 31 (f) Naturopathy;
- 32 (g) Osteopathic medicine and surgery;
- 33 (h) Physical therapy;
- 34 (i) Physicians;
- 35 (j) Practical nursing;
- 36 (k) Registered nursing; and
- 37 (l) Psychology.

1 "Disciplinary board final decision," for real estate brokers and
2 salespersons, means any final decision issued by the director of the
3 department of licensing for real estate brokers and salespersons.

4 (~~(8)~~) (9) "Unsupervised" means not in the presence of:

5 (a) Another employee or volunteer from the same business or
6 organization as the applicant; or

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

11 (~~(9)~~) (10) "Vulnerable adult" means "vulnerable adult" as defined
12 in chapter 74.34 RCW, except that for the purposes of requesting and
13 receiving background checks pursuant to RCW 43.43.832, it shall also
14 include adults of any age who lack the functional, mental, or physical
15 ability to care for themselves.

16 (~~(10)~~) (11) "Financial exploitation" means the illegal or
17 improper use of a vulnerable adult or that adult's resources for
18 another person's profit or advantage.

19 (~~(11)~~) (12) "Agency" means any person, firm, partnership,
20 association, corporation, or facility which receives, provides services
21 to, houses or otherwise cares for vulnerable adults.

22 NEW SECTION. Sec. 2. A new section is added to chapter 43.43 RCW
23 to read as follows:

24 For purposes of background checks, convictions for crimes relating
25 to drugs may be used as a tool for investigation and may be used for
26 any decision regarding the person's suitability for a position in which
27 the person may have unsupervised access to children or vulnerable
28 adults.

29 Sec. 3. RCW 43.43.834 and 1990 c 3 s 1103 are each amended to read
30 as follows:

31 (1) A business or organization shall not make an inquiry to the
32 Washington state patrol under RCW 43.43.832 or an equivalent inquiry to
33 a federal law enforcement agency unless the business or organization
34 has notified the applicant who has been offered a position as an
35 employee or volunteer, that an inquiry may be made.

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

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

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

7 (c) Convicted of crimes related to drugs as defined in RCW
8 43.43.830;

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

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

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

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

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

29 (4) The business or organization shall notify the applicant of the
30 state patrol's response within ten days after receipt by the business
31 or organization. The employer shall provide a copy of the response to
32 the applicant and shall notify the applicant of such availability.

33 (5) The business or organization shall use this record only in
34 making the initial employment or engagement decision. Further
35 dissemination or use of the record is prohibited. A business or
36 organization violating this subsection is subject to a civil action for
37 damages.

1 (6) An insurance company shall not require a business or
2 organization to request background information on any employee before
3 issuing a policy of insurance.

4 (7) The business and organization shall be immune from civil
5 liability for failure to request background information on an applicant
6 unless the failure to do so constitutes gross negligence.

7 **Sec. 4.** RCW 43.43.842 and 1997 c 392 s 518 are each amended to
8 read as follows:

9 (1)(a) The secretary of social and health services and the
10 secretary of health shall adopt additional requirements for the
11 licensure or relicensure of agencies, facilities, and licensed
12 individuals who provide care and treatment to vulnerable adults,
13 including nursing pools registered under chapter 18.52C RCW. These
14 additional requirements shall ensure that any person associated with a
15 licensed agency or facility having unsupervised access with a
16 vulnerable adult shall not have been: (i) Convicted of a crime against
17 persons as defined in RCW 43.43.830, except as provided in this
18 section; (ii) convicted of crimes relating to financial exploitation as
19 defined in RCW 43.43.830, except as provided in this section; (iii)
20 found in any disciplinary board final decision to have abused a
21 vulnerable adult under RCW 43.43.830; or (iv) the subject in a
22 protective proceeding under chapter 74.34 RCW.

23 (b) A person associated with a licensed agency or facility who has
24 unsupervised access with a vulnerable adult shall make the disclosures
25 specified in RCW 43.43.834(2). The person shall make the disclosures
26 in writing, sign, and swear to the contents under penalty of perjury.
27 The person shall, in the disclosures, specify all crimes against
28 children or other persons, ~~((and))~~ all crimes relating to financial
29 exploitation, and all crimes relating to drugs as defined in RCW
30 43.43.830, committed by the person.

31 (2) The rules adopted under this section shall permit the licensee
32 to consider the criminal history of an applicant for employment in a
33 licensed facility when the applicant has one or more convictions for a
34 past offense and:

35 (a) The offense was simple assault, assault in the fourth degree,
36 or the same offense as it may be renamed, and three or more years have
37 passed between the most recent conviction and the date of application
38 for employment;

1 (b) The offense was prostitution, or the same offense as it may be
2 renamed, and three or more years have passed between the most recent
3 conviction and the date of application for employment;

4 (c) The offense was theft in the third degree, or the same offense
5 as it may be renamed, and three or more years have passed between the
6 most recent conviction and the date of application for employment;

7 (d) The offense was theft in the second degree, or the same offense
8 as it may be renamed, and five or more years have passed between the
9 most recent conviction and the date of application for employment;

10 (e) The offense was forgery, or the same offense as it may be
11 renamed, and five or more years have passed between the most recent
12 conviction and the date of application for employment.

13 The offenses set forth in (a) through (e) of this subsection do not
14 automatically disqualify an applicant from employment by a licensee.
15 Nothing in this section may be construed to require the employment of
16 any person against a licensee's judgment.

17 (3) In consultation with law enforcement personnel, the secretary
18 of social and health services and the secretary of health shall
19 investigate, or cause to be investigated, the conviction record and the
20 protection proceeding record information under this chapter of the
21 staff of each agency or facility under their respective jurisdictions
22 seeking licensure or relicensure. An individual responding to a
23 criminal background inquiry request from his or her employer or
24 potential employer shall disclose the information about his or her
25 criminal history under penalty of perjury. The secretaries shall use
26 the information solely for the purpose of determining eligibility for
27 licensure or relicensure. Criminal justice agencies shall provide the
28 secretaries such information as they may have and that the secretaries
29 may require for such purpose.

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