
SUBSTITUTE HOUSE BILL 2215

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives B. Sullivan and Ahern)

READ FIRST TIME 03/04/05.

1 AN ACT Relating to background checks; amending RCW 43.43.830,
2 43.43.832, 43.43.834, 43.43.836, 43.43.838, 43.43.840, and 43.43.845;
3 and repealing RCW 43.43.835.

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

5 **Sec. 1.** RCW 43.43.830 and 2003 c 105 s 5 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 43.43.845.

10 (1) "Applicant" means:

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

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 under circumstances where such access will or may involve

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

4 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
5 or

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

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

15 (3) "Civil adjudication proceeding" (~~((means a specific court~~
16 ~~finding of sexual abuse or exploitation or physical abuse in a~~
17 ~~dependency action under RCW 13.34.040 or in a domestic relations action~~
18 ~~under Title 26 RCW. In the case of vulnerable adults, civil~~
19 ~~adjudication means a specific court finding of abuse or financial~~
20 ~~exploitation in a protection proceeding under chapter 74.34 RCW. It~~
21 ~~does not include administrative proceedings. The term "civil~~
22 ~~adjudication" is further limited to court findings that identify as the~~
23 ~~perpetrator of the abuse a named individual, over the age of eighteen~~
24 ~~years, who was a party to the dependency or dissolution proceeding or~~
25 ~~was a respondent in a protection proceeding in which the finding was~~
26 ~~made and who contested the allegation of abuse or exploitation)) is a~~
27 judicial or administrative adjudicative proceeding that results in a
28 finding of, or upholds an agency finding of, domestic violence, abuse,
29 sexual abuse, neglect, or exploitation or financial exploitation of a
30 child or vulnerable adult under chapter 13.34, 26.44, or 74.34 RCW, or
31 rules adopted under chapter 18.51 RCW. "Civil adjudication proceeding"
32 also includes judicial or administrative orders that become final due
33 to the failure of the alleged perpetrator to timely exercise a right
34 afforded to him or her to administratively challenge findings made by
35 the department of social and health services or the department of
36 health under chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under
37 chapter 18.51 RCW.

1 (4) "Conviction record" means "conviction record" information as
2 defined in RCW 10.97.030(~~(+3)~~) and 10.97.050 relating to a crime
3 (~~against children or other persons~~) committed by either an adult or
4 a juvenile. It does not include a conviction for an offense that has
5 been the subject of an expungement, pardon, annulment, certificate of
6 rehabilitation, or other equivalent procedure based on a finding of the
7 rehabilitation of the person convicted, or a conviction that has been
8 the subject of a pardon, annulment, or other equivalent procedure based
9 on a finding of innocence. It does include convictions for offenses
10 for which the defendant received a deferred or suspended sentence,
11 unless the record has been expunged according to law.

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

33 (6) "Crimes relating to drugs" means a conviction of a crime to
34 manufacture, delivery, or possession with intent to manufacture or
35 deliver a controlled substance.

36 (7) "Crimes relating to financial exploitation" means a conviction
37 for first, second, or third degree extortion; first, second, or third

1 degree theft; first or second degree robbery; forgery; or any of these
2 crimes as they may be renamed in the future.

3 ~~(8) ("Disciplinary board final decision" means any final decision~~
4 ~~issued by a disciplining authority under chapter 18.130 RCW or the~~
5 ~~secretary of the department of health for the following businesses or~~
6 ~~professions:~~

- 7 ~~(a) Chiropractic;~~
- 8 ~~(b) Dentistry;~~
- 9 ~~(c) Dental hygiene;~~
- 10 ~~(d) Massage;~~
- 11 ~~(e) Midwifery;~~
- 12 ~~(f) Naturopathy;~~
- 13 ~~(g) Osteopathic medicine and surgery;~~
- 14 ~~(h) Physical therapy;~~
- 15 ~~(i) Physicians;~~
- 16 ~~(j) Practical nursing;~~
- 17 ~~(k) Registered nursing; and~~
- 18 ~~(l) Psychology.~~

19 ~~"Disciplinary board final decision," for real estate brokers and~~
20 ~~salespersons, means any final decision issued by the director of the~~
21 ~~department of licensing for real estate brokers and salespersons.~~

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

- 23 (a) Another employee or volunteer from the same business or
24 organization as the applicant; or
- 25 (b) Any relative or guardian of any of the children or
26 developmentally disabled persons or vulnerable adults to which the
27 applicant has access during the course of his or her employment or
28 involvement with the business or organization.

29 ~~((10))~~ (9) "Vulnerable adult" means "vulnerable adult" as defined
30 in chapter 74.34 RCW, except that for the purposes of requesting and
31 receiving background checks pursuant to RCW 43.43.832, it shall also
32 include adults of any age who lack the functional, mental, or physical
33 ability to care for themselves.

34 ~~((11))~~ (10) "Financial exploitation" means ~~((the illegal or~~
35 ~~improper use of a vulnerable adult or that adult's resources for~~
36 ~~another person's profit or advantage))~~ "financial exploitation" as
37 defined in RCW 74.34.020.

1 (~~(12)~~) (11) "Agency" means any person, firm, partnership,
2 association, corporation, or facility which receives, provides services
3 to, houses or otherwise cares for vulnerable adults.

4 **Sec. 2.** RCW 43.43.832 and 2000 c 87 s 1 are each amended to read
5 as follows:

6 (1) The legislature finds that businesses and organizations
7 providing services to children, developmentally disabled persons, and
8 vulnerable adults need adequate information to determine which
9 employees or licensees to hire or engage. The legislature further
10 finds that many developmentally disabled individuals and vulnerable
11 adults desire to hire their own employees directly and also need
12 adequate information to determine which employees or licensees to hire
13 or engage. Therefore, the Washington state patrol (~~(criminal)~~)
14 identification (~~(system)~~) and criminal history section shall disclose,
15 upon the request of a business or organization as defined in RCW
16 43.43.830, a developmentally disabled person, or a vulnerable adult as
17 defined in RCW 43.43.830 or his or her guardian, an applicant's record
18 for convictions (~~(of offenses against children or other persons,~~
19 ~~convictions for crimes relating to financial exploitation, but only if~~
20 ~~the victim was a vulnerable adult, adjudications of child abuse in a~~
21 ~~civil action, the issuance of a protection order against the respondent~~
22 ~~under chapter 74.34 RCW, and disciplinary board final decisions and any~~
23 ~~subsequent criminal charges associated with the conduct that is the~~
24 ~~subject of the disciplinary board final decision)) as defined in
25 chapter 10.97 RCW.~~

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

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

36 (4) The legislature further finds that the secretary of the
37 department of social and health services must (~~(consider)~~) establish

1 rules and set standards to require specific action when considering the
2 information listed in subsection (1) of this section, and when
3 considering additional information including but not limited to civil
4 adjudication proceedings as defined in RCW 43.43.830 and any out-of-
5 state equivalent, in the following circumstances:

6 (a) When considering persons for state employment in positions
7 directly responsible for the supervision, care, or treatment of
8 children, vulnerable adults, or individuals with mental illness or
9 developmental disabilities;

10 (b) When considering persons for state positions involving
11 unsupervised access to vulnerable adults to conduct comprehensive
12 assessments, financial eligibility determinations, licensing and
13 certification activities, investigations, surveys, or case management;
14 or for state positions otherwise required by federal law to meet
15 employment standards;

16 (c) When licensing agencies or facilities with individuals in
17 positions directly responsible for the care, supervision, or treatment
18 of children, developmentally disabled persons, or vulnerable adults,
19 including but not limited to agencies or facilities licensed under
20 chapter 74.15 or 18.51 RCW;

21 (d) When contracting with individuals or businesses or
22 organizations for the care, supervision, case management, or treatment
23 of children, developmentally disabled persons, or vulnerable adults,
24 including but not limited to services contracted for under chapter
25 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

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

32 (5) Whenever a state conviction record check is required by state
33 law, persons may be employed or engaged as volunteers or independent
34 contractors on a conditional basis pending completion of the state
35 background investigation. Whenever a national criminal record check
36 through the federal bureau of investigation is required by state law,
37 a person may be employed or engaged as a volunteer or independent
38 contractor on a conditional basis pending completion of the national

1 check. The Washington personnel resources board shall adopt rules to
2 accomplish the purposes of this subsection as it applies to state
3 employees.

4 (6)(a) For purposes of facilitating timely access to criminal
5 background information and to reasonably minimize the number of
6 requests made under this section, recognizing that certain health care
7 providers change employment frequently, health care facilities may,
8 upon request from another health care facility, share copies of
9 completed criminal background inquiry information.

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

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

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

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

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

37 (g) For the purposes of this subsection, "health care facility"

1 means a nursing home licensed under chapter 18.51 RCW, a boarding home
2 licensed under chapter 18.20 RCW, or an adult family home licensed
3 under chapter 70.128 RCW.

4 (7) If a federal bureau of investigation check is required in
5 addition to the state background check by the department of social and
6 health services, an applicant who is not disqualified based on the
7 results of the state background check shall be eligible for a one
8 hundred twenty day provisional approval to hire, pending the outcome of
9 the federal bureau of investigation check. The department may extend
10 the provisional approval until receipt of the federal bureau of
11 investigation check. If the federal bureau of investigation check
12 disqualifies an applicant, the department shall notify the requestor
13 that the provisional approval to hire is withdrawn and the applicant
14 may be terminated.

15 **Sec. 3.** RCW 43.43.834 and 1999 c 21 s 2 are each amended to read
16 as follows:

17 (1) A business or organization shall not make an inquiry to the
18 Washington state patrol under RCW 43.43.832 or an equivalent inquiry to
19 a federal law enforcement agency unless the business or organization
20 has notified the applicant who (~~has been~~) may be offered a position
21 as an employee or volunteer, that an inquiry may be made.

22 (2) A business or organization shall require each applicant to
23 disclose to the business or organization whether the applicant (~~has~~
24 ~~been~~):

25 (a) Has been convicted of (~~any~~) a crime (~~against children or~~
26 ~~other persons~~);

27 (b) (~~Convicted of crimes relating to financial exploitation if the~~
28 ~~victim was a vulnerable adult~~) Has had findings made against him or
29 her in any civil adjudicative proceeding as defined in RCW 43.43.830;
30 or

31 (c) (~~Convicted of crimes related to drugs as defined in RCW~~
32 ~~43.43.830~~;

33 ~~(d) Found in any dependency action under RCW 13.34.040 to have~~
34 ~~sexually assaulted or exploited any minor or to have physically abused~~
35 ~~any minor~~;

36 ~~(e) Found by a court in a domestic relations proceeding under Title~~

1 ~~26 RCW to have sexually abused or exploited any minor or to have~~
2 ~~physically abused any minor;~~

3 ~~(f) Found in any disciplinary board final decision to have sexually~~
4 ~~or physically abused or exploited any minor or developmentally disabled~~
5 ~~person or to have abused or financially exploited any vulnerable adult;~~
6 ~~or~~

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

9 ~~The disclosure shall be made in writing and signed by the applicant~~
10 ~~and sworn under penalty of perjury. The disclosure sheet shall specify~~
11 ~~all crimes against children or other persons and all crimes relating to~~
12 ~~financial exploitation as defined in RCW 43.43.830 in which the victim~~
13 ~~was a vulnerable adult)) Has both a conviction under (a) of this~~
14 ~~subsection and findings made against him or her under (b) of this~~
15 ~~subsection.~~

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

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

22 (5) The business or organization shall use this record only in
23 making the initial employment or engagement decision. Further
24 dissemination or use of the record is prohibited, except as provided in
25 RCW 28A.320.155. A business or organization violating this subsection
26 is subject to a civil action for damages.

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

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

33 **Sec. 4.** RCW 43.43.836 and 1987 c 486 s 4 are each amended to read
34 as follows:

35 An individual may contact the state patrol to ascertain whether
36 ((that same)) an individual has a ((civil adjudication, disciplinary

1 ~~board final decision, or~~) conviction record. The state patrol shall
2 disclose such information, subject to the fee established under RCW
3 43.43.838.

4 **Sec. 5.** RCW 43.43.838 and 1995 c 29 s 1 are each amended to read
5 as follows:

6 (1) After January 1, 1988, and notwithstanding any provision of RCW
7 43.43.700 through 43.43.810 to the contrary, the state patrol shall
8 furnish a transcript of the conviction record(~~(, disciplinary board
9 final decision and any subsequent criminal charges associated with the
10 conduct that is the subject of the disciplinary board final decision,
11 or civil adjudication record~~)) pertaining to any person for whom the
12 state patrol or the federal bureau of investigation has a record upon
13 the written request of:

14 (a) The subject of the inquiry;

15 (b) Any business or organization for the purpose of conducting
16 evaluations under RCW 43.43.832;

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

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

20 (e) The department of social and health services for the purpose of
21 meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or
22 72.23 RCW, or any later-enacted statute which purpose is to regulate or
23 license a facility which handles vulnerable adults. However, access to
24 conviction records pursuant to this subsection (1)(e) does not limit or
25 restrict the ability of the department to obtain additional information
26 regarding conviction records and pending charges as set forth in RCW
27 74.15.030(2)(b).

28 (~~After processing the request, if the conviction record,
29 disciplinary board final decision and any subsequent criminal charges
30 associated with the conduct that is the subject of the disciplinary
31 board final decision, or adjudication record shows no evidence of a
32 crime against children or other persons or, in the case of vulnerable
33 adults, no evidence of crimes relating to financial exploitation in
34 which the victim was a vulnerable adult, an identification declaring
35 the showing of no evidence shall be issued to the business or
36 organization by the state patrol and shall be issued within fourteen
37 working days of the request. The business or organization shall~~

1 provide a copy of the identification declaring the showing of no
2 evidence to the applicant. Possession of such identification shall
3 satisfy future record check requirements for the applicant for a two-
4 year period unless the prospective employee is any current school
5 district employee who has applied for a position in another school
6 district.))

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

22 (3) No employee of the state, employee of a business or
23 organization, or the business or organization is liable for defamation,
24 invasion of privacy, negligence, or any other claim in connection with
25 any lawful dissemination of information under RCW 43.43.830 through
26 43.43.840 or 43.43.760.

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

34 (5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an
35 employer to make an inquiry not specifically authorized by this
36 chapter, or be construed to affect the policy of the state declared in
37 chapter 9.96A RCW.

1 **Sec. 6.** RCW 43.43.840 and 1997 c 386 s 40 are each amended to read
2 as follows:

3 ~~((1) The supreme court shall by rule require the courts of the~~
4 ~~state to notify the state patrol of any dependency action under RCW~~
5 ~~13.34.040, domestic relations action under Title 26 RCW, or protection~~
6 ~~action under chapter 74.34 RCW, in which the court makes specific~~
7 ~~findings of physical abuse or sexual abuse or exploitation of a child~~
8 ~~or abuse or financial exploitation of a vulnerable adult.~~

9 ~~(2) The department of licensing shall notify the state patrol of~~
10 ~~any disciplinary board final decision that includes specific findings~~
11 ~~of physical abuse or sexual abuse or exploitation of a child or abuse~~
12 ~~or financial exploitation of a vulnerable adult.~~

13 ~~(3))~~ When a business or an organization terminates, fires,
14 dismisses, fails to renew the contract, or permits the resignation of
15 an employee because of crimes against children or other persons or
16 because of crimes relating to the financial exploitation of a
17 vulnerable adult, and if that employee is employed in a position
18 requiring a certificate or license issued by a licensing agency such as
19 the state board of education, the business or organization shall notify
20 the licensing agency of such termination of employment.

21 **Sec. 7.** RCW 43.43.845 and 1990 c 33 s 577 are each amended to read
22 as follows:

23 (1) Upon a guilty plea or conviction of a person of any felony
24 crime involving the physical neglect of a child under chapter 9A.42
25 RCW, the physical injury or death of a child under chapter 9A.32 or
26 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),
27 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses
28 under chapter 9A.44 RCW where a minor is the victim, promoting
29 prostitution of a minor under chapter 9A.88 RCW, or the sale or
30 purchase of a minor child under RCW 9A.64.030, the prosecuting attorney
31 shall determine whether the person holds a certificate or permit issued
32 under chapters 28A.405 and 28A.410 RCW or is employed by a school
33 district. If the person is employed by a school district or holds a
34 certificate or permit issued under chapters 28A.405 and 28A.410 RCW,
35 the prosecuting attorney shall notify the ~~((state patrol))~~
36 superintendent of public instruction of such guilty pleas or
37 convictions.

1 (2) (~~When the state patrol receives information that a person who~~
2 ~~has a certificate or permit issued under chapters 28A.405 and 28A.410~~
3 ~~RCW or is employed by a school district has pled guilty to or been~~
4 ~~convicted of one of the felony crimes under subsection (1) of this~~
5 ~~section, the state patrol shall immediately transmit that information~~
6 ~~to the superintendent of public instruction. It shall be the duty of))~~
7 The superintendent of public instruction ((~~to~~)) shall provide this
8 information to the state board of education and the school district
9 employing the individual who pled guilty or was convicted of the crimes
10 identified in subsection (1) of this section.

11 NEW SECTION. Sec. 8. RCW 43.43.835 (Background checks--Drug-
12 related conviction information) and 1998 c 10 s 2 are each repealed.

--- END ---