
HOUSE BILL 2461

State of Washington 60th Legislature 2008 Regular Session

By Representatives McDonald, Anderson, Morrell, Campbell, and Roach

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1 AN ACT Relating to employment and certification of education
2 employees; amending RCW 28A.400.320, 28A.400.330, 28A.405.470,
3 28A.410.090, 28A.410.110, 9.96A.020, and 43.43.845; adding a new
4 section to chapter 28A.400 RCW; adding a new section to chapter 28A.405
5 RCW; adding a new section to chapter 41.59 RCW; and adding a new
6 section to chapter 41.56 RCW.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.400
9 RCW to read as follows:

10 (1) Subject to subsection (2) of this section, RCW 28A.400.320,
11 28A.400.330, 28A.405.470, 28A.410.090(3), 28A.410.110, 9.96A.020,
12 43.43.845, and section 9 of this act apply to any of the following
13 felony crimes:

14 (a) Any felony crime involving the physical neglect of a child
15 under chapter 9A.42 RCW;

16 (b) Physical injury or death of a child under chapter 9A.32 or
17 9A.36 RCW, except motor vehicle violations under chapter 46.61 RCW;

18 (c) Sexual exploitation of a child under chapter 9.68A RCW;

1 (d) Sexual offenses under chapter 9A.44 RCW where a minor is the
2 victim;

3 (e) Promoting prostitution of a minor under chapter 9A.88 RCW;

4 (f) Sale or purchase of a minor child under RCW 9A.64.030;

5 (g) A sex offense as defined by RCW 9.94A.030; or

6 (h) Violation of laws of another jurisdiction that are similar to
7 those specified in (a) through (g) of this subsection.

8 (2) For felony crimes specified under subsection (1)(a) through (f)
9 of this section or similar laws of another jurisdiction, the provisions
10 of RCW 28A.400.320, 28A.405.470, 28A.410.090(3), and 28A.410.110 apply
11 to guilty pleas or convictions that occur after July 23, 1989. For all
12 other felony crimes specified under subsection (1) of this section or
13 similar laws of another jurisdiction, the provisions of RCW
14 28A.400.320, 28A.405.470, 28A.410.090(3), and 28A.410.110 apply to
15 guilty pleas or convictions that occur after the effective date of this
16 section. The provisions of RCW 28A.400.320, 28A.400.330, 28A.405.470,
17 and section 9 of this act apply to arrests for any felony crime
18 specified under subsection (1) of this section that occur after the
19 effective date of this section.

20 **Sec. 2.** RCW 28A.400.320 and 1990 c 33 s 383 are each amended to
21 read as follows:

22 (1) The school district board of directors shall immediately
23 terminate the employment of any classified employee who has contact
24 with children during the course of his or her employment upon a guilty
25 plea or conviction of any felony crime (~~(involving the physical neglect~~
26 ~~of a child under chapter 9A.42 RCW, the physical injury or death of a~~
27 ~~child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations~~
28 ~~under chapter 46.61 RCW), sexual exploitation of a child under chapter~~
29 ~~9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the~~
30 ~~victim, promoting prostitution of a minor under chapter 9A.88 RCW, the~~
31 ~~sale or purchase of a minor child under RCW 9A.64.030, or violation of~~
32 ~~similar laws of another jurisdiction)) specified under section 1 of
33 this act.~~

34 (2) A classified employee who has contact with children during the
35 course of his or her employment shall immediately notify the school
36 district upon his or her arrest for any felony crime specified under
37 section 1 of this act.

1 (3) The employee shall have a right of appeal under chapter 28A.645
2 RCW including any right of appeal under a collective bargaining
3 agreement.

4 **Sec. 3.** RCW 28A.400.330 and 1989 c 320 s 4 are each amended to
5 read as follows:

6 The school district board of directors shall include in any
7 contract for services with an entity or individual other than an
8 employee of the school district a provision requiring the contractor to
9 prohibit any employee of the contractor from working at a public school
10 who has contact with children at a public school during the course of
11 his or her employment and who has pled guilty to or been convicted of
12 any felony crime (~~((involving the physical neglect of a child under
13 chapter 9A.42 RCW, the physical injury or death of a child under
14 chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under
15 chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A
16 RCW, sexual offenses under chapter 9A.44 RCW where a minor is the
17 victim, promoting prostitution of a minor under chapter 9A.88 RCW, the
18 sale or purchase of a minor child under RCW 9A.64.030, or violation of
19 similar laws of another jurisdiction))~~ specified under section 1 of
20 this act. The contract shall contain a provision requiring an employee
21 of the contractor, who has contact with children at a public school
22 during the course of his or her employment, immediately to notify the
23 contractor, and the contractor immediately to notify the school
24 district, upon the employee's arrest for any felony crime specified
25 under section 1 of this act. The contract shall also contain a
26 provision that any failure to comply with this section shall be grounds
27 for the school district immediately terminating the contract.

28 **Sec. 4.** RCW 28A.405.470 and 1990 c 33 s 405 are each amended to
29 read as follows:

30 (1) The school district shall immediately terminate the employment
31 of any person whose certificate or permit authorized under chapter
32 28A.405 or 28A.410 RCW is subject to revocation under RCW
33 28A.410.090(~~((+2))~~)(3) upon a guilty plea or conviction of any felony
34 crime (~~((involving the physical neglect of a child under chapter 9A.42
35 RCW, the physical injury or death of a child under chapter 9A.32 or
36 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),~~

1 ~~sexual exploitation of a child under chapter 9.68A RCW, sexual offenses~~
2 ~~under chapter 9A.44 RCW where a minor is the victim, promoting~~
3 ~~prostitution of a minor under chapter 9A.88 RCW, the sale or purchase~~
4 ~~of a minor child under RCW 9A.64.030, or violation of similar laws of~~
5 ~~another jurisdiction)) specified under section 1 of this act.~~
6 Employment shall remain terminated unless the employee successfully
7 prevails on appeal.

8 (2) An employee holding a certificate or permit authorized under
9 this chapter or chapter 28A.410 RCW shall immediately notify the school
10 district upon his or her arrest for any felony crime specified under
11 section 1 of this act.

12 (3) This section shall only apply to employees holding a
13 certificate or permit who have contact with children during the course
14 of their employment.

15 **Sec. 5.** RCW 28A.410.090 and 2005 c 461 s 2 are each amended to
16 read as follows:

17 (1)(a) Any certificate or permit authorized under the provisions of
18 this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may
19 be revoked or suspended by the authority authorized to grant the same
20 based upon a criminal records report authorized by law, or upon the
21 complaint of any school district superintendent, educational service
22 district superintendent, or private school administrator for
23 immorality, violation of written contract, unprofessional conduct,
24 intemperance, or crime against the law of the state.

25 (b) If the superintendent of public instruction has reasonable
26 cause to believe that an alleged violation of this chapter or rules
27 adopted under it has occurred based on a written complaint alleging
28 physical abuse or sexual misconduct by a certificated school employee
29 filed by a parent or another person, but no complaint has been
30 forwarded to the superintendent by a school district superintendent,
31 educational service district superintendent, or private school
32 administrator, and that a school district superintendent, educational
33 service district superintendent, or private school administrator has
34 sufficient notice of the alleged violation and opportunity to file a
35 complaint, the superintendent of public instruction may cause an
36 investigation to be made of the alleged violation, together with such

1 other matters that may be disclosed in the course of the investigation
2 related to certificated personnel.

3 (2) A parent or another person may file a written complaint with
4 the superintendent of public instruction alleging physical abuse or
5 sexual misconduct by a certificated school employee if:

6 (a) The parent or other person has already filed a written
7 complaint with the educational service district superintendent
8 concerning that employee;

9 (b) The educational service district superintendent has not caused
10 an investigation of the allegations and has not forwarded the complaint
11 to the superintendent of public instruction for investigation; and

12 (c) The written complaint states the grounds and factual basis upon
13 which the parent or other person believes an investigation should be
14 conducted.

15 (3)(a) Any such certificate or permit authorized under this chapter
16 or chapter 28A.405 RCW shall be revoked by the authority authorized to
17 grant the certificate upon a guilty plea or the conviction of any
18 felony crime (~~((involving the physical neglect of a child under chapter
19 9A.42 RCW, the physical injury or death of a child under chapter 9A.32
20 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61
21 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual
22 offenses under chapter 9A.44 RCW where a minor is the victim, promoting
23 prostitution of a minor under chapter 9A.88 RCW, the sale or purchase
24 of a minor child under RCW 9A.64.030, or violation of similar laws of
25 another jurisdiction))~~ specified under section 1 of this act. The
26 person whose certificate is in question shall be given an opportunity
27 to be heard.

28 (b) Mandatory permanent revocation upon a guilty plea or the
29 conviction of felony crimes specified under ((this subsection)) section
30 1(1)(a) through (f) of this act or similar laws of another jurisdiction
31 shall apply to such convictions or guilty pleas which occur after July
32 23, 1989. Revocation of any certificate or permit authorized under
33 this chapter or chapter 28A.405 RCW for a guilty plea or criminal
34 conviction of a crime under this subsection 3(b) occurring prior to
35 July 23, 1989, shall be subject to the provisions of subsection (1) of
36 this section.

37 (c) Mandatory permanent revocation upon a guilty plea or conviction
38 of felony crimes specified under section 1(1)(g) of this act but not

1 specified under section 1(1) (a) through (f) of this act, or similar
2 laws of another jurisdiction, shall apply to such convictions or guilty
3 pleas that occur after the effective date of this section. Revocation
4 of any certificate or permit authorized under this chapter or chapter
5 28A.405 RCW for a guilty plea or criminal conviction of a crime under
6 this subsection (3)(c) occurring before the effective date of this
7 section is subject to the provisions of subsection (1) of this section.

8 (4)(a) Any such certificate or permit authorized under this chapter
9 or chapter 28A.405 RCW shall be suspended or revoked, according to the
10 provisions of this subsection, by the authority authorized to grant the
11 certificate upon a finding that an employee has engaged in an
12 unauthorized use of school equipment to intentionally access material
13 depicting sexually explicit conduct or has intentionally possessed on
14 school grounds any material depicting sexually explicit conduct; except
15 for material used in conjunction with established curriculum. A first
16 time violation of this subsection shall result in either suspension or
17 revocation of the employee's certificate or permit as determined by the
18 office of the superintendent of public instruction. A second violation
19 shall result in a mandatory revocation of the certificate or permit.

20 (b) In all cases under this subsection (4), the person whose
21 certificate is in question shall be given an opportunity to be heard
22 and has the right to appeal as established in RCW 28A.410.100.
23 Certificates or permits shall be suspended or revoked under this
24 subsection only if findings are made on or after July 24, 2005. For
25 the purposes of this subsection, "sexually explicit conduct" has the
26 same definition as provided in RCW 9.68A.011.

27 (5) Any such certificate or permit authorized under this chapter or
28 chapter 28A.405 RCW shall be revoked by the authority authorized to
29 grant the certificate upon a finding that the certificate holder
30 obtained the certificate through fraudulent means, including but not
31 limited to misrepresentation of required academic credentials, prior
32 criminal record, or employment history. In all cases under this
33 subsection, the person whose certificate is in question shall be given
34 an opportunity to be heard and has the right to appeal as established
35 in RCW 28A.410.100. Certificates or permits shall be revoked under
36 this subsection only if findings are made on or after the effective
37 date of this section.

1 **Sec. 6.** RCW 28A.410.110 and 1990 c 33 s 410 are each amended to
2 read as follows:

3 In case any certificate or permit authorized under this chapter or
4 chapter 28A.405 RCW is revoked, the holder shall not be eligible to
5 receive another certificate or permit for a period of twelve months
6 after the date of revocation. However, if the certificate or permit
7 authorized under this chapter or chapter 28A.405 RCW was revoked
8 because of a guilty plea or the conviction of a felony crime
9 (~~involving the physical neglect of a child under chapter 9A.42 RCW,~~
10 ~~the physical injury or death of a child under chapter 9A.32 or 9A.36~~
11 ~~RCW (except motor vehicle violations under chapter 46.61 RCW), sexual~~
12 ~~exploitation of a child under chapter 9.68A RCW, sexual offenses under~~
13 ~~chapter 9A.44 RCW where a minor is the victim, promoting prostitution~~
14 ~~of a minor under chapter 9A.88 RCW, the sale or purchase of a minor~~
15 ~~child under RCW 9A.64.030, or violation of similar laws of another~~
16 ~~jurisdiction)) specified under section 1 of this act, the certificate
17 or permit shall not be reinstated.~~

18 **Sec. 7.** RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read
19 as follows:

20 (1) Subject to the exceptions in subsections (3) and (4) of this
21 section, and unless there is another provision of law to the contrary,
22 a person is not disqualified from employment by the state of Washington
23 or any of its counties, cities, towns, municipal corporations, or
24 quasi-municipal corporations, nor is a person disqualified to practice,
25 pursue or engage in any occupation, trade, vocation, or business for
26 which a license, permit, certificate or registration is required to be
27 issued by the state of Washington or any of its counties, cities,
28 towns, municipal corporations, or quasi-municipal corporations solely
29 because of a prior conviction of a felony. However, this section does
30 not preclude the fact of any prior conviction of a crime from being
31 considered.

32 (2) A person may be denied employment by the state of Washington or
33 any of its counties, cities, towns, municipal corporations, or quasi-
34 municipal corporations, or a person may be denied a license, permit,
35 certificate or registration to pursue, practice or engage in an
36 occupation, trade, vocation, or business by reason of the prior
37 conviction of a felony if the felony for which he or she was convicted

1 directly relates to the position of employment sought or to the
2 specific occupation, trade, vocation, or business for which the
3 license, permit, certificate or registration is sought, and the time
4 elapsed since the conviction is less than ten years. However, for
5 positions in the county treasurer's office, a person may be
6 disqualified from employment because of a prior guilty plea or
7 conviction of a felony involving embezzlement or theft, even if the
8 time elapsed since the guilty plea or conviction is ten years or more.

9 (3) A person is disqualified for any certificate required or
10 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior
11 guilty plea or the conviction of a felony (~~(involving sexual
12 exploitation of a child under chapter 9.68A RCW, sexual offenses under
13 chapter 9A.44 RCW where a minor is the victim, promoting prostitution
14 of a minor under chapter 9A.88 RCW, or a violation of similar laws of
15 another jurisdiction)) crime specified under section 1 of this act,
16 even if the time elapsed since the guilty plea or conviction is ten
17 years or more.~~

18 (4) A person is disqualified from employment by school districts,
19 educational service districts, and their contractors hiring employees
20 who will have regularly scheduled unsupervised access to children,
21 because of a prior guilty plea or conviction of a felony (~~(involving
22 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses
23 under chapter 9A.44 RCW where a minor is the victim, promoting
24 prostitution of a minor under chapter 9A.88 RCW, or a violation of
25 similar laws of another jurisdiction)) crime specified under section 1
26 of this act, even if the time elapsed since the guilty plea or
27 conviction is ten years or more.~~

28 (5) Subsections (3) and (4) of this section (~~(only)~~) as they
29 pertain to felony crimes specified under section 1(1) (a) through (f)
30 of this act or similar laws of another jurisdiction, apply to a person
31 applying for a certificate or for employment on or after July 25, 1993.
32 Subsections (3) and (4) of this section as they pertain to all other
33 felony crimes specified under section 1(1) of this act or similar laws
34 of another jurisdiction apply to a person applying for a certificate or
35 for employment after the effective date of this section.

36 **Sec. 8.** RCW 43.43.845 and 2006 c 263 s 828 are each amended to
37 read as follows:

1 (1) Upon a guilty plea or conviction of a person of any felony
2 crime (~~((involving the physical neglect of a child under chapter 9A.42~~
3 ~~RCW, the physical injury or death of a child under chapter 9A.32 or~~
4 ~~9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),~~
5 ~~sexual exploitation of a child under chapter 9.68A RCW, sexual offenses~~
6 ~~under chapter 9A.44 RCW, promoting prostitution of a minor under~~
7 ~~chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW~~
8 ~~9A.64.030)) specified under section 1 of this act, the prosecuting
9 attorney shall notify the state patrol of such guilty pleas or
10 convictions.~~

11 (2) When the state patrol receives (~~(information that a person has~~
12 ~~pled guilty to or been convicted of one of the felony crimes)) the
13 notice required under subsection (1) of this section, the state patrol
14 shall transmit that information to the superintendent of public
15 instruction. It shall be the duty of the superintendent of public
16 instruction, on at least a quarterly basis, to identify whether the
17 person holds a certificate or permit issued under chapters 28A.405 and
18 28A.410 RCW or is employed by a school district, and provide this
19 information to the Washington professional educator standards board and
20 the school district employing the (~~(individual who pled guilty or was~~
21 ~~convicted of the crimes identified in subsection (1) of this section))
22 person.~~~~

23 NEW SECTION. Sec. 9. A new section is added to chapter 28A.405
24 RCW to read as follows:

25 (1) A school district superintendent shall immediately notify the
26 office of the superintendent of public instruction when:

27 (a) A certificated employee of the district has notified the
28 district of his or her arrest for any felony crime specified under
29 section 1 of this act; or

30 (b) The district terminates or does not renew the employment
31 contract of a certificated employee on the basis of sufficient cause
32 for termination or nonrenewal.

33 (2) The office of the superintendent of public instruction shall
34 maintain a record of the notices received under this section.

35 (3) This section applies only to employees holding a certificate
36 or permit authorized under this chapter or chapter 28A.410 RCW who have
37 contact with children during the course of their employment.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 41.59 RCW
2 to read as follows:

3 Nothing in this chapter may be construed to grant employers or
4 employees the right to reach agreements that are in conflict with the
5 termination and notice provisions of RCW 28A.405.470 and section 9 of
6 this act.

7 NEW SECTION. **Sec. 11.** A new section is added to chapter 41.56 RCW
8 to read as follows:

9 Nothing in this chapter may be construed to grant school district
10 employers or classified school district employees the right to reach
11 agreements that are in conflict with the termination and notice
12 provisions of RCW 28A.400.320.

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