

---

HOUSE BILL 1240

---

State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Dammeier, Priest, Haler, Roach, McCune, and Herrera

Read first time 01/15/09. Referred to Committee on Education.

1            AN ACT Relating to crimes that require dismissal or certificate  
2 revocation for school employees; amending RCW 28A.400.320, 28A.400.330,  
3 28A.405.470, 28A.410.090, 28A.410.110, 9.96A.020, and 43.43.845; adding  
4 a new section to chapter 28A.400 RCW; adding a new section to chapter  
5 28A.405 RCW; adding a new section to chapter 41.59 RCW; and adding a  
6 new 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) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3),  
11 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or  
12 conviction occurring after July 23, 1989, and before the effective date  
13 of this section, for any of the following felony crimes:

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

16            (b) The 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) The sale or purchase of a minor child under RCW 9A.64.030;

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

7 (2) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3),  
8 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or  
9 conviction occurring on or after the effective date of this section,  
10 for any of the following felony crimes or attempts, conspiracies, or  
11 solicitations to commit any of the following felony crimes:

12 (a) A felony violation of RCW 9A.88.010, indecent exposure;

13 (b) A felony violation of chapter 9A.42 RCW involving physical  
14 neglect;

15 (c) A felony violation of chapter 9A.32 RCW;

16 (d) A violation of RCW 9A.36.011, assault 1; 9A.36.021, assault 2;  
17 9A.36.120, assault of a child 1; 9A.36.130, assault of a child 2; or  
18 any other felony violation of chapter 9A.36 RCW involving physical  
19 injury except assault 3 where the victim is eighteen years of age or  
20 older;

21 (e) A sex offense as defined in RCW 9.94A.030;

22 (f) A violation of RCW 9A.40.020, kidnapping 1; or 9A.40.030,  
23 kidnapping 2;

24 (g) A violation of RCW 9A.64.030, child selling or child buying;

25 (h) A violation of RCW 9A.88.070, promoting prostitution 1;

26 (i) A violation of RCW 9A.56.200, robbery 1; or

27 (j) A violation of laws of another jurisdiction that are similar to  
28 those specified in (a) through (i) of this subsection.

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

31 (1) The school district board of directors shall immediately  
32 terminate the employment of any classified employee who has contact  
33 with children during the course of his or her employment upon a guilty  
34 plea or conviction of any felony crime (~~involving the physical neglect~~  
35 ~~of a child under chapter 9A.42 RCW, the physical injury or death of a~~  
36 ~~child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations~~  
37 ~~under chapter 46.61 RCW), sexual exploitation of a child under chapter~~

1 ~~9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the~~  
2 ~~victim, promoting prostitution of a minor under chapter 9A.88 RCW, the~~  
3 ~~sale or purchase of a minor child under RCW 9A.64.030, or violation of~~  
4 ~~similar laws of another jurisdiction)) specified under section 1 of  
5 this act.~~

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

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

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

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

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

3       (1) The school district shall immediately terminate the employment  
4 of any person whose certificate or permit authorized under chapter  
5 28A.405 or 28A.410 RCW is subject to revocation under RCW  
6 28A.410.090(~~(+2)~~) (3) upon a guilty plea or conviction of any felony  
7 crime (~~(involving the physical neglect of a child under chapter 9A.42~~  
8 ~~RCW, the physical injury or death of a child under chapter 9A.32 or~~  
9 ~~9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),~~  
10 ~~sexual exploitation of a child under chapter 9.68A RCW, sexual offenses~~  
11 ~~under chapter 9A.44 RCW where a minor is the victim, promoting~~  
12 ~~prostitution of a minor under chapter 9A.88 RCW, the sale or purchase~~  
13 ~~of a minor child under RCW 9A.64.030, or violation of similar laws of~~  
14 ~~another jurisdiction)) specified under section 1 of this act.  
15 Employment shall remain terminated unless the employee successfully  
16 prevails on appeal.~~

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

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

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

26       (1)(a) Any certificate or permit authorized under the provisions of  
27 this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may  
28 be revoked or suspended by the authority authorized to grant the same  
29 based upon a criminal records report authorized by law, or upon the  
30 complaint of any school district superintendent, educational service  
31 district superintendent, or private school administrator for  
32 immorality, violation of written contract, unprofessional conduct,  
33 intemperance, or crime against the law of the state. School district  
34 superintendents, educational service district superintendents, or  
35 private school administrators may file a complaint concerning any  
36 certificated employee of a school district, educational service

1 district, or private school and this filing authority is not limited to  
2 employees of the complaining superintendent or administrator.

3 (b) If the superintendent of public instruction has reasonable  
4 cause to believe that an alleged violation of this chapter or rules  
5 adopted under it has occurred based on a written complaint alleging  
6 physical abuse or sexual misconduct by a certificated school employee  
7 filed by a parent or another person, but no complaint has been  
8 forwarded to the superintendent by a school district superintendent,  
9 educational service district superintendent, or private school  
10 administrator, and that a school district superintendent, educational  
11 service district superintendent, or private school administrator has  
12 sufficient notice of the alleged violation and opportunity to file a  
13 complaint, the superintendent of public instruction may cause an  
14 investigation to be made of the alleged violation, together with such  
15 other matters that may be disclosed in the course of the investigation  
16 related to certificated personnel.

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

20 (a) The parent or other person has already filed a written  
21 complaint with the educational service district superintendent  
22 concerning that employee;

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

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

29 (3)(a) Any such certificate or permit authorized under this chapter  
30 or chapter 28A.405 RCW shall be revoked by the authority authorized to  
31 grant the certificate upon a guilty plea or the conviction of any  
32 felony crime (~~involving the physical neglect of a child under chapter~~  
33 ~~9A.42 RCW, the physical injury or death of a child under chapter 9A.32~~  
34 ~~or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61~~  
35 ~~RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual~~  
36 ~~offenses under chapter 9A.44 RCW where a minor is the victim, promoting~~  
37 ~~prostitution of a minor under chapter 9A.88 RCW, the sale or purchase~~  
38 ~~of a minor child under RCW 9A.64.030, or violation of similar laws of~~

1 ~~another jurisdiction))~~ specified under section 1 of this act, in  
2 accordance with this section. The person whose certificate is in  
3 question shall be given an opportunity to be heard.

4 (b) Mandatory permanent revocation upon a guilty plea or the  
5 conviction of felony crimes specified under ((this subsection)) section  
6 1(1) of this act shall apply to such convictions or guilty pleas which  
7 occur after July 23, 1989, and before the effective date of section 1  
8 of this act.

9 (c) Mandatory permanent revocation upon a guilty plea or conviction  
10 of felony crimes specified under section 1(2) of this act shall apply  
11 to such convictions or guilty pleas that occur on or after the  
12 effective date of section 1 of this act.

13 (d) Revocation of any certificate or permit authorized under this  
14 chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction  
15 of a crime specified under section 1 of this act occurring prior to  
16 July 23, 1989, shall be subject to the provisions of subsection (1) of  
17 this section.

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

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

37 (5) Any such certificate or permit authorized under this chapter or  
38 chapter 28A.405 RCW shall be revoked by the authority authorized to

1 grant the certificate upon a finding that the certificate holder  
2 obtained the certificate through fraudulent means, including fraudulent  
3 misrepresentation of required academic credentials or prior criminal  
4 record. In all cases under this subsection, the person whose  
5 certificate is in question shall be given an opportunity to be heard  
6 and has the right to appeal as established in RCW 28A.410.100.  
7 Certificates or permits shall be revoked under this subsection only if  
8 findings are made on or after the effective date of this section.

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

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

26 **Sec. 7.** RCW 9.96A.020 and 2008 c 134 s 26 are each amended to read  
27 as follows:

28 (1) Subject to the exceptions in subsections (3) through (5) of  
29 this section, and unless there is another provision of law to the  
30 contrary, a person is not disqualified from employment by the state of  
31 Washington or any of its counties, cities, towns, municipal  
32 corporations, or quasi-municipal corporations, nor is a person  
33 disqualified to practice, pursue or engage in any occupation, trade,  
34 vocation, or business for which a license, permit, certificate or  
35 registration is required to be issued by the state of Washington or any  
36 of its counties, cities, towns, municipal corporations, or quasi-

1 municipal corporations solely because of a prior conviction of a  
2 felony. However, this section does not preclude the fact of any prior  
3 conviction of a crime from being considered.

4 (2) A person may be denied employment by the state of Washington or  
5 any of its counties, cities, towns, municipal corporations, or quasi-  
6 municipal corporations, or a person may be denied a license, permit,  
7 certificate or registration to pursue, practice or engage in an  
8 occupation, trade, vocation, or business by reason of the prior  
9 conviction of a felony if the felony for which he or she was convicted  
10 directly relates to the position of employment sought or to the  
11 specific occupation, trade, vocation, or business for which the  
12 license, permit, certificate or registration is sought, and the time  
13 elapsed since the conviction is less than ten years. However, for  
14 positions in the county treasurer's office, a person may be  
15 disqualified from employment because of a prior guilty plea or  
16 conviction of a felony involving embezzlement or theft, even if the  
17 time elapsed since the guilty plea or conviction is ten years or more.

18 (3) A person is disqualified for any certificate required or  
19 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior  
20 guilty plea or the conviction of a felony (~~((involving sexual  
21 exploitation of a child under chapter 9.68A RCW, sexual offenses under  
22 chapter 9A.44 RCW where a minor is the victim, promoting prostitution  
23 of a minor under chapter 9A.88 RCW, or a violation of similar laws of  
24 another jurisdiction))~~ crime specified under section 1 of this act,  
25 even if the time elapsed since the guilty plea or conviction is ten  
26 years or more.

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

37 (5) The provisions of this chapter do not apply to issuance of



1 licenses or credentials for professions regulated under chapter 18.130  
2 RCW.

3 (6)(a) Subsections (3) and (4) of this section (~~only~~) as they  
4 pertain to felony crimes specified under section 1(1) of this act apply  
5 to a person applying for a certificate or for employment on or after  
6 July 25, 1993, and before the effective date of section 1 of this act.  
7 Subsections (3) and (4) of this section as they pertain to all felony  
8 crimes specified under section 1(2) of this act apply to a person  
9 applying for a certificate or for employment on or after the effective  
10 date of section 1 of this act.

11 (b) Subsection (5) of this section only applies to a person  
12 applying for a license or credential on or after June 12, 2008.

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

15 (1) Upon a guilty plea or conviction of a person of any felony  
16 crime (~~(involving the physical neglect of a child under chapter 9A.42~~  
17 ~~RCW, the physical injury or death of a child under chapter 9A.32 or~~  
18 ~~9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),~~  
19 ~~sexual exploitation of a child under chapter 9.68A RCW, sexual offenses~~  
20 ~~under chapter 9A.44 RCW, promoting prostitution of a minor under~~  
21 ~~chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW~~  
22 ~~9A.64.030)) specified under section 1 of this act, the prosecuting  
23 attorney shall notify the state patrol of such guilty pleas or  
24 convictions.~~

25 (2) When the state patrol receives (~~information that a person has~~  
26 ~~pled guilty to or been convicted of one of the felony crimes)) the  
27 notice required under subsection (1) of this section, the state patrol  
28 shall transmit that information to the superintendent of public  
29 instruction. It shall be the duty of the superintendent of public  
30 instruction, on at least a quarterly basis, to identify whether the  
31 person holds a certificate or permit issued under chapters 28A.405 and  
32 28A.410 RCW or is employed by a school district, and provide this  
33 information to the Washington professional educator standards board and  
34 the school district employing the (~~individual who pled guilty or was~~  
35 ~~convicted of the crimes identified in subsection (1) of this section))  
36 person.~~~~

1        NEW SECTION.    **Sec. 9.**    A new section is added to chapter 28A.405  
2    RCW to read as follows:

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

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

8        (b) The district terminates the employment contract of a  
9    certificated employee on the basis of sufficient cause for termination.

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

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

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

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

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

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

--- END ---