
SUBSTITUTE HOUSE BILL 1741

State of Washington 61st Legislature 2009 Regular Session

By House Education (originally sponsored by Representatives Darneille, Quall, Lias, Santos, Van De Wege, Goodman, Dickerson, Jacks, Hurst, Haigh, Pettigrew, Kenney, Dammeier, and Morrell)

READ FIRST TIME 02/20/09.

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) The employee shall have a right of appeal under chapter 28A.645
7 RCW including any right of appeal under a collective bargaining
8 agreement. A school district board of directors is entitled to recover
9 from the employee any salary or other compensation that may have been
10 paid to the employee for the period between such time as the employee
11 was placed on administrative leave, based upon criminal charges that
12 the employee committed a felony crime specified under section 1 of this
13 act, and the time termination becomes final.

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

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

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

35 The school district shall immediately terminate the employment of
36 any person whose certificate or permit authorized under chapter 28A.405

1 or 28A.410 RCW is subject to revocation under RCW 28A.410.090(~~(+2)~~)
2 (3) upon a guilty plea or conviction of any felony crime (~~(involving~~
3 ~~the physical neglect of a child under chapter 9A.42 RCW, the physical~~
4 ~~injury or death of a child under chapter 9A.32 or 9A.36 RCW (except~~
5 ~~motor vehicle violations under chapter 46.61 RCW), sexual exploitation~~
6 ~~of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44~~
7 ~~RCW where a minor is the victim, promoting prostitution of a minor~~
8 ~~under chapter 9A.88 RCW, the sale or purchase of a minor child under~~
9 ~~RCW 9A.64.030, or violation of similar laws of another jurisdiction))~~
10 specified under section 1 of this act. Employment shall remain
11 terminated unless the employee successfully prevails on appeal. A
12 school district board of directors is entitled to recover from the
13 employee any salary or other compensation that may have been paid to
14 the employee for the period between such time as the employee was
15 placed on administrative leave, based upon criminal charges that the
16 employee committed a felony crime specified under section 1 of this
17 act, and the time termination becomes final. This section shall only
18 apply to employees holding a certificate or permit who have contact
19 with children during the course of their employment.

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

22 (1)(a) Any certificate or permit authorized under the provisions of
23 this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may
24 be revoked or suspended by the authority authorized to grant the same
25 based upon a criminal records report authorized by law, or upon the
26 complaint of any school district superintendent, educational service
27 district superintendent, or private school administrator for
28 immorality, violation of written contract, unprofessional conduct,
29 intemperance, or crime against the law of the state. School district
30 superintendents, educational service district superintendents, or
31 private school administrators may file a complaint concerning any
32 certificated employee of a school district, educational service
33 district, or private school and this filing authority is not limited to
34 employees of the complaining superintendent or administrator.

35 (b) If the superintendent of public instruction has reasonable
36 cause to believe that an alleged violation of this chapter or rules
37 adopted under it has occurred based on a written complaint alleging

1 physical abuse or sexual misconduct by a certificated school employee
2 filed by a parent or another person, but no complaint has been
3 forwarded to the superintendent by a school district superintendent,
4 educational service district superintendent, or private school
5 administrator, and that a school district superintendent, educational
6 service district superintendent, or private school administrator has
7 sufficient notice of the alleged violation and opportunity to file a
8 complaint, the superintendent of public instruction may cause an
9 investigation to be made of the alleged violation, together with such
10 other matters that may be disclosed in the course of the investigation
11 related to certificated personnel.

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

15 (a) The parent or other person has already filed a written
16 complaint with the educational service district superintendent
17 concerning that employee;

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

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

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

37 (b) Mandatory permanent revocation upon a guilty plea or the
38 conviction of felony crimes specified under (~~this subsection~~) section

1 1(1) of this act shall apply to such convictions or guilty pleas which
2 occur after July 23, 1989, and before the effective date of section 1
3 of this act.

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

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

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

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

32 (5) Any such certificate or permit authorized under this chapter or
33 chapter 28A.405 RCW shall be revoked by the authority authorized to
34 grant the certificate upon a finding that the certificate holder
35 obtained the certificate through fraudulent means, including fraudulent
36 misrepresentation of required academic credentials or prior criminal
37 record. In all cases under this subsection, the person whose
38 certificate is in question shall be given an opportunity to be heard

1 and has the right to appeal as established in RCW 28A.410.100.
2 Certificates or permits shall be revoked under this subsection only if
3 findings are made on or after the effective date of this section.

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

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

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

23 (1) Subject to the exceptions in subsections (3) through (5) of
24 this section, and unless there is another provision of law to the
25 contrary, a person is not disqualified from employment by the state of
26 Washington or any of its counties, cities, towns, municipal
27 corporations, or quasi-municipal corporations, nor is a person
28 disqualified to practice, pursue or engage in any occupation, trade,
29 vocation, or business for which a license, permit, certificate or
30 registration is required to be issued by the state of Washington or any
31 of its counties, cities, towns, municipal corporations, or quasi-
32 municipal corporations solely because of a prior conviction of a
33 felony. However, this section does not preclude the fact of any prior
34 conviction of a crime from being considered.

35 (2) A person may be denied employment by the state of Washington or
36 any of its counties, cities, towns, municipal corporations, or quasi-

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

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

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

32 (5) The provisions of this chapter do not apply to issuance of
33 licenses or credentials for professions regulated under chapter 18.130
34 RCW.

35 (6) Subsections (3) and (4) of this section (~~(only))~~ as they
36 pertain to felony crimes specified under section 1(1) of this act apply
37 to a person applying for a certificate or for employment on or after
38 July 25, 1993, and before the effective date of section 1 of this act.

1 Subsections (3) and (4) of this section as they pertain to all felony
2 crimes specified under section 1(2) of this act apply to a person
3 applying for a certificate or for employment on or after the effective
4 date of section 1 of this act. Subsection (5) of this section only
5 applies to a person applying for a license or credential on or after
6 June 12, 2008.

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

9 (1) Upon a guilty plea or conviction of a person of any felony
10 crime (~~((involving the physical neglect of a child under chapter 9A.42~~
11 ~~RCW, the physical injury or death of a child under chapter 9A.32 or~~
12 ~~9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),~~
13 ~~sexual exploitation of a child under chapter 9.68A RCW, sexual offenses~~
14 ~~under chapter 9A.44 RCW, promoting prostitution of a minor under~~
15 ~~chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW~~
16 ~~9A.64.030)) specified under section 1 of this act, the prosecuting
17 attorney shall notify the state patrol of such guilty pleas or
18 convictions.~~

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

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

33 (1) A school district superintendent shall immediately notify the
34 office of the superintendent of public instruction when the district
35 terminates the employment contract of a certificated employee on the
36 basis of probable cause for termination.

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

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

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

8 Nothing in this chapter may be construed to grant employers or
9 employees the right to reach agreements that are in conflict with the
10 termination provisions of RCW 28A.405.470.

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

13 Nothing in this chapter may be construed to grant school district
14 employers or classified school district employees the right to reach
15 agreements that are in conflict with the termination provisions of RCW
16 28A.400.320.

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