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**SUBSTITUTE SENATE BILL 5681**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Pridemore, Stevens, Regala, Harper, Shin, McAuliffe, Chase, and Roach)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to background checks of peer counselors; and  
2 amending RCW 43.43.830 and 43.43.832.

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

4 **Sec. 1.** RCW 43.43.830 and 2007 c 387 s 9 are each amended to read  
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in  
7 this section apply throughout RCW 43.43.830 through 43.43.845.

8 (1) "Applicant" means:

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

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

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

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

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

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

15 (3) "Civil adjudication proceeding" is a judicial or administrative  
16 adjudicative proceeding that results in a finding of, or upholds an  
17 agency finding of, domestic violence, abuse, sexual abuse, neglect,  
18 abandonment, violation of a professional licensing standard regarding  
19 a child or vulnerable adult, or exploitation or financial exploitation  
20 of a child or vulnerable adult under any provision of law, including  
21 but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted  
22 under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"  
23 also includes judicial or administrative findings that become final due  
24 to the failure of the alleged perpetrator to timely exercise a legal  
25 right to administratively challenge such findings.

26 (4) "Conviction record" means "conviction record" information as  
27 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by  
28 either an adult or a juvenile. It does not include a conviction for an  
29 offense that has been the subject of an expungement, pardon, annulment,  
30 certificate of rehabilitation, or other equivalent procedure based on  
31 a finding of the rehabilitation of the person convicted, or a  
32 conviction that has been the subject of a pardon, annulment, or other  
33 equivalent procedure based on a finding of innocence. It does include  
34 convictions for offenses for which the defendant received a deferred or  
35 suspended sentence, unless the record has been expunged according to  
36 law.

37 (5) "Crime against children or other persons" means a conviction of  
38 any of the following offenses: Aggravated murder; first or second

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

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

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

28 (8) "Unsupervised" means not in the presence of:

29 (a) Another employee or volunteer from the same business or  
30 organization as the applicant; or

31 (b) Any relative or guardian of any of the children or  
32 developmentally disabled persons or vulnerable adults to which the  
33 applicant has access during the course of his or her employment or  
34 involvement with the business or organization.

35 With regard to peer counselors, "unsupervised" does not include  
36 incidental contact with children under age sixteen at the location at  
37 which the peer counseling is taking place. "Incidental contact" means  
38 minor or casual contact with a child in an area accessible to and

1 within visual or auditory range of others. It could include passing a  
2 child while walking down a hallway but would not include being alone  
3 with a child for any period of time in a closed room or office.

4 (9) "Vulnerable adult" means "vulnerable adult" as defined in  
5 chapter 74.34 RCW, except that for the purposes of requesting and  
6 receiving background checks pursuant to RCW 43.43.832, it shall also  
7 include adults of any age who lack the functional, mental, or physical  
8 ability to care for themselves.

9 (10) "Financial exploitation" means "financial exploitation" as  
10 defined in RCW 74.34.020.

11 (11) "Agency" means any person, firm, partnership, association,  
12 corporation, or facility which receives, provides services to, houses  
13 or otherwise cares for vulnerable adults, juveniles, or children, or  
14 which provides child day care, early learning, or early childhood  
15 education services.

16 (12) "Peer counselor" means a nonprofessional person who has equal  
17 standing with another person, providing advice on a topic about which  
18 the nonprofessional person is more experienced or knowledgeable, and  
19 who is a counselor for a peer counseling program that contracts with or  
20 is otherwise approved by the department, another state or local agency,  
21 or the court.

22 **Sec. 2.** RCW 43.43.832 and 2007 c 387 s 10 are each amended to read  
23 as follows:

24 (1) The legislature finds that businesses and organizations  
25 providing services to children, developmentally disabled persons, and  
26 vulnerable adults need adequate information to determine which  
27 employees or licensees to hire or engage. The legislature further  
28 finds that many developmentally disabled individuals and vulnerable  
29 adults desire to hire their own employees directly and also need  
30 adequate information to determine which employees or licensees to hire  
31 or engage. Therefore, the Washington state patrol identification and  
32 criminal history section shall disclose, upon the request of a business  
33 or organization as defined in RCW 43.43.830, a developmentally disabled  
34 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her  
35 guardian, an applicant's conviction record as defined in chapter 10.97  
36 RCW.

1 (2) The legislature also finds that the Washington professional  
2 educator standards board may request of the Washington state patrol  
3 criminal identification system information regarding a certificate  
4 applicant's conviction record under subsection (1) of this section.

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

11 (4) The legislature further finds that the secretary of the  
12 department of social and health services must establish rules and set  
13 standards to require specific action when considering the information  
14 listed in subsection (1) of this section, and when considering  
15 additional information including but not limited to civil adjudication  
16 proceedings as defined in RCW 43.43.830 and any out-of-state  
17 equivalent, in the following circumstances:

18 (a) When considering persons for state employment in positions  
19 directly responsible for the supervision, care, or treatment of  
20 children, vulnerable adults, or individuals with mental illness or  
21 developmental disabilities;

22 (b) When considering persons for state positions involving  
23 unsupervised access to vulnerable adults to conduct comprehensive  
24 assessments, financial eligibility determinations, licensing and  
25 certification activities, investigations, surveys, or case management;  
26 or for state positions otherwise required by federal law to meet  
27 employment standards;

28 (c) When licensing agencies or facilities with individuals in  
29 positions directly responsible for the care, supervision, or treatment  
30 of children, developmentally disabled persons, or vulnerable adults,  
31 including but not limited to agencies or facilities licensed under  
32 chapter 74.15 or 18.51 RCW;

33 (d) When contracting with individuals or businesses or  
34 organizations for the care, supervision, case management, or treatment,  
35 including peer counseling, of children, developmentally disabled  
36 persons, or vulnerable adults, including but not limited to services  
37 contracted for under chapter 18.20, (~~(18.48,)~~) 70.127, 70.128, 72.36,  
38 or 74.39A RCW or Title 71A RCW;

1 (e) When individual providers are paid by the state or providers  
2 are paid by home care agencies to provide in-home services involving  
3 unsupervised access to persons with physical, mental, or developmental  
4 disabilities or mental illness, or to vulnerable adults as defined in  
5 chapter 74.34 RCW, including but not limited to services provided under  
6 chapter 74.39 or 74.39A RCW.

7 (5) The director of the department of early learning shall  
8 investigate the conviction records, pending charges, and other  
9 information including civil adjudication proceeding records of current  
10 employees and of any person actively being considered for any position  
11 with the department who will or may have unsupervised access to  
12 children, or for state positions otherwise required by federal law to  
13 meet employment standards. "Considered for any position" includes  
14 decisions about (a) initial hiring, layoffs, reallocations, transfers,  
15 promotions, or demotions, or (b) other decisions that result in an  
16 individual being in a position that will or may have unsupervised  
17 access to children as an employee, an intern, or a volunteer.

18 (6) The director of the department of early learning shall adopt  
19 rules and investigate conviction records, pending charges, and other  
20 information including civil adjudication proceeding records, in the  
21 following circumstances:

22 (a) When licensing or certifying agencies with individuals in  
23 positions that will or may have unsupervised access to children who are  
24 in child day care, in early learning programs, or receiving early  
25 childhood education services, including but not limited to licensees,  
26 agency staff, interns, volunteers, contracted providers, and persons  
27 living on the premises who are sixteen years of age or older;

28 (b) When authorizing individuals who will or may have unsupervised  
29 access to children who are in child day care, in early learning  
30 programs, or receiving early childhood learning education services in  
31 licensed or certified agencies, including but not limited to licensees,  
32 agency staff, interns, volunteers, contracted providers, and persons  
33 living on the premises who are sixteen years of age or older;

34 (c) When contracting with any business or organization for  
35 activities that will or may have unsupervised access to children who  
36 are in child day care, in early learning programs, or receiving early  
37 childhood learning education services;

1 (d) When establishing the eligibility criteria for individual  
2 providers to receive state paid subsidies to provide child day care or  
3 early learning services that will or may involve unsupervised access to  
4 children.

5 (7) Whenever a state conviction record check is required by state  
6 law, persons may be employed or engaged as volunteers or independent  
7 contractors on a conditional basis pending completion of the state  
8 background investigation. Whenever a national criminal record check  
9 through the federal bureau of investigation is required by state law,  
10 a person may be employed or engaged as a volunteer or independent  
11 contractor on a conditional basis pending completion of the national  
12 check. The Washington personnel resources board shall adopt rules to  
13 accomplish the purposes of this subsection as it applies to state  
14 employees.

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

21 (b) Completed criminal background inquiry information may be shared  
22 by a willing health care facility only if the following conditions are  
23 satisfied: The licensed health care facility sharing the criminal  
24 background inquiry information is reasonably known to be the person's  
25 most recent employer, no more than twelve months has elapsed from the  
26 date the person was last employed at a licensed health care facility to  
27 the date of their current employment application, and the criminal  
28 background information is no more than two years old.

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

34 (d) Any health care facility that knows or has reason to believe  
35 that an applicant has or may have a disqualifying conviction or finding  
36 as described in RCW 43.43.842, subsequent to the completion date of  
37 their most recent criminal background inquiry, shall be prohibited from

1 relying on the applicant's previous employer's criminal background  
2 inquiry information. A new criminal background inquiry shall be  
3 requested pursuant to RCW 43.43.830 through 43.43.842.

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

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

11 (g) For the purposes of this subsection, "health care facility"  
12 means a nursing home licensed under chapter 18.51 RCW, a boarding home  
13 licensed under chapter 18.20 RCW, or an adult family home licensed  
14 under chapter 70.128 RCW.

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