

ESHB 1565 - H AMD 967

By Representative Robinson

ADOPTED 01/16/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 43.43.830 and 2019 c 271 s 10 are each amended to
4 read as follows:

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

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

12 (2) "Applicant" means:

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

17 (b) Any prospective volunteer who will have regularly scheduled
18 unsupervised access to children under sixteen years of age,
19 developmentally disabled persons, or vulnerable adults during the
20 course of his or her employment or involvement with the business or
21 organization under circumstances where such access will or may
22 involve groups of (i) five or fewer children under twelve years of
23 age, (ii) three or fewer children between twelve and sixteen years of
24 age, (iii) developmentally disabled persons, or (iv) vulnerable
25 adults;

26 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
27 or

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

30 (3) "Business or organization" means a person, business, or
31 organization licensed in this state, any agency of the state, or
32 other governmental entity, that educates, trains, treats, supervises,

1 houses, or provides recreation to developmentally disabled persons,
2 vulnerable adults, or children under sixteen years of age, or that
3 provides child day care, early learning, or early learning childhood
4 education services, including but not limited to public housing
5 authorities, school districts, and educational service districts.

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

18 (5) "Client" or "resident" means a child, person with
19 developmental disabilities, or vulnerable adult applying for housing
20 assistance from a business or organization.

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

32 (7) "Crime against children or other persons" means a conviction
33 of any of the following offenses: Aggravated murder; first or second
34 degree murder; first or second degree kidnapping; first, second, or
35 third degree assault; fourth degree assault (if a violation of RCW
36 9A.36.041(3)); first, second, or third degree assault of a child;
37 first, second, or third degree rape; first, second, or third degree
38 rape of a child; first or second degree robbery; first degree arson;
39 first degree burglary; first or second degree manslaughter; first or
40 second degree extortion; indecent liberties; incest; vehicular

1 homicide; first degree promoting prostitution; communication with a
2 minor; unlawful imprisonment; simple assault; sexual exploitation of
3 minors; first or second degree criminal mistreatment; endangerment
4 with a controlled substance; child abuse or neglect as defined in RCW
5 26.44.020; first or second degree custodial interference; first or
6 second degree custodial sexual misconduct; hate crime; first, second,
7 or third degree child molestation; first or second degree sexual
8 misconduct with a minor; commercial sexual abuse of a minor; child
9 abandonment; promoting pornography; selling or distributing erotic
10 material to a minor; custodial assault; violation of child abuse
11 restraining order; child buying or selling; prostitution; felony
12 indecent exposure; criminal abandonment; or any of these crimes as
13 they may be renamed in the future.

14 (8) "Crimes relating to drugs" means a conviction of a crime to
15 manufacture, delivery, or possession with intent to manufacture or
16 deliver a controlled substance.

17 (9) "Crimes relating to financial exploitation" means a
18 conviction for first, second, or third degree extortion; first,
19 second, or third degree theft; first or second degree robbery;
20 forgery; or any of these crimes as they may be renamed in the future.

21 (10) "Criminal background inquiry information" means only the
22 results from a processed background check, including criminal history
23 record information that may be disclosed without restriction under
24 RCW 10.97.050. "Criminal background inquiry information" does not
25 include any commercial records or financial records of an individual
26 or any criminal history record information that is confidential under
27 state or federal law.

28 (11) "Financial exploitation" means "financial exploitation" as
29 defined in RCW 74.34.020.

30 (~~(11)~~) (12) "Health care facility" means a nursing home
31 licensed under chapter 18.51 RCW, an assisted living facility
32 licensed under chapter 18.20 RCW, (~~(12)~~) an adult family home
33 licensed under chapter 70.128 RCW, or an enhanced services facility
34 licensed under chapter 70.97 RCW.

35 (~~(12)~~) (13) "Peer counselor" means a nonprofessional person who
36 has equal standing with another person, providing advice on a topic
37 about which the nonprofessional person is more experienced or
38 knowledgeable, and who is a counselor for a peer counseling program
39 that contracts with or is otherwise approved by the department,
40 another state or local agency, or the court.

1 ~~((13))~~ (14) "Provider" means the following types of entities:

2 (a) A health care facility, as defined in this section;

3 (b) An in-home services agency, as defined in RCW 70.127.010;

4 (c) A community residential service business, as defined in RCW
5 74.39A.009; and

6 (d) A consumer directed employer, as defined in RCW 74.39A.009.

7 (15) "Unsupervised" means not in the presence of:

8 (a) Another employee or volunteer from the same business or
9 organization as the applicant; or

10 (b) Any relative or guardian of any of the children or
11 developmentally disabled persons or vulnerable adults to which the
12 applicant has access during the course of his or her employment or
13 involvement with the business or organization.

14 With regard to peer counselors, "unsupervised" does not include
15 incidental contact with children under age sixteen at the location at
16 which the peer counseling is taking place. "Incidental contact" means
17 minor or casual contact with a child in an area accessible to and
18 within visual or auditory range of others. It could include passing a
19 child while walking down a hallway but would not include being alone
20 with a child for any period of time in a closed room or office.

21 ~~((14))~~ (16) "Vulnerable adult" means "vulnerable adult" as
22 defined in chapter 74.34 RCW, except that for the purposes of
23 requesting and receiving background checks pursuant to RCW 43.43.832,
24 it shall also include adults of any age who lack the functional,
25 mental, or physical ability to care for themselves.

26 **Sec. 2.** RCW 43.43.832 and 2019 c 146 s 6 are each amended to
27 read as follows:

28 (1) The Washington state patrol identification and criminal
29 history section shall disclose conviction records as follows:

30 (a) An applicant's conviction record, upon the request of a
31 business or organization as defined in RCW 43.43.830, a
32 developmentally disabled person, or a vulnerable adult as defined in
33 RCW 43.43.830 or his or her guardian;

34 (b) The conviction record of an applicant for certification, upon
35 the request of the Washington professional educator standards board;

36 (c) Any conviction record to aid in the investigation and
37 prosecution of child, developmentally disabled person, and vulnerable
38 adult abuse cases and to protect children and adults from further
39 incidents of abuse, upon the request of a law enforcement agency, the

1 office of the attorney general, prosecuting authority, or the
2 department of social and health services; and

3 (d) A prospective client's or resident's conviction record, upon
4 the request of a business or organization that qualifies for
5 exemption under section 501(c)(3) of the internal revenue code of
6 1986 (26 U.S.C. Sec. 501(c)(3)) and that provides emergency shelter
7 or transitional housing for children, persons with developmental
8 disabilities, or vulnerable adults.

9 (2) The secretary of the department of social and health services
10 and the secretary of children, youth, and families must establish
11 rules and set standards to require specific action when considering
12 the information received pursuant to subsection (1) of this section,
13 and when considering additional information including but not limited
14 to civil adjudication proceedings as defined in RCW 43.43.830 and any
15 out-of-state equivalent, in the following circumstances:

16 (a) When considering persons for state employment in positions
17 directly responsible for the supervision, care, or treatment of
18 children, vulnerable adults, or individuals with mental illness or
19 developmental disabilities provided that: For persons residing in a
20 home that will be utilized to provide foster care for dependent
21 youth, a criminal background check will be required for all persons
22 aged sixteen and older and the department of social and health
23 services may require a criminal background check for persons who are
24 younger than sixteen in situations where it may be warranted to
25 ensure the safety of youth in foster care;

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

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

37 (d) When contracting with individuals or businesses or
38 organizations for the care, supervision, case management, or
39 treatment, including peer counseling, of children, developmentally
40 disabled persons, or vulnerable adults, including but not limited to

1 services contracted for under chapter 18.20, 70.127, 70.128, 72.36,
2 or 74.39A RCW or Title 71A RCW;

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

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

21 (4) The secretary of the department of children, youth, and
22 families shall adopt rules and investigate conviction records,
23 pending charges, and other information including civil adjudication
24 proceeding records, in the following circumstances:

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

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

38 (c) When contracting with any business or organization for
39 activities that will or may have unsupervised access to children who

1 are in child day care, in early learning programs, or receiving early
2 childhood learning education services;

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

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

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

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

34 (c) If criminal background inquiry information is shared, the
35 (~~health care facility~~) provider employing the subject of the
36 inquiry must require the applicant to sign a disclosure statement
37 indicating that there has been no conviction or finding as described
38 in RCW 43.43.842 since the completion date of the most recent
39 criminal background inquiry.

1 (d) Any (~~health care facility~~) provider that knows or has
2 reason to believe that an applicant has or may have a disqualifying
3 conviction or finding as described in RCW 43.43.842, subsequent to
4 the completion date of their most recent criminal background inquiry,
5 shall be prohibited from relying on the applicant's previous
6 employer's criminal background inquiry information. A new criminal
7 background inquiry shall be requested pursuant to RCW 43.43.830
8 through 43.43.842.

9 (e) (~~Health care facilities~~) Providers that share criminal
10 background inquiry information shall be immune from any claim of
11 defamation, invasion of privacy, negligence, or any other claim in
12 connection with any dissemination of this information in accordance
13 with this subsection.

14 (f) (~~Health care facilities~~) Providers shall transmit and
15 receive the criminal background inquiry information in a manner that
16 reasonably protects the subject's rights to privacy and
17 confidentiality.

18 (7) The department of social and health services may maintain a
19 background check database. The background check database shall be a
20 web-based background check system for the use of authorized internal
21 and external entities to submit background check requests; receive
22 results of background checks based on name, date of birth,
23 fingerprint identification, or any other method of positive
24 identification; review state and federal criminal history records;
25 and process the results of background checks. A business or
26 organization required to complete background checks for long-term
27 care workers under RCW 74.39A.056 may satisfy that requirement by
28 using the results of the background check database in accordance with
29 rules adopted by the department of social and health services."

30 Correct the title.

EFFECT: Updates the underlying provisions of the bill to account
for changes in statute made by legislation that passed in the
previous session.

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