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HOUSE BILL 1565

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State of Washington

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2019 Regular Session

**By** Representatives Robinson, Tharinger, Klippert, and Lovick; by request of Department of Social and Health Services

Read first time 01/24/19. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to certain providers sharing background checks;  
2 amending RCW 43.43.830; and reenacting and amending RCW 43.43.832.

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

4 **Sec. 1.** RCW 43.43.830 and 2017 c 272 s 5 are each amended to  
5 read 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) "Agency" means any person, firm, partnership, association,  
9 corporation, or facility which receives, provides services to, houses  
10 or otherwise cares for vulnerable adults, juveniles, or children, or  
11 which provides child day care, early learning, or early childhood  
12 education services.

13 (2) "Applicant" means:

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

18 (b) Any prospective volunteer who will have regularly scheduled  
19 unsupervised access to children under sixteen years of age,  
20 developmentally disabled persons, or vulnerable adults during the  
21 course of his or her employment or involvement with the business or

1 organization under circumstances where such access will or may  
2 involve groups of (i) five or fewer children under twelve years of  
3 age, (ii) three or fewer children between twelve and sixteen years of  
4 age, (iii) developmentally disabled persons, or (iv) vulnerable  
5 adults;

6 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;  
7 or

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

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

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

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

33 (6) "Conviction record" means "conviction record" information as  
34 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed  
35 by either an adult or a juvenile. It does not include a conviction  
36 for an offense that has been the subject of an expungement, pardon,  
37 annulment, certificate of rehabilitation, or other equivalent  
38 procedure based on a finding of the rehabilitation of the person  
39 convicted, or a conviction that has been the subject of a pardon,  
40 annulment, or other equivalent procedure based on a finding of

1 innocence. It does include convictions for offenses for which the  
2 defendant received a deferred or suspended sentence, unless the  
3 record has been expunged according to law.

4 (7) "Crime against children or other persons" means a conviction  
5 of any of the following offenses: Aggravated murder; first or second  
6 degree murder; first or second degree kidnapping; first, second, or  
7 third degree assault; fourth degree assault (if a violation of RCW  
8 9A.36.041(3)); first, second, or third degree assault of a child;  
9 first, second, or third degree rape; first, second, or third degree  
10 rape of a child; first or second degree robbery; first degree arson;  
11 first degree burglary; first or second degree manslaughter; first or  
12 second degree extortion; indecent liberties; incest; vehicular  
13 homicide; first degree promoting prostitution; communication with a  
14 minor; unlawful imprisonment; simple assault; sexual exploitation of  
15 minors; first or second degree criminal mistreatment; endangerment  
16 with a controlled substance; child abuse or neglect as defined in RCW  
17 26.44.020; first or second degree custodial interference; first or  
18 second degree custodial sexual misconduct; malicious harassment;  
19 first, second, or third degree child molestation; first or second  
20 degree sexual misconduct with a minor; commercial sexual abuse of a  
21 minor; child abandonment; promoting pornography; selling or  
22 distributing erotic material to a minor; custodial assault; violation  
23 of child abuse restraining order; child buying or selling;  
24 prostitution; felony indecent exposure; criminal abandonment; or any  
25 of these crimes as they may be renamed in the future.

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

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

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

35 (11) "Health care facility" means a nursing home licensed under  
36 chapter 18.51 RCW, ~~((a-[an]))~~ an assisted living facility licensed  
37 under chapter 18.20 RCW, ~~((e#))~~ an adult family home licensed under  
38 chapter 70.128 RCW, or an enhanced services facility licensed under  
39 chapter 70.97 RCW.

1 (12) "Peer counselor" means a nonprofessional person who has  
2 equal standing with another person, providing advice on a topic about  
3 which the nonprofessional person is more experienced or  
4 knowledgeable, and who is a counselor for a peer counseling program  
5 that contracts with or is otherwise approved by the department,  
6 another state or local agency, or the court.

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

26 **Sec. 2.** RCW 43.43.832 and 2017 3rd sp.s. c 20 s 5 and 2017 3rd  
27 sp.s. c 6 s 224 are each reenacted and amended to 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 Washington personnel resources board 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~~) the following types of providers may(~~(~~  
22 ~~upon request from another health care facility,~~) share copies of  
23 completed criminal background inquiry information: Health care  
24 facilities as defined in RCW 43.43.830, in-home services agencies as  
25 defined in chapter 70.127 RCW, community residential service  
26 businesses as defined in RCW 74.39A.009, and consumer directed  
27 employers as defined in RCW 74.39A.009.

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

38 (c) If criminal background inquiry information is shared, the  
39 (~~health care facility~~) provider employing the subject of the  
40 inquiry must require the applicant to sign a disclosure statement

1 indicating that there has been no conviction or finding as described  
2 in RCW 43.43.842 since the completion date of the most recent  
3 criminal background inquiry.

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

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

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

21 (7) The department of social and health services may maintain a  
22 background check database. A business or organization required to  
23 complete background checks for long-term care workers under RCW  
24 74.39A.056 may satisfy that requirement by using the background check  
25 database in accordance with rules adopted by the department of social  
26 and health services.

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