



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: August 12, 2021

TIME: 2:46 PM

WSR 21-17-077

Agency: Department of Social Health Services, Aging and Long-Term Support Administration

Title of rule and other identifying information: (describe subject) WAC 388-113-0020 "Which criminal convictions and pending charges automatically disqualify an individual from having unsupervised access to adult or minors who are receiving services in a program under chapters 388-71, 388-101, 388-106, 388-76, 388-78A, 388-97, 388-825, and 388-107 WAC?"

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is implementing changes to WAC 388-113-0020 related to the passage of Substitute House Bill 1411 passed in the 2021 Legislative Session. The effective date of the bill was July 25, 2021. The rule is currently in effect by emergency adoption under WSR 21-16-068.

The bill adds limitations to certain crimes which were previously permanently disqualifying: Assault 2, Assault 3, Delivery of marijuana, Extortion 2, Theft 1, and Robbery 2; and adds a provision which removes the automatic disqualification, allowing for a Character Competence and Suitability review, for a crime listed in which is accompanied by a court issued Certificate of Restoration of Opportunity (CROP). Domestic Violence (felonies only) was removed from the list of automatically disqualifying crimes because by law this is an aggravator added to another crime, not a stand-alone crime.

Reasons supporting proposal: To preserve and expand the workforce of long-term care workers by balancing client choice and safety. These changes remove criminal history related barriers to employment for individuals working for or intending to work for vulnerable persons while maintaining the statutory requirement of character, competence and suitability determination.

Statutory authority for adoption: RCW 74.08.090; 43.43.842, 74.39A.056

Statute being implemented: RCW 74.08.090; 43.43.842, 74.39A.056

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

Name of proponent: (person or organization) Department of Social and Health Services

- Private
- Public
- Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Stacy Graff	PO Box 45600, Olympia WA 98504-5600	360-725-2533
Implementation:	Stacy Graff	PO Box 45600, Olympia WA 98504-5600	360-725-2533
Enforcement:	Stacy Graff	PO Box 45600, Olympia WA 98504-5600	360-725-2533

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): the passage of Substitute House Bill 1411 is effective as of July 25, 2021, so the current rule is out of compliance with the statute.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

Name: Rules Coordinator

Agency: Department of Social and Health Services

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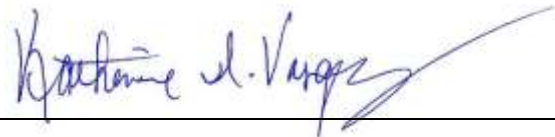
AND RECEIVED BY (date) 5:00 pm on October 19, 2021

Date: August 12, 2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-113-0020 Which criminal convictions and pending charges automatically disqualify an individual from having unsupervised access to adults or minors who are receiving services in a program under chapters 388-71, 388-101, 388-106, 388-76, 388-78A, 388-97, 388-825, and 388-107 WAC?

(1) Individuals who must satisfy background checks requirements under chapters 388-71, 388-101, 388-106, 388-76, 388-78A, 388-97, 388-825, and 388-107 WAC must not work in a position that may involve unsupervised access to minors or vulnerable adults if the individual has been convicted of or has a pending charge for any of the following crimes:

- (a) Abandonment of a child;
- (b) Abandonment of a dependent person;
- (c) Abuse or neglect of a child;
- (d) Arson 1;
- (e) Assault 1;
- (f) Assault 2 (less than five years);
- (g) Assault 3 (less than five years);
- (h) Assault 4/simple assault (less than three years);
- (i) Assault 4 domestic violence felony;
- (j) Assault of a child;
- (k) Burglary 1;
- (l) Child buying or selling;
- (m) Child molestation;
- (n) Coercion (less than five years);
- (o) Commercial sexual abuse of a minor/patronizing a juvenile prostitute;
- (p) Communication with a minor for immoral purposes;
- (q) Controlled substance homicide;
- (r) Criminal mistreatment;
- (s) Custodial assault;
- (t) Custodial interference;
- (u) Custodial sexual misconduct;
- (v) Dealing in depictions of minor engaged in ~~((sexual))~~ sexually explicit conduct;
- (w) ~~((Domestic violence (felonies only))~~;
~~(x))~~ Drive-by shooting;
- ~~((y))~~ (x) Drug crimes ~~((, if they involve))~~ involving one or more of the following:
 - (i) ~~((Manufacture of))~~ Manufacturing or possession with the intent to manufacture a drug;
 - (ii) Delivery ~~((of))~~ or possession with the intent to deliver a drug other than marijuana;
 - (iii) ~~((Possession of a drug with the intent to manufacture or deliver))~~ Delivery of marijuana (less than three years).
- ~~((z))~~ (y) Endangerment with a controlled substance;
- ~~((aa))~~ (z) Extortion 1;
- (aa) Extortion 2 (less than five years);
- ~~((bb))~~ (bb) Forgery (less than five years);
- ~~((cc))~~ (cc) Homicide by abuse, watercraft, vehicular homicide (negligent homicide);
- ~~((dd))~~ (dd) Identity theft (less than five years);
- ~~((ee))~~ (ee) Incendiary devices (possess, manufacture, dispose);
- ~~((ff))~~ (ff) Incest;

((+gg)) (gg) Indecent exposure/public indecency (felony);
 ((+hh)) (hh) Indecent liberties;
 ((+ii)) (ii) Kidnapping;
 ((+jj)) (jj) Luring;
 ((+kk)) (kk) Malicious explosion 1;
 ((+ll)) (ll) Malicious explosion 2;
 ((+mm)) (mm) Malicious harassment;
 ((+nn)) (nn) Malicious placement of an explosive 1;
 ((+oo)) (oo) Malicious placement of an explosive 2 (less than
 five years);
 ((+pp)) (pp) Malicious placement of imitation device 1 (less
 than five years);
 ((+qq)) (qq) Manslaughter;
 ((+rr)) (rr) Murder/aggravated murder;
 ((+ss)) (ss) Possess depictions minor engaged in sexual conduct;
 ((+tt)) (tt) Promoting pornography;
 ((+uu)) (uu) Promoting prostitution 1;
 ((+vv)) (vv) Promoting suicide attempt (less than five years);
 ((+ww)) (ww) Prostitution (less than three years);
 ((+xx)) (xx) Rape;
 ((+yy)) (yy) Rape of child;
 ((+zz)) (zz) Residential burglary;
 ((+aaa)) (aaa) Robbery 1;
(bbb) Robbery 2 (less than five years);
 ((+bbb)) (ccc) Selling or distributing erotic material to a mi-
 nor;
 ((+eee)) (ddd) Sending or bringing into the state depictions of
 a minor engaged in sexually explicit conduct;
 ((+ddd)) (eee) Sexual exploitation of minors;
 ((+eee)) (fff) Sexual misconduct with a minor;
 ((+fff)) (ggg) Sexually violating human remains;
 ((+ggg)) (hhh) Stalking (less than five years);
 ((+hhh)) (iii) Theft 1 (less than ten years);
 ((+iii)) (jjj) Theft from a vulnerable adult 1;
 ((+jjj)) ~~Theft from a vulnerable adult 2 (less than ten years);~~
~~(+kkk)) (kkk) Theft 2 (less than five years);~~
(lll) Theft from a vulnerable adult 2 (less than ten years);
 ((+lll)) (mmm) Theft 3 (less than three years);
 ((+mmm)) (nnn) Unlawful imprisonment;
 ((+nnn)) (ooo) Unlawful use of building for drug purposes (less
 than five years);
 ((+ooo)) (ppp) Use of machine gun in a felony;
 ((+ppp)) (qqq) Vehicular assault;
 ((+qqq)) (rrr) Violation of temporary restraining order or pre-
 liminary injunction involving sexual or physical abuse to a child;
 ((+rrr)) (sss) Violation of a temporary or permanent vulnerable
 adult protection order (VAPO) that was based upon abandonment, abuse,
 financial exploitation, or neglect; and
 ((+sss)) (ttt) Voyeurism.

(2) If "(less than ten years)," "(less than five years)," or
 "(less than three years)" appears after a crime listed in subsection
 (1) of this section, the individual is not automatically disqualified
 if the required number of years has passed since the date of the con-
 viction. This will result in a letter from the background check cen-
 tral unit indicating a character, competence, and suitability review
 is required before allowing unsupervised access to children or vulner-
 able adults. This provision applies to convictions that the department

has determined under subsection (3) of this section as equivalent to a crime listed in subsection (1) of this section once the period of time listed in subsection (1) of this section has passed.

(3) When the department determines that a conviction or pending charge in federal court or in any other court, including state court is equivalent to a Washington state crime that is disqualifying under this section, the equivalent conviction or pending charge is also disqualifying.

(4) In instances where a court has issued a certificate of restoration of opportunity of one of the crimes listed above, according to the procedure in RCW 9.97.020, the conviction is not automatically disqualifying but is subject to a character, competence, and suitability review.