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**HOUSE BILL 1411**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representatives Simmons, Davis, Santos, Valdez, Berry, and Fitzgibbon

AN ACT Relating to health care workforce eligibility for persons with prior involvement with the criminal justice system; amending RCW 9.97.020; adding new sections to chapter 74.39A RCW; and providing an expiration date.

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

NEW SECTION. **Sec.**  A new section is added to chapter 74.39A RCW to read as follows:

(1) Where the department is required to screen a person through a background check to determine whether the person has a history that would disqualify the person from having unsupervised access to, working with, or providing supervision, care, or treatment to vulnerable persons, or acting as a long-term care worker or vocational and employment service provider as defined in RCW 71A.12.040, the department may not automatically disqualify a person on the basis of a criminal record that includes any of the following crimes once the specified amount of time has passed for the particular crime:

(a) Selling drug paraphernalia under RCW 69.50.4121 after three years or more have passed between the most recent conviction and the date the background check is processed;

(b) Selling marijuana to a person under the age of 21 under RCW 69.50.475 after three years or more have passed between the most recent conviction and the date the background check is processed;

(c) Theft in the first degree under RCW 9A.56.030 after five years or more have passed between the most recent conviction and the date the background check is processed;

(d) Robbery in the second degree under RCW 9A.56.210 after five years or more have passed between the most recent conviction and the date the background check is processed;

(e) Extortion in the second degree under RCW 9A.56.130 after five years or more have passed between the most recent conviction and the date the background check is processed;

(f) Assault in the second degree under RCW 9A.36.021 after five years or more have passed between the most recent conviction and the date the background check is processed; and

(g) Assault in the third degree under RCW 9A.36.031 after five years or more have passed between the most recent conviction and the date the background check is processed.

(2) Notwithstanding subsection (1) of this section, a long-term care worker may not provide or be paid to provide care to children or vulnerable adults under the medicare or medicaid programs if the worker is excluded from participating in those programs by federal law.

(3) The provisions of subsection (1) of this section do not apply to any situation in which the record includes charges related to abuse, neglect, personal or financial exploitation, or abandonment of a minor or vulnerable adult under chapter 74.34 RCW and RCW 26.44.020.

(4) The department or an employer contracted with the department, when conducting a character, competence, and suitability review for the purpose of hiring, licensing, certifying, contracting with, permitting, or continuing to permit a person to be employed in any position caring for or having unsupervised access to a vulnerable adult, may, in its sole discretion, determine whether to consider any of the convictions identified in subsection (1) of this section. The department or an employer contracted with the department, when conducting a character, competence, and suitability review for the purpose of hiring, licensing, certifying, contracting with, permitting, or continuing to permit a person to be employed in any position caring for or having unsupervised access to a vulnerable adult, is immune from suit in law, equity, or under the administrative procedure act for damages based upon its exercise of discretion under this section or the refusal to exercise such discretion. In any action at law against the department or an employer contracted with the department relating to or arising from the hiring, licensing, certifying, contracting with, permitting, or continuing to permit a person to be employed in any position caring for or having unsupervised access to a vulnerable adult, evidence of the crimes identified in subsection (1) of this section may not be introduced as evidence of negligence or intentionally tortious conduct on the part of the department or an employer contracted with the department.

NEW SECTION. **Sec.**  A new section is added to chapter 74.39A RCW to read as follows:

(1) The department shall facilitate a work group dedicated to expanding the long-term care workforce, racial equity in client choice, and paid home care services. The work group shall identify an informed consent process by which older adults and people with disabilities may hire a trusted individual with a criminal record that would otherwise disqualify the person from providing paid home care services under this chapter. In its development of the recommendations, the work group must consider client safety, client direction, racial equity, cultural competency, and workforce development.

(2)(a) The work group shall consist of:

(i) Two representatives from the department;

(ii) Two representatives from community-based organizations that represent people with criminal records;

(iii) One representative from a community-based organization that represents Black communities;

(iv) One representative from an organization or tribe to represent the interests of American Indians and Alaska Natives;

(v) One representative from a community-based organization that represents immigrant populations or persons of color;

(vi) Three representatives from the union representing the majority of long-term care workers in Washington;

(vii) One representative of a consumer-directed employer;

(viii) One representative of an association representing area agencies on aging in Washington;

(ix) One representative from the office of the state long-term care ombuds;

(x) One representative from the office of the state developmental disability ombuds; and

(xi) Four representatives from organizations representing seniors and individuals with physical or developmental disabilities.

(b) The department shall invite the participation of persons with expertise in the background check process to provide advice and consultation to the work group with respect to the development of the proposed process under subsection (1) of this section.

(c) Appointments to the work group shall be made by the department. The department shall convene the meetings of the work group and service as the facilitator.

(3) The work group shall devote at least one meeting to reviewing and analyzing racial disparities relevant to the work group's direction under subsection (1) of this section, including disparities in charges and disqualifications in providing paid home care services under this chapter.

(4) The work group must submit its recommendations to the secretary by December 1, 2021. The recommendations must include a proposed process for clients to hire a family member or friend with a criminal record. The proposed process must include a recommended communication strategy to inform older adults and people with disabilities in Washington about the process.

(5) After receiving the informed consent process recommended by the work group, the department may revise the process as needed.

(6) The department shall implement the informed consent process, as recommended by the work group and revised by the department, if applicable, by January 1, 2023.

(7) This section expires July 1, 2023.

**Sec.**  RCW 9.97.020 and 2017 3rd sp.s. c 6 s 806 are each amended to read as follows:

(1) Except as provided in this section, no state, county, or municipal department, board, officer, or agency authorized to assess the qualifications of any applicant for a license, certificate of authority, qualification to engage in the practice of a profession or business, or for admission to an examination to qualify for such a license or certificate may disqualify a qualified applicant, solely based on the applicant's criminal history, if the qualified applicant has obtained a certificate of restoration of opportunity and the applicant meets all other statutory and regulatory requirements, except as required by federal law or exempted under this subsection. Nothing in this section is interpreted as restoring or creating a means to restore any firearms rights or eligibility to obtain a firearm dealer license pursuant to RCW 9.41.110 or requiring the removal of a protection order.

(a)(i) Criminal justice agencies, as defined in RCW 10.97.030, and the Washington state bar association are exempt from this section.

(ii) This section does not apply to the licensing, certification, or qualification of the following professionals: Accountants, RCW 18.04.295; assisted living facilities employees who are not long-term care workers as defined in RCW 74.39A.009, RCW 18.20.125; bail bond agents, RCW 18.185.020; escrow agents, RCW 18.44.241; ((~~long-term care workers, RCW 18.88B.080~~)); nursing home administrators, RCW 18.52.071; nursing, chapter 18.79 RCW; physicians and physician assistants, chapters 18.71 and 18.71A RCW; private investigators, RCW 18.165.030; receivers, RCW 7.60.035; teachers, chapters 28A.405 and 28A.410 RCW; notaries public, chapter 42.45 RCW; private investigators, chapter 18.165 RCW; real estate brokers and salespersons, chapters 18.85 and 18.86 RCW; and security guards, chapter 18.170 RCW((~~; and vulnerable adult care providers, RCW 43.43.842~~)).

(iii) To the extent this section conflicts with the requirements for receipt of federal funding under the adoption and safe families act, 42 U.S.C. Sec. 671, this section does not apply.

(b) Unless otherwise addressed in statute, in cases where an applicant would be disqualified under RCW 43.20A.710, and the applicant has obtained a certificate of restoration of opportunity for a disqualifying conviction, ((~~the department of social and health services and~~)) the department of children, youth, and families may, after review of relevant factors, including the nature and seriousness of the offense, time that has passed since conviction, changed circumstances since the offense occurred, and the nature of the employment or license sought, at their discretion:

(i) Allow the applicant to have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities if the applicant is otherwise qualified and suitable; or

(ii) Disqualify the applicant solely based on the applicant's criminal history.

(c) Unless otherwise addressed in statute, in cases in which an applicant would be disqualified under RCW 43.20A.710, 43.43.842, or department rule, and the applicant has obtained a certificate of restoration of opportunity for a disqualifying conviction, the department of social and health services may, after review of relevant factors, including the nature and seriousness of the offense, time that has passed since conviction, changed circumstances since the offense occurred, and the nature of the employment or license sought, at its discretion:

(i) Allow the applicant to have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities if the applicant is otherwise qualified and suitable; or

(ii) Disqualify the applicant solely based on the applicant's criminal history.

(d) If the practice of a profession or business involves unsupervised contact with vulnerable adults, children, or individuals with mental illness or developmental disabilities, or populations otherwise defined by statute as vulnerable, the department of health may, after review of relevant factors, including the nature and seriousness of the offense, time that has passed since conviction, changed circumstances since the offense occurred, and the nature of the employment or license sought, at its discretion:

(i) Disqualify an applicant who has obtained a certificate of restoration of opportunity, for a license, certification, or registration to engage in the practice of a health care profession or business solely based on the applicant's criminal history; or

(ii) If such applicant is otherwise qualified and suitable, credential or credential with conditions an applicant who has obtained a certificate of restoration of opportunity for a license, certification, or registration to engage in the practice of a health care profession or business.

((~~(d)~~)) (e) The state of Washington, any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, the department of health, the department of social and health services, and its officers, employees, contractors, and agents are immune from suit in law, equity, or any action under the administrative procedure act based upon its exercise of discretion under this section. This section does not create a protected class; private right of action; any right, privilege, or duty; or change to any right, privilege, or duty existing under law. This section does not modify a licensing or certification applicant's right to a review of an agency's decision under the administrative procedure act or other applicable statute or agency rule. A certificate of restoration of opportunity does not remove or alter citizenship or legal residency requirements already in place for state agencies and employers.

(2) A qualified court has jurisdiction to issue a certificate of restoration of opportunity to a qualified applicant.

(a) A court must determine, in its discretion whether the certificate:

(i) Applies to all past criminal history; or

(ii) Applies only to the convictions or adjudications in the jurisdiction of the court.

(b) The certificate does not apply to any future criminal justice involvement that occurs after the certificate is issued.

(c) A court must determine whether to issue a certificate by determining whether the applicant is a qualified applicant as defined in RCW 9.97.010.

(3) An employer or housing provider may, in its sole discretion, determine whether to consider a certificate of restoration of opportunity issued under this chapter in making employment or rental decisions. An employer or housing provider is immune from suit in law, equity, or under the administrative procedure act for damages based upon its exercise of discretion under this section or the refusal to exercise such discretion. In any action at law against an employer or housing provider arising out of the employment of or provision of housing to the recipient of a certificate of restoration of opportunity, evidence of the crime for which a certificate of restoration of opportunity has been issued may not be introduced as evidence of negligence or intentionally tortious conduct on the part of the employer or housing provider. This subsection does not create a protected class, private right of action, any right, privilege, or duty, or to change any right, privilege, or duty existing under law related to employment or housing except as provided in RCW 7.60.035.

(4) The department of social and health services or an employer contracted with the department of social and health services, when hiring, licensing, certifying, contracting with, permitting, or continuing to permit a person to be employed in any position caring for or having unsupervised access to a vulnerable adult, may, in its sole discretion, determine whether to consider a certificate of restoration of opportunity issued under this chapter. The department of social and health services or an employer contracted with the department of social and health services, when hiring, licensing, certifying, contracting with, permitting, or continuing to permit a person to be employed in any position caring for or having unsupervised access to a vulnerable adult, is immune from suit in law, equity, or under the administrative procedure act for damages based upon its exercise of discretion under this subsection or the refusal to exercise such discretion. In any action at law against the department of social and health services or an employer contracted with the department of social and health services relating to or arising from the hiring, licensing, certifying, contracting with, permitting, or continuing to permit a person providing home care services to be employed in any position caring for or having unsupervised access to a vulnerable adult of the recipient of a certificate of restoration of opportunity, evidence of the crime for which a certificate of restoration of opportunity has been issued may not be introduced as evidence of negligence or intentionally tortious conduct on the part of the department of social and health services or an employer contracted with the department of social and health services. This subsection does not create a protected class, a private right of action, or any right, privilege, or duty, or to change any right, privilege, or duty existing under law related to the department of social and health services or an employer contracted with the department of social and health services.

(5)(a) Department of social and health services: A certificate of restoration of opportunity does not apply to the state abuse and neglect registry. No finding of abuse, neglect, or misappropriation of property may be removed from the registry based solely on a certificate. The department must include such certificates as part of its criminal history record reports, qualifying letters, or other assessments pursuant to RCW 43.43.830 through 43.43.838. The department shall adopt rules to implement this subsection.

(b) Washington state patrol: The Washington state patrol is not required to remove any records based solely on a certificate of restoration of opportunity. The state patrol must include a certificate as part of its criminal history record report.

(c) Court records:

(i) A certificate of restoration of opportunity has no effect on any other court records, including records in the judicial information system. The court records related to a certificate of restoration of opportunity must be processed and recorded in the same manner as any other record.

(ii) The qualified court where the applicant seeks the certificate of restoration of opportunity must administer the court records regarding the certificate in the same manner as it does regarding all other proceedings.

(d) Effect in other judicial proceedings: A certificate of restoration of opportunity may only be submitted to a court to demonstrate that the individual met the specific requirements of this section and not for any other procedure, including evidence of character, reputation, or conduct. A certificate is not an equivalent procedure under Rule of Evidence 609(c).

(e) Department of health: The department of health must include a certificate of restoration of opportunity on its public website if:

(i) Its website includes an order, stipulation to informal disposition, or notice of decision related to the conviction identified in the certificate of restoration of opportunity; and

(ii) The credential holder has provided a certified copy of the certificate of restoration of opportunity to the department of health.

(f) Department of children, youth, and families: A certificate of restoration of opportunity does not apply to founded findings of child abuse or neglect. No finding of child abuse or neglect may be destroyed based solely on a certificate. The department of children, youth, and families must include such certificates as part of its criminal history record reports, qualifying letters, or other assessments pursuant to RCW 43.43.830 through 43.43.838. The department of children, youth, and families shall adopt rules to implement this subsection ((~~(4)~~)) (5)(f).

((~~(5)~~)) (6) In all cases, an applicant must provide notice to the prosecutor in the county where he or she seeks a certificate of restoration of opportunity of the pendency of such application. If the applicant has been sentenced by any other jurisdiction in the five years preceding the application for a certificate, the applicant must also notify the prosecuting attorney in those jurisdictions. The prosecutor in the county where an applicant applies for a certificate shall provide the court with a report of the applicant's criminal history.

((~~(6)~~)) (7) Application for a certificate of restoration of opportunity must be filed as a civil action.

((~~(7)~~)) (8) A superior court in the county in which the applicant resides may decline to consider the application for certificate of restoration of opportunity. If the superior court in which the applicant resides declines to consider the application, the court must dismiss the application without prejudice and the applicant may refile the application in another qualified court. The court must state the reason for the dismissal on the order. If the court determines that the applicant does not meet the required qualifications, then the court must dismiss the application without prejudice and state the reason(s) on the order. The superior court in the county of the applicant's conviction or adjudication may not decline to consider the application.

((~~(8)~~)) (9) Unless the qualified court determines that a hearing on an application for certificate of restoration is necessary, the court must decide without a hearing whether to grant the certificate of restoration of opportunity based on a review of the application filed by the applicant and pleadings filed by the prosecuting attorney.

((~~(9)~~)) (10) The clerk of the court in which the certificate of restoration of opportunity is granted shall transmit the certificate of restoration of opportunity to the Washington state patrol identification section, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol shall update its records to reflect the certificate of restoration of opportunity.

((~~(10)~~)) (11)(a) The administrative office of the courts shall develop and prepare instructions, forms, and an informational brochure designed to assist applicants applying for a certificate of restoration of opportunity.

(b) The instructions must include, at least, a sample of a standard application and a form order for a certificate of restoration of opportunity.

(c) The administrative office of the courts shall distribute a master copy of the instructions, informational brochure, and sample application and form order to all county clerks and a master copy of the application and order to all superior courts by January 1, 2017.

(d) The administrative office of the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then arrange for translation of the instructions, which shall contain a sample of the standard application and order, and the informational brochure into languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to the county clerks by January 1, 2017.

(e) The administrative office of the courts shall update the instructions, brochures, standard application and order, and translations when changes in the law make an update necessary.

**--- END ---**