

SENATE BILL REPORT

SHB 1411

As of March 18, 2021

Title: An act relating to health care workforce eligibility for persons with prior involvement with the criminal justice system.

Brief Description: Expanding health care workforce eligibility.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Simmons, Davis, Santos, Valdez, Berry and Fitzgibbon).

Brief History: Passed House: 3/1/21, 58-39.

Committee Activity: Health & Long Term Care: 3/22/21.

Brief Summary of Bill

- Prohibits the Department of Social and Health Services (DSHS) from automatically disqualifying a person convicted of certain crimes from having unsupervised access to, working with, or providing care to vulnerable adults or children.
- Directs DSHS to facilitate a work group to identify an informed consent process to allow older adults and people with disabilities to hire an individual with a criminal record that would otherwise disqualify the person from providing paid home care services.
- Authorizes DSHS to exercise its discretion regarding whether to permit or prohibit a person with a certificate of restoration of opportunity to have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Staff: LeighBeth Merrick (786-7445)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Disqualifying Crimes. The Department of Social and Health Services (DSHS) is responsible for investigating the conviction records and pending charges of specified people who may have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities, including DSHS employees or applicants, in-home service providers, and long-term care facilities. Agencies, facilities, and individuals who provide care to vulnerable adults may not allow persons to work in a position that may involve unsupervised access to minors or vulnerable adults if the person has been convicted of or has a pending charge for certain disqualifying crimes. In some cases, a person will not be automatically disqualified from employment if a designated number of years have passed since the date of conviction for the disqualifying crime. In those instances, the person may be allowed to work in a position with access to minors and vulnerable adults depending on the results of a character, competence, and suitability review.

Certificate of Restoration of Opportunity. A certificate of restoration of opportunity (CROP) may be granted to a person by a superior court if the person:

- has achieved the applicable waiting period following sentencing or release from confinement—one year for misdemeanors and gross misdemeanors when sentenced to probation or some other noncustodial sentence; 18 months for misdemeanors and gross misdemeanors when sentenced to a term of confinement; two years for a class B or C felony; or five years for any violent offense;
- is in compliance with or completed all sentencing requirements, including legal financial obligations;
- does not have any new arrests, convictions, or pending criminal charges or known imminent charges; and
- is not required to register as a sex offender.

A person is not eligible for a CROP if they have ever been convicted of any of the following offenses: a class A felony, an attempt to commit a class A felony, or criminal solicitation of or criminal conspiracy to commit a class A felony; a sex offense; a crime that includes sexual motivation; extortion in the first degree; drive-by shooting; vehicular assault; or luring.

A public entity may not disqualify a person who holds a CROP for a license, certificate, or qualification to engage in the practice of a profession or business solely based on criminal history if the person meets all other statutory or regulatory requirements. Criminal justice agencies and the Washington State Bar Association may disqualify a person who holds a CROP based solely on criminal history. DSHS, the Department of Children, Youth, and Families, and the Department of Health may disqualify a person who holds a CROP based solely on criminal history if the profession or license would give the person unsupervised access to vulnerable persons.

Summary of Bill: Disqualifying Crimes. DSHS may not automatically disqualify a long-term care worker, contracted provider, or licensee who has a criminal record that contains

certain crimes from having unsupervised access to, working with, or providing care to vulnerable adults or children. The long-term care worker, contracted provider, or licensee may engage in these activities once a specified amount of time has passed since the most recent conviction for each crime and the date of the background check. The crimes and the specified minimum times are:

- selling marijuana to a person under the age of 21 years old— after at least three years have passed;
- theft in the first degree— after at least five years have passed;
- robbery in the second degree— after at least five years have passed;
- extortion in the second degree— after at least five years have passed;
- assault in the second degree —after at least five years have passed; and
- assault in the third degree —after at least five years have passed.

While DSHS may not automatically disqualify a long-term care worker, contracted provider, or licensee, DSHS or an employer under contract with DSHS has the discretion to consider any of the convictions when conducting a character, competence, and suitability review regarding a long-term care worker, contracted provider, or licensee to be employed in a position caring for, or having unsupervised access to, vulnerable adults or children. DSHS and the employer are immune from law suits based upon their exercise of discretion or refusal to exercise discretion. The exemption from automatic disqualification does not apply to background checks performed by DSHS on behalf of the Department of Children, Youth, and Families. The exemption from automatic disqualification does not apply to DSHS employees or applicants, except for positions in the state-operated community residential program. The exemption does not allow for care to be provided or paid for if it would be prohibited under federal Medicare or Medicaid rules.

Informed Consent Work Group. DSHS must facilitate a work group to identify an informed consent process to allow older adults and people with disabilities to hire an individual with a criminal record that would otherwise disqualify the person from providing paid home care services. DSHS must appoint the members of the work group, which include:

- two representatives from DSHS;
- two representatives from community-based organizations that represent people with criminal records;
- one representative from a community-based organization that represents Black communities;
- one representative from an organization or tribe to represent the interests of American Indians or Alaska Natives;
- one representative from a community-based organization that represents immigrant populations or persons of color;
- three representatives from the union representing the majority of long-term care workers in Washington;
- one representative of a consumer-directed employer;
- one representative of an association representing area agencies on aging in Washington;

- one representative from the Office of the Long-Term Care Ombuds;
- one representative from the Office of the State Developmental Disability Ombuds;
- one representative from an association representing Medicaid home care agencies; and
- four representatives from organizations representing seniors and individuals with physical or developmental disabilities.

At least one of the work group's meetings must be devoted to reviewing and analyzing racial disparities, including disparities in charges and disqualifications in providing paid home care services. By December 1, 2021, the work group must submit its recommendations to the secretary of DSHS, including a proposed informed consent process for clients to hire a family member or friend with a criminal record. DSHS may revise the informed consent process, but must implement it by January 1, 2023.

Certificate of Restoration of Opportunity. The exclusions that apply to certain applicants with a CROP are eliminated with respect to assisted living facility employees, long-term care workers, and vulnerable adult care providers. In cases regarding an applicant who has a CROP, as well as a criminal history that would disqualify the applicant from a license or employment, DSHS may use its discretion to:

- 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
- disqualify the applicant solely based on the applicant's criminal history.

Prior to making the decision, DSHS must review relevant factors, including the nature and seriousness of the offense, the time passed since conviction, changed circumstances since the offense occurred, and the nature of the employment or the license being sought.

DSHS and the employer are immune from law suits based upon their exercise of discretion or refusal to exercise discretion.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.