
HOUSE BILL 1411

State of Washington

67th Legislature

2021 Regular Session

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

Read first time 01/28/21. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to health care workforce eligibility for persons
2 with prior involvement with the criminal justice system; amending RCW
3 9.97.020; adding new sections to chapter 74.39A RCW; and providing an
4 expiration date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 74.39A
7 RCW to read as follows:

8 (1) Where the department is required to screen a person through a
9 background check to determine whether the person has a history that
10 would disqualify the person from having unsupervised access to,
11 working with, or providing supervision, care, or treatment to
12 vulnerable persons, or acting as a long-term care worker or
13 vocational and employment service provider as defined in RCW
14 71A.12.040, the department may not automatically disqualify a person
15 on the basis of a criminal record that includes any of the following
16 crimes once the specified amount of time has passed for the
17 particular crime:

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

1 (b) Selling marijuana to a person under the age of 21 under RCW
2 69.50.475 after three years or more have passed between the most
3 recent conviction and the date the background check is processed;

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

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

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

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

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

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

24 (3) The provisions of subsection (1) of this section do not apply
25 to any situation in which the record includes charges related to
26 abuse, neglect, personal or financial exploitation, or abandonment of
27 a minor or vulnerable adult under chapter 74.34 RCW and RCW
28 26.44.020.

29 (4) The department or an employer contracted with the department,
30 when conducting a character, competence, and suitability review for
31 the purpose of hiring, licensing, certifying, contracting with,
32 permitting, or continuing to permit a person to be employed in any
33 position caring for or having unsupervised access to a vulnerable
34 adult, may, in its sole discretion, determine whether to consider any
35 of the convictions identified in subsection (1) of this section. The
36 department or an employer contracted with the department, when
37 conducting a character, competence, and suitability review for the
38 purpose of hiring, licensing, certifying, contracting with,
39 permitting, or continuing to permit a person to be employed in any
40 position caring for or having unsupervised access to a vulnerable

1 adult, is immune from suit in law, equity, or under the
2 administrative procedure act for damages based upon its exercise of
3 discretion under this section or the refusal to exercise such
4 discretion. In any action at law against the department or an
5 employer contracted with the department relating to or arising from
6 the hiring, licensing, certifying, contracting with, permitting, or
7 continuing to permit a person to be employed in any position caring
8 for or having unsupervised access to a vulnerable adult, evidence of
9 the crimes identified in subsection (1) of this section may not be
10 introduced as evidence of negligence or intentionally tortious
11 conduct on the part of the department or an employer contracted with
12 the department.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.39A
14 RCW to read as follows:

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

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

26 (i) Two representatives from the department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (7) This section expires July 1, 2023.

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

33 (1) Except as provided in this section, no state, county, or
34 municipal department, board, officer, or agency authorized to assess
35 the qualifications of any applicant for a license, certificate of
36 authority, qualification to engage in the practice of a profession or
37 business, or for admission to an examination to qualify for such a
38 license or certificate may disqualify a qualified applicant, solely
39 based on the applicant's criminal history, if the qualified applicant

1 has obtained a certificate of restoration of opportunity and the
2 applicant meets all other statutory and regulatory requirements,
3 except as required by federal law or exempted under this subsection.
4 Nothing in this section is interpreted as restoring or creating a
5 means to restore any firearms rights or eligibility to obtain a
6 firearm dealer license pursuant to RCW 9.41.110 or requiring the
7 removal of a protection order.

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

11 (ii) This section does not apply to the licensing, certification,
12 or qualification of the following professionals: Accountants, RCW
13 18.04.295; assisted living facilities employees who are not long-term
14 care workers as defined in RCW 74.39A.009, RCW 18.20.125; bail bond
15 agents, RCW 18.185.020; escrow agents, RCW 18.44.241; (~~long-term~~
16 ~~care workers, RCW 18.88B.080~~); nursing home administrators, RCW
17 18.52.071; nursing, chapter 18.79 RCW; physicians and physician
18 assistants, chapters 18.71 and 18.71A RCW; private investigators, RCW
19 18.165.030; receivers, RCW 7.60.035; teachers, chapters 28A.405 and
20 28A.410 RCW; notaries public, chapter 42.45 RCW; private
21 investigators, chapter 18.165 RCW; real estate brokers and
22 salespersons, chapters 18.85 and 18.86 RCW; and security guards,
23 chapter 18.170 RCW(~~and vulnerable adult care providers, RCW~~
24 ~~43.43.842~~)).

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

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

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

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

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

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

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

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

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

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

35 (~~(d)~~) (e) The state of Washington, any of its counties, cities,
36 towns, municipal corporations, or quasi-municipal corporations, the
37 department of health, the department of social and health services,
38 and its officers, employees, contractors, and agents are immune from
39 suit in law, equity, or any action under the administrative procedure
40 act based upon its exercise of discretion under this section. This

1 section does not create a protected class; private right of action;
2 any right, privilege, or duty; or change to any right, privilege, or
3 duty existing under law. This section does not modify a licensing or
4 certification applicant's right to a review of an agency's decision
5 under the administrative procedure act or other applicable statute or
6 agency rule. A certificate of restoration of opportunity does not
7 remove or alter citizenship or legal residency requirements already
8 in place for state agencies and employers.

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

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

13 (i) Applies to all past criminal history; or

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

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

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

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

37 (4) The department of social and health services or an employer
38 contracted with the department of social and health services, when
39 hiring, licensing, certifying, contracting with, permitting, or
40 continuing to permit a person to be employed in any position caring

1 for or having unsupervised access to a vulnerable adult, may, in its
2 sole discretion, determine whether to consider a certificate of
3 restoration of opportunity issued under this chapter. The department
4 of social and health services or an employer contracted with the
5 department of social and health services, when hiring, licensing,
6 certifying, contracting with, permitting, or continuing to permit a
7 person to be employed in any position caring for or having
8 unsupervised access to a vulnerable adult, is immune from suit in
9 law, equity, or under the administrative procedure act for damages
10 based upon its exercise of discretion under this subsection or the
11 refusal to exercise such discretion. In any action at law against the
12 department of social and health services or an employer contracted
13 with the department of social and health services relating to or
14 arising from the hiring, licensing, certifying, contracting with,
15 permitting, or continuing to permit a person providing home care
16 services to be employed in any position caring for or having
17 unsupervised access to a vulnerable adult of the recipient of a
18 certificate of restoration of opportunity, evidence of the crime for
19 which a certificate of restoration of opportunity has been issued may
20 not be introduced as evidence of negligence or intentionally tortious
21 conduct on the part of the department of social and health services
22 or an employer contracted with the department of social and health
23 services. This subsection does not create a protected class, a
24 private right of action, or any right, privilege, or duty, or to
25 change any right, privilege, or duty existing under law related to
26 the department of social and health services or an employer
27 contracted with the department of social and health services.

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

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

40 (c) Court records:

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

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

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

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

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

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

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

33 (~~((5))~~) (6) In all cases, an applicant must provide notice to the
34 prosecutor in the county where he or she seeks a certificate of
35 restoration of opportunity of the pendency of such application. If
36 the applicant has been sentenced by any other jurisdiction in the
37 five years preceding the application for a certificate, the applicant
38 must also notify the prosecuting attorney in those jurisdictions. The
39 prosecutor in the county where an applicant applies for a certificate

1 shall provide the court with a report of the applicant's criminal
2 history.

3 ~~((+6))~~ (7) Application for a certificate of restoration of
4 opportunity must be filed as a civil action.

5 ~~((+7))~~ (8) A superior court in the county in which the applicant
6 resides may decline to consider the application for certificate of
7 restoration of opportunity. If the superior court in which the
8 applicant resides declines to consider the application, the court
9 must dismiss the application without prejudice and the applicant may
10 refile the application in another qualified court. The court must
11 state the reason for the dismissal on the order. If the court
12 determines that the applicant does not meet the required
13 qualifications, then the court must dismiss the application without
14 prejudice and state the reason(s) on the order. The superior court in
15 the county of the applicant's conviction or adjudication may not
16 decline to consider the application.

17 ~~((+8))~~ (9) Unless the qualified court determines that a hearing
18 on an application for certificate of restoration is necessary, the
19 court must decide without a hearing whether to grant the certificate
20 of restoration of opportunity based on a review of the application
21 filed by the applicant and pleadings filed by the prosecuting
22 attorney.

23 ~~((+9))~~ (10) The clerk of the court in which the certificate of
24 restoration of opportunity is granted shall transmit the certificate
25 of restoration of opportunity to the Washington state patrol
26 identification section, which holds criminal history information for
27 the person who is the subject of the conviction. The Washington state
28 patrol shall update its records to reflect the certificate of
29 restoration of opportunity.

30 ~~((+10))~~ (11) (a) The administrative office of the courts shall
31 develop and prepare instructions, forms, and an informational
32 brochure designed to assist applicants applying for a certificate of
33 restoration of opportunity.

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

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

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

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

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