

## **Health Care & Wellness Committee**

### **HB 1411**

**Brief Description:** Expanding health care workforce eligibility.

**Sponsors:** Representatives Simmons, Davis, Santos, Valdez, Berry and Fitzgibbon.

#### **Brief Summary of Bill**

- Prohibits the Department of Social and Health Services (Department) from automatically disqualifying a person who has a criminal record containing certain crimes from: (1) having unsupervised access to, working with, or providing care to a vulnerable person; or (2) acting as a long-term care worker or vocational and employment services provider.
- Establishes 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 the Department to exercise its discretion regarding whether to permit or prohibit a person with a certificate of opportunity of restoration to have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities.

**Hearing Date:** 2/8/21

**Staff:** Christopher Blake (786-7392).

#### **Background:**

##### Disqualifying Crimes.

The Department of Social and Health Services is responsible for investigating the conviction records and pending charges of specified people who may have unsupervised access to children,

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vulnerable adults, or individuals with mental illness or developmental disabilities, including Department 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, as follows: 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 he or she has 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.

In general, 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. The following entities may disqualify a person who holds a CROP based solely on criminal history: criminal justice agencies and the Washington State Bar Association. The following entities 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: the Department of Social and Health Services, the Department of Children, Youth, and Families, and the Department of Health.

**Summary of Bill:**

**Disqualifying Crimes.**

The Department of Social and Health Services (Department) may not automatically disqualify a person who has a criminal record that contains certain crimes from: (1) having unsupervised

access to, working with, or providing care to a vulnerable person; or (2) acting as a long-term care worker or vocational and employment services provider. The person 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 drug paraphernalia after at least three years have passed;
- 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 the Department may not automatically disqualify a person, the Department or an employer under contract with the Department has the discretion to consider any of the convictions when conducting a character, competence, and suitability review regarding a person to be employed in a position caring for, or having unsupervised access to, a vulnerable adult. The Department and the employer are immune from law suits based upon their exercise of discretion or refusal to exercise discretion and the crimes may not be introduced as evidence of negligence or intentionally tortious conduct by the Department or the employer.

The exemption from automatic disqualification does not apply to crimes involving the abuse, neglect, personal or financial exploitation, or abandonment of a minor or vulnerable adult. In addition, 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.

The Department 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.

The Department must appoint the members of the work group, which include:

- two representatives from the Department;
- 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; and
- four representatives from organizations representing seniors and individuals with physical or developmental disabilities.

At least one meeting of the work group 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 the Department, including a proposed informed consent process for clients to hire a family member or friend with a criminal record. The Department 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 certificate of restoration of opportunity (CROP) are eliminated with respect to assisted living facility employees who are long-term care workers, 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, the Department may, in its discretion:

- 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, the Department must review relevant factors, including the nature and seriousness of the offense, the time that has passed since conviction, changed circumstances since the offense occurred, and the nature of the employment or the license that is being sought.

The Department and the employer are immune from law suits based upon their exercise of discretion or refusal to exercise discretion and the crimes may not be introduced as evidence of negligence or intentionally tortious conduct by the Department or the employer.

**Appropriation:** None.

**Fiscal Note:** Requested on February 3, 2021.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.