

Chapter 388-113 WAC
DISQUALIFYING CRIMES AND NEGATIVE ACTIONS

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-113-0040	Are there any exceptions to the automatic disqualification under WAC 388-113-0020? [Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0040, filed 6/24/14, effective 7/25/14.] Decodified by WSR 21-18-081, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. Recodified as § 388-113-0025.
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WAC 388-113-0005 What is the purpose of this chapter and to whom does it apply? (1) The purpose of this chapter is to describe the following:

- (a) Criminal convictions, pending charges, and negative actions that automatically disqualify an applicant from having unsupervised access to vulnerable adults or minors who are receiving services from a program or facility under subsection (2) of this section;
 - (b) Exceptions to automatic disqualifications that may apply to certain criminal convictions and pending charges;
 - (c) Character, competence, and suitability review;
 - (d) Circumstances in which providers may share background check results and criminal history record information;
 - (e) One hundred and twenty day provisional hire while fingerprints are pending; and
 - (f) Confidentiality and retention for background checks.
- (2) This chapter applies to the following programs or facilities:
- (a) Long-term care workers providing in-home care under chapter 388-106 WAC, Long-term care services;
 - (b) Chapter 388-76 WAC, Licensed adult family homes;
 - (c) Chapter 388-78A WAC, Licensed assisted living facilities;
 - (d) Chapter 388-97 WAC, Licensed nursing homes and medicare and medicaid certified nursing facilities;
 - (e) Certified community residential services and supports under chapter 388-101 and 388-101D WAC;
 - (f) Chapter 388-107 WAC, Licensed enhanced services facilities under chapter 388-107 WAC; and
 - (g) Developmental disabilities administration programs under chapter 388-825 WAC.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0005, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0005, filed 6/24/14, effective 7/25/14.]

WAC 388-113-0010 What definitions apply to this chapter? "Applicant" means an employee, volunteer, student, intern, licensee, service provider, contractor, or other individual who is the subject of the background check and who will work in a position that may have unsupervised access, as defined in RCW 43.43.830 to minors or vulnerable adults.

"Authorized entity" means a service provider, licensee, contractor, or other public or private agency that:

(1) Is required to conduct background checks under the rules listed in WAC 388-113-0005; and

(2) Is authorized to conduct the background checks through the background check central unit.

"Background check" means a name and date of birth check or a fingerprint-based background check, or both.

"Background check central unit (BCCU)" means a division within the department that processes background checks for department authorized service providers and department programs who serve vulnerable individuals across Washington state.

"Background check result" means a notification letter produced by the BCCU that describes the outcome of the background check, as described in WAC 388-113-0101, but does not, by itself, include criminal history record information (CHRI).

"Criminal history record information" means the information found in the Records of Arrests and Prosecutions (RAP) sheet about a person's arrests and convictions.

"Department" means the Washington state department of social and health services and its designees.

"Drug" means a:

(1) Controlled substance as defined in RCW 69.50.101;

(2) Legend drug, as defined in RCW 69.41.010;

(3) Precursor drug under Chapter 69.43 RCW; or

(4) Imitation controlled substance, as defined in RCW 69.52.020.

"Final finding" is described in WAC 388-71-0105.

"Founded" is defined in WAC 110-30-0020.

"Fingerprint-based background check" means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation (FBI).

"Individual provider (IP)" as defined in RCW 74.39A.240.

"Minor" means any person under the age of 18 who is receiving services from a program or facility under chapter 388-71 WAC, Home and community services and programs, chapter 388-106 WAC, Long-term care services, chapter 388-76 WAC, Adult family home minimum licensing requirements, chapter 388-78A WAC, Assisted living facility licensing rules, chapter 388-97 WAC, Nursing homes, chapter 388-101 WAC, Certified community residential services and supports, chapter 388-107 WAC, Licensing requirements for enhanced service facilities, or chapter 388-825 WAC, Developmental disabilities administration service rules.

"Name and date of birth check" is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

"Negative Action" means actions as described in WAC 388-113-0030.

"Pending charge" means a criminal charge for a crime has been filed in a court of law for which the department has not received documentation showing the disposition of the charge.

"Record of Arrest and Prosecution (RAP sheet)" means a record kept by law-enforcement authorities of a person's arrests and convictions.

"Requesting entity" means the person or entity that requested the background check from the background check central unit (BCCU).

"Unsupervised access" is described in RCW 43.43.830(13).

"Vulnerable adult" is defined in RCW 74.34.020(17).

[Statutory Authority: RCW 74.08.090 and 74.39A.250. WSR 22-19-048, § 388-113-0010, filed 9/15/22, effective 10/16/22. Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0010, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0010, filed 6/24/14, effective 7/25/14.]

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, 388-115, 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, 388-115, 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 sexually explicit conduct;
- (w) Drive-by shooting;
- (x) Drug crimes involving one or more of the following:
- (i) Manufacturing or possession with the intent to manufacture a drug;
- (ii) Delivery or possession with the intent to deliver a drug other than marijuana;
- (iii) Delivery of marijuana (less than three years).
- (y) Endangerment with a controlled substance;
- (z) Extortion 1;
- (aa) Extortion 2 (less than five years);
- (bb) Forgery (less than five years);
- (cc) Homicide by abuse, watercraft, vehicular homicide (negligent homicide);
- (dd) Identity theft (less than five years);
- (ee) Incendiary devices (possess, manufacture, dispose);
- (ff) Incest;
- (gg) Indecent exposure/public indecency (felony);
- (hh) Indecent liberties;
- (ii) Kidnapping;
- (jj) Luring;
- (kk) Malicious explosion 1;
- (ll) Malicious explosion 2;
- (mm) Malicious harassment;
- (nn) Malicious placement of an explosive 1;
- (oo) Malicious placement of an explosive 2 (less than five years);
- (pp) Malicious placement of imitation device 1 (less than five years);
- (qq) Manslaughter;
- (rr) Murder/aggravated murder;
- (ss) Possess depictions minor engaged in sexual conduct;
- (tt) Promoting pornography;
- (uu) Promoting prostitution 1;
- (vv) Promoting suicide attempt (less than five years);
- (ww) Prostitution (less than three years);
- (xx) Rape;
- (yy) Rape of child;
- (zz) Residential burglary;
- (aaa) Robbery 1;
- (bbb) Robbery 2 (less than five years);
- (ccc) Selling or distributing erotic material to a minor;
- (ddd) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;
- (eee) Sexual exploitation of minors;
- (fff) Sexual misconduct with a minor;
- (ggg) Sexually violating human remains;
- (hhh) Stalking (less than five years);
- (iii) Theft 1 (less than 10 years);
- (jjj) Theft from a vulnerable adult 1;
- (kkk) Theft 2 (less than five years);
- (lll) Theft from a vulnerable adult 2 (less than 10 years);
- (mmm) Theft 3 (less than three years);
- (nnn) Unlawful imprisonment;

(ooo) Unlawful use of building for drug purposes (less than five years);
(ppp) Use of machine gun in a felony;
(qqq) Vehicular assault;
(rrr) Violation of temporary restraining order or preliminary injunction involving sexual or physical abuse to a child;
(sss) Violation of a temporary or permanent vulnerable adult protection order (VAPO) that was based upon abandonment, abuse, financial exploitation, or neglect; and
(ttt) Voyeurism.

(2) If "(less than 10 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 conviction. This will result in a letter from the background check central unit indicating a character, competence, and suitability review is required before allowing unsupervised access to children or vulnerable 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.

[Statutory Authority: RCW 74.08.090 and 74.39A.250. WSR 22-19-048, § 388-113-0020, filed 9/15/22, effective 10/16/22. Statutory Authority: RCW 74.08.090, 43.43.842, and 74.39A.056. WSR 21-23-014, § 388-113-0020, filed 11/4/21, effective 12/5/21; WSR 18-08-066, § 388-113-0020, filed 4/2/18, effective 5/3/18. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0020, filed 6/24/14, effective 7/25/14.]

WAC 388-113-0025 Are there any exceptions to the automatic disqualification under WAC 388-113-0020? (1) Under the conditions described in this section, an individual is not automatically disqualified from having unsupervised access to minors and vulnerable adults if he or she:

(a) Has worked continuously for the same employer for whom he or she was working on July 24, 2014; and

(b) Does not have a conviction or pending charge that was automatically disqualifying under rules that were in effect on July 24, 2014; and

(c) Works for a program or facility that operates under chapters 388-71 WAC, Home care agencies; 388-115 WAC, Individual providers; 388-106 WAC, Long-term care services; 388-76 WAC, Adult family homes; 388-78A WAC, Assisted living facilities; or 388-97 WAC, Nursing homes and was convicted of, or has a pending charge for:

(i) Residential burglary;

- (ii) Unlawful use of building for drug purposes (five or more years);
- (iii) Vehicular assault; or
- (d) Works for a program or facility that operates under chapter 388-825 WAC (developmental disabilities administration programs) or supported living and was convicted of, or has a pending charge for:
 - (i) Assault 3;
 - (ii) Manufacture of a controlled substance;
 - (iii) Delivery of a controlled substance; or
 - (iv) Possession of a controlled substance with the intent to manufacture or deliver.
- (2) In addition to the requirements under subsection (1) of this section, in order for an individual to be eligible for an exception under this section, the following conditions must also be satisfied:
 - (a) The conviction date for the crimes listed in (1)(c) and (d) must be before July 25, 2014;
 - (b) The individual has to continue to work for the same employer; and
 - (c) The employer or hiring entity must:
 - (i) Review the individual's character, competence, and suitability to have unsupervised access to minors or to vulnerable adults, and;
 - (ii) Have documentation on file demonstrating the results of the character, competence, and suitability review; and
 - (iii) Have documentation on file demonstrating that the individual meets all of the conditions in subsection (2) of this section, including a copy of a background check result letter dated prior to July 25, 2014, indicating the individual was not disqualified from having unsupervised access to minors or vulnerable adults.

[Statutory Authority: RCW 74.08.090 and 74.39A.250. WSR 22-19-048, § 388-113-0025, filed 9/15/22, effective 10/16/22. Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, reclassified as § 388-113-0025, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0040, filed 6/24/14, effective 7/25/14.]

WAC 388-113-0030 Which negative actions automatically disqualify an applicant from having unsupervised access to minors and vulnerable adults who are receiving services? Applicants who must satisfy background checks requirements under a program or facility listed in WAC 388-113-0005 may not work in a position that may involve unsupervised access to minors or vulnerable adults if he or she has one or more of the following automatically disqualifying negative actions:

- (1) A court of law has issued a final order finding or concluding the applicant abused, neglected, financially exploited, or abandoned a minor or vulnerable adult;
- (2) The department has made a final finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult against the applicant or the applicant is listed on any state's registry as having a final finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult, and if the finding was made by adult protective services, it was after October 2003;
- (3) A founded finding of abuse, neglect, sexual exploitation, or abandonment of a minor against the applicant, or the applicant was

found by a court in a dependency proceeding, a title 26 RCW domestic relations proceeding, or other court proceeding to have sexually abused or exploited any minor, or to have physically abused any minor and the finding was made by child protective services after October 1, 1998. Such a finding is not disqualifying if it is accompanied by a Certificate of Parental Improvement (CPI);

(4) The applicant is a registered sex offender, or is required by law to register as a sex offender; or

(5) The department of health or another disciplining authority has issued a final order finding or concluding the applicant abused, neglected, financially exploited, or abandoned a minor or vulnerable adult.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0030, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0030, filed 6/24/14, effective 7/25/14.]

WAC 388-113-0050 What is a character, competence, and suitability determination?

(1) A character, competence, and suitability determination is a review process that the department, or an authorized entity uses to decide whether an applicant has the character, competence, and suitability to have unsupervised access to minors or vulnerable adults.

(2) The department or authorized entity may also conduct a character, competence, and suitability determination for the purpose of deciding whether or not an applicant has the character, competence, and suitability to work with a particular department client when the applicant is or intends to be an individual provider.

(3) The department or an authorized entity may consider any information that may be relevant to an applicant's character, competence, and suitability, to maintain and promote the health and safety of the client including but not limited to:

(a) The ability of the applicant to appropriately meet the care needs of persons who would be under his or her care;

(b) A history of behaviors that may put persons who would be under the applicant's care at risk; or

(c) The vulnerability of persons who would be under the applicant's care.

(4) Additional factors that may be considered in a character, competence, and suitability determination include, but are not limited to, whether the applicant has had any of the following:

(a) Findings made or actions taken, including settlements or stipulations, by the department, the department of health, or other federal or state agencies;

(b) Sanctions imposed or corrective or remedial actions taken by federal, state, county, or municipal officials;

(c) A license, certification, or contract that is denied, suspended, revoked, or terminated, including a license or certification relinquished in lieu of discipline;

(d) Injunctions against operating a facility for the care of minors or vulnerable adults;

(e) Issuance of a final restraining order or order of protection, either active or expired;

(f) Convictions, or pending charges, for crimes not automatically disqualifying under WAC 388-113-0020, including:

(i) The amount of time that has passed since any of the applicant's convictions, pending charges;

(ii) The seriousness of any convictions or pending charges; and

(iii) The number and types of convictions or pending charges in the applicant's background;

(g) History of failure to comply with the department's billing requirements;

(h) Evidence the applicant has obtained or attempted to obtain a license, certification, department contract, or payment by fraudulent means or misrepresentation; or

(i) Evidence the applicant refused to permit authorized department representatives to interview clients, to have access to client records, or to have access to any care setting.

A character, competence, and suitability determination is only appropriate where the applicant has not been automatically disqualified.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0050, filed 8/30/21, effective 10/1/21.]

WAC 388-113-0060 How and when must a character, competence, and suitability determination be conducted by the department or an authorized entity?

(1) The department or an authorized entity must conduct a character, competence, and suitability determination of an employee, prospective employee, or other individual who is required to undergo a background check when the applicant has received a "review required" result as defined in WAC 388-113-0101(b).

(2) If the department or an authorized entity is required to conduct a character, competence, and suitability determination under this section, the person or entity responsible must document in writing the following information:

(a) Reason for the decision;

(b) Whether or not the applicant may have unsupervised access to minors and vulnerable adults;

(c) The date the character, competence, and suitability determination was completed; and

(d) The name and signature of the person or persons who performed the determination.

(3) If an applicant is required to have a character, competence, and suitability determination under this section, the applicant may not have unsupervised access to minors or vulnerable adults unless the character, competence, and suitability determination has:

(a) Been completed and documented in writing.

(b) Concluded the applicant may have unsupervised access to minors or vulnerable adults.

(4) A character, competence, and suitability determination may not be conducted if an applicant has an automatically disqualifying conviction or pending charge under WAC 388-113-0020 or has an automatically disqualifying negative action under WAC 388-113-0030.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326,

74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0060, filed 8/30/21, effective 10/1/21.]

WAC 388-113-0070 When may a character, competence, and suitability determination be conducted? The department or an authorized entity may choose to conduct a character, competence, and suitability determination at any time.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0070, filed 8/30/21, effective 10/1/21.]

WAC 388-113-0100 What information sources are searched when the background check central unit (BCCU) conducts a background check? (1) The BCCU searches multiple information sources when completing state and federal background checks, including state and federal law enforcement records, state court records, and agency databases.

These sources include:

- (a) Washington state:
 - (i) Court criminal history and judicial information system records;
 - (ii) DSHS adult protective services findings;
 - (iii) DSHS residential client protection program findings;
 - (iv) DSHS child protective services findings;
 - (v) Department of health findings; and
 - (vi) Department of corrections;
 - (b) Washington state patrol (WSP) fingerprint rap sheets for fingerprint-based search;
 - (c) WSP criminal history records;
 - (d) Applicant self-disclosures;
 - (e) Federal Bureau of Investigation fingerprint rap sheets for fingerprint based search;
 - (f) Western identification network (WIN) state search (Alaska, Oregon, Idaho, Montana, Nevada, Utah, and Wyoming); and
 - (g) Stored WSP & FBI fingerprint rap sheets and WIN state rap sheets (unless prohibited by federal law).
- (2) For more information, BCCU can be contacted at BCCUInquiry@dshs.wa.gov.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0100, filed 8/30/21, effective 10/1/21.]

WAC 388-113-0101 What are the possible results of a background check? (1) The requesting entity will receive a background check result. The background check result by itself does not include criminal history record information but identifies the source of any criminal or negative action records. The possible types of results are:

- (a) A "no record" letter, which means none of the background check data sources reported criminal or negative action records and there are no background check records to be reviewed;

(b) A "review required" letter, which means the applicant or one or more data sources reported a background issue that requires a character, competence, and suitability review by the department or authorized entity to determine whether or not the applicant can work in a position that may have unsupervised access to minors or vulnerable adults; or

(c) A "disqualify" letter, which means the applicant or one or more data sources reported a background issue that automatically disqualifies the applicant from a position that has unsupervised access to minors or vulnerable adults.

(2) The requesting entity may receive an "additional information" letter, which means the applicant or one or more data sources reported information in a manner that is unclear and BCCU requires clarifying information from the applicant before the background check can be completed. An additional information letter is not a result. If the individual receives an "additional information" letter:

(a) The individual may not be contracted or begin working in a position that has unsupervised access until the requesting entity has a non-disqualifying result from the name and date of birth check; or

(b) If the additional information letter is the result of a pending fingerprint check, the individual is not automatically disqualified, and may work as described in WAC 388-113-0109.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0101, filed 8/30/21, effective 10/1/21.]

WAC 388-113-0103 What does the requesting entity receive from the background check central unit? (1) The background check central unit (BCCU) provides the entity who requested the name and date of birth background check with:

(a) Background check result; and

(b) Any criminal history record information and negative actions reported from the background check data sources including the Washington state record of arrests and prosecutions (RAP) sheets; and may include prior fingerprint RAP sheets from the federal bureau of investigation (FBI) if one was used to complete the background check. The FBI RAP sheets will only be distributed as described in subsection (2)(c) below.

(2) BCCU provides the entity who requested the fingerprint background check with:

(a) Background check result;

(b) Any criminal history record information and negative actions reported from the background check data sources, including Washington state RAP sheets; and

(c) Authorized governmental entities will also receive the FBI RAP sheets.

(3) In cases where the requesting entity is not authorized to receive the FBI RAP sheet, the applicant may request those records directly from BCCU.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0103, filed 8/30/21, effective 10/1/21.]

WAC 388-113-0105 When must background check results and criminal history information be shared with the applicant? The requesting entity must:

- (1) Notify the applicant of the background check result;
- (2) Inform the applicant they may have a copy of their results and criminal history record information when the entity has it; and
- (3) Provide a copy of results and criminal history record information when the entity has it, if requested. The applicant may also contact BCCU at BCCUInquiry@dshs.wa.gov.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0105, filed 8/30/21, effective 10/1/21.]

WAC 388-113-0107 When can background check results and criminal history record information be shared? (1) The requesting entity may only disclose the background check result and criminal history record information in the Washington state record of arrests and prosecutions (RAP) sheets from the background check central unit to the following:

- (a) The applicant;
- (b) The client, or client's representative, when the client has elected to receive services from an IP; and
- (c) Other persons or entities as allowed by federal and state law, including the department of health (DOH).

(2) A requesting entity that receives criminal history record information from the federal bureau of investigations (FBI) may only disclose the FBI RAP sheets to the following:

- (a) The applicant; and
- (b) A governmental entity as allowed by federal and state law, including DOH.

(3) The applicant may choose to provide a copy of the background check result and FBI RAP sheets to the requesting entity or employer.

(4) For additional information sharing related to health care facilities as defined in RCW 43.43.830, refer to individual program WACs under title chapter 388-76 WAC, Adult family home minimum licensing requirements, chapter 388-97 WAC, Nursing Homes, chapter 388-78A WAC, Assisted living facility licensing rules.

(5) The applicant may contact BCCU at BCCUInquiry@dshs.wa.gov for a copy of their results.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0107, filed 8/30/21, effective 10/1/21.]

WAC 388-113-0108 When will the client of an individual provider receive the result and criminal history record information from the state background check? A client who has elected to receive services from an individual provider will be notified of the result of a background check. When the result of a background check is "review required" the client, who is the managing employer of the individual provider, will be provided with a copy of the background check result and the Washington State record of arrests and prosecutions (RAP)

sheets if requested by the client. The individual provider may choose to provide a copy of the FBI RAP sheet to the client.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0108, filed 8/30/21, effective 10/1/21.]

WAC 388-113-0109 May an individual have unsupervised access to minors or vulnerable adults pending the outcome of the fingerprint check?

(1) Individuals who are required to complete a fingerprint-based background check may have unsupervised access for a one hundred twenty-day provisional period when both:

(a) The individual is not disqualified by the name and date of birth background check which is also known as the interim result letter; and

(b) A fingerprint-based background check is pending, which means fingerprint appointment has been scheduled.

(2) If this section conflicts with any other provision of the WAC, this section takes precedence.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0109, filed 8/30/21, effective 10/1/21.]