

FINAL BILL REPORT

SHB 1411

C 219 L 21
Synopsis as Enacted

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).

House Committee on Health Care & Wellness
Senate Committee on Health & Long Term Care

Background:

Disqualifying Crimes.

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

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- 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:

Disqualifying Crimes.

The Department of Social and Health Services (Department) 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 after at least three years have passed;
- Theft in the first degree after at least 10 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.

The Department, a contracted provider, or a licensee has the discretion to consider any of the convictions when conducting a character, competence, and suitability review for the purpose of hiring, licensing, certifying, contracting with, or permitting a person to be employed in a position caring for, or having unsupervised access to, vulnerable adults or

children. If the Department or a consumer directed employer determines that an individual with a conviction that is exempt as an automatic disqualifying crime is qualified to provide services as an individual provider, the results of the state background check must be provided to the client and any guardian of the client before the individual begins providing services. When conducting a character, competence, and suitability review, the Department, contracted providers, and licensees have a rebuttable presumption that their exercise of discretion or refusal to exercise discretion was appropriate.

The exemption from automatic disqualification does not apply to background checks performed by the Department on behalf of the Department of Children, Youth, and Families. The exemption from automatic disqualification does not apply to Department employees or applicants, except for positions in the state-operated community residential program. 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.

The term "contracted provider" is defined to mean a provider, and its employees, contracted with the Department or an area agency on aging to provide services to Department clients under public health care, long-term care, and developmental disability programs. The term "licensee" is defined as a nonstate facility or setting that is licensed or certified, or has applied to be licensed or certified, by the Department.

Informed Choice Work Group.

The Department must facilitate a work group to identify recommendations on informed choice through a process to allow older adults and people with disabilities to hire a trusted individual with a criminal record that would otherwise disqualify the person from providing paid home care services. The recommendations on an informed choice process must include client safety, client direction, racial equity, cultural competence, economic consequences of unpaid caregiving, categories of eligible workers, any disqualifying crimes, mechanisms for consideration, and workforce development.

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;
- two representatives from federally recognized tribes, one from each side of the Cascade Mountains;
- 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 State 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;
- one representative from the Washington State Attorney General's Office;
- four representatives from organizations representing seniors and individuals with physical or developmental disabilities;
- two representatives who are current or previous consumers of personal care services and who represent the diversity of the disability community; and
- two representatives who receive unpaid care from individuals who are unable to become Medicaid paid home care workers because of disqualifying convictions.

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, 2022, the work group must submit its recommendations to the Legislature, including a proposed process for clients to hire a trusted individual with a criminal record.

Certificate of Restoration of Opportunity.

The exclusions that apply to certain license applicants with a certificate of restoration of opportunity (CROP) are eliminated with respect to assisted living facility employees and long-term care workers. The exclusions are also removed for vulnerable adult care providers who are home care aides or contracted providers or licensees.

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.

When hiring, licensing, certifying, contracting with, or permitting a person to be employed to care for or have unsupervised access to vulnerable adults or children, the Department, contracted providers, and licensees may, in their sole discretion, determine whether to consider a CROP. If the Department or a consumer directed employer determines that an individual with a CROP is qualified to provide services as an individual provider, the results of the state background check must be provided to the client and any guardian of the client before the individual begins providing services. The Department, contracted providers, and

licensees have a rebuttable presumption that their exercise of discretion or refusal to exercise discretion when hiring, licensing, or contracting with a person with a CROP was appropriate.

Votes on Final Passage:

House	58	39	
Senate	29	18	(Senate amended)
House	58	40	(House concurred)

Effective: July 25, 2021
July 1, 2022 (Section 6)