

WSR 21-16-068
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed July 30, 2021, 11:17 a.m., effective July 30, 2021, 11:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To implement changes related to the passage of SHB 1411 which adds time limitations to certain crimes which were previously permanently disqualifying: Assault 2, Assault 3, Delivery of marijuana, Extortion 2, Theft 1, and Robbery 2; to add a provision which removes the automatic disqualification, allowing for a character competence and suitability review, for a crime listed which is accompanied by a court issued certificate of restoration of opportunity; and to remove domestic violence (felonies only) from the list of automatically disqualifying crimes because by law this is an aggravator added to another crime, not a stand-alone crime.

Citation of Rules Affected by this Order: Amending WAC 388-113-0020.

Statutory Authority for Adoption: RCW 74.08.090, 43.43.842, 74.39A.056.

Other Authority: SHB 1411.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: To preserve and expand the workforce of long-term care workers by balancing client choice and safety. These proposed changes remove criminal history related barriers to employment for individuals working for or intending to work for vulnerable persons.

This emergency rule filing is necessary to ensure current WAC aligns with the statutory amendments in SHB 1411 passed in the 2021 legislative session. The department needs to have its rule align with the statute so that providers affected by the statute changes are not automatically disqualified, but receive a character, competence or suitability determination as to whether they can become a paid provider to the vulnerable adult. SHB 1411 is effective July 25, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 30, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4879.2

AMENDATORY SECTION (Amending WSR 18-08-066, filed 4/2/18, effective 5/3/18)

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, 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, 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 ~~((sexual))~~ sexually explicit conduct;
- (w) ~~((Domestic violence (felonies only))~~;
~~(x))~~ Drive-by shooting;
- ~~((y))~~ (x) Drug crimes ~~((, if they involve))~~ involving one or more of the following:
 - (i) ~~((Manufacture of))~~ Manufacturing or possession with the intent to manufacture a drug;
 - (ii) Delivery ~~((of))~~ or possession with the intent to deliver a drug other than marijuana;
 - (iii) ~~((Possession of a drug with the intent to manufacture or deliver))~~ Delivery of marijuana (less than three years).
- ~~((z))~~ (y) Endangerment with a controlled substance;
- ~~((aa))~~ (z) Extortion 1;
- (aa) Extortion 2 (less than five years);
- ~~((bb))~~ (bb) Forgery (less than five years);
- ~~((cc))~~ (cc) Homicide by abuse, watercraft, vehicular homicide (negligent homicide);
- ~~((dd))~~ (dd) Identity theft (less than five years);

((ee)) (ee) Incendiary devices (possess, manufacture, dispose);
 ((ff)) (ff) Incest;
 ((gg)) (gg) Indecent exposure/public indecency (felony);
 ((hh)) (hh) Indecent liberties;
 ((ii)) (ii) Kidnapping;
 ((jj)) (jj) Luring;
 ((kk)) (kk) Malicious explosion 1;
 ((ll)) (ll) Malicious explosion 2;
 ((mm)) (mm) Malicious harassment;
 ((nn)) (nn) Malicious placement of an explosive 1;
 ((oo)) (oo) Malicious placement of an explosive 2 (less than
 five years);
 ((pp)) (pp) Malicious placement of imitation device 1 (less
 than five years);
 ((qq)) (qq) Manslaughter;
 ((rr)) (rr) Murder/aggravated murder;
 ((ss)) (ss) Possess depictions minor engaged in sexual conduct;
 ((tt)) (tt) Promoting pornography;
 ((uu)) (uu) Promoting prostitution 1;
 ((vv)) (vv) Promoting suicide attempt (less than five years);
 ((ww)) (ww) Prostitution (less than three years);
 ((xx)) (xx) Rape;
 ((yy)) (yy) Rape of child;
 ((zz)) (zz) Residential burglary;
 ((aaa)) (aaa) Robbery 1;
 ((bbb)) (bbb) Robbery 2 (less than five years);
 ((ccc)) (ccc) Selling or distributing erotic material to a mi-
 nor;
 ((ddd)) (ddd) Sending or bringing into the state depictions of
 a minor engaged in sexually explicit conduct;
 ((eee)) (eee) Sexual exploitation of minors;
 ((fff)) (fff) Sexual misconduct with a minor;
 ((ggg)) (ggg) Sexually violating human remains;
 ((hhh)) (hhh) Stalking (less than five years);
 ((iii)) (iii) Theft 1 (less than ten years);
 ((jjj)) (jjj) Theft from a vulnerable adult 1;
 (~~jjj~~) ~~Theft from a vulnerable adult 2 (less than ten years);~~
 (~~kkk~~) ~~(kkk)~~ Theft 2 (less than five years);
 ((lll)) (lll) Theft from a vulnerable adult 2 (less than ten years);
 ((lll)) (mmm) Theft 3 (less than three years);
 ((mmm)) (nnn) Unlawful imprisonment;
 ((nnn)) (ooo) Unlawful use of building for drug purposes (less
 than five years);
 ((ooo)) (ppp) Use of machine gun in a felony;
 ((ppp)) (qqq) Vehicular assault;
 ((qqq)) (rrr) Violation of temporary restraining order or pre-
 liminary injunction involving sexual or physical abuse to a child;
 ((rrr)) (sss) Violation of a temporary or permanent vulnerable
 adult protection order (VAPO) that was based upon abandonment, abuse,
 financial exploitation, or neglect; and
 ((sss)) (ttt) Voyeurism.

(2) If "(less than ten 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 con-
 viction. This will result in a letter from the background check cen-
 tral 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, 43.43.842, 74.39A.056. 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.]