

WSR 21-17-077
EXPEDITED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed August 12, 2021, 2:46 p.m.]

Title of Rule and Other Identifying Information: 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?

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is implementing changes to WAC 388-113-0020 related to the passage of SHB 1411 passed in the 2021 legislative session. The effective date of the bill was July 25, 2021. The rule is currently in effect by emergency adoption under WSR 21-16-068.

The bill adds limitations to certain crimes which were previously permanently disqualifying: Assault 2, Assault 3, Delivery of marijuana, Extortion 2, Theft 1, and Robbery 2; and adds 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 (CROP). Domestic violence (felonies only) was removed from the list of automatically disqualifying crimes because by law this is an aggravator added to another crime, not a stand-alone [stand-alone] crime.

Reasons Supporting Proposal: To preserve and expand the workforce of long-term care workers by balancing client choice and safety. These changes remove criminal history related barriers to employment for individuals working for or intending to work for vulnerable persons while maintaining the statutory requirement of character, competence and suitability determination.

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

Statute Being Implemented: RCW 74.08.090, 43.43.842, 74.39A.056.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stacy Graff, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2533.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The passage of SHB 1411 is effective as of July 25, 2021, so the current rule is out of compliance with the statute.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EX-

PRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Department of Social and Health Services, P.O. Box 45850, Olympia, WA 98504-5850, phone 360-664-6097, fax 360-664-6185, email DSHSRPAURulesCoordinator@dshs.wa.gov, AND RECEIVED BY 5:00 p.m. on October 19, 2021.

August 12, 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))~~ (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);
~~((bbb))~~ (ccc) Selling or distributing erotic material to a minor;
~~((eee))~~ (ddd) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;
~~((ddd))~~ (eee) Sexual exploitation of minors;
~~((eee))~~ (fff) Sexual misconduct with a minor;
~~((fff))~~ (ggg) Sexually violating human remains;
~~((ggg))~~ (hhh) Stalking (less than five years);
~~((hhh))~~ (iii) Theft 1 (less than ten years);
~~((iii))~~ (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 preliminary 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 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, 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.]