



# PROPOSED RULE MAKING

## CR-102 (October 2017) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: October 30, 2017

TIME: 9:02 AM

WSR 17-22-090

**Agency:** Department of Social and Health Services, Aging and Long-Term Support Administration

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 17-16-157 ; or**
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
- Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) The department is proposing to amend 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, 388-76, 388-78A, 388-97, 388-825, and 388-107 WAC?" to update the list of qualifying crimes and to remove the example for time limited convictions in WAC 388-113-0020(2).

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
December 5, 2017	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 <sup>th</sup> and Jefferson. A map is available at: <a href="https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2">https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2</a>

**Date of intended adoption:** Not earlier than December 6, 2017. (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: DSHS Rules Coordinator  
 Address: PO Box 45850  
 Olympia, WA 98504  
 Email: [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
 Fax: 360-664-6185  
 Other:  
 By (date) 5:00 p.m. December 5, 2017

**Assistance for persons with disabilities:**

Contact Jeff Kildahl, DSHS Rules Consultant  
 Phone: 360-664-6092  
 Fax: 360-664-6185  
 TTY: 711 Relay Service  
 Email: [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov)  
 Other:  
 By (date) November 21, 2017

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The department is amending chapter 388-113-0020 WAC as a result of the passage of HB 1153 and HB 1163 during the 2017 Legislative Session, and to simplify the WAC by removing the example of time limited convictions in 388-113-0020(2).

**Reasons supporting proposal:** See purpose statement above.

**Statutory authority for adoption:** RCW 74.08.090, RCW 43.43.842, RCW 74.39A.056

**Statute being implemented:** RCW 74.39A.056, RCW 43.43.842

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** (person or organization) Department of Social and Health Services

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Stacy Graff	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2533
Implementation:	Stacy Graff	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2533
Enforcement:	Stacy Graff	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2533

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: Rules are exempt per RCW 34.05.328(5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- |   |  |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Date:** October 24, 2017

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



**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, 388-76, 388-78A, 388-97, 388-825, and 388-107 WAC (~~may~~) must not work in a position that may involve unsupervised access to minors or vulnerable adults if (~~he or she~~) the individual has been convicted of or has a pending charge for (~~one~~) 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;
- (g) Assault 3;
- (h) Assault 4/simple assault (less than three years);
- (i) Assault 4 domestic violence felony;
- (j) Assault of a child;
- ~~((j))~~ (k) Burglary 1;
- ~~((k))~~ (l) Child buying or selling;
- ~~((l))~~ (m) Child molestation;
- ~~((m))~~ (n) Coercion (less than five years);
- ~~((n))~~ (o) Commercial sexual abuse of a minor/patronizing a juvenile prostitute;
- ~~((o))~~ (p) Communication with a minor for immoral purposes;
- ~~((p))~~ (q) Controlled substance homicide;
- ~~((q))~~ (r) Criminal mistreatment;
- ~~((r))~~ (s) Custodial assault;
- ~~((s))~~ (t) Custodial interference;
- ~~((t))~~ (u) Custodial sexual misconduct;
- ~~((u))~~ (v) Dealing in depictions of minor engaged in sexual explicit conduct;
- ~~((v))~~ (w) Domestic violence (felonies only);
- ~~((w))~~ (x) Drive-by shooting;
- ~~((x))~~ (y) Drug crimes, if they involve one or more of the following:
  - (i) Manufacture of a drug;
  - (ii) Delivery of a drug; (~~and~~)
  - (iii) Possession of a drug with the intent to manufacture or deliver.
- ~~((y))~~ (z) Endangerment with a controlled substance;
- ~~((z))~~ (aa) Extortion;
- ~~((aa))~~ (bb) Forgery (less than five years);
- ~~((bb))~~ (cc) Homicide by abuse, watercraft, vehicular homicide (negligent homicide);
- ~~((cc))~~ (dd) Identity theft (less than five years);
- ~~((dd))~~ (ee) Incendiary devices (possess, manufacture, dispose);
- ~~((ee))~~ (ff) Incest;
- ~~((ff))~~ (gg) Indecent exposure/public indecency (felony);
- ~~((gg))~~ (hh) Indecent liberties;
- ~~((hh))~~ (ii) Kidnapping;

((+ii)) (jj) Luring;  
 ((+jj)) (kk) Malicious explosion 1;  
 ((+kk)) (ll) Malicious explosion 2;  
 ((+ll)) (mm) Malicious harassment;  
 ((+mm)) (nn) Malicious placement of an explosive 1;  
 ((+nn)) (oo) Malicious placement of an explosive 2 (less than five years);  
 ((+oo)) (pp) Malicious placement of imitation device 1 (less than five years);  
 ((+pp)) (qq) Manslaughter;  
 ((+qq)) (rr) Murder/aggravated murder;  
 ((+rr)) (ss) Possess depictions minor engaged in sexual conduct;  
 ((+ss)) (tt) Promoting pornography;  
 ((+tt)) (uu) Promoting prostitution 1;  
 ((+uu)) (vv) Promoting suicide attempt (less than five years);  
 ((+vv)) (ww) Prostitution (less than three years);  
 ((+ww)) (xx) Rape;  
 ((+xx)) (yy) Rape of child;  
 ((+yy)) (zz) Residential burglary;  
 ((+zz)) (aaa) Robbery;  
 ((+aaa)) (bbb) Selling or distributing erotic material to a minor;  
 ((+bbb)) (ccc) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;  
 ((+ccc)) (ddd) Sexual exploitation of minors;  
 ((+ddd)) (eee) Sexual misconduct with a minor;  
 ((+eee)) (fff) Sexually violating human remains;  
 ((+fff)) (ggg) Stalking (less than five years);  
 ((+ggg)) (hhh) Theft 1;  
(iii) Theft from a vulnerable adult1;  
(jjj) Theft from a vulnerable adult 2 (less than ten years);  
 ((+hhh)) (kkk) Theft 2 (less than five years);  
 ((+iii)) (lll) Theft 3 (less than three years);  
 ((+jjj)) (mmm) Unlawful imprisonment  
 ((+kkk)) (nnn) Unlawful use of building for drug purposes (less than (5) five years);  
 ((+lll)) (ooo) Use of machine gun in a felony;  
 ((+mmm)) (ppp) Vehicular assault;  
 ((+nnn)) (qqq) Violation of temporary restraining order or preliminary injunction involving sexual or physical abuse to a child;  
 ((+ooo)) (rrr) Violation of a temporary or permanent vulnerable adult protection order (VAPO) that was based upon abandonment, abuse, financial exploitation, or neglect; and  
 ((+ppp)) (sss) Voyeurism.

(2) If "(less than ten years)," "(less than five years)," or "(less than three years)" appears after a crime listed in subsection (1) ((above)) of this section, the individual is not automatically disqualified if the required number of years has passed since the date of the conviction. ~~((For example, if three or more years have passed since an individual was convicted of Theft in the 3rd degree that conviction would not be automatically disqualifying. If the required number of years has passed, the employer must conduct an overall assessment of the person's))~~ 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 ((and minors)).

(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.