



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: July 30, 2021

TIME: 11:17 AM

WSR 21-16-068

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

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: To implement changes related to the passage of Substitute House Bill 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 (CROP); 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:

- New:
- Repealed:
- Amended: WAC 388-113-0020
- Suspended:

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

Other authority: Substitute House Bill 1411

EMERGENCY RULE

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.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

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 Substitute House Bill 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.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>1</u>	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New ____ Amended ____ Repealed ____

The number of sections adopted on the agency's own initiative:

New ____ Amended ____ Repealed ____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New ____ Amended ____ Repealed ____

The number of sections adopted using:

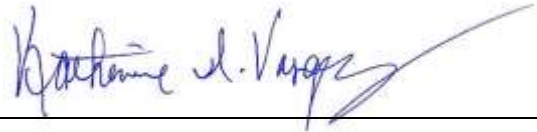
Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	____	Amended	<u>1</u>	Repealed	____

Date Adopted: July 30, 2021

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, 388-106, 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) Robbery 2 (less than five years);
 ((+bbb)) (ccc) Selling or distributing erotic material to a mi-
 nor;
 ((+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) 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 vulner-
 able 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.