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Chapter 388-113 WAC

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## DISQUALIFYING CRIMES AND NEGATIVE ACTIONS

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### What is the purpose of this chapter?

The purpose of this chapter is to describe the:

(1) Criminal convictions, pending charges, and negative actions that automatically disqualify an individual from having unsupervised access to vulnerable adults or minors who are receiving services under:

- (a) Chapter **388-71** WAC, Home and community services and programs, including individual providers and employees of home care agencies;
- (b) Chapter **388-101** WAC, Certified community residential services and supports;
- (c) Chapter **388-76** WAC, Licensed adult family homes;
- (d) Chapter **388-78A** WAC, Licensed assisted living facilities;
- (e) Chapter **388-97** WAC, Licensed nursing homes;
- (f) Chapter **388-825** WAC, Developmental disabilities administration programs; and
- (g) Chapter **388-107** WAC, Licensed enhanced services facilities.

(2) Exceptions to automatic disqualifications that may apply to certain criminal convictions and pending charges.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0005, filed 6/24/14, effective 7/25/14.]

**PDF 388-113-0010**

### What definitions apply to this chapter?

**"Department"** means the Washington state department of social and health services.

**"Drug" means a:**

- (a) Controlled substance as defined in RCW 69.50.101;
- (b) Legend drug, as defined in RCW 69.41.010;
- (c) Precursor drug under Chapter 69.43 RCW; or
- (d) Imitation controlled substance, as defined in RCW 69.52.020.

**"Minor"** means any person under the age of eighteen.

**"Pending charge"** means a criminal charge for a disqualifying crime has been filed in a court of law for which the department has not received documentation showing the disposition of the charge.

**"Unsupervised"** means not in the presence of:

- (a) Another employee or volunteer from the same business or organization as the applicant; or
- (b) Any relative or guardian of any of the minors or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

**"Vulnerable adult"** is defined in RCW 74.34.020(17).

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0010, filed 6/24/14, effective 7/25/14.]

**PDF 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;
- (g) Assault 3;
- (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 explicit conduct;
- (w) Domestic violence (felonies only);
- (x) Drive-by shooting;
- (y) Drug crimes, if they involve one or more of the following:
  - (i) Manufacture of a drug;
  - (ii) Delivery of a drug;
  - (iii) Possession of a drug with the intent to manufacture or deliver.
- (z) Endangerment with a controlled substance;
- (aa) Extortion;
- (bb) Forgery (less than five years);
- (cc) Homicide by abuse, watercraft, vehicular homicide (negligent homicide);
- (dd) Identity theft (less than five years);
- (ee) Incendiary devices (possess, manufacture, dispose);
- (ff) Incest;
- (gg) Indecent exposure/public indecency (felony);
- (hh) Indecent liberties;
- (ii) Kidnapping;
- (jj) Luring;
- (kk) Malicious explosion 1;
- (ll) Malicious explosion 2;
- (mm) Malicious harassment;
- (nn) Malicious placement of an explosive 1;
- (oo) Malicious placement of an explosive 2 (less than five years);
- (pp) Malicious placement of imitation device 1 (less than five years);
- (qq) Manslaughter;
- (rr) Murder/aggravated murder;
- (ss) Possess depictions minor engaged in sexual conduct;
- (tt) Promoting pornography;

- (uu) Promoting prostitution 1;
- (vv) Promoting suicide attempt (less than five years);
- (ww) Prostitution (less than three years);
- (xx) Rape;
- (yy) Rape of child;
- (zz) Residential burglary;
- (aaa) Robbery;
- (bbb) Selling or distributing erotic material to a minor;
- (ccc) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;
- (ddd) Sexual exploitation of minors;
- (eee) Sexual misconduct with a minor;
- (fff) Sexually violating human remains;
- (ggg) Stalking (less than five years);
- (hhh) Theft 1;
- (iii) Theft from a vulnerable adult 1;
- (jjj) Theft from a vulnerable adult 2 (less than ten years);
- (kkk) Theft 2 (less than five years);
- (lll) Theft 3 (less than three years);
- (mmm) Unlawful imprisonment;
- (nnn) Unlawful use of building for drug purposes (less than five years);
- (ooo) Use of machine gun in a felony;
- (ppp) Vehicular assault;
- (qqq) Violation of temporary restraining order or preliminary injunction involving sexual or physical abuse to a child;
- (rrr) Violation of a temporary or permanent vulnerable adult protection order (VAPO) that was based upon abandonment, abuse, financial exploitation, or neglect; and
- (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) 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.

(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.

[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.]

## Where do I find what negative actions are disqualifying?

In addition to disqualifying convictions and pending charges for disqualifying crimes, individuals are disqualified from working in positions involving unsupervised access to minors or vulnerable adults under chapters **388-71**, 388-101, 388-76, 388-78A, 388-97, 388-825 and **388-107** WAC if certain findings have been made or certain actions have been taken against them. These disqualifying findings and actions are referred to as "negative actions" and they are listed in the following program rules:

- (a) Chapter **388-71** WAC, Home and community services and programs, including individual providers and employees of home care agencies;
- (b) Chapter **388-101** WAC, Certified community residential services and supports;
- (c) Chapter **388-76** WAC, Licensed adult family homes;
- (d) Chapter **388-78A** WAC, Licensed assisted living facilities;
- (e) Chapter **388-97** WAC, Licensed nursing homes;
- (f) Chapter **388-825** WAC, Developmental disabilities administration programs; and
- (g) Chapter **388-107** WAC, Licensed enhanced services facilities.

[Statutory Authority: RCW **74.08.090**, **74.09.520**, **74.39A.056**. WSR 14-14-025, § 388-113-0030, filed 6/24/14, effective 7/25/14.]

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**PDF 388-113-0040**

## Are there any exceptions to the automatic disqualification under WAC 388-113-0020?

(1) Under the conditions described in this section, an individual is not automatically disqualified from having unsupervised access to minors and vulnerable adults if he or she:

- (a) Has worked continuously for the same employer for whom he or she was working on July 24, 2014; and
- (b) Does not have a conviction or pending charge that was automatically disqualifying under rules that were in effect on July 24, 2014; and
- (c) Works for a program or facility that operates under chapters **388-71** WAC, Individual providers and home care agencies; **388-76** WAC, Adult family home; **388-78A** WAC Assisted living facility; or **388-97** WAC, Nursing homes and was convicted of, or has a pending charge for:
  - (i) Residential burglary;
  - (ii) Unlawful use of building for drug purposes (five or more years);
  - (iii) Vehicular assault; or
  - (d) Works for a program or facility that operates under chapter **388-825** WAC (developmental disabilities administration programs) or supported living and was convicted of, or has a pending charge for:
    - (i) Assault 3;
    - (ii) Manufacture of a controlled substance;
    - (iii) Delivery of a controlled substance; or

(iv) Possession of a controlled substance with the intent to manufacture or deliver.

(2) In addition to the requirements under subsection (1), in order for an individual to be eligible for an exception under this section, the following conditions must also be satisfied:

(a) The conviction date for the crimes listed in (1)(c) and (d) must be before July 25, 2014;

(b) The individual has to continue to work for the same employer; and

(c) The employer or hiring entity must:

(i) Review the individual's character, competence and suitability to have unsupervised access to minors or to vulnerable adults, and;

(ii) Have documentation on file demonstrating the results of the character, competence and suitability review; and

(iii) Have documentation on file demonstrating that the individual meets all of the conditions in subsection (2) of this section, including a copy of a background check result letter dated prior to July 25, 2014, indicating the individual was not disqualified from having unsupervised access to minors or vulnerable adults.

[Statutory Authority: RCW **74.08.090**, **74.09.520**, **74.39A.056**. WSR 14-14-025, § 388-113-0040, filed 6/24/14, effective 7/25/14.]