



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Juvenile Rehabilitation Services

- Preproposal Statement of Inquiry was filed as WSR 09-01-073 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____ ; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject)

The department is amending chapter 388-720 WAC, Collection of costs of support, treatment, and confinement of juveniles under RCW 13.40.220

Hearing location(s):

Blake Office Park East – Rose Room
4500 – 10th Ave. SE
Lacey, Washington 98503
(One block north of the intersection of Pacific Ave. SE and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling 360-664-6094)

Date: **October 27, 2009** Time: **10:00am**

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850, Olympia WA, 98504-5850
Delivery: 4500 – 10th Ave. SE, Lacey, Washington 98503
E-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
Fax: (360) 664-6185

by
5:00 p.m. October 27, 2009

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by October 13, 2009
TTY (360) 664-6178 or (360) 664-6094 or
by e-mail at johnsjl4@dshs.wa.gov

Date of intended adoption: Not earlier than October 28, 2009 (Note: This is **NOT** the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

This rule has not been up-dated since 2004.

It is necessary to revise this rule to more accurately reflect:

- (1) Current gross personal income levels used to calculate obligation to reimburse the department, and
- (2) Current costs of institutional care for juveniles in legal custody of the department.

Other anticipated changes are intended to:

- (1) Clarify rule language,
- (2) Allow use of additional information available to the department in establishing financial obligation,
- (3) Revise percentage base of gross income used to calculate of reimbursement obligation,
- (4) Apply Federal Poverty Guidelines to reimbursement calculations, and to
- (5) Establish periodic re-calculation of residential care cost, removing fixed cost of care from rule.

Reasons supporting proposal:

See above.

Statutory authority for adoption:

RCW 13.40.220(3)

Statute being implemented:

RCW 13.40.220

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:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 22, 2009

TIME: 12:50 PM

WSR 09-19-128

DATE

September 17, 2009

NAME (type or print)

Stephanie Vaughn

SIGNATURE

TITLE

DSHS Rules Coordinator

(COMPLETE REVERSE SIDE)

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

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Lee Mosley, JRA	1115 Washington St., Olympia WA 98504-5720	(360) 902-8092
Implementation	Kathleen Gregory, OFR/FSA	4450 10 th Ave SE Lacey, WA 98503-2850	(360) 664-5549
Enforcement	Pat Buker, OFR/FSA	4450 10 th Ave SE Lacey, WA 98503-2850	(360) 664-5473

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. Explain why no statement was prepared.

No small business will be affected. This rule affects only individual persons who are determined to be financially obligated to reimburse the department for expenses related to the care and custody of a dependent juvenile.

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

e-mail

No: Please explain: RCW 34.05.328(5)(b)(vii) exempts rules which concern "liability for care of dependents" from the requirement for a cost-benefit analysis.

AMENDATORY SECTION (Amending Order 3752, filed 10/20/00, effective 11/20/00)

WAC 388-720-0010 Definitions. (~~((1) "Juvenile" means juvenile offender sentenced to confinement in the department, other than an offender for whom a parent is approved to receive adoption support under chapter 74.13 RCW.~~

~~(2) "Department" means the department of social and health services, state of Washington.~~

~~(3) "Gross income" means the total income from all sources, received by the parent, the juvenile, or other children of the parent remaining in the household, other than a step-child, as determined by the department.~~

~~(4) "Parent" means the parent of the juvenile or other person legally obligated to care for and support the juvenile, not including a stepparent.~~

~~(5) "Parents and dependents" means the juvenile's parent or parents, a stepparent living in the home who has no income, any child on whom the parent may claim a federal income tax deduction, not including the juvenile confined to the department, and any stepchild for whom the parent is the sole means of support))~~
"Department" means the department of social and health services, state of Washington.

"Dependent" means the juvenile's parent or parents, a registered domestic partner, a stepparent living in the home who has no income, any child, stepchild or adult family member on whom the parent may claim a federal income tax deduction, not including the juvenile confined to the department.

"Federal Poverty Guidelines" means the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services (HHS) under the authority of 42 U.S.C. 9902(2).

"Gross income" means the total income, as determined by the department, from all sources, received by the legally obligated person, the legally obligated person's spouse or registered domestic partner, the juvenile, or other children or step-children of the legally obligated person remaining in the household. Child support received for the juvenile will be included as gross income; child support received for other children will not be counted as part of the legally obligated person's gross income.

"Juvenile" means a juvenile offender sentenced to confinement in the department, other than an offender for whom a parent is approved to receive adoption support under chapter 74.13 RCW.

"Legally obligated person", "financially obligated person" and "responsible person" mean the parent or parents of the juvenile or other person or persons, including registered domestic partners, legally obligated to care for and support the juvenile, including a stepparent.

WAC 388-720-0020 Cost reimbursement schedule and ability to pay. ((As provided for in RCW 13.40.220 the office of financial recovery may negotiate payment schedules and the methods used to satisfy costs of support, treatment and confinement with parents and other legally obligated persons, on behalf of the department. The results of the application of this rule may be appealed as provided for in RCW 13.490.220 (4) and (6) and Part IV Adjudicative Proceedings, of chapter 34.05 RCW, Administrative Procedure Act.)) (1) A parent or other legally obligated person shall pay a percentage of gross income to reimburse the department for the cost of support, treatment and confinement of the juvenile.

(2) Gross income, adjusted annually according to the published Federal Poverty Guidelines, shall form the basis to determine obligation to pay.

(3) Ability to pay ((will be)) and obligation to reimburse are determined by ((the)) application of the information provided by a parent or other legally obligated person in the financial information statement and/or by other information available to the department to the reimbursement schedule below:

((Monthly Gross Income	Percentage of Gross Income Ordered for Reimbursement of Costs Number of Parents and Dependents Remaining in Household								
	1	2	3	4	5	6	7	8+	
TANF or \$0-600	0	0	0	0	0	0	0	0	
\$601 - 1000	8%	6%	4%	2%	0	0	0	0	
\$1001 - 2000	12%	10%	8%	6%	4%	2%	0	0	
\$2001 - 3000	16%	14%	12%	10%	8%	6%	4%	2%	
\$3001 - 4000+	18%	16%	14%	12%	10%	8%	6%	4%))	

<u>Gross Income as Percentage of Federal Poverty Guideline</u>	<u>Dependents in Home</u>					
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
<u>150 - 174%</u>	<u>12%</u>	<u>12%</u>	<u>10%</u>	<u>10%</u>	<u>8%</u>	<u>8%</u>
<u>175 - 199%</u>	<u>13%</u>	<u>13%</u>	<u>11%</u>	<u>11%</u>	<u>9%</u>	<u>9%</u>
<u>200 - 224%</u>	<u>14%</u>	<u>14%</u>	<u>12%</u>	<u>12%</u>	<u>10%</u>	<u>10%</u>
<u>225 - 249%</u>	<u>15%</u>	<u>15%</u>	<u>13%</u>	<u>13%</u>	<u>11%</u>	<u>11%</u>
<u>250 - 274%</u>	<u>16%</u>	<u>16%</u>	<u>14%</u>	<u>14%</u>	<u>12%</u>	<u>12%</u>
<u>275 - 299%</u>	<u>17%</u>	<u>17%</u>	<u>15%</u>	<u>15%</u>	<u>13%</u>	<u>13%</u>
<u>300 - 399%</u>	<u>18%</u>	<u>18%</u>	<u>16%</u>	<u>16%</u>	<u>14%</u>	<u>14%</u>

400%+

20%

20%

18%

18%

16%

16%

Reimbursement Obligation: Assessed Percentage of Gross Income

~~((1))~~ (4) Within fifteen days of receipt of the financial information statement, ~~((a parent or other))~~ the legally obligated person shall complete, sign and mail the statement to the department.

(5) Based on the statement, if returned, and on other information available to it, the department shall determine the ~~((parent's))~~ legally obligated person's gross income, the number of parents or registered domestic partners and dependents remaining in the household, and the reimbursement obligation, and shall serve on the ~~((parent))~~ legally obligated person a notice and finding of financial responsibility.

~~((2))~~ (6) If a ~~((parent or))~~ legally obligated person fails to timely provide a financial statement and insufficient information is available to the department to determine ability to pay, the reimbursement obligation shall be ~~((twenty-three hundred dollars per month))~~ the current monthly average (marginal) institutional cost of care as determined by the department.

~~((3))~~ If the juvenile's parents or other legally obligated person reside in separate households, each parent shall be liable for reimbursement.

~~(4)~~ The gross income of a parent shall be reduced by the amount the parent pays in spousal maintenance to the juvenile's parent, which is gross income to the receiving parent. The gross income of a parent or other legally obligated person shall be reduced by the amount of current child support paid for any child, including the juvenile offender. This credit shall be available when the support is paid to any section of the department or to any other person legally entitled to receive those support payments, pursuant to court order or administrative order for a child the parent did not claim as a dependent under the reimbursement schedule.

~~((5))~~ Reimbursement)) (7) Assessed obligation for reimbursement may not exceed the institutional average daily rate (full cost of care) as determined by the department.

~~((6))~~ (8) The reimbursement obligation commences the day the juvenile enters the custody of the department, regardless of when the notice and finding of financial responsibility is received by the parent. ~~((A))~~ The monthly reimbursement obligation shall be reduced on a pro rata basis for any days in which the juvenile was not in the custody of the department.

~~((7))~~ (9) If the juvenile's parents or other legally obligated persons reside in separate households, each shall be liable for reimbursement.

(10) The gross income of a legally obligated person shall be reduced by the amount the person pays in spousal maintenance to the juvenile's parent, which is gross income to the receiving parent.

(11) The gross income of a legally obligated person shall be reduced by the amount of current child support paid for any child, including the juvenile offender. This credit shall be available when the support is paid to any section of the department or to any other person legally entitled to receive those support payments, pursuant to court order or administrative order for a child the

legally obligated person did not claim as a dependent under the reimbursement schedule.

~~(12) The ((parent or other)) legally obligated person of the juvenile shall be exempt from the payment of the cost of the juvenile's care in the state facility if:~~

~~(a) The ((parent or other)) legally obligated person receives adoption support or is eligible to receive adoption support for the juvenile offender; or ((if))~~

~~(b) The ((parent, or other)) legally obligated person, or such person's child, spouse, registered domestic partner, or spouse's child((7)) or a dependent person in the household was the victim of the offense for which the juvenile was committed to the department.~~

(13) As provided for in RCW 13.40.220, the office of financial recovery, on behalf of the department, may negotiate with legally obligated persons the payment schedules and methods used to satisfy costs of support, treatment and confinement.

AMENDATORY SECTION (Amending Order 3752, filed 10/20/00, effective 11/20/00)

WAC 388-720-0030 ((Hearing)) Modifications. ~~((A parent may request a hearing under RCW 13.40.220(5) to contest a notice and finding of financial responsibility issued by the department. The department shall ensure the hearing is governed by chapter 34.05 RCW and chapter 388-02 WAC. The sole issues at the hearing include whether the:~~

~~(1) Person receiving the notice and finding of financial responsibility is a parent of the juvenile; and~~

~~(2) Department correctly:~~

~~(a) Determined the parent's gross income and the number of parents and dependents; and~~

~~(b) Calculated the reimbursement obligation in accordance with the reimbursement schedule as described under WAC 388-720-0020))~~

(1) A legally obligated person may submit a modified financial statement upon a change in gross income or in the number of persons residing in the household only if the change decreases the reimbursement obligation by one hundred dollars per month or more. A decrease may be granted only from the date on which the request for modification is made, and may not be applied retroactively.

(2) A legally obligated person shall file a financial statement modification if a change in gross income or the number of persons residing in the household increases the reimbursement obligation by one hundred dollars per month or more. An increase may be applied retroactively from the date of the change in income.

(3) The department will issue a new notice and finding of financial responsibility upon receipt of a modified financial statement as defined in subsections (1) or (2) of this section. The department may also issue a new notice based upon its own review of information available to it if the conditions of subsection (1) or (2) of this section are met.

AMENDATORY SECTION (Amending Order 3752, filed 10/20/00, effective 11/20/00)

WAC 388-720-0040 ((Modifications)) Hearing. (1) ~~((A parent may modify the parent's financial statement upon a change in gross income or in the number of persons residing in the household only if the change decreases the reimbursement obligation by one hundred dollars per month or more. A decrease may be granted only from the date on which the request for modification is made, and may not be applied retroactively))~~ A legally obligated person may request a hearing pursuant to RCW 13.40.220(6) and chapter 34.05 RCW to contest a notice and finding of financial responsibility issued by the department.

(2) ~~((A parent shall file a financial statement modification if a change in gross income or the number of persons residing in the household increases the reimbursement obligation by one hundred dollars per month or more. An increase may be applied retroactively.~~

(3) ~~The department will issue a new notice and finding of financial responsibility upon receipt of a modified financial statement as defined in subsections (1) or (2) of this section. The department may also issue a new notice based upon its own review if the conditions of subsection (1) or (2) of this section are met))~~ The sole issues which may be considered at the hearing are whether the:

(a) Person receiving the notice and finding of financial responsibility is a person financially obligated for the care and support of the juvenile; and

(b) Department, as described under WAC 388-720-0020 correctly:

(i) Determined the legally obligated person's gross income and determined the number of parents in the household, including registered domestic partners, and dependents;

(ii) Determined exemptions; and

(iii) Calculated the reimbursement obligation in accordance with the reimbursement schedule as described under WAC 388-720-0020.

AMENDATORY SECTION (Amending WSR 03-01-044, filed 12/10/02, effective 1/10/03)

WAC 388-720-0050 Powers of the administrative law judge. The administrative law judge ~~((in the final order rendered))~~ after the hearing conducted in accordance with WAC ~~((388-720-0030))~~ 388-720-0040, in the final order rendered shall:

(1) Include the name and age of the juvenile ~~((in that final order)).~~ ~~((The administrative law judge shall also indicate))~~

(2) Include the ~~((parent's or other))~~ legally obligated person's monthly ~~((liability))~~ obligation amount for the period of the juvenile's confinement beginning with the date the child enters the custody of the department. ~~((The administrative law judge shall))~~

(3) Not establish ~~((in the final order))~~ any amount

constituting a repayment figure of any accrued obligation of the ~~((parent but shall indicate))~~ legally obligated person.

~~(4) State ((in the final order))~~ that any accrued obligation shall be paid by the ~~((parent))~~ legally obligated person to the department's office of financial recovery (OFR) and that OFR will be responsible for determining the method of repayment of the parent's accrued obligation.

~~((The administrative law judge shall also))~~ (5) Include a statement ~~((in the final order))~~ that the ~~((parent's))~~ responsible person's financial obligation is collectible by OFR and that should the ~~((parent))~~ legally obligated person fail to comply with any payment plan entered into by OFR and the ~~((parent))~~ legally obligated person, or the ~~((parent))~~ legally obligated person fails to pay the amount set out in the final order, OFR shall be authorized to take legal collection action to recover the amounts due from the ~~((parent))~~ legally obligated person. Legal collection action can include, but is not limited to:

~~((1))~~ (a) The filing of liens against the real and personal property of the ~~((parent))~~ responsible person; or

~~((2))~~ (b) The issuance of a garnishment order against the wages, bank accounts, or other property of the responsible persons.