



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Social and Health Services, Aging and Disability Services Administration

- Permanent Rule
- Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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: The Division of Developmental Disabilities is amending WAC 388-831-0010 and 0030 to include individuals who have a history of violent behavior which demonstrates the likelihood to commit a violent act. This amendment reflects the legislation contained in RCW 71A.12.210. The department is proceeding to adopt these rules on a permanent basis.

Citation of existing rules affected by this order:

Repealed: None
 Amended: WAC 388-831-0010, 388-831-0030
 Suspended: None

Statutory authority for adoption: RCW 71A.12.030, RCW 71A.12.210

Other authority: Title 71A RCW

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____.(date)
 Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

EMERGENCY RULE ONLY

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: This rule is necessary for the preservation of public health, safety or general welfare by expanding the population who have community protection issues and may be eligible for services. This group of individuals was inadvertently omitted from the permanent rule filed previously. This emergency rule extends the emergency rule filed as WSR 09-02-077 while the department completes stakeholder work and the permanent rulemaking process. The department anticipates filing for the CR 102 by June 30, 2009.

Date adopted:

May 1, 2009

NAME (TYPE OR PRINT)

Stephanie Schiller

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 06, 2009

TIME: 9:06 AM

WSR 09-10-084

(COMPLETE REVERSE SIDE)

**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	___	Repealed	___

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

New	___	Amended	___	Repealed	___
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The number of sections adopted in the agency's own initiative:

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

New	___	Amended	<u>2</u>	Repealed	___
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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>2</u>	Repealed	___

AMENDATORY SECTION (Amending 08-20-118, filed 9/30/08, effective 10/31/08)

WAC 388-831-0010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

"Certified community protection program residential services" means access to twenty-four hour supervision, instruction, and support services as identified in the person's individual support plan.

"Community protection program" See WAC 388-831-0020.

"Constitutes a risk to others" means a determination of a person's risk and/or dangerousness based upon a thorough assessment by a qualified professional. Actuarial risk assessment instruments should be used to supplement clinical judgment whenever appropriate.

"Department" means the department of social and health services.

"Developmental disability" means that condition defined in WAC 388-823-0040 and RCW 71A.10.020(3).

"Disclosure" means providing copies of professional assessments, incident reports, legal documents, and other information pertaining to community protection issues to ensure the provider has all relevant information. Polygraph and plethysmograph reports are excluded from disclosure.

"Division" means the division of developmental disabilities (DDD).

"Managed successfully" means that a person supported by a community protection program does not engage in the behavior identified in WAC 388-831-0030 and RCW 71A.12.210.

"Opportunistic behavior" means an act committed on impulse, which is not premeditated. In determining whether an act is opportunistic, the original motive or intent of the offense or crime will be considered.

"Predatory" means acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or casual acquaintances with whom no substantial personal relationship exists. Predatory behavior may be characterized by planning and/or rehearsing the act, stalking, and/or grooming the victim.

"Program participant" means a person who has agreed to and is receiving services and supports in the community protection program.

"Qualified professional" means a licensed psychologist, psychiatrist, or a certified or affiliate sex offender treatment provider with at least three years prior experience working with individuals with developmental disabilities, and:

- If the person being assessed has demonstrated sexually aggressive or sexually violent behavior, that person must be assessed by a certified sex offender treatment provider, or affiliate sex offender treatment provider working under the

supervision of a certified sex offender treatment provider; or

- If the person being assessed has demonstrated violent, dangerous, or aggressive behavior, that person must be assessed by a licensed psychologist or psychiatrist who has received specialized training in the treatment of or has at least three years prior experience treating violent or aggressive behavior.

"Restrictive procedures" or "Restrictions" means procedures that restrict a client's freedom of movement, restrict access to client property, prevent a client from doing something the client wants to do, require a client to do something the client does not want to do, or remove something the client owns or has earned.

"Risk assessment" means the written opinion of a qualified professional stating, at a minimum:

- Whether a person meets the criteria in WAC 388-831-0030 and RCW 71A.12.210; and

- What restrictions are necessary to keep people safe.

"Service provider" means a person or agency contracted with the department or a sub-contractor who delivers services and supports to a community protection program participant.

"Specialized environment" means a place where the program participant has agreed to supervision in a safe, structured manner specifying rules, requirements, restrictions, and expectations for personal responsibility in order to maximize community safety.

"Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individual supports and services. This group may include, but is not limited to, the case resource manager, therapist, residential provider, employment/day program provider, and the person's legal representative and/or family, provided the person agrees to the family member's involvement.

~~((**"Violent offense"** means any felony defined as a violent offense in RCW 9.94A.030.))~~

"Violent" or "violence" means acts that meet the criteria for crimes listed in RCW 9.94A.030(32), 9.94A.030(45), 9.94A.030(46), 9.94A.030(54), or 9A.48.040, whether or not the person who committed the acts has been charged with or convicted of the crime.

"Waiver" means the community-based program funded under section 1915(c) of Title XIX of the federal social security act and chapter 388-845 WAC.

AMENDATORY SECTION (Amending WSR 08-20-118, filed 9/30/08, effective 10/31/08)

WAC 388-831-0030 Who are individuals with community protection issues? You are considered an individual with community protection issues if:

- (1) You have been determined to have a developmental disability as defined in WAC 388-823-0040 and RCW 71A.10.020(3); and

- (2) You have been identified by DDD as a person who meets one or more of the following:

- (a) You have been charged with or convicted of a crime of

sexual violence as defined in chapter 9A.44 or 71.09 RCW;

(b) You have been charged with or convicted of a crime involving sexual acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been charged with or convicted of one or more violent crimes as defined in RCW 9.94A.030(45);

(d) You have not been charged with or convicted of a crime identified in (2)(a), (b), or (c) above, but you have a history of violent, stalking, sexually violent, predatory and/or opportunistic behavior which a qualified professional has determined demonstrates a likelihood to commit a violent, sexually violent and/or predatory act (~~(based on current behaviors that may escalate to violence, as determined by a qualified professional)~~); and

(3) You constitute a current risk to others as determined by a qualified professional.

(4) Charges or crimes that result in acquittal are excluded.