



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 creating a new chapter 388-831 WAC, Community Protection Program, to implement Engrossed Substitute Senate Bill (ESSB) 6630, Laws of 2006. This chapter codifies the rules relating to the administration of the Community Protection Program as directed by the legislature.

Citation of existing rules affected by this order:

Repealed: None
 Amended: None
 Suspended: None (See attachment A)

Statutory authority for adoption: RCW 71A.12.030

Other authority : Engrossed Substitute Senate Bill (ESSB) 6630, Laws of 2006.

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 08-16-123 on August 5, 2008
 Describe any changes other than editing from proposed to adopted version:
 None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A These rules are exempt from a CBA pursuant to RCW 34.05.(5)(b)(iii) and (vii) as they adopt Washington State statutes and relate to client medical or financial eligibility.

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:

Date adopted:
September 29, 2008

NAME (TYPE OR PRINT)
Stephanie Schiller

SIGNATURE
Stephanie E Schiller

TITLE
DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 30, 2008
TIME: 4:09 PM

WSR 08-20-118

**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	<u>25</u>	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	___	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	<u>25</u>	Amended	___	Repealed	___

Attachment A to CR 103 - COMMUNITY PROTECTION PROGRAM
SUMMARY OF NEW RULES
September 2008

Washington Administrative Code	Effect of Rule
388-831-0010 – Definitions (New)	Adds definitions used in this chapter
388-831-0020 (New)	Defines the Community Protection Program (CPP)
388-831-0030 (New)	Defines individuals with community protection issues
388-831-0040 (New)	Defines who is covered by these rules
388-831-0050 (New)	Defines the steps necessary to receive services
388-831-0060 (New)	Defines what is contained in the assessment
388-831-0065 (New)	Defines what happens for refusal to participate in the assessment
388-831-0070 (New)	Describes what information will be given to individuals considered for placement in the CPP
388-831-0080 (New)	Describes the notification requirement to individuals who are appropriate for placement in the CPP
388-831-0090 (New)	Describes the notification requirement to individuals who cannot be managed successfully in the CPP
388-831-0100 (New)	Explains how to apply for the CPP
388-831-0110 (New)	Describes what information will be shared with others
388-831-0120 (New)	Describes what the services will be
388-831-0130 (New)	Describes the services available in the CPP
388-831-0150 (New)	Defines who can provide therapy
388-831-0160 (New)	Describes the services available for individuals who refuse placement in the CPP
388-831-0200 (New)	Defines how often progress will be reviewed
388-831-0210 (New)	Defines what is included in the review of progress
388-831-0220 (New)	Defines when placement in a less restrictive setting may be considered
388-831-0230 (New)	Describes the process to move to a less restrictive setting
388-831-0240 (New)	Defines when termination from the CPP may occur
388-831-0250 (New)	Describes that participation in the CPP is voluntary but limits the services available if this occurs
388-831-0260 (New)	Defines where the enforcement rules against a provider of residential services and support may be found
388-831-0300 (New)	Defines the appeal rights for individuals receiving services through the CPP waiver
388-831-0400 (New)	Clarifies that nothing in these rules create an entitlement to placement on the CPP waiver

Chapter 388-831 WAC

COMMUNITY PROTECTION PROGRAM

NEW SECTION

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.

"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.

NEW SECTION

WAC 388-831-0020 What is the community protection program?

(1) The community protection program is an array of services specifically designed to support persons who meet the definition of an "individual with community protection issues", as defined in WAC 388-831-0030.

(2) Community protection services and supports are designed to assist program participants to live safely and successfully in the

community while minimizing the risk to public safety.

(3) Participation in the program is voluntary.

NEW SECTION

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 stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a 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.

NEW SECTION

WAC 388-831-0040 Who is covered by these rules? These rules cover persons who are age eighteen or older and meet the criteria defined in WAC 388-831-0030.

NEW SECTION

WAC 388-831-0050 What steps are necessary for me to receive services through the community protection program? In order to

receive services through the community protection program, you must:

(1) Receive an assessment of risk and/or dangerousness by a qualified professional, as specified in WAC 388-831-0060;

(a) You and your representative have the right to choose the qualified professional who is contracted with the state;

(b) The division will provide you with a list of these qualified professionals; and

(2) Be informed of the information contained in WAC 388-831-0070.

NEW SECTION

WAC 388-831-0060 What is contained in the risk assessment?

(1) The risk assessment must be consistent with the guidelines for risk assessments and psychological or psychosexual evaluations developed by the division.

(2) The risk assessment must contain:

(a) A determination by a qualified professional whether your behaviors can be managed successfully in the community with reasonably available safeguards;

(b) A determination that lesser restrictive residential placement alternatives have been considered and would not be reasonable for your situation;

(c) Recommendations for treatment; and

(d) A list of necessary restrictions and the reason for them.

(3) The division may request an additional evaluation by a qualified professional who is contracted with the state.

NEW SECTION

WAC 388-831-0065 What if I refuse to participate in the risk assessment?

(1) If you refuse to participate in the risk assessment, the division cannot determine what your health and safety needs are, or whether you can be supported successfully in the community with reasonable safeguards. You will not be eligible for any division services except for case management and medicaid personal care (if eligible under chapter 388-106 WAC).

(2) Your name will be placed on the specialized client database. This database identifies individuals who may present a danger to their communities.

(3) If DDD determines it can provide only case management and personal care, you and your legal representative will receive a notice of the determination that explains the decision and your right to appeal that decision.

NEW SECTION

WAC 388-831-0070 What type of information will I receive from the division when I am considered for placement in the community protection program? When you are considered for placement in the community protection program, the division will provide you and your legal representative the following information in writing:

- (1) Limitations regarding the services that will be available due to your community protection issues;
- (2) Disclosure requirements as a condition of receiving services other than case management;
- (3) The requirement to engage in therapeutic treatment if it is a condition of receiving certain services;
- (4) Anticipated restrictions that may be provided, such as intensive supervision and/or limited access to television viewing, reading material and videos;
- (5) The right to decline services;
- (6) The anticipated consequences of declining services, such as the loss of existing services and/or removal from waiver services;
- (7) The right to an administrative hearing as specified in WAC 388-825-120 through WAC 388-825-165, including an emergency adjudicative proceeding as specified in RCW 34.05.479;
- (8) The requirement to sign a preplacement agreement as a condition of receiving community protection program residential services;
- (9) The right to retain current services as specified in WAC 388-825-145 or 388-825-150;
- (10) The right to refuse to participate in the program; and
- (11) Information about how to contact a disability rights organization.

NEW SECTION

WAC 388-831-0080 Will I be notified of the division's determination regarding placement in the community protection program?

(1) If the division determines that you are appropriate for placement in the community protection program, you and your legal representative will receive in writing a determination by the division that you meet the criteria for placement within the community protection program and your right to appeal this decision.

(2) This notification does not guarantee placement within the community protection program.

(3) If the division determines that you are not appropriate for placement in the community protection program, you and your legal representative will receive a notice in writing of the determination by the division that you do not meet the criteria for placement within the community protection program.

NEW SECTION

WAC 388-831-0090 Will I be notified if the division determines that I cannot be managed successfully in the community protection program? If the division determines that your health and safety needs cannot be met and you cannot be managed successfully in the community protection program with reasonably available safeguards, you and your legal representative will receive this determination in writing.

NEW SECTION

WAC 388-831-0100 How do I apply for the community protection program? (1) You may apply for the community protection program by calling the regional DDD office or a local DDD office. The toll free regional numbers are:

Region 1	Spokane	1-800-462-0624
Region 2	Yakima	1-800-822-7840
Region 3	Everett Bellingham Mount Vernon	1-800-788-2053 1-800-239-8285 1-800-491-5266
Region 4	Seattle	1-800-314-3296
Region 5	Tacoma Bremerton	1-800-248-0949 1-800-735-6740
Region 6	Port Angeles Tumwater Vancouver	1-877-601-2760 1-800-339-8227 1-888-877-3490

(2) DDD will make arrangements with you to complete the application for the eligibility determination by mail or over the phone.

NEW SECTION

WAC 388-831-0110 What information about me will be shared with others if I am offered services in the community protection program? (1) If you are offered services in the community protection program, the division will give information about you and your community protection issues to:

- (a) Prospective community protection service providers; and
- (b) Your current service providers.

(2) The division will not authorize any services without disclosure of your community protection issues.

NEW SECTION

WAC 388-831-0120 What will my services be like in the community protection program? Your community protection services will be:

- (1) Consistent with your individual support and supervision needs as specified in your individual support plan;
- (2) Consistent with your individual treatment plan, which includes your most recent treatment goals and current restrictions; and
- (3) Provided in the least restrictive manner and environment that minimizes the likelihood of offending behavior.

NEW SECTION

WAC 388-831-0130 What services may I receive in the community protection program? (1) The division will only authorize services to program participants who follow the treatment recommendations made by the qualified professionals who assess and/or provide your treatment and are listed in WAC 388-845-0220.

(2) Your residential services must be provided by a certified community protection intensive supported living services provider. Community protection intensive supported living services provide:

- (a) An opportunity for you to live successfully in the community;
- (b) A specialized environment in which you are supported to make positive choices to reduce the behaviors that require intensive intervention and supervision.

(3) Your employment services as defined in WAC 388-845-1200, 388-845-1400, and 388-845-2100 must be provided by a qualified community protection employment program service provider.

NEW SECTION

WAC 388-831-0150 Who can provide my therapy in the community protection program? You and your representative have the right to choose the qualified professional to provide your therapy, subject to the following conditions:

- (1) Your therapy must be provided by a qualified professional who:
 - (a) Has at least three years experience treating individuals with developmental disabilities and community protection issues;
 - (b) Is in good standing with the department of health, health professions quality assurance division;
 - (c) Is within a reasonable distance of your residence; and
 - (d) Is contracted with the department.
- (2) Only a certified sex offender treatment provider (SOTP) or an affiliate sex offender treatment provider working under the

supervision of a certified SOTP may provide sexual deviancy treatment.

(3) Any restrictive procedures used during your therapy or as part of your treatment must follow requirements for restrictive procedures developed by the department.

NEW SECTION

WAC 388-831-0160 What services may I receive if I refuse placement in the community protection program? If you are offered and refuse community protection program residential services, you may only receive case management services and medicaid personal care (if eligible under chapter 388-106 WAC).

NEW SECTION

WAC 388-831-0200 How often will my progress be reviewed? (1) The treatment team will review your progress at least every ninety days.

(2) If a treatment team member has reason to believe that your circumstances have changed significantly, the team member may request that a risk reassessment be conducted at any time.

NEW SECTION

WAC 388-831-0210 What is included in the review of my progress? (1) The review of your progress will include:

(a) Evaluating the use of less restrictive measures;

(b) Making changes in your program as necessary;

(c) Reviewing all restrictions and recommending reductions, if appropriate.

(2) The therapist must write a report annually evaluating your risk of offense and/or risk of behaviors that are dangerous to you or others.

NEW SECTION

WAC 388-831-0220 When may I be considered for placement in a less restrictive residential setting? (1) If you demonstrate success in complying with reduced restrictions and remain free of

any offense that may indicate a relapse for at least twelve months, you may be considered for placement in a less restrictive residential setting.

(2) If you request placement in a less restrictive residential setting and that request is denied, you and your legal representative will receive a notice of the determination by DDD, explaining the reason for the denial and your right to appeal this decision.

NEW SECTION

WAC 388-831-0230 What is the process to move me to a less restrictive residential setting? (1) The process to move you to a less restrictive residential setting will include:

(a) Written verification of your treatment progress and an assessment of low risk of reoffense and/or dangerousness by your therapist;

(b) A recommendation by your therapist that you are ready for reductions in supervision and restrictions;

(c) Development of a gradual phase out plan by the treatment team, projected over a reasonable period of time, which includes specific criteria for evaluating reductions in restrictions, especially supervision;

(d) Compliance with reduced restrictions;

(e) The absence of any incidents that may indicate relapse for a period of twelve months;

(f) An assessment by a qualified professional consistent with the division guidelines for risk assessment and psychosexual evaluations containing:

(i) An evaluation of your risk of reoffense and/or dangerousness; and (ii) An opinion as to whether or not you can be managed successfully in a less restrictive community residential setting; and

(g) A recommendation as to suitable placement by the treatment team.

(2) When the treatment team agrees that you are ready to move to a less restrictive community residential placement, you will receive a written plan that details what supports and services, including the level of supervision, you will receive in the less restrictive community residential placement.

(3) If you meet the eligibility requirements described in WAC 388-845-0030, you are eligible for waiver services and will be placed on a waiver that meets your needs.

NEW SECTION

WAC 388-831-0240 Can I be terminated from the community protection program? You may be terminated from the community

protection program by the division if:

- (1) You physically assault program participants, staff or others;
- (2) You repeatedly elope from the program or evade supervision;
- (3) You engage in illegal behavior of any kind; or
- (4) You refuse to comply with program and/or treatment guidelines to the extent that your therapist determines you are not amenable to treatment; or
- (5) The division determines that your health and safety needs cannot be met in the program.

NEW SECTION

WAC 388-831-0250 Can I leave the community protection program at any time? Your participation in the community protection program is voluntary. However, if you leave the community protection program and DDD determines that you require the community protection program to meet your health and safety needs and those of the community, you will not be eligible for other DDD residential services or employment/day program services.

NEW SECTION

WAC 388-831-0260 What enforcement actions may the division take against a provider of residential services and support? The rules regarding the enforcement actions that the division may take against a provider of residential services and support may be found in WAC 388-101-4150 through WAC 388-101-4190.

NEW SECTION

WAC 388-831-0300 What appeal rights do I have if I receive services through the division's community protection waiver? (1) You have the right to appeal decisions made by the division in accordance with WAC 388-825-120 through WAC 388-825-165.

(2) In addition to the right to appeal department actions described in WAC 388-825-120(3), if you receive services through the division's community protection waiver you have the right to appeal the following decisions by the division:

- (a) Termination of community protection waiver eligibility;
- (b) Your assignment to the community protection waiver; and
- (c) Denial of a request for a less restrictive community residential placement.

(3) You may appeal final administrative decisions pursuant to the provisions of RCW 34.05.510 through 34.05.598.

(4) You do not have the right to an administrative hearing on the division's decision denying you placement on the community protection waiver.

NEW SECTION

WAC 388-831-0400 Am I entitled to placement on the community protection waiver? Nothing in these rules creates an entitlement to placement on the community protection waiver.