



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: May 17, 2021

TIME: 10:04 AM

WSR 21-11-068

Agency: Department of Social and Health Services, Economic Services Administration

Original Notice

Supplemental Notice to WSR 21-08-072

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 20-13-047 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is proposing additional amendments to WAC 388-454-0006, "The department makes background checks on adults who are acting in place of a parent without court-ordered custody."

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 22, 2021	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 Or virtually	Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2 Due to the COVID pandemic, rule hearings may be virtual. Please see DSHS website for the most current information

Date of intended adoption: Not earlier than June 23, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator

Address: PO Box 45850
Olympia, WA 98504

Email: DSHSRPAURulesCoordinator@dshs.wa.gov

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. June 22, 2021

Assistance for persons with disabilities:

Contact Katherine Vasquez, DSHS Rules Coordinator

Phone: 360-664-6097

Fax: 360-664-6185

TTY: 711 Relay Service

Email: vasquki@dshs.wa.gov

Other:

By (date) June 15, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Additional proposed amendments add language around how pardons, vacated convictions, and certificates of rehabilitation are treated for purposes of background checks conducted as part of the Temporary Assistance for Needy Families (TANF) and State Family Assistance (SFA) *In Loco Parentis* eligibility process.

Reasons supporting proposal: The additional proposed language is in response to comments received during the rule making process from an external advocacy organization. This organization requested clarity in rule for how pardons, vacated convictions and certificates of rehabilitation are handled for these specific types of background checks.

Statutory authority for adoption: RCW 43.43.832, RCW 74.04.050, RCW 74.04.055, RCW 74.04.057, RCW 74.08.090 and RCW 74.12.290.

Statute being implemented:

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

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:	Melissa Kenney	PO Box 45470, Olympia, WA 98504-5470	360-764-3272
Implementation:	Melissa Kenney	PO Box 45470, Olympia, WA 98504-5470	360-764-3272
Enforcement:	Melissa Kenney	PO Box 45470, Olympia, WA 98504-5470	360-764-3272

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

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:
TTY:
Email:
Other:

No: Please explain: This amendment is exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, “[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents...”

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW 34.05.328(5)(b)(vii).

Explanation of exemptions, if necessary: These amendments do not impact small businesses. They only impact DSHS clients.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency’s analysis showing how costs were calculated. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

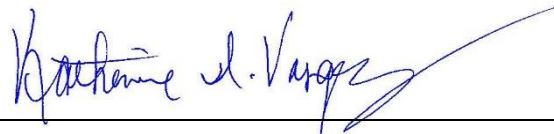
- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: May 14, 2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-454-0006 The department makes background checks on adults who are acting in place of a parent without court-ordered custody. (1) We check your background when you ask for temporary assistance for needy families (TANF) or state family assistance (SFA) benefits for a child who:

(a) Is not related to you; and

(b) Lives with you but you do not have a court order that gives you legal custody of the child.

(2) A child who is not related to you cannot receive TANF/SFA benefits while living with you until we have completed a background check and the results of the background check meet the criteria in subsection (3) through (5) of this section.

(3) A child who is not related to you cannot receive benefits while living with you if:

(a) You have been convicted of a crime listed in WAC ((388-06A-0170)) 110-04-0100(1)(a) through (e); or

(b) You have been convicted of a crime listed in WAC ((388-06A-0180)) 110-04-0110(1) through (3) within the last five years; or

(c) You have a pending criminal charge for a disqualifying crime listed in WAC 110-04-0130(1)(a) through (b); or

(d) You are determined by the department to not have the character, suitability, and competence necessary to receive benefits for a child not related to you, as described in subsection (4) and (5) of this section.

(4) We review your background when you have been convicted of a crime listed in WAC ((388-06A-0180)) 110-04-0110(1) through (3), more than five years ago to determine your character, suitability, and competence to receive benefits for a child not related to you. We consider the following factors:

(a) The amount of time that has passed since you were convicted;

(b) The seriousness of the crime that led to the conviction;

(c) The number and types of convictions in your background; and

(d) Your age at the time of the conviction.

(5) When you have a conviction for a crime other than those listed in WAC ((388-06A-0170)) 110-04-0100(1)(a) through (e), or ((388-06A-0180)) 110-04-0110(1) through (3) or have a founded finding of child abuse or neglect, as defined in WAC 110-03-0020, we review your background as described in subsection (4) of this section.

(6) If you disclose to us that you have received a certificate of parental improvement, as described in WAC 110-05-0001, and we verify it, then the related founded finding of child abuse or neglect, or dependency finding will not be considered in our determination under this section.

(7) Expunged ((~~or~~)), sealed, or vacated conviction records do not count against you. Convictions for which you received a pardon or certificate of rehabilitation are reviewed in accordance with subsection (4) of this section.