



RULE-MAKING ORDER
PERMANENT RULE ONLY

CR-103P (October 2017)
(Implements RCW 34.05.360)

CODE REVISER USE ONLY

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 STATE OF WASHINGTON
 FILED

DATE: October 26, 2017

TIME: 9:20 AM

WSR 17-22-059

Agency: Department of Social and Health Services, Children's Administration

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)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: Public Law 114-22 amended the Child Abuse Prevention and Treatment Act (CAPTA), a federal law for state receipt of federal funds, to require that a child be considered a victim of "child abuse and neglect" and of "sexual abuse" if the child is a victim of sex trafficking. To continue to qualify for federal funds, WAC 388-15-009 must be changed to incorporate sex trafficking. These changes also align with anticipated changes to the Washington State Criminal Code.

In addition, the Washington State Court of Appeals has issued two published opinions related to RCW 26.44.020(1) and (16): *Marcum v. Dep't. of Soc. and Health Svcs.*, 172 Wn. App. 546, 290 P.3d 1045 (2012), and *Brown v. Dep't. of Soc. and Health Svcs.*, 190 Wn.App. 572, 360 P.3d 875 (2015). Therefore, additional changes are being made to WAC 388-15-009 to clarify the Department's interpretation of RCW 26.44.020(1) and (16) in light of those published opinions.

Additional changes were made to strengthen and clarify the existing language

Citation of rules affected by this order:

New: None
 Repealed: None
 Amended: WAC 388-15-009
 Suspended: None

Statutory authority for adoption: RCW 74.08.090, RCW 74.04.050, RCW 74.13.031, chapter 26.44 RCW

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 17-18-062 on September 1, 2017 (date).

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:

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

**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	<u>1</u>	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 on 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	___	Amended	<u>1</u>	Repealed	___

Date: October 26, 2017

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-15-009 What is child abuse or neglect? Child abuse or neglect means the injury, sexual abuse, or sexual exploitation of a child by any person under circumstances which indicate that the child's health, welfare, or safety is harmed, or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is ~~((a-child))~~ one who has been subjected to child abuse or neglect as defined in this section.

(1) Physical abuse means the nonaccidental infliction of physical injury or physical mistreatment on a child that harms the child's health, welfare, or safety. ~~((Physical abuse includes))~~ It may include, but is not limited to, such actions as:

(a) Throwing, kicking, burning, or cutting a child;
(b) Striking a child with a closed fist;
(c) Shaking a child under age three;
(d) Interfering with a child's breathing;
(e) Threatening a child with a deadly weapon; or
(f) Doing any other act that is likely to cause and ~~((which))~~ that does cause bodily harm greater than transient pain or minor temporary marks or ~~((which))~~ that is injurious to the child's health, welfare or safety.

(2) Physical discipline of a child, including the reasonable use of corporal punishment, is not considered abuse when it is reasonable and moderate and is inflicted by a parent or guardian for the purposes of restraining or correcting the child. The age, size, and condition of the child, and the location of any inflicted injury shall be considered in determining whether the bodily harm is reasonable or moderate. Other factors may include the developmental level of the child and the nature of the child's misconduct. A parent's belief that it is necessary to punish a child does not justify or permit the use of excessive, immoderate or unreasonable force against the child.

(3) Sexual abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or other intimate parts of another for the purpose of gratifying the sexual desire of the person touching the child, the child, or a third party. A parent or guardian of a child, a person authorized by the parent or guardian to provide childcare for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purposes of providing hygiene, child care, and medical treatment or diagnosis.

(4) Sexual exploitation includes, but is not limited to, sex trafficking and commercial sexual exploitation as those terms are defined by law and includes such actions as allowing, ~~((permitting,))~~ compelling, encouraging, aiding, or otherwise causing a child to ~~((engage))~~ participate in one or more of the following:

(a) ~~((Prostitution))~~ Any sex act when anything of value is given to or received by any person for the sex act;

(b) Sexually explicit, obscene, or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted; ~~((or))~~

(c) Sexually explicit, obscene, or pornographic activity as part of a live performance or for the benefit or sexual gratification of another person.

(5) Negligent treatment or maltreatment means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, on the part of a child's parent, legal custodian, guardian, or caregiver that shows a serious disregard of the consequences to the child ~~((of such magnitude that it))~~ and creates a clear and present danger to the child's health, welfare, or safety.

(a) When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor must be given great weight.

(b) The fact that the siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment.

(c) Poverty, homelessness, or exposure to domestic violence perpetrated against someone other than the child does not, in and of itself, constitute negligent treatment or maltreatment.

(d) A child does not have to suffer actual damage or physical or emotional harm to be in circumstances ((which)) that create a clear and present danger to the child's health, welfare, or safety.

(e) Negligent treatment or maltreatment ((includes)) may include, but is not limited((,)) to one or more of the following:

~~((a))~~ (i) Failure to provide adequate food, shelter, clothing, supervision, or health care necessary for a child's health, welfare, or safety ~~((Poverty and/or homelessness do not constitute negligent treatment or maltreatment in and of themselves))~~, such that the failure shows a serious disregard of the consequence to the child and creates a clear and present danger to the child's health, welfare, or safety;

~~((b))~~ (ii) Actions, failures to act, or omissions that result in injury ~~((to or which create a substantial))~~ or risk of injury to the physical, emotional, and/or cognitive development of a child, such that it shows a serious disregard of the consequences to the child and creates a clear and present danger to the child's health, welfare, or safety; ~~((or~~

~~((c))~~ (iii) The cumulative effects of a pattern of conduct, behavior, or inaction by a parent or guardian in providing for the physical, emotional ~~((and))~~ or developmental needs of ~~((a child's))~~ the child, such that it shows a serious disregard of the consequences to the child and creates a clear and present danger to the child's health, welfare, or safety;

(iv) The effects of chronic failure on the part of a parent or guardian to perform basic parental functions, obligations, ~~((and))~~ or duties ~~((, when the result is to cause))~~ that causes injury or ~~((create a))~~ substantial risk of injury to the physical, emotional, ~~((and/or))~~ or cognitive development of ~~((a))~~ the child, such that it shows a serious disregard of the consequences to the child and creates a clear and present danger to the child's health, welfare, or safety.