



PROPOSED RULE MAKING

CR-102 (June 2024)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 17, 2024

TIME: 9:23 AM

WSR 24-19-081

Agency: Department of Social and Health Services, Behavioral Health Administration, SCC

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

- Preproposal Statement of Inquiry was filed as WSR 24-14-109 ; 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) Chapter 388-881 WAC Sexual Predator Program – External Oversight and possible other sections in chapter 388-880 WAC.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 22, 2024	10:00 a.m.	Virtually via Teams or Call in	Hearings are held virtually, see the DSHS website at https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of intended adoption: Not earlier than October 23, 2024. (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
 Beginning (date and time) noon on September 18, 2024
 By (date and time) 5:00 p.m. on October 22, 2024

Assistance for persons with disabilities:

Contact Shelley Tencza, Rules Consultant
 Phone 360-664-6036
 Fax 360-664-6185
 TTY 711 Relay Service
 Email shelley.tencza@dshs.wa.gov
 Other
 By (date) 5:00 p.m. on October 8, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is proposing to amend chapter 388-881 WAC Sexual Predator Program to update gender neutral language throughout as well as identify current practices.

Reasons supporting proposal: These changes are due to the progression and change within the special commitment center (SCC) program which includes the oversight of the program from external sources.

Statutory authority for adoption: RCW 71.09.800,

Statute being implemented: RCW 71.09.800.

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:

Name of proponent: (person or organization)

Type of proponent: Private. Public. Governmental.

Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting	Christina Wells	SCC	253-363-0274
Implementation	Keith Devos, CEO	SCC	253-617-6322
Enforcement	Keith Devos, CEO	SCC	253-617-6322

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: Not a significant legislative rule. RCW 34.05.328(5)(b)(ii): Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

Regulatory Fairness Act and Small Business Economic Impact Statement
 Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:
 This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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:

<input checked="" type="checkbox"/> RCW 34.05.310 (4)(b) (Internal government operations)	<input type="checkbox"/> RCW 34.05.310 (4)(e) (Dictated by statute)
<input type="checkbox"/> RCW 34.05.310 (4)(c) (Incorporation by reference)	<input type="checkbox"/> RCW 34.05.310 (4)(f) (Set or adjust fees)
<input type="checkbox"/> RCW 34.05.310 (4)(d) (Correct or clarify language)	<input type="checkbox"/> 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 19.85.025\(4\)](#). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW 34.05.328(5)(b)(ii): Rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

- The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

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

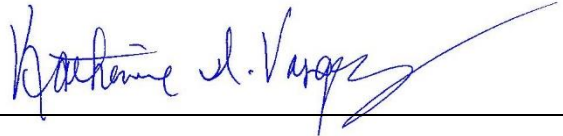
Name
Address
Phone
Fax
TTY
Email
Other

Date: September 16, 2024

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-881-010 External oversight of the special commitment center. Independent external oversight of the SCC (~~shall~~) must include:

- (1) (~~A governing body;~~
- ~~(2))~~ Professional standards to be used as a benchmark for evaluation;
- ~~((3))~~ (2) An inspection of care according to accepted professional standards;
- ~~((4))~~ (3) An (~~ombudsman~~) ombudsperson service; and
- ~~((5))~~ (4) External investigation of incidents.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-881-020 External oversight—Professional standards. (1) The department (~~shall~~) must develop (~~and governing body approve for use~~) professional practice standards applicable to treatment programs for adults civilly committed (~~adult~~) for sex (~~offenders~~) offenses.

- (2) Such standards (~~shall~~) must include provisions requiring:
 - (a) Staff competency, training, and supervision;
 - (b) Adequacy of treatment components and measures of progress;
 - (c) A treatment-supportive environment;
 - (d) Provision of medical services appropriate to a residential treatment setting; and
 - (e) Program oversight.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-881-025 External oversight—Annual inspection of care (IOC). (1) An independent, annual, on-site inspection of care, performed according to professional standards approved under this chapter, (~~shall~~) will be conducted of the SCC at least annually.

(2) The purpose of the IOC (~~shall be~~) is to provide objective measures of service delivery, for internal program use and quality management (~~, to the governing body~~).

(3) Members of the inspection of care team (~~shall~~) will be contracted by the department annually for a specified period during which they (~~shall~~) must:

- (a) Conduct an on-site and documentary inspection;
- (b) Prepare interim and final, and, as requested by the SCC (~~superintendent or governing body~~) chief executive officer, supplementary reports;
- (c) Receive and consider SCC program responses to all reports.

(4) The IOC team (~~shall~~) must be of no fewer than (~~four~~) three and no more than six persons.

- (a) At least one member of the IOC team must not be a DSHS employee; and
- (b) At least one member must be a sex offender treatment provider.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-881-030 External oversight—~~((Ombudsman))~~ Ombudsperson service. (1) The SCC ~~((shall))~~ must retain an ~~((ombudsman))~~ ombudsperson service for the purpose of conducting independent, neutral reviews of program conformance with internal SCC policies in the care, control, and treatment of residents at the SCC.

(2) The ~~((ombudsman))~~ ombudsperson function ~~((shall))~~ must be outside the supervision of the ~~((superintendent))~~ chief executive officer of the SCC and of the assistant secretary for the behavioral health ~~((and rehabilitation services))~~ administration.

(3) In performance of the ~~((ombudsman))~~ ombudsperson function, the individual(s) so employed ~~((shall))~~ must be afforded access to all records and documents normally available to public inspection according to rules and policies of the department and of the state of Washington.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-881-035 External oversight—Investigation of incidents. ~~((1))~~ The Washington state patrol shall investigate incidents which involve SCC residents in accordance with department policy.

~~((2))~~ The scope and authority for such investigations shall be determined through an interagency agreement between the department and the Washington state patrol.

~~((3))~~ Criteria to determine which incidents ~~((justify))~~ will be investigated by an external ~~((investigation shall))~~ entity must be ~~((approved))~~ determined by the DSHS secretary~~((, DSHS))~~.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-881-015 External oversight—Governing body.