

Chapter 388-880 WAC

SPECIAL COMMITMENT—SEXUALLY VIOLENT PREDATORS

(Formerly chapter 275-155 WAC)

WAC	
388-880-005	Special commitment of sexually violent predators— Legal basis.
388-880-007	Purpose.
388-880-010	Definitions.
388-880-020	Authorization for indefinite commitment to the sexual predator program.
388-880-030	Sexual predator program supplemental and post commit- ment evaluations.
388-880-031	Sexual predator program annual evaluation.
388-880-033	Evaluator—Qualifications.
388-880-034	Evaluator—Supplemental and post commitment evalua- tion responsibilities.
388-880-035	Refusal to participate in a supplemental or post commit- ment pretrial evaluation.
388-880-036	Supplemental evaluation—Reporting.
388-880-040	Individualized treatment.
388-880-042	Resident records—Purposes.
388-880-043	Resident records—Location and custody.
388-880-044	Resident records—Access.
388-880-045	Resident records—Retention.
388-880-050	Rights of a person court-detained or civilly committed to the special commitment center.
388-880-055	How SCC processes recommendations related to releases, discharges and revocations.
388-880-056	How SCC considers a resident for release to an LRA.
388-880-057	How SCC considers a resident's revocation of LRA sta- tus.
388-880-058	How SCC considers a recommendation for a resident's unconditional discharge.
388-880-059	Communicating and coordinating resident discharge and conditional release related matters.
388-880-060	Sexual predator program reimbursement.
388-880-070	Resident escorted leave—Purpose.
388-880-080	Reasons why escorted leave is allowed.
388-880-090	Conditions of a resident's escorted leave.
388-880-100	Application requests and approval for resident escorted leave.
388-880-110	Procedures for resident escorted leave from the total confinement facility.
388-880-120	Expenses associated with escorted leave.
388-880-130	Escorted leave expenses—Paid by resident.
388-880-140	Escorted leave expenses—Paid by department.
388-880-150	Requests for public disclosure.
388-880-151	Requests for resident medical information.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-880-032	Recommendation for release to a less restrictive alterna- tive (LRA). [Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-032, filed 12/27/01, effective 1/27/02.] Repealed by WSR 03-23-022, filed 11/10/03, effective 12/11/03. Statutory Authority: RCW 71.09.040(4).
-------------	--

WAC 388-880-005 Special commitment of sexually violent predators—Legal basis. (1) Chapter 71.09 RCW authorizes the department to develop a sexual predator program (SPP) for a person the court determines to be a sexually violent predator.

(2) The department's SPP shall provide:

(a) Custody, supervision, and evaluation of a person court-detained to the SPP to determine if the person meets the

definition of a sexually violent predator under chapter 71.09 RCW; and

(b) Treatment, care, evaluation and control of a person civilly committed as a sexually violent predator.

(3) Evaluations and evaluation procedures may be established in coordination with the department, the department of corrections and the end of sentence review committee.

(4) Secure facilities operated by the department for the sexual predator program include the special commitment center (SCC) total confinement facility, a secure community transition facility, and any community-based facility established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

(5) The secretary or designee may execute such agreements as appropriate and necessary to implement this chapter.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-005, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-005, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-005, filed 12/27/01, effective 1/27/02. WSR 99-21-001, recodified as § 388-880-005, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-005, filed 12/1/97, effective 1/1/98. Statutory Authority: 1990 c 3. WSR 90-17-120 (Order 3054), § 275-155-005, filed 8/21/90, effective 9/21/90.]

WAC 388-880-007 Purpose. These rules carry out the legislative intent of chapter 71.09 RCW, authorizing the department to provide evaluation, care, control, and treatment of persons court-detained or civilly committed to the sexual predator program.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-007, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-007, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-007, filed 12/27/01, effective 1/27/02.]

WAC 388-880-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"Appropriate facility" means the total confinement facility the department uses to hold and evaluate a person court-detained under chapter 71.09 RCW.

"Authorized third party" means a person approved in writing by the resident on a DSHS Form 17-063 (Authorization to disclose records), who may request and have access to the resident clinical file under chapter 71.09 RCW or the resident's medical records under chapter 70.02 RCW.

"Care" means a service the department provides during a person's detention or commitment within a secure facility toward adequate health, shelter, and physical sustenance.

"Control" means a restraint, restriction, or confinement the department applies protecting a person from endangering self, others, or property during a period of custody under chapter 71.09 RCW.

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

"Escorted leave" means a leave of absence under the continuous supervision of an escort from a facility housing persons who are court-detained or civilly committed under chapter 71.09 RCW.

"Evaluation" means an examination, report, or recommendation by a professionally qualified person to determine if a person has a personality disorder and/or mental abnormality which renders the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. The four types of evaluations that occur related to a person's commitment or detention under chapter 71.09 RCW are as follows:

- The **initial evaluation** occurs before the person is detained at the SCC, usually occurring while the person is in prison, juvenile rehabilitation administration (JRA), a state mental hospital, a county jail, or in the community following commission of a recent overt act.

- **Supplemental evaluations**, as required by RCW 71.09.040, are performed for civil commitment trial purposes.

- **Annual review evaluations** occur only after a person has been civilly committed under RCW 71.09.070

- **Post commitment evaluations**, as required by RCW 71.09.090, when the person qualifies for a conditional or unconditional release trial.

"Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

"Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

"Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

"Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

"Immediate family" includes a resident's parents, step-parents, parent surrogates, legal guardians, grandparents, spouse, brothers, sisters, half or stepbrothers or sisters, children, stepchildren, registered domestic partner, and other dependents.

"Indigent" refers to the financial status of a resident who has maintained a total balance of forty dollars or less, combined, in his/her resident trust and resident store accounts for the past thirty days, after paying court ordered legal financial obligations, child support, or cost-of-care reimbursement, and who swears or affirms under penalty of perjury that he/she has no additional outside resources, including but not limited to pension income, business income, and a spouse's or registered domestic partner's employment or other income.

"Individual treatment plan (ITP)" means an outline the SCC staff persons develop detailing how control, care,

and treatment services are provided to a civilly committed person or to a court-detained person.

"Legal mail" means a resident's written communications, to or from: Courts/court staff regarding a legal action currently before a court, a licensed attorney, a public defense agency, a licensed private investigator retained by private counsel representing a resident or appointed by a court, an expert retained by an attorney representing a resident or appointed by a court, and a law enforcement agency.

"Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions stated in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.-230.

"Less restrictive alternative facility" means a secure community transition facility as defined under RCW 71.09.020(1).

"Mental abnormality" means a congenital or acquired condition affecting the person's emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

"Native format" means the format in which a record subject to public disclosure was originally produced.

"Oversight" means official direction, guidance, review, inspection, investigation, and information gathering activities conducted for the purposes of program quality assurance by persons or entities within, or external to, the SCC.

"Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

"Predatory" means acts a person directs toward:

- (1) Strangers;
- (2) Individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or
- (3) Persons of casual acquaintance with whom no substantial personal relationship exists.

"Professionally qualified person":

(1) **"Psychiatrist"** means a person licensed as a physician in this state, in accordance with chapters 18.71 and 18.57 RCW. In addition, the person shall:

- (a) Have completed three years of graduate training in a psychiatry program approved by the American Medical Association or the American Osteopathic Association; and
- (b) Be certified, or eligible to be certified, by the American Board of Psychiatry and Neurology.

(2) **"Psychologist"** means a person licensed as a doctoral level psychologist in this state, in accordance with chapter 18.83 RCW.

"Relapse prevention plan (RPP)" details static and dynamic risk factors particular to the resident and contains a written plan of interventions for the purpose of reducing the risk of sexual offending.

"Resident" means a person court-detained or civilly committed pursuant to chapter 71.09 RCW.

"Resident trust account" means the custodial bank account, held by the state, which represents the resources of the individual resident which is held for the individual resident's use.

"Responsivity" refers to the delivery of treatment in a manner that is consistent with the abilities and learning style of the offender. Responsivity can be conceptualized within the following categories: Physical limitations and sensory impairments, cognitive and learning impairments, mental health symptoms and behavioral disorders, cultural and sub-cultural differences to the extent that these differences may interfere with treatment participation.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"Secure community transition facility (SCTF)" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under chapter 71.09 RCW. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include, but are not limited to, the facilities established in RCW 71.09.201 and any community-based facilities established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

"SCTF community transition team (CTT-SCTF)" means a team made up of three key individuals who will be closely involved with day to day decision making related to the transition activities of a resident residing in an SCTF operated by the department of social and health services. These three individuals include the DOC community corrections officer, the sex offender treatment provider employed by the department or who has been contracted by SCC, and the SCTF manager, the clinical director or designee may substitute for the SCTF manager. The CTT-SCTF must approve all community activities of an SCTF resident. As the agency responsible for funding SCTF activities, the department through its SCTF manager may consider budgetary constraints when approving or supporting discretionary activities such as community shopping or recreation, or personal activities such as visiting family and friends.

"Secure facility" means a residential facility for persons court-detained or civilly committed under the provisions of chapter 71.09 RCW that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement in RCW 71.09.096.

"Senior clinical team" means a body of clinical professionals as described below which has been designated by the superintendent to meet regularly to:

- Make decisions about the implementation of the sex offender treatment program.
- Review for the purposes of approval or denial, treatment team recommendations for phase promotions or demotions.
- Make clinical recommendations about residents in community less restrictive alternative (LRA) settings.
- Provide general consultation regarding resident treatment and behavioral management issues.

- Conduct outreach to program areas of SCC including staffing and consultation of residents in sex offender treatment.

- As requested, provide guidance and advice to the clinical director, the superintendent and the treatment teams.

Members of the senior clinical team are expected to take into account all available relevant information, including contextual and situational factors, to make optimal, clinically supportable decisions.

The senior clinical team shall consist of a team of professionally qualified persons employed by the department which are designated by the superintendent. The team may include a SCC contracted community based psychologist with advanced forensic assessment and treatment expertise, and/or a contracted community-based psychiatrist with advanced expertise in forensic assessment and treatment.

The senior clinical team shall not include the following persons (unless needed at the request of the clinical director for consultation on a specific issue(s):

- The resident's attorney;
- The prosecuting agency;
- Any representative from DOC;
- Potential sex offender treatment providers (SOTPs) or community providers of any type who may treat the resident; or
- Any other party who may serve to financially gain from the resident's release.

"Sexual predator program" means a department-administered and operated program including the special commitment center (SCC) established for:

- (1) A court-detained person's custody and evaluation; or
- (2) Control, care, and treatment of a civilly committed person defined as a sexually violent predator under chapter 71.09 RCW.

"Sexually violent offense" means an act defined under chapter 9A.28 RCW, RCW 9.94A.030 and 71.09.020.

"Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

"Superintendent" means the person appointed by the secretary of the department to be responsible for the general operation, program, and facilities of the SCC.

"Total confinement facility" means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-010, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-010, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-010, filed 12/27/01, effective 1/27/02. WSR 99-21-001, recodified as § 388-880-010, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-010, filed 12/1/97, effective 1/1/98. Statutory Authority: 1990 c 3. WSR 90-17-120 (Order 3054), § 275-155-010, filed 8/21/90, effective 9/21/90.]

WAC 388-880-020 Authorization for indefinite commitment to the sexual predator program. A person must be admitted to the custody of the department when, under RCW 71.09.060, a court or jury determines, beyond a reasonable doubt, that the person is a sexually violent predator and commits the person for placement in a secure facility operated by the department for control, care, and treatment.

[Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-020, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-020, filed 12/27/01, effective 1/27/02. WSR 99-21-001, recodified as § 388-880-020, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.030 and 71.09.050. WSR 93-17-027 (Order 3609), § 275-155-020, filed 8/11/93, effective 9/11/93. Statutory Authority: 1990 c 3. WSR 90-17-120 (Order 3054), § 275-155-020, filed 8/21/90, effective 9/21/90.]

WAC 388-880-030 Sexual predator program supplemental and post commitment evaluations. (1) When a court orders a person transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator, pursuant to RCW 71.09.040(4), the department shall, before the scheduled commitment hearing or trial, provide an evaluation to the court. The evaluation must make a recommendation as to whether the person suffers from a mental abnormality or personality disorder that makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility.

(2) Supplemental and post commitment evaluations must be conducted in accordance with the criteria set forth in WAC 388-880-033, and must be in the form required by and filed in accordance with WAC 388-880-034 and 388-880-036.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-030, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-030, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-030, filed 12/27/01, effective 1/27/02. WSR 99-21-001, recodified as § 388-880-030, filed 10/6/99, effective 10/6/99. Statutory Authority: 1990 c 3. WSR 90-17-120 (Order 3054), § 275-155-030, filed 8/21/90, effective 9/21/90.]

WAC 388-880-031 Sexual predator program annual evaluation. (1) Annually or as required by court order, the department shall conduct an evaluation and examine the mental condition of each person civilly committed under chapter 71.09 RCW. The evaluation shall be conducted by a professionally qualified person designated by the secretary.

(2) Under RCW 71.09.070, the annual evaluation must include consideration of whether:

(a) The person currently meets the definition of a sexually violent predator; and

(b) Conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community.

(3) The report of the department shall be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and shall be prepared by a professionally qualified person as defined herein.

(4) The department shall file this periodic report with the court that civilly committed the person under chapter 71.09 RCW.

(5) A copy of this report shall be served on the prosecuting agency involved in the initial hearing or commitment and

upon the detained or committed person and his or her counsel.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-031, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-031, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-031, filed 12/27/01, effective 1/27/02.]

WAC 388-880-033 Evaluator—Qualifications. Professionally qualified persons employed by the department or under contract to provide evaluative services must:

(1) Have demonstrated expertise in conducting evaluations of sex offenders, including diagnosis and assessment of reoffense risk;

(2) Have demonstrated expertise in providing expert testimony related to sex offenders or other forensic topics; and

(3) Provide documentation of such qualification to the department.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-033, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-033, filed 11/10/03, effective 12/11/03.]

WAC 388-880-034 Evaluator—Supplemental and post commitment evaluation responsibilities. The evaluation done in accordance with WAC 388-880-030(1) in preparation for a trial or hearing must be based on the following:

(1) Examination of the resident, including a forensic interview and a medical examination, if necessary;

(2) Review of the following types of records, tests or reports relating to the person that the evaluator deems necessary, including but not limited to:

(a) All available criminal records, to include arrests and convictions, and records of institutional custody, including city, county, state and federal jails or institutions, with any records and notes of statements made by the person regarding criminal offenses, whether or not the person was charged with or convicted of the offense;

(b) All necessary and relevant court documents;

(c) Sex offender treatment records and, when permitted by law, substance abuse treatment program records, including group notes, autobiographical notes, progress notes, psycho-social reports and other material relating to the person's participation in treatment;

(d) Psychological and psychiatric testing, diagnosis and treatment, and other clinical examinations, including records of custody in a mental health treatment hospital or other facility;

(e) Medical and physiological testing, including plethysmography and polygraphy;

(f) Any end of sentence review report, with information for all prior commitments upon which the report or reports were made;

(g) All other relevant and necessary records, evaluations, reports and other documents from state or local agencies;

(h) Other relevant and appropriate tests that are industry standard practices;

(i) All evaluations, treatment plans, examinations, forensic measures, charts, files, reports and other information made for or prepared by the SCC which relate to the resident's care, control, observation, and treatment.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-034, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-034, filed 11/10/03, effective 12/11/03.]

WAC 388-880-035 Refusal to participate in a supplemental or post commitment pretrial evaluation. If the person refuses to participate in examinations, forensic interviews, psychological testing, physiological testing, or any other interviews necessary to conduct the supplemental or post commitment evaluation under WAC 388-880-030(1), the evaluator must notify the SCC forensic services manager. The SCC will notify the prosecuting agency for potential court enforcement.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-035, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-035, filed 11/10/03, effective 12/11/03.]

WAC 388-880-036 Supplemental evaluation—Reporting. (1) The evaluation must be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and must be prepared by a professionally qualified person.

(2) The report of the evaluation must include:

- (a) A description of the nature of the examination;
- (b) A diagnosis of the mental condition of the person;
- (c) A determination of whether the person suffers from a mental abnormality or personality disorder;
- (d) An opinion as to whether the person meets the definition of a sexually violent predator to a reasonable degree of psychological or medical certainty.

(3) The department shall file the evaluation with the court that detained or committed the person under chapter 71.09 RCW.

(4) A copy of the evaluation must be served on the prosecuting agency involved in the initial hearing or commitment, the court of record and upon the court-detained or civilly committed person and his or her counsel.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-036, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-036, filed 11/10/03, effective 12/11/03.]

WAC 388-880-040 Individualized treatment. (1) When the court detains a person or commits a person to the SCC, SCC staff persons designated by the clinical director shall develop an individual treatment plan (ITP) for the person. The resident shall have an opportunity to participate in the treatment planning process.

(2) The ITP shall be based upon, but not limited to, the following information as may be available:

- (a) The person's offense history;
- (b) A psycho-social history;
- (c) The person's most recent evaluation; and
- (d) A statement of high risk factors for potential reoffense, as may be ascertained over time.

(3) The ITP shall include, but not be limited to:

- (a) A description of the person's specific treatment needs in:
 - (i) Sex offender specific treatment;
 - (ii) Substance abuse treatment, as applicable;

(ii) Supports to promote psychiatric stability, as applicable;

(iv) Supports for medical conditions and disability, as applicable;

(v) Social, family, and life skills.

(b) An outline of intermediate and long-range treatment goals, with cognitive and behavioral interventions for achieving the goals;

(c) A description of SCC staff persons' responsibilities; and

(d) A general plan and criteria, keyed to the resident's achievement of long-range treatment goals, for recommending to the court whether the person should be released to a less restrictive alternative.

(4) SCC staff persons shall review the person's ITP every six months.

(a) A new treatment plan will be issued every twelve months or more often as needed.

(b) Existing treatment plans will be reviewed at least once every six months by the treatment team, this review shall be documented in a progress note.

(c) The review or reissue of a resident's treatment plan may occur at anytime based on the resident's behavior or treatment status.

(5) A court-detained person's plan may include access to program services and opportunities available to persons who are civilly committed, with the exception that the court-detained person may be restricted in employment and other activities, depending on program resources and incentives reserved for persons who are civilly committed and/or actively involved in treatment.

(6) Nothing in this chapter shall exclude a court-detained person from engaging in the sex offender treatment program and, should the person elect to engage in treatment before the person's commitment trial:

(a) The person shall be accorded privileges and access to program services in a like manner as are accorded to a civilly committed person in treatment; and

(b) Shall not, solely by reason of the person's voluntary participation in treatment, be judged nor assumed by staff, administrators or professional persons of the SCC or of the department to meet the definition of a sexually violent predator under chapter 71.09 RCW.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-040, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-040, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-040, filed 12/27/01, effective 1/27/02. WSR 99-21-001, recodified as § 388-880-040, filed 10/6/99, effective 10/6/99. Statutory Authority: 1990 c 3. WSR 90-17-120 (Order 3054), § 275-155-040, filed 8/21/90, effective 9/21/90.]

WAC 388-880-042 Resident records—Purposes. (1) The SCC shall maintain two types of records for each person court-detained for evaluation or civilly committed for treatment as a sexually violent predator. Such records shall be known as the clinical record and the medical record. Such records shall include:

(a) **Clinical records**—A record of mental health related treatment and behavior related matters such as:

(i) Evaluations, records, reports, and other documents obtained from other agencies relating to the person prior to the person's detention and/or commitment to the SCC.

(ii) Evaluations, clinical examinations, forensic measures, treatment plans charts, files, reports, responsive documents, grievances and other information made for or prepared by SCC personnel, contracted professionals, or others which relate to the person's care, control, and treatment during the person's detention or commitment to, the SCC.

(iii) Observation reports, memoranda to the resident, progress notes, behavior management reports, violation reports and other correspondence received at SCC or while on a secure community transition facility (SCTF) or other less restrictive alternative (LRA) placement.

(iv) Transitory and nontransitory documents will be retained pursuant to the DSHS approved retention schedule.

(b) **Medical records**—A record of medical care received by a resident before placement at SCC and while placed at SCC.

(i) All medical evaluations, records, reports, and other documents obtained from other agencies relating to the person's health status.

(ii) All medical evaluations, records, reports, and other documents created by SCC contracted and state personnel while the resident is placed at SCC.

(iii) Records made by contracted professional persons providing treatment or residential services may be maintained in their professional files, subject to contractual arrangement for SCC and department access to those records.

(iv) The SCC health clinic at the total confinement center on McNeil Island serves as the primary care provider and referring entity for all community based health care and treatment and as such is authorized to receive copies of all medical records pertaining to resident health care paid for by the department.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-042, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-042, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-042, filed 12/27/01, effective 1/27/02.]

WAC 388-880-043 Resident records—Location and custody. (1) Based on the resident's physical location of residence, his or her records shall be securely maintained in one of the following four types of locations:

(a) In a designated records storage area within the SCC total confinement facility (TCF);

(b) In a secure filing system at an SCC-operated secure community transition facility (SCTF);

(c) In a secure filing system at a contracted facility such as a group home or nursing home; or

(d) In a secure filing system of the office of a licensed, contracted provider such as a community based sex offender treatment provider or psychiatrist.

(2) The person's current medical and clinical treatment records shall be maintained in the facility wherein the resident is housed and made directly available to medical and emergency providers and authorized staff persons.

(3) The designated records storage area within the SCC TCF serves as a centralized repository for resident records regardless of the resident's status or location.

(4) During the period of a person's residence in a SCTF operated by the department:

(a) A copy of all resident records created at the SCTF will be forwarded to the SCC TCF records center, the original record will remain at the SCTF.

(b) The person's original records pertaining to their treatment, behavior and care while they resided at the SCC TCF will remain in the designated records storage area within the SCC TCF and will not be transferred to the SCTF.

(5) Regardless of location, only assigned treatment providers and authorized staff persons shall have access to resident records.

(6) During a period of a person's less restrictive alternative (LRA) placement in a private home or in a facility operated by a contracting agency:

(a) Original behavioral and treatment records and evaluations shall be maintained by the contracted professional providing treatment and copies thereof shall be sent to the SCC or the department by contract requirement; and

(b) Copies of documents held by the SCC may be made available as necessary to the contracting agency, the contracted treatment provider, and the assigned community corrections officer.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-043, filed 6/22/10, effective 7/23/10. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-043, filed 12/27/01, effective 1/27/02.]

WAC 388-880-044 Resident records—Access. (1) **Resident records disclosure requirements and conditions.**

(a) Per RCW 71.09.080, SCC must keep resident records detailing all medical, expert, and professional care and treatment received by an SCC resident, and must keep copies of all reports of periodic examinations made pursuant to the resident's detainment and/or civil commitment.

(b) Per RCW 71.09.080(2), access to resident medical and clinical records by persons other than department employees or parties representing the department is limited to the following:

(i) Upon request only to:

(A) The resident;

(B) The resident's attorney;

(C) The resident's legal guardian, guardian ad litem or other personal representative properly authorized, in writing, by the resident;

(D) The prosecuting attorney/attorney general;

(E) The court;

(F) A protection and advocacy agency when authorized by law; or

(G) An expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(ii) Upon documented request by a resident, the SCC shall provide the resident supervised access to all clinical and medical records and reports, or to redacted copies thereof, related to the resident's commitment, control, care and treatment. SCC may reasonably limit conditions, frequency and duration of the resident's access to his or her records and reports.

(A) The resident must review the aforementioned documents in person, at the facility where he or she resides.

(B) The resident may purchase copies of these documents through the SCC public records disclosure process described in WAC 388-880-150.

(iii) All other parties requesting resident records must have the signed authorization of the resident or be the resident's personal representative, or obtain a court order. For these records, SCC will charge copying fees per WAC 388-880-150 and 388-880-151.

(2) Inventories of resident personal property.

(a) SCC is required by RCW 71.09.080(3) to make available for inspection, by a "responsible relative" of the resident, a copy of the resident's personal property inventory which has been signed by the staff members who conducted the inventory; unless the resident has specifically imposed a limitation on the release of this information in advance of the request.

(b) SCC will not disclose the contents of the inventory to other persons without authorization of the resident or order of the court.

(c) A copy of the resident's current inventory shall be provided to him or her at no cost whenever a new inventory has been completed.

(3) A policy on access to resident records shall be maintained and published to residents of the SCC.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-044, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-044, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-044, filed 12/27/01, effective 1/27/02.]

WAC 388-880-045 Resident records—Retention. (1)

The SCC shall create schedules and requirements, consistent with department policy, for the retention, storage, and disposal of records, documents, evaluations, reports, and other material related to SCC residents, under the following conditions:

(a) While a person is currently court-detained or civilly committed to the SCC;

(b) Following a court ruling that a person does not meet the definition of a sexually violent predator within chapter 71.09 RCW and upon the person's release from the custody of the department;

(c) Following a resident's unconditional discharge from commitment;

(d) Following a resident's death.

(2) All original records specified herein and held by the SCC shall be retained in the SCC total confinement facility for a period of five years, after which the records will be transferred to a designated location for a period consistent with department administrative policy, after a resident's:

(a) Release following a court ruling that the person does not meet the definition of a sexually violent predator within chapter 71.09 RCW;

(b) Unconditional discharge from commitment; or

(c) Death.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-045, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-045, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-045, filed 12/27/01, effective 1/27/02.]

(1/15/13)

WAC 388-880-050 Rights of a person court-detained or civilly committed to the special commitment center. (1) During a person's period of detention or commitment, the department shall:

(a) Apprise the person of the person's right to an attorney and to retain one professionally qualified person to perform an evaluation on the person's behalf;

(b) Provide access to the person and the person's records in accordance with RCW 71.09.080 and WAC 388-880-044.

(2) A person the court detains for evaluation or commits to the SCC shall:

(a) Receive adequate care and individualized treatment;

(b) Be permitted to wear the person's own clothing except as may be required to wear state issued clothing during an escorted leave from the secure facility, or when the wearing of state issued clothing is required within the facility for health or safety of self or others, or when the wearing of a particular type of clothing or a particular colored clothing or accoutrement is prohibited for the general safety and security within the facility where the person is housed; and to keep and use the person's own possessions, except when deprivation of possessions is necessary for the person's protection, health or safety, the protection, health or safety of others, or to limit the quantity of the person's personal possessions to within facility limitation, or for the protection of property within the SCC or SCTF;

(c) Be permitted to accumulate and spend a reasonable amount of money in the person's SCC resident trust account;

(d) Have access to reasonable personal storage space within SCC limitations, which shall be outlined in an internal policy that is accessible to the person;

(e) Be permitted to have approved visitors within reasonable limitations;

(f) Have reasonable access to a telephone to make and receive confidential calls within SCC limitations; and

(g) Have reasonable access to letter writing material and to:

(i) Receive and send correspondence through the mail within SCC limitations and according to established safeguards against the receipt of contraband material; and

(ii) Send written communication regarding the fact of the person's detention or commitment.

(3) A person the court commits to the SCC shall have the following procedural rights to:

(a) Have reasonable access to an attorney and be informed of the name and address of the person's designated attorney;

(b) Petition the court for release from the SCC; and

(c) Receive annual written notice of the person's right to petition the committing court for release. The department's written notice and waiver shall:

(i) Include the option to voluntarily waive the right to petition the committing court for release; and

(ii) Annually be forwarded to the committing court by the department.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-050, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-050, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-050, filed 12/27/01, effective 1/27/02. WSR 99-21-001, recodified as § 388-880-050, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.030 and 71.09.050. WSR 93-17-

027 (Order 3609), § 275-155-050, filed 8/11/93, effective 9/11/93. Statutory Authority: 1990 c 3. WSR 90-17-120 (Order 3054), § 275-155-050, filed 8/21/90, effective 9/21/90.]

WAC 388-880-055 How SCC processes recommendations related to releases, discharges and revocations. The purpose of WAC 388-880-056 through 388-880-059 is:

- (1) To explain how SCC internally considers residents for a release to an LRA;
- (2) To explain how SCC internally considers a resident's revocation of LRA status;
- (3) To explain how SCC internally considers a recommendation for a resident's unconditional discharge;
- (4) To explain how SCC communicates and coordinates resident discharge and conditional release related matters.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-055, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-055, filed 11/10/03, effective 12/11/03.]

WAC 388-880-056 How SCC considers a resident for release to an LRA. When the department, based on a forensic evaluation or progress in sex offender treatment, considers a SCC resident for a less restrictive alternative placement under RCW 71.09.090(1), or considers a resident currently residing in a secure community transition facility (SCTF) on a conditional release for further transition into a nonSCTF less restrictive alternative, the clinical director shall schedule the senior clinical team to review the matter and formulate a clinical recommendation to the superintendent.

The meeting will provide an adequate staffing of the case, to include the resident's:

- (1) Participation and progress in sex offender treatment.
- (2) Behavior.
- (3) Latest annual forensic evaluation.
- (4) Relapse prevention plan.
- (5) Any other relevant information such as: medication compliance, manifestation and management of dynamic risk factors, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, PPG assessments results, etc.
- (6) When the resident is being considered for a LRA placement in a nonstate sponsored setting such as a private home or apartment option, the team shall also consider the resident's finances such as savings, benefits, eligibility for social services, housing options, employment or employability, absence or availability of community supports, family supports, etc.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-056, filed 6/22/10, effective 7/23/10.]

WAC 388-880-057 How SCC considers a resident's revocation of LRA status. (1) When a resident on a conditional release in any less restrictive alternative setting is alleged to have committed a violation of his or her court-ordered conditions and is pending a hearing on revocation or modification, the superintendent may direct a senior clinical team to review the matter and make a clinical recommendation.

- (a) In developing its clinical recommendation, the senior clinical team will review:

- (i) The resident's transition activity;
- (ii) The factors surrounding the situation(s)/behavior(s) causing the revocation review;
- (iii) The ability of SCC and DOC to adequately assure for the public's safety and the resident's compliance with less restrictive alternative conditions if the resident remains in the community or is allowed community access;
- (iv) The ability of SCC and department of corrections (DOC) to adequately manage the resident in the community given existing resources; and
- (v) Any other relevant information (e.g., medication compliance, manifestation and management of dynamic risk factors, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, PPG assessment results, etc.).

(b) The senior clinical team will provide the superintendent with a clinical recommendation regarding the revocation and any modification to the conditions if so recommended.

(2) The superintendent or designee will notify the prosecuting attorney, the resident's community corrections officer (CCO), sex offender treatment provider (SOTP) and local law enforcement of SCC's position pertaining to the revocation or continuation of the resident's less restrictive alternative status.

(3) When a resident is residing in the SCC total confinement facility while he or she is pending a revocation decision on their LRA status:

(a) An SCC associate superintendent will be responsible to determine the resident's living unit placement, behavior level assignment, persons who may be on the resident's personal visiting list, recreation activities and privileges, and personal property privileges.

(b) The resident's community transition team, in consultation with the SCC clinical department, shall determine the resident's treatment activities.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-057, filed 6/22/10, effective 7/23/10.]

WAC 388-880-058 How SCC considers a recommendation for a resident's unconditional discharge. (1) When the department, based on forensic evaluation that opines that a resident no longer meets the definition of a sexually violent predator, or based on progress in sex offender treatment and a successful transition process into the community, considers a resident for unconditional discharge, the clinical director shall convene a meeting of the senior clinical team within thirty days and provide a clinical recommendation to the superintendent.

(a) In formulating the clinical recommendation, the senior clinical team shall review any and all relevant information about this person, such as: Behavior, medication compliance, manifestation and management of dynamic risk factors, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, PPG assessment results, etc.

(b) The senior clinical team will provide the superintendent with a written statement identifying the clinical concerns of the team, if any.

(2) The superintendent or designee, after review of the forensic opinion and the clinical recommendation, will make a determination regarding the recommendation for the resi-

dent's unconditional discharge and will notify the relevant parties of the SCC position on the resident's unconditional discharge.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-058, filed 6/22/10, effective 7/23/10.]

WAC 388-880-059 Communicating and coordinating resident discharge and conditional release related matters. (1) Communication with the department.

(a) The SCC clinical director, or designee serves as the principal party at SCC responsible to communicate discharge and release matters internally within SCC.

(b) When a resident's request for advancement to community transition status is approved by the superintendent, the superintendent shall inform the DSHS secretary.

(c) If the SCC superintendent endorses the resident's request to petition the court for conditional release to either a secure community transition facility or other type of less restrictive alternative, the superintendent (as the secretary's designee) shall formally authorize the resident, in writing, to petition the court for a less restrictive alternative hearing in accordance with RCW 71.09.090.

(d) Once the superintendent has made a decision to support a resident's request to petition the court, the superintendent shall notify the clinical director of that decision. At that point the clinical director or designee shall serve as the principal party at SCC to communicate discharge and release matters to the resident, to external stakeholders which among others shall include the state attorney general's criminal justice division's sexually violent predator unit and the King County prosecuting attorney's sexually violent predator unit, and to organize the necessary activities in support of that discharge or conditional release.

(2) Responsibility to communicate court related activities.

(a) The resident's attorney is responsible to coordinate the court hearing.

(b) When the court orders a resident to be conditionally released to a less restrictive alternative, the SCC clinical director or designee shall:

(i) Manage the release process, including community notification to the appropriate law enforcement agency at least thirty days prior to the resident's release to the court-approved LRA.

(ii) Keep internal SCC stakeholders apprised of the status of the case.

(iii) Coordinate the transition with the:

(A) DOC end of sentence review committee program manager;

(B) Assigned DOC community corrections officer, if applicable;

(C) Court-approved sex offender treatment provider, if applicable;

(D) Appropriate SCTF manager, if applicable; and

(E) Other court-approved providers or persons for the resident's court-approved living setting.

(iv) The coordination will address civil commitment issues, community safety and the court-ordered conditions of release.

(1/15/13)

(3) When the secretary objects to a pending release.

When the DSHS secretary objects to a pending release under RCW 71.09.090, before the scheduled less restrictive alternative court hearing or following the hearing such as in the case of newly discovered information, that objection shall be presented to the court in writing and shall be signed by the secretary or designee.

(4) When a less restrictive alternative placement is approved by the court.

When a resident of SCC is approved to transfer to a less restrictive alternative placement or a resident of a secure community transition facility is approved to transfer to an alternative less restrictive alternative placement, that placement will occur no sooner than thirty days following the day the court approves that placement. This thirty day period will allow SCC to fulfill its law enforcement notification obligations under RCW 9A.44.130 and the affected county sheriff to fulfill their public notification obligations under RCW 4.24.550.

(5) When a resident is unconditionally released by the court.

When a resident of the SCC total confinement facility or a secure community transition facility is determined by the court to no longer meet the criteria of a sexually violent predator under chapter 71.09 RCW, and the court orders that the resident shall be unconditionally released, SCC shall release the person within twenty-four hours of the court's decision.

(6) When a resident or attorney proposes an alternative less restrictive alternative placement.

(a) When a resident or attorney proposes an alternative less restrictive alternative placement other than what SCC recommends or supports, the resident or the attorney shall bear the responsibility to locate and identify that alternative.

(b) The department shall not reimburse attorneys or other parties for assisting residents in finding an alternative less restrictive alternative placement unless otherwise ordered by the commitment court for good cause.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-059, filed 6/22/10, effective 7/23/10.]

WAC 388-880-060 Sexual predator program reimbursement.

(1) The department shall obtain reimbursement under RCW 43.20B.330, 43.20B.335, 43.20B.340, 43.20B.345, 43.20B.350, 43.20B.355, 43.20B.360, and 43.20B.370 for the cost of care of a person court-committed to a SPP to the extent of the person's ability to pay.

(2) The department shall calculate ability to pay and assess liability under WAC 388-855-0045 in order to permit the department to initiate cost of care collections.

(3) SCC shall fulfill its obligations under chapter 43.20 RCW by submitting relevant resident information on each resident who has been civilly committed under chapter 71.09 RCW to the DSHS office of financial recovery to determine the resident's ability to contribute to his or her cost of care.

(4) DSHS shall not reimburse attorneys for assisting residents in administrative hearings related to cost of care recovery actions by the department.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-060, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-060, filed 11/10/03, effective 12/11/03. WSR 99-21-001, recodified as § 388-880-060, filed 10/6/99,

effective 10/6/99. Statutory Authority: 1990 c 3. WSR 90-17-120 (Order 3054), § 275-155-060, filed 8/21/90, effective 9/21/90.]

WAC 388-880-070 Resident escorted leave—Purpose. The purpose of WAC 388-880-070 through 388-880-140 is:

- (1) To set forth the conditions under which residents will be granted leaves of absence;
- (2) To provide for safeguards to prevent escape, the obtaining of contraband, and the commission of new crimes, while on leaves of absence; and
- (3) To outline the process for the reimbursement of the state by the resident and the resident's family for the costs of the leave of absence.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-070, filed 6/22/10, effective 7/23/10. WSR 99-21-001, recodified as § 388-880-070, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-070, filed 12/1/97, effective 1/1/98.]

WAC 388-880-080 Reasons why escorted leave is allowed. An escorted leave of absence may be granted by the superintendent, or designee, subject to the approval of the secretary, to residents to:

- (1) Go to the bedside of a member of the resident's immediate family as defined in WAC 388-855-0015, who is seriously ill;
- (2) Attend the funeral of a member of the resident's immediate family as defined in WAC 388-855-0015; and
- (3) Receive necessary medical or dental care which is not available in the institution.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-080, filed 6/22/10, effective 7/23/10. WSR 99-21-001, recodified as § 388-880-080, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-080, filed 12/1/97, effective 1/1/98.]

WAC 388-880-090 Conditions of a resident's escorted leave. (1) An escorted leave shall be authorized only for trips within the boundaries of the state of Washington.

(2) The duration of an escorted leave to the bedside of a seriously ill member of the resident's immediate family or attendance at a funeral shall not exceed forty-eight hours unless otherwise approved by the superintendent, or designee.

(3) Other than when housed in a city or county jail or state institution the resident shall be in the visual or auditory contact of an approved escort at all times.

(4) The resident shall be housed in a city or county jail or state institution at all times when not in transit or actually engaged in the activity for which the escorted leave was granted.

(5) Unless indigent, the resident and immediate family member shall, in writing, make arrangements to reimburse the state for the cost of the leave prior to the date of the leave.

(6) The superintendent, or designee, shall notify county and city law enforcement agencies with jurisdiction in the area of the resident's destination before allowing any escorted leave of absence.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-090, filed 6/22/10, effective 7/23/10. WSR 99-21-001,

recodified as § 388-880-090, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-090, filed 12/1/97, effective 1/1/98.]

WAC 388-880-100 Application requests and approval for resident escorted leave. The superintendent, or designee, shall establish a policy and procedures governing the method of handling the requests by individual residents. The superintendent, or designee, shall evaluate each leave request and, in writing, approve or deny the request within forty-eight hours of receiving the request based on:

- (1) The nature and length of the escorted leave;
- (2) The community risk associated with granting the request based on the resident's history of security or escape risk;
- (3) The resident's overall history of stability, cooperative or disruptive behavior, and violence or other acting out behavior;

(4) The resident's degree of trustworthiness as demonstrated by his/her performance in unit assignments, security level, and general cooperativeness with facility staff;

(5) The resident's family's level of involvement and commitment to the escorted leave planning process;

(6) The rehabilitative or treatment benefits which could be gained by the resident; and

(7) Any other information as may be deemed relevant.

The resident's, and family's, ability to reimburse the state for the cost of the escorted leave shall not be a determining factor in approving or denying a request.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-100, filed 6/22/10, effective 7/23/10. WSR 99-21-001, recodified as § 388-880-100, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-100, filed 12/1/97, effective 1/1/98.]

WAC 388-880-110 Procedures for resident escorted leave from the total confinement facility. (1) Only an employee approved by the superintendent, or designee, will be authorized to serve as an escort. All escorts from the total confinement facility must be employees of the department of social and health services.

(2) Escorted leave will only be granted for the reasons set forth in RCW 71.09.210.

(3) As a matter to standard procedure, the minimum level of restraint used on all escorted leaves performed under RCW 71.09.210 will be ankle and waist restraints which are intended to limit the person's ability to run and/or swing their arms.

(4) The superintendent, or designee, shall:

(a) As needed, on an individual basis, determine the need to use any additional types of restraint above and beyond the standard ankle and waist restraints.

(b) Determine if escort staff will be authorized to wear civilian clothing when escorting a resident to a bedside visit or funeral.

(c) Determine the number of staff and job classification of staff that shall conduct the escort.

(d) Ensure escort staff are trained and experienced in the escort procedures.

(e) Ensure that escorted leaves are supervised by staff in accordance with written procedures approved by the superintendent, or designee.

(f) Ensure that one escort is designated as a lead worker when more than one employee participates on the escort.

(5) The escort shall:

(a) Supervise the resident per written procedure.

(b) Adhere to the restraint level determination.

(c) Ensure that if a resident escapes, or disappears, that local law enforcement is immediately notified and that notification shall include a description of the resident's physical person, clothing and photo.

(d) Carry a copy of the resident's photo and description.

(e) Not deviate from the approved route or make unplanned stops unless an emergency situation arises.

[Statutory Authority: RCW 71.09.800 and 72.01.090. WSR 13-03-092, § 388-880-110, filed 1/15/13, effective 2/15/13. Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-110, filed 6/22/10, effective 7/23/10. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-110, filed 12/27/01, effective 1/27/02. WSR 99-21-001, recodified as § 388-880-110, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-110, filed 12/1/97, effective 1/1/98.]

WAC 388-880-120 Expenses associated with escorted leave. (1) Staff assigned escort duties shall be authorized per diem reimbursement for meals, lodging, and transportation at the rate established by the state travel policy.

(2) Staff assigned escort duties, in a travel status, shall receive appropriate compensation at regular salary or overtime for all hours spent in actual escort of the resident, but not including hours spent sleeping or not engaged in direct supervision of the resident. The salary shall be paid at the appropriate straight time and overtime rates as provided in the civil service rules.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-120, filed 6/22/10, effective 7/23/10. WSR 99-21-001, recodified as § 388-880-120, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-120, filed 12/1/97, effective 1/1/98.]

WAC 388-880-130 Escorted leave expenses—Paid by resident. (1) The expenses of the escorted leave as enumerated in WAC 388-880-070 through [388-880-]120 shall be reimbursed by the resident or his/her immediate family member unless the superintendent, or designee, has authorized payment at state expense in accordance with WAC 388-880-140.

(2) Payments by the resident, or the resident's immediate family member, shall be made to the facility's business office and applied to the appropriate fund as defined by law, applicable provisions of the Washington Administrative Code, or department policy.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-130, filed 6/22/10, effective 7/23/10. WSR 99-21-001, recodified as § 388-880-130, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-130, filed 12/1/97, effective 1/1/98.]

WAC 388-880-140 Escorted leave expenses—Paid by department. The expenses of the escorted leave shall be absorbed by the state if:

(1) The resident and his/her immediate family are indigent as defined in WAC 388-855-0045; or

(2) The expenses were incurred to secure necessary medical or dental care.

(1/15/13)

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-140, filed 6/22/10, effective 7/23/10. WSR 99-21-001, recodified as § 388-880-140, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-140, filed 12/1/97, effective 1/1/98.]

WAC 388-880-150 Requests for public disclosure. (1) Public disclosure requests for SCC records.

SCC records may be requested under the Public Records Act providing that the request complies with requirements and limitations of chapter 42.56 RCW and the fulfillment of that request will not violate any of the disclosure exemptions and limitations found in state or federal law.

(a) A public records disclosure request should include:

(i) Requester's name;

(ii) Requester's address;

(iii) A clear statement on the first page of the request indicating that the request is asking for public records; and

(iv) Identification and specification of the records(s) wanted.

(b) The address and fax number for requesting SCC records under public disclosure is:

DSHS - Special Commitment Center
Attn: Public Disclosure Coordinator
P.O. Box 88450
Steilacoom, Washington 98388-0646

Or the request can be faxed to (253) 617-6318.

(2) **Public viewing of SCC records.**

Requesters may review requested SCC records instead of, or before purchasing, by:

(a) Requesting a viewing appointment through SCC public disclosure staff after receiving notice that the records are assembled.

(b) Attending the scheduled viewing appointment at the SCC administrative offices located at 1715 Lafayette Street in Steilacoom, Washington.

(c) Viewing hours are between 9:00 a.m. and 4:00 p.m., Monday through Friday, except on legal holidays.

(d) The requester may purchase copies of public records before or at the time of public viewing.

(e) The requester may designate another person to review the requested records at a viewing appointment as arranged through SCC public disclosure staff.

(f) If the requester or such other person as he designates does not appear to view an installment of records, the SCC no longer needs to complete processing of the request and the request is considered abandoned and complete.

(3) **Cost for making public disclosure copies of SCC records.**

Under the Public Disclosure Act, SCC charges a fee for making copies associated with a public disclosure request.

(a) **Paper copy cost.** The cost charged by SCC for copies of records under public records disclosure is fifteen cents per single-sided page or thirty cents for double-sided pages in the native format, plus the actual cost of the mailing container and postage.

(b) **Electronic copy cost.** PDF or TIFF type copies of SCC records may be provided when appropriate at the cost of fifty dollars per hour or thirteen cents per page, in the native format, plus cost of media, mailing container and postage.

[Ch. 388-880 WAC p. 11]

When charged an hourly rate, it shall be prorated based on the actual time used to scan the documents and transfer them to electronic media. Due to privacy and security concerns when exemptions apply to any part of the information provided, copies of electronic records must normally be provided in PDF or similar format.

(c) **Other records.** SCC charges fifty dollars per hour, prorated based on the actual time used, to make copies of videotapes and compact disks such as CDR and DVD formatted items, plus the cost of media, mailing container and postage.

(d) No party will be reimbursed for public record request costs made under chapter 388-885 WAC.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-150, filed 6/22/10, effective 7/23/10.]

WAC 388-880-151 Requests for resident medical information. (1) Requests for SCC resident medical information.

SCC medical records may be requested under chapter 70.02 RCW "health care records access and disclosure" by authorized third parties and will be charged at the rate provided below.

Note - requests for copies of medical records submitted by SCC residents on themselves, as covered under RCW 71.09.080, will be provided at the public disclosure rates provided in WAC 388-880-150.

(a) A health care records disclosure request from an authorized third party shall include:

(i) Requester's name;

(ii) Requester's address;

(iii) A copy of the written and signed authorization from the resident on a DSHS Form 17-063 (Authorization to Disclose Records);

(iv) A clear statement on the first page of the request indicating that the requester is asking for a specific resident's medical information; and

(v) Identification and specification of the medical record(s) wanted.

(b) Requests for resident medical records under chapter 70.02 RCW shall be made to the following address or fax number:

DSHS - Special Commitment Center
Attn: Public Disclosure Coordinator
PO Box 88450
Steilacoom, Washington 98388-0646

Or the request can be faxed to (253) 617-6318.

(2) **Cost for making copies of resident medical information.**

Under RCW 70.02.010(15) SCC charges a fee for making copies associated with a medical information request.

(a) Cost - regardless of format:

(i) No more than one dollar and two cents per page for the first thirty pages.

(ii) No more than seventy-eight cents per page for all additional pages.

(iii) A twenty-three dollar clerical fee may be charged for searching and handling records.

(iv) Cost of mailing container and postage.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-151, filed 6/22/10, effective 7/23/10.]