

WSR 24-12-043

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Behavioral Health Administration)

[Filed May 30, 2024, 3:30 p.m., effective June 30, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of social and health services (department) recognizes these WAC have not been updated since 2013 and since then, there have been policy and RCW changes that require an update. The department has decided to change the name of the treatment program from "sexual predator program" to "sex offense specific treatment program" which will help clarify the type of treatment provided by the special commitment center. The department is updating the WAC that relate to the forensic evaluations that are completed as well as the qualifications of the forensic evaluators. The department is also updating language to include discharge planning.

Citation of Rules Affected by this Order: New WAC 388-880-041; repealing WAC 388-880-030, 388-880-034, 388-880-035 and 388-880-036; and amending WAC 388-880-005, 388-880-007, 388-880-010, 388-880-020, 388-880-031, 388-880-033, 388-880-040, and 388-880-050.

Statutory Authority for Adoption: RCW 71.09.070, 71.09.090, and 71.09.097.

Adopted under notice filed as WSR 24-09-058 on April 15, 2024.

Changes Other than Editing from Proposed to Adopted Version:

Based on comments received during the public rules hearing, the clarifying changes from the language proposed under WSR 24-09-058 are below.

WAC 388-880-010, the department will not remove the language from "evaluation" of "causes serious difficulty in controlling their sexually violent behavior and."

WAC 388-880-010, the department will not remove "post-commitment evaluations" as a definition.

WAC 388-880-010, the department is updating the definition of "secure community transition facility" to match statute.

WAC 388-880-010, the department removed the addition of the two RCWs under sexually violent offense.

WAC 388-880-033, the department changed the word "adjudicated" to "charged or convicted."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 4.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 8, Repealed 4.

Date Adopted: May 30, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5024.6

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

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)))~~ sex offender specific treatment program for a person the court determines to be a sexually violent predator.

(2) The department's ~~((SPP))~~ sex offender specific treatment program ~~((shall))~~ will provide:

(a) Custody, supervision, and evaluation of a person court-detained to the ~~((SPP))~~ sex offender specific treatment program 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~~((r))~~; and

(c) Discharge planning in accordance with RCW 71.09.080(4)(a)-(g).

(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))~~ sex offender specific treatment program include the special commitment center (SCC) total confinement facility, a secure community transition facility, and any community-based ~~((facility))~~ placement 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.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

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))~~ sex offender specific treatment program.

AMENDATORY SECTION (Amending WSR 23-11-031, filed 5/10/23, effective 6/10/23)

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.

"Chief executive officer (CEO)" means the person appointed by the secretary of the department to be responsible for the general operation, program, and facilities of the SCC. Also referred to as "superintendent of the special commitment center" and "superintendent" under chapter 71.09 RCW.

"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 or DSHS.

"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 ~~((r))~~ or mental abnormality, ~~((or both,))~~ which causes serious difficulty in controlling their sexually violent behavior and 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 may 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, department of children, youth, and families, 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, stepparents, parent surrogates, legal guardians, grandparents, spouse, brothers, sisters, half or stepbrothers or sisters, children, stepchildren, registered domestic partner, and other dependents.

"Indigent" for purposes of escorted leave and state issued property, refers to the financial status of a resident who has maintained

a total balance of \$40 or less, combined, in their resident trust and resident store accounts for the past 30 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 they have 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 (LRA)" 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(16).

"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.

"Original 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 must:

(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 resident. 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 subcultural differences to the extent that these differences may interfere with treatment participation.

"Risk factors" means resident factors, supported by empirical evidence, shown to increase the likelihood an individual will engage in sexual offending behavior.

"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 71.09.250 and any community-based facilities established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

"SCTF residential community transition team (RCTT)" 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 department of corrections (DOC) correctional specialist, the certified sex offender treatment provider employed by DSHS or who has been contracted by the SCC, and the SCTF manager, the chief of clinical services or designee may substitute for the SCTF manager. The RCTT must approve all community activities of an SCTF resident. As the agency responsible for funding SCTF activities, DSHS 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 team of professionally qualified persons employed by the department which are designated by the CEO to meet regularly to:

- Make decisions about the implementation of the sex offense treatment.

- Make clinical recommendations to provide input about residents releasing to 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 offense treatment.
- As requested, provide guidance and advice to the chief of clinical services, the CEO, and the treatment teams.

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

The team may include either a SCC contracted community-based psychologist with advanced forensic assessment and treatment expertise, a contracted community-based psychiatrist with advanced expertise in forensic assessment and treatment, or both.

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

- The resident's attorney;
- The prosecuting agency;
- Any representative from DOC;
- Potential certified sex offender treatment providers (CSOTPs) 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~~) Sex offender specific treatment 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 RCW 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.

"**Special commitment center (SCC)**" means the department operated secure facility that provides supervision and sex offender treatment services in a total confinement setting for individuals detained or committed under RCW 71.09.

"**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.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-020 Authorization for indefinite commitment to the (~~sexual predator~~) sex offender specific treatment 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.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

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

(2) Under RCW 71.09.070, the annual review 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)) must be in the form of a declaration or certification in compliance with the requirements of chapter 5.50 RCW ((9A.72.085)) and ((shall)) will be prepared by a professionally qualified person as defined herein.

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

(5) A copy of this report ((shall)) will be served on the prosecuting agency involved in the initial hearing or commitment and upon the ((detained or)) committed person and ((his or her)) their counsel.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-033 Evaluator—Qualifications. Professionally qualified persons employed by the department or under contract to provide evaluative services must have a license, in good standing, in the state of Washington as a psychologist or psychiatrist and:

(1) Have demonstrated expertise in conducting evaluations of ((sex offenders)) individuals charged or convicted for sexual and non-sexual crimes, including diagnosis and risk ((assessment of reoffense risk)) assessments;

(2) Have demonstrated expertise in providing expert testimony ((related to sex offenders or other forensic topics)) in legal proceedings involving individuals charged or convicted for sexual and nonsexual crimes; and

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

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-040 Individualized treatment: clinical services.

(1) When the court detains ~~((a person))~~ or commits a person to the SCC, SCC staff persons designated by the ~~((clinical director))~~ chief of clinical services ~~((shall))~~ must develop ~~((an individual))~~ a clinical treatment plan ~~((ITP))~~ for the person to address sex offense treatment progress. The resident ~~((shall))~~ will have an opportunity to participate in the treatment planning process.

(2) The ~~((ITP))~~ clinical treatment plan ~~((shall))~~ will 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 forensic evaluation; and

(d) A statement of high-risk factors for potential reoffense, as may be ascertained over time.

(3) The ~~((ITP shall))~~ clinical treatment plan must include, but is not ~~((be))~~ limited to:

(a) A description of the person's specific treatment and responsibility needs ~~((in:))~~;

~~((i) Sex offender specific treatment;~~

~~((ii) Substance abuse treatment, as applicable;~~

~~((iii))~~ (b) Supports to promote psychiatric stability, as applicable;

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

~~((v) Social, family, and life skills.~~

~~((b))~~ (d) 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.))~~ Each resident's clinical treatment plan will be done as follows:

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

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

(c) The review or reissue of a resident's clinical treatment plan may occur at any time 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, or both.

(6) Nothing in this chapter ~~((shall))~~ will 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)~~) will have access to program services (~~(in a like manner as are accorded)~~) similar to a civilly committed person in treatment; and

(b) (~~(Shall)~~) Will 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.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-880-041 Individualized treatment: discharge planning.

(1) SCC will develop on an ongoing basis, clinically appropriate discharge plans for every resident. These plans will address at a minimum:

(a) The resident's known physical health, functioning, and any need for health aid devices;

(b) The resident's known intellectual or cognitive level of functioning and need for specialized programming;

(c) The resident's known history of substance use and abuse;

(d) The resident's known history of risky or impulsive behaviors, criminogenic needs, and treatment interventions to address them;

(e) The resident's known ability to perform life skills and activities of daily living independently and the resident's known need for any disability accommodations;

(f) A summary of the known community services and supports the resident needs for a safe life in the community and the type of providers of such services and support; and

(g) A plan to mitigate the needs identified in this subsection that also addresses ways to develop or increase social supports, recreation opportunities, gainful employment, and if applicable, spiritual opportunities.

(2) These plans are memorialized in a psychosocial assessment. These assessments will be written by the assigned social worker and reviewed by the social work manager. Psychosocial assessments are updated on an annual basis, or more frequently if needed.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

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)~~) must:

(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;~~) Provide access to the person and the person's records in accordance with RCW 71.09.080(3) and WAC 388-880-044; and

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

requests review of their SCC records to the SCC records department, the SCC records department will compile all records and schedule a time and location for the resident to review those records.

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

(a) Receive adequate care, ~~((and))~~ individualized treatment, and discharge planning;

(b) Be permitted to wear the person's own clothing and maintain the person's own possessions except ~~((as may be))~~ when:

(i) 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,))~~;

(ii) Doing so would impact the health, safety, or security of the facility, 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))~~

(iii) ((limit)) Limiting the quantity of the person's personal possessions to within facility ~~((limitation))~~ limitations, or for the protection of property within the ~~((SCC))~~ TCF or SCTF;

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

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

~~((Be permitted to have))~~ Have access to approved visitors ~~((within reasonable limitations))~~;

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

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

(i) Receive and send correspondence through the mail within SCC policies~~((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))~~ will 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))~~ must:

(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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-880-030 Sexual predator program supplemental and post commitment evaluations.
- WAC 388-880-034 Evaluator—Supplemental and post commitment evaluation responsibilities.
- WAC 388-880-035 Refusal to participate in a supplemental or post commitment pretrial evaluation.
- WAC 388-880-036 Supplemental evaluation—Reporting.