Washington State Department of
Enterprise Services

As required by

The Washington State Administrative Procedure Act Chapter 34.05 RCW

CONCISE EXPLANATORY STATEMENT

Relating to amending

Chapter 200-220 WAC, Use of the public areas of the capitol buildings and grounds

March 1, 2023

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1. About the concise explanatory statement

The Administrative Rulemaking Act (chapter 34.05 RCW) requires an agency to prepare a concise explanatory statement of the rule. This must be done before the agency files an adopted rule with the code reviser. The concise explanatory statement must:

- Identify the reasons for adopting the rule.
- Describe any differences between the proposed rule as published in the Washington State Register and the rule as adopted, other than editing changes, stating the reasons for differences,
- Summarize all comments regarding the proposed rule, and
- Respond to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

Concise explanatory statements are available on the Department of Enterprise Services rulemaking website in advance of filing the permanent rulemaking order (CR-103) with the Office of the Code Revisor. Making the concise explanatory statement available online is in addition to the statutory requirement to provide the concise explanatory statement to anyone upon request or to anyone that commented on the proposed rule.

2. Reason for Rule Adoption

Background

Under RCW 43.19.125, the Department of Enterprise Services (DES) is charged with custody and control of the capitol buildings and grounds. Additionally, under RCW 43.19.011, the director of enterprise services has authority to adopt rules to carry out the purposes of chapter 43.19 RCW, to delegate powers, duties, and functions as the director deems necessary, and to perform other duties as are necessary and consistent with law.

DES and its predecessor agency, the Department of General Administration, have put rules in place governing use of the Capitol Campus since the late 1960s. Campus use rules are designed to balance the conduct of government business, public access and expression of free speech, public and employee safety and welfare, the stewardship of the capitol buildings and grounds, and civic education.

About use of the Capitol Campus

All three branches of state government conduct their business on the Capitol Campus, more than 40 agencies have offices here, thousands of people participate in free speech activities, and thousands more people of all ages participate in civic education tours, attend events hosted on the campus, visit the parks and gardens scattered throughout the campus, and run, walk, or hike the trails surrounding Capitol Lake.

In addition to making sure the Capitol Campus is a safe place to work and visit, protecting the right of people to assemble and exercise free speech on the Capitol Campus is a top priority for DES and the Washington State Patrol (WSP). Portions of the campus have been traditionally used for free speech; however, it is important to understand that free speech laws do not extend to protecting unlawful conduct including:

- Blocking traffic or entrances
- Damaging or taking other people's permitted displays on the campus
- Crimes like assault, vandalism or damaging the unique historical structures on campus

About enforcement

When enforcement is needed, proper tools are important. There has been a change in tenor and tone of activities on the campus over the past several years, with a degradation of the expectation of civil and safe behavior. When groups motivated by conflict come to the campus, tactical challenges and response needs increase, and risk to campus visitors as well as those working on the campus intensifies.

DES and the WSP use overall public safety as a guide in seeking compliance with rules and laws. Our general approach is to start with engagement to avoid any enforcement action. We then seek voluntary compliance, whenever possible. If enforcement is needed, we use the lowest level enforcement action possible.

Rulemaking reason

The reasons for adopting the rule are to:

- Make technical edits for clarification and clean up purposes.
- Make it clear that DES has delegated authority to the Washington State Patrol (WSP) to enforce Campus use statutes, rules, and policies.
- Put in place an administrative process for exclusion from use of the campus as an available enforcement action. The rules include a process for appealing an exclusion from use of the Campus.
- Establishing that the consequences for not complying with a notice of exclusion from the campus constitutes criminal trespass under chapter 9A.52 RCW Burglary and Trespass.

Exclusion is an administrative process that can be used instead of citing someone for criminal trespass, which is a misdemeanor. The rules in place right now do not make it clear we have the option to use this civil process.

Consideration and Response Summary

Consistent with the requirements of RCW 34.05.325, we received public comments from August 24, 2022 through September 30, 2022. We accepted written comments online through our rule-making web site, and oral testimony at a virtual public oral hearing held on September 27, 2022. We are responding to all comments received as provided in RCW 34.05.325 (6) (a)(iii) and (b).

The rules we intend to adopt comply with the legislative intent and authority granted us in Chapters 43.19.125 and 46.08.150 Revised Code of Washington.

We would like to thank all those who participated in this rulemaking process with us.

3. Differences Between Proposed and Adopted Rule Text

The rules we intend to adopt do not differ from the proposed rules published in the Washington State Register (WSR) as WSR 22-17-170.

4. Summary of All Comments Received and Consideration

We received comments in several formats, including email, letters, and via our website. We have tried to present comments as closely as possible to their original formats. The comments are listed verbatim, and no changes were made to typos, grammatical or other similar errors.

No comments were received at the public hearing.

Comments unrelated to the proposed rules

We received the following comments on rules other than the proposed rules. While we provide those comments below, we are unable to consider the comment in adopting the proposed rule.

Comments on various existing rules under chapter 200-220 WAC *Submitted by the American Civil Liberties Union of Washington State*

We request that you consider revising the existing rules as well, to ensure that the rules do not unduly infringe upon the rights of Washingtonians who seek to have their voices heard at the seat of our democracy.

1. WAC 200-220-030(8) – Definition of Free Speech and Assembly Activity. Courts have extended free speech protection to use of tents and other structures that may be associated with camping, as well as activities like meal programs for homeless people in parks. See, e.g., Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984); Students Against Apartheid Coalition v. O'Neil, 660 F.Supp. 333 (W.D. Va. 1987); University of Utah Students Against Apartheid v. Peterson, 649 F. Supp. 1200, 1204-1205 (D. Utah 1986) (finding constitutional right of speech for students to maintain continuous presence with shanties over many months, enhancing their expressive character). See also, Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale, 901 F.3d 1235 (11th Cir. 2018) (outdoor food sharing is constitutionally protected expressive conduct). The rules should be clarified to align with these protections.

2. WAC 200-220-100—It is likely unconstitutional to require a "permit for free speech and assembly activities involving twenty-five or more people in capitol buildings or more than seventy-five people on the capitol grounds, and for all private or commercial activities." This regulation fails to account for spontaneous gatherings in response to breaking news and instances where there isn't time to complete the permitting process, but where speakers deem timeliness is of utmost importance to their speech activity. A permit requirement, or warnings/arrests for lack of a permit in these circumstances, is unconstitutional. See Long Beach Area Peace Network v. City of Long Beach, 574 F.3d 1011, 1030 (9th Cir. 2009). Although WAC 200-220-110 recognizes the "spontaneous expression exception" it still requires speakers to provide notice at least two hours in advance and only allows for such notice during working hours Monday through Friday. This does not comport with constitutional protections for free speech. See Santa Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022, 1045-1048 (9th Cir. 2006), That is because WAC 200-220-110 fails to account for breaking news events on weekends or after working hours, which are also constitutionally protected.

3. WAC 200-220-120(2)—This regulation impermissibly grants the Department unfettered discretion to "require additional information" when determining whether to grant a permit. This provision creates significant First Amendment and due process concerns as it does not specify what additional information may be asked for or when. This open-ended discretion and lack of clarity raises concerns that some permit applicants will be surprised by a request for additional information and some may be treated differently than others, possibly based on the content or viewpoint of the speech, which is unconstitutional. Of further concern, the grant of discretion and lack of clear process raises significant due process concerns regarding when the agency may deem a request final and when a right to an appeal is triggered.

4. WAC 200-220-210, -270, and -280—These rules impermissibly grant the Department unfettered discretion to cancel or revoke a previously issued permit. These regulations raise concerns about unfettered discretion and the possibility that unspecified "reasonable" time, place, and manner restrictions can be added at any time. The concern arises from the fact that the rules collectively provide the agency the discretionary authority to "cancel [a] permit at any time if [the] activity does not comply with any applicable laws and rules or the terms of the

permit." WAC 200-220-270. The rules further provide that if a permit is "canceled and [the speaker] persist in [the] activity, [speaker] may be subject to appropriate law enforcement action." Id. This is problematic because of the lack of clarity regarding when and how a permit would be revoked and how notice of revocation would be communicated to the speaker. These rules are also concerning because they grant overly broad discretion to the agency administrator, and also because it refers to a threat that "law enforcement" may become involved. Id. Subsection -280 increases the concern for arbitrary and capricious action by the agency and raises heightened concerns regarding its grant of unfettered discretion to government administrators as it allows for the revocation of a permit if "necessary state government activities" are implicated—even though what constitutes such is not defined.

5. WAC 200-220-320—This regulation impermissibly provides unfettered discretion to administrators to limit speech and creates arbitrary limitations on speech unrelated to any reasonable time, place, and manner restrictions. By allowing "limits on free speech and assembly activities in the public areas of the capitol buildings and grounds, according to design, health, safety, operational or other such considerations. These may include, but are not limited to, limits designated by the director under WAC 200-220-210," the rule fails to limit or guide discretion and is problematic for that reason. Furthermore, the rule states free speech and assembly activities may not exceed 14 consecutive calendar days in duration—regardless of whether such expressive conduct has any impact on daily activities on the Capital Campus. For example, a person who wishes to engage in daily silent protest that consists solely of holding a single sign would be barred from doing so after 14 days regardless of the lack of impact on Capital Campus activities. Due to this, this subsection also raises significant constitutional concerns due to its grant of unfettered discretion to government administrators and the imposition of an arbitrary time limit for speakers to engage in expressive conduct.

6. WAC 200-220-243—This regulation impermissibly provides unfettered discretion to government administrators to determine when camping will be permitted. This regulation fails to account for camping that is expressive activity, allows unfettered discretion, and invites viewpoint or content discrimination. While the proposed regulations define camping as "for purposes of habitation," there is no definition of habitation and the plain language of the proposed regulation is unclear as to who will determine what constitutes "for the purpose of habitation" when it comes to speakers engaging in expressive conduct on the Capitol Campus. The proposed regulation also raises further concerns under the Ninth Circuit ruling in Martin v Boise, 920 F.3d 584 (9th Cir. 2019), which finds a constitutional violation when people are penalized for camping on public property when there is inadequate shelter available. "The practice of punishing people who have no access to shelter for the act of sleeping or resting outside while having a blanket or other bedding to stay warm and dry constitutes cruel and unusual punishment in violation of the Eighth Amendment." Blake v. City of Grants Pass, No. 1:18-CV-01823-CL, 2020 WL 4209227, at *8 (D. Or. July 22, 2020) ("Eighth Amendment prohibits cruel and unusual punishment whether the punishment is designated as civil or criminal")

Agency consideration of the comment

Thank you for your comments. The comments are related to existing rules and are not related to our request for comments on the proposed rules, therefore, we are unable to consider the comments in adopting the proposed rules.

Comments related to the proposed rules

a) Comment summary: Officers on campus *Commenter unknown*

Clean up the language that WSP will be the officers on campus; it seemed a bit nebulous.

Agency consideration of the comment

Thank you for your comment. The comment is noted but does not provide sufficient information for a detailed response, therefore, no change was made to the proposed rules.

b) Comment summary: Not charging criminals with crimes *Commentor unknown*

Why make it easier for criminals to not be charged with crimes. The campus will soon start to look like capital lake.

Agency consideration of the comment

Thank you for your comment. The comment is noted but does not provide sufficient information for a detailed response. The Capitol Campus is widely used for free speech activities, commercial activities, and private activities. The rules apply to all non-governmental activities on the Capitol Campus. The proposed rules put in place a content neutral structure to ensure compliance with requirements related to use of the Capitol Campus regardless of the activity type.

The proposed amendments to the Campus Use Rules do not alter the application of criminal laws. Instead, they clarify operational coordination between the Department of Enterprise Services and the Washington State Patrol. This increases the WSP's ability to address emergent issues before they become subject to criminal enforcement, with a goal of providing a safe environment for people to interact with their government. Therefore, no change was made to the proposed rules.

c) Comment summary: Use of the lowest level of intervention *Submitted by the American Civil Liberties Union of Washington*

We appreciate the Department's desire to address potential trespass, harassment, or property destruction offenses on the Capitol grounds, and its intent to use the lowest level of intervention necessary. The ACLU of Washington strongly opposes government overreliance on police and punishment to respond to social challenges that could be addressed more effectively, and with greater fidelity to democratic principles, through different policy solutions. We believe the proposed rules propose a solution - formal banishment from the seat of Washington State lawmaking - that poses serious concerns under the First Amendment of the U.S. Constitution and Article I, sections 4 and 5 of the Washington State Constitution. Banishment from the Capitol threatens to deny people their right to petition government and curtail their speech.

Agency consideration of the comment

Thank you for your comment. DES and the WSP use overall public safety as a guide in seeking compliance with rules and laws. Our general approach is to start with engagement to avoid any enforcement action. We then seek voluntary compliance, whenever possible. If needed, we use the lowest level enforcement action possible.

Consistent with this long-standing practice to use the lowest level enforcement action, starting with seeking voluntary compliance, the proposed rules provide an administrative, non-criminal process to address violations of requirements governing use of the Capitol Campus.

The Washington State Patrol is a general authority law enforcement entity, meaning it has authority statewide, including on the Capitol Campus. The proposed amendments to the Campus Use Rules do not increase the Washington State Patrol's criminal enforcement authority, but instead clarify operational coordination between the Department of Enterprise Services and the Washington State Patrol in a manner that increases WSP's ability to address emergent issues before they become subject to criminal enforcement.

Therefore, no change was made to the proposed rules.

d) Comment summary: Rules unconstitutionally chill free speech *Submitted by the American Civil Liberties Union of Washington*

The Capitol Campus is the seat of our state's democracy. As your 9/1/22 email inviting comment on the proposed rules acknowledges, it is the quintessential traditional public forum "held in trust for the public" and "devoted to assembly and debate," where constitutional protections for free speech, assembly, and the right to petition government are at their greatest. Traditional public forums include streets and parks which "'have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'" Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n, 460 U.S. 37, 45 (1983) (quoting Hague v. C.I.O., 307 U.S. 496, 515 (1939)). They are areas where First Amendment expressive activities are afforded the strongest protection and where "the government's ability to permissibly restrict expressive conduct is extremely limited." United States v. Grace, 461 U.S. 171, 177 (1983). They are places where the government may only enforce restrictions on speech that are narrowly drawn to achieve a compelling state interest, which means that the proposed speech restrictions are subject to the most stringent of tests - strict scrutiny. Perry, supra, at 45–46. The Supreme Court "has frequently reaffirmed that speech on public issues," particularly in a traditional public forum, "occupies the highest rung of the heirarchy [sic] of First Amendment values and is entitled to special protection." (internal quotation marks omitted)." Colson v. Grohman, 174 F.3d 498, 506 (5th Cir. 1999) (quoting Connick v. Myers, 461 U.S. 138, 145 (1983)).

The government may impose reasonable restrictions on the time, place or manner of speech in a traditional public forum. However, to do so in compliance with constitutional protections, the government must show that the restrictions "are justified without reference to the content of the speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989), (quoting Clark v. Community for Creative Non–Violence, 468 U.S. 288, 293 (1984)). Given the uniquely unparalleled nature of the Capitol Campus, there are likely no adequate alternative channels or fora for speech and expressive conduct speakers wish to engage in on the Capitol Campus. Rules governing free speech activities in traditional public forums unconstitutionally chill speech when they are unclear or allow government officials unfettered discretion. See Hopper v. City of Pasco, 241 F.3d 1067, 1070 (9th Cir. 2001). See also, Freedman v. State of Md., 380 U.S. 51, 56- 57 (1965). Even in the limited public forum in Hopper, the Court found the rules were unconstitutional because "application of the policy was left entirely to the discretion of city administrators." 241 F.3d at 1079. Courts have time and again struck down regulations that lack "clear standards" and a clear "decision-making trail," even when the government has articulated a compelling interest that appears neutral and non-content based. See Seattle Affiliate of Oct. 22nd Coal. to Stop Police Brutality, Repression & Criminalization of a Generation v. City of Seattle, 550 F.3d 788, 802–03 (9th Cir. 2008). Without clear and unambiguous terms, the risk of inconsistent application and content-based discrimination is significant, which is "intolerable." Id. Furthermore, there is a "'heavy presumption' against the validity of a prior restraint" on speech. Forsyth County., Ga. v. Nationalist Movement, 505 U.S. 123, 130 (1992) (quoting Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963)). "Regulations that sweep too broadly chill protected speech prior to publication, and thus may rise to the level of a prior restraint." O'Day v. King County., 109 Wn. 2d 796, 804 (1988). Unnecessary timing and financial burdens imposed through permit requirements for free speech activities will be invalidated by the courts. See October 22nd, 550 F.3d at 797-98 (striking down permitting scheme that gave government officials unbridled discretion to modify speech activities). Any additional "safety and security standards" applied to permits for speech activities in the public areas of the Capitol Campus must be clearly defined, generally applicable and objective, and narrowly tailored to the valid

governmental interests involved. Seattle Mideast Awareness Campaign v. King County, 781 F.3d 489, 496 (9th Cir. 2015). The United States and Washington Supreme Courts have consistently "condemned statutes and ordinances . . . [lacking] narrowly drawn, reasonable and definite standards for the officials to follow." Niemotko v. State of Md., 340 U.S. 268, 271 (1951). See also, Forsyth County, 505 U.S. 123, 133 (1992); Coll. Republicans of Univ. of Washington v. Cauce, No. C18-189-MJP, 2018 WL 804497, at *2 (W.D. Wash. Feb. 9, 2018); Kunz v. People of State of New York, 340 U.S. 290 (1951); Saia v. People of State of New York, 334 U.S. 558 (1948); Hague v. Comm. for Indus. Org., 307 U.S. 496 (1939); and Lovell v. City of Griffin, Ga., 303 U.S. 444 (1938

Agency consideration of the comment

Thank you for your comment. In addition to the operation of state government, the Capitol Campus is widely used for free speech activities, commercial activities, and private activities. While promoting and making free speech activities a priority, the current rules apply to all non-governmental activities on the Capitol Campus. The proposed rules put in place a content neutral structure to ensure compliance with requirements related to use of the Capitol Campus regardless of the activity type.

We agree that many areas of the Capitol Campus are traditional public fora and that government may impose reasonable restrictions on time, place, and manner of speech. The existing rules support our mutual position on time, place, and manner of speech. WAC 200-220-210 Enterprise services may set reasonable time, place, and manner limits on activities. The proposed rules do not impose any additional restrictions based on speech.

The department welcomes and supports free speech on the Capitol Campus. Protecting the right to assemble and exercise free speech is a top priority for the Department of Enterprise Services and the Washington State Patrol. It is important to understand the protection of free speech does not extend to protecting unlawful conduct. The department does not welcome criminal activities, civil violations, or violation of other requirements related to use of the Capitol Campus, including preventing or interfering with the rightful use of the campus for free speech. Anyone violating campus use requirements or other rules, or laws may be subject to enforcement.

Therefore, no change was made to the proposed rules.

e) Comment summary: Exclusion is based merely on a "reasonable belief" or "probable cause" a violation has occurred. *Submitted by the American Civil Liberties Union of Washington*

Of further concern, expanding the role of law enforcement agencies in penalizing speech heightens our concerns about the constitutionality of these regulations. Use of law enforcement not only creates the specter of criminalizing free speech activities, but it also increases the risk of police use of force, and unduly chills constitutionally protected expression and conduct.

Instead of providing increased safeguards appropriate to the Capitol Campus as a traditional public forum, the proposed regulations authorize law enforcement to issue a warning and to commence the exclusion process whenever any rule violation is alleged and based simply on the officer's "reasonable belief" that a violation occurred. Similarly, all that is needed to sustain exclusion is an officer to find that there is "probable cause" that a violation occurred. By allowing such a low bar to limit speech and expressive conduct, the proposed regulations likely violate all the above- cited traditional public forum protections and fail to account for the Capitol Campus being the most important location for much free speech activity to occur.

Agency consideration of the comment

Thank you for your comment.

DES and the WSP use overall public safety as a guide in seeking compliance with rules and laws. Our general approach is to start with engagement to avoid any enforcement action. We then seek voluntary compliance, whenever possible. If needed, we use the lowest level enforcement action possible.

Consistent with this long-standing practice to use the lowest level enforcement action, starting with seeking voluntary compliance, the proposed rules provide an administrative, non-criminal process to address violations of requirements governing use of the Capitol Campus.

The proposed rules reflect a goal of resolving matters at the lowest level of intervention possible. The proposed rules require specific findings for issuing a warning notice and an exclusion order and are consistent with judicially approved law enforcement practices and with similar trespass warning programs.

Persons subject to exclusion warnings and exclusion orders have a meaningful and timely opportunity to appeal.

Therefore, no change was made to the proposed rules.

f) Comment summary: An opportunity to request an exemption invites content and viewpoint discrimination. *Submitted by the American Civil Liberties Union of Washington*

The subsections of the proposed regulations which allow a speaker to request an exemption to exercise First Amendment rights fail to remedy the above discussed problems. That subsection permits broad unguided discretion in granting or denying or revoking permits; impermissibly invites content and viewpoint-based discrimination; constitutes a prior restraint; and fails to provide adequate due process protections.

Although the proposed rules provide for an appeal process, as required by due process and free speech constitutional protections, we are concerned that the procedural safeguards may also be inadequate. The proposed rules would require the appeal be submitted to the director within 10 days, which does not allow enough time for individuals to prepare and file an appeal. The rules should be revised to allow 30 days to appeal.

Agency consideration of the comment

Thank you for your comment. The comment does not give sufficient information to provide a detailed response. Exemptions are available for many reasons, including to allow persons to conduct business, meet with legislators, attend committee/other meetings in Capitol Campus buildings. The specific viewpoint or content of those reasons is not considered in granting an exemption.

Anyone who receives a warning, or a notice of exclusion is provided an opportunity to appeal following the appropriate appeal process established by state law under the Administrative Procedures Act. Persons subject to exclusion warnings and exclusion orders have a meaningful and timely opportunity to appeal.

Therefore, no change was made to the proposed rules.

g) Comment summary: The Washington State Legislature has not delegated to the Department rulemaking authority addressing exclusion from the Capitol Campus *Submitted by the American Civil Liberties Union of Washington*

The Proposed Rules Raise Concerns about Exceeding Constitutional Limits on Separation of Powers and the Delegation of Legislative Authority "The Washington constitution, Art. II, § 1, as amended by the Seventh Amendment, vests the legislative power in the Senate and House of Representatives … The legislative power to make purely substantive law cannot be surrendered or delegated to or performed by any other agency." Senior

Citizens League v. Department of Social Sec. of Wash., 38 Wn.2d 142, 152, 228 P.2d 478, 484 (1951) (citing Uhden, Inc. v. Greenough, 181 Wash. 412, 43 P.2d 983 (1935)).

The Washington State Legislature has delegated the following authority to the Department: "The director of enterprise services shall have custody and control of the capitol buildings and grounds, supervise and direct proper care, heating, lighting and repairing thereof, and designate rooms in the capitol buildings to be occupied by various state officials." RCW 43.19.125(1). The Legislature has not delegated authority to the Department to define circumstances under which members of the public may be banned from Washington's seat of government or the duration for which they may be banned. Nor has it established or delegated to the Department authority to create procedural safeguards to protect against potential arbitrary action or abuse of discretion by the Department.

Agency consideration of the comment

Thank you for your comment. As noted earlier, under RCW 43.19.125, the Department of Enterprise Services (DES) is charged with custody and control of the capitol buildings and grounds. Additionally, under RCW 43.19.011, the director of enterprise services has authority to adopt rules to carry out the purposes of chapter 43.19 RCW, to delegate powers, duties, and functions as the director deems necessary, and to perform other duties as are necessary and consistent with law.

DES and its predecessor agency, the Department of General Administration, have put rules in place governing use of the Capitol Campus since the late 1960s. Campus use rules are designed to balance the conduct of government business, public access and expression of free speech, public and employee safety and welfare, the stewardship of the capitol buildings and grounds, and civic education.

As we both note, "The director of enterprise services shall have custody and control of the capitol buildings and grounds." Custody and control includes the ability to enforce compliance and put procedural safeguards in place. The Washington State Legislature has clearly granted to the Department the authority to establish rules governing use of the Capitol Campus including rules related to compliance and putting in place procedural safeguards.

Therefore, no change was made to the proposed rules.

h) Comment summary: The exclusion rules under proposed rule 200-220-620 WAC are vague and provide too much discretion *Submitted by the American Civil Liberties Union of Washington*

Further, proposed regulation -620 alone raises a myriad of concerns. It fails to define what "substantial risk of damage" means and how it will be determined. There is impermissible discretion in the parts of the rule allowing an exclusion to be extended, and in the parts allowing the exclusion issuer to decide how long the exclusion should be based on their perception of the nature of the violation. The provisions for when attending a hearing is allowed or when an exclusion still applies are very unclear. The rules do not specify if repeat violations must occur in a certain period of time, or anytime in a person's lifetime, or if the duration of exclusion is calculated concurrently in instances of multiple violations. And there is apparently no right to be heard and appeal prior to the exclusion being enforced. A post-warning hearing and appeal may be appropriate, but that is not adequate for an actual exclusion, especially one that can lead to criminal trespass charges.

Agency consideration of the comment

Thank you for your comment. The comment does not provide sufficient information for a detailed response. See response to Comment (f).

Therefore, no change was made to the proposed rules.