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Division II  
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NO. 52541-1-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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IN RE  
RHONDA CROCKETT  
Appellant  
and  
STATE OF WASHINGTON,  
Respondent.

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BRIEF OF APPELLANT

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GARY A. PREBLE, WSB #14758  
Attorney for Appellant,  
Rhonda Crockett

PREBLE LAW FIRM, P.S.  
2120 State Avenue NE, Suite 101  
Olympia, WA 98506  
(360) 943-6960  
Fax: (360) 943-2603  
gary@preblelaw.com

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## **A. ASSIGNMENTS OF ERROR and ISSUES**

### **Assignments of Error**

The findings of fact in review orders can be difficult to object to because they are often lengthy and each can not be objected to as a whole. Appellant assigns error to any finding indicating she had knowledge in 2008 M-L was molested by her husband, and any finding she violated RCW 9A.16.100 while disciplining M-L August 18, 2013. To summarize, the appellant objects to all the findings, conclusions and orders as follows, objecting that there was no or no substantial evidence. Appellant objects:

1. That Ms. Crockett was aware of any sexual abuse of M-L by Mr. Crockett. FF 1.
2. That inappropriate touching related to appellant by M-L on Thanksgiving Day 2008 was of a sexual nature. FF 1, 20(2), (3), CL 18.
3. That M-L said on Thanksgiving James was touching her over her clothes sexually. FF 10.
4. That James admitted to either one on Thanksgiving 2008 to sexually touching M-L. FF 1, 12.
5. That James communicated to appellant or M-L on Thanksgiving Day 2008 that his offer to call the police was to report that he had sexually touched M-L. FF 12.
6. That appellant stopped James from calling police to report he sexually molested M-L. FF 12.
7. That appellant never asked M-L for additional details as to her molestation allegation. FF 14.
8. That appellant ever asked M-L whether James was “still” touching her. FF 14.
9. That as implied, appellant didn’t ask M-L more than once after Thanksgiving Day 2008 whether James had touched her, and that M-L had not continued to subsequently deny James had touched her. FF 14.
10. That appellant set up rules to prevent James from sexually touching M-L “again”. FF 15.
11. That appellant became concerned when M-L would ride in the front seat (which should rather be stated that it did not please appellant that her headstrong daughter, M-L, chose to sit in the front seat, contrary to her mother’s directions). FF 15.

12. That the actual cause of the altercation in August 2013 was something other than the daughter's raging loss of self-control and consequent disrespect for her mother. FF 16.
13. That M-L's wrist was sore or painful for approximately a week and a half. FF 17, 20.
14. That any soreness to M-L's wrist was the result of her mother's action. FF 17.
15. That there were marks on M-L's arm or wrist lasting a few days after the altercation. FF 17.
16. That there was a "disagreement" (rather than M-L's tantrum). FF 18.
17. That as implied, appellant was going to strike M-L with her open hand in a manner that would have violated RCW 9A.16.100 or any relevant WAC. FF 18.
18. That as implied, taking M-L down to the floor was abuse within the meaning of RCW 9A.16.100 or any relevant WAC, or that M-L was harmed thereby. FF 18.
19. That appellant is not credible and that M-L was credible. FF 20.
20. That appellant was ever aware prior to August 18, 2013 that James had molested or engaged in inappropriate sexual contact with M-L. FF 20.
21. That as implied, appellant is motivated by anything but truth. FF 20(1).
22. That appellant blames M-L for ruining her family. FF 20(1).
23. That appellant had motivation to minimize or dismiss the "allegations", rather than be motivated by the truth, M-L saying she was touched on her side and near her knee. FF 20(2).
24. That as implied, not reporting was done to avoid the breakup of her new family rather than that M-L indicated to appellant touching that did not constitute sexual molestation. FF 20(2).
25. That M-L disclosed sexual abuse by James by appellant on Thanksgiving Day 2008 or that appellant knew then James had engaged in inappropriate sexual contact with M-L. FF 20(2).
26. That the word "again" is appropriate rather than "sexually" in the final sentence of FF 20(2).
27. That M-L had no motivation to lie in reporting molestation or her version of the physical altercation with appellant. FF 20(3).
28. That as implied, the fact of James' conviction in 2014 is relevant to what appellant knew from M-L prior to August, 2013. FF 20(3).

29. That as implied, M-L's loss of her adoptive family is not of her own choosing. FF 20(3).
30. That M-L has remained consistent in her reports. FF 20(3).
31. That appellant provided "no" support that M-L is lying to serve her own needs. FF 20(3).
32. That it is more likely than not appellant was aware James was molesting or sexually touching M-L since November 2008. FF 21.
33. That it is more likely than not M-L suffered pain after the August 2013 altercation so as to indicate a violation of RCW 9A.16.100 or any relevant WAC. FF 21.
34. That any specific observation of the witnesses was identified by either the Administrative Law Judge (ALJ) or the Review Judge (RJ). CL 3.
35. That being unable to pursue one's career is not punitive. CL 8.
36. That appellant "threw" M-L to the ground. CL 13.
37. That taking M-L to the floor resulted in pain or marks to M-L. CL 13.
38. That appellant's force with M-L was not reasonable or moderate. CL 15.
39. That the review officer's selection of the words "threw" and "throwing" is an inappropriate attempt to fit the testimony into one of the acts presumed unreasonable, or that if the words "threw" and "throwing" are appropriate, appellant has not rebutted the presumption. CL 15.
40. That the altercation arose because M-L refused to drive to a doctor appointment (rather than due to her disrespect and disobedience). CL 15.
41. That appellant's behavior was abusive. CL 15.
42. That appellant's actions are not excused in the exception in WAC 388-15-009(2). CL 15.
43. That appellant's acts were negligent treatment or maltreatment CL 18.
44. That appellant failed to take appropriate action re M-L's allegations on Thanksgiving. CL18
45. That appellant demonstrated any disregard, let alone serious disregard, for M-L's health and welfare, or created a clear and present danger to M-L's safety. CL 18.
46. That the Department's Founded finding should be affirmed. CL 18.
47. That any findings of fact by the ALJ are correct that suggest appellant had ever been told of actual abuse by M-L prior to the events of August 2013

or that appellant had abused or neglected M-L or at any time up to and through August 2013. CL 19.

48. That any argument in the *Petition for Review* has no merit or does not substantially affect appellant's rights. CL 19.
49. That the *Initial Order* should have been affirmed. CL 19.
50. That the Department's findings of physical abuse and negligent treatment or maltreatment of M-L by appellant should have been affirmed. CL 19.

### **Issues Pertaining to Assignments of Error**

1. Whether M-L was credible when her statements were not consistent?
2. Whether there was substantial evidence to find the appellant not credible?
3. Whether M-L rather than Ms. Crockett is credible based on CL 20?
4. Whether the court should defer to the findings identified by the RJ as credibility findings?
5. Whether appellant chronically failed to act on the knowledge that her daughter had been sexually molested?
6. Whether an appellate court may review credibility determinations when an RJ is entitled to do so?
7. Whether this appeal should be decided by court *de novo*, since the RJ's credibility determination is not witness demeanor?
8. Whether marks or aching lasting "a couple of day[sic]," RP 1:43, on a healthy 17-year-old minor child is bodily harm greater than transient pain or minor temporary marks?
9. Whether the Department's view of transient and "minor temporary" being no more than 24 hours is inappropriate under the law or WACs?
10. Whether appellant's self-defense and taking down of healthy 17-year-old M-L to the floor, even if it resulted in ache and marks, was likely to cause ache and marks on her wrist that were greater than transient or minor temporary marks?
11. Whether appellant's self-defense and taking down of healthy 17-year-old M-L to the floor, even if it resulted in ache and marks, did cause ache and marks on her wrist that were greater than transient or minor temporary?
12. Whether the RJ appropriately considered—if at all—the age, size,

condition of the healthy 17-year-old and location of the ache and marks?

13. Whether the ache and marks to which the healthy 17-year-old child testified were shown by a preponderance of the evidence not to have been caused by the child's resistance to the mother's actions rather than by the mother's actions?
14. Whether the ache and marks on the healthy 17-year-old child's wrists lasting "a couple of day[sic]" are the type of reasonable and moderate injury to a child that is not illegal?
15. Whether the mother's response to the child of grabbing her wrists and taking her down to the floor was self-defense in light of the healthy 17-year-old child's grabbing her arm?
16. Whether threw mother "threw" M-L to floor within the meaning of RCW 9A.44.100(6) and related WACs?
17. Whether the mother's response to the child of grabbing her wrists and taking her down to the floor was reasonable and moderate restraint in light of the healthy 17-year-old child's behavior and grabbing her arm while being out of control?
18. Whether "touching" necessarily means "sexual touching"?
19. Whether "inappropriate touching" is necessarily "sexual touching"?
20. Whether a parent is entitled under the law to make decisions appropriate for the welfare of their children without calling the police or CPS after the child has provided details indicating abuse has not occurred?
21. Whether a parent is entitled under the law to make decisions appropriate for the welfare of their children without calling the police or CPS even if abuse has occurred, or whether all abuse must be reported?
22. Whether the standard is clear and convincing evidence because a founded finding will preclude Ms. Crockett's ability to renew her speech pathologist licence?

## **B. STATEMENT OF THE CASE**

Following is a brief explanation of the facts of two incidents for which Ms. Crockett was founded for abuse and neglect. The facts are only briefly set out because the specifics are analyzed in the sections that follow.

On Thanksgiving Day 2008, Ms. Crockett had been married to James Crockett for about five months. She had two daughters, 12-year-old M-L whom she had adopted when she was foster parent in Tennessee, and 6-year-old LW, her biological daughter. James had gone to the store with the girls and upon return M-L claimed James had “molested” her. Ms. Crockett stopped what she was doing and spoke with both her husband and M-L. After questioning M-L, she learned the touching was not sexual in nature. M-L made several statements as to what she told her mother that day. Ms. Crockett then established a safety plan which was followed for some period of time. M-L testified James never molested her again after her accusation on Thanksgiving Day 2008. See, generally, Agency Record (AR) 004–5. As a result of the foregoing, Ms. Crockett was founded for neglect as to M-L only. AR 002–3.

On August 18, 2013, Ms. Crockett and M-L got in an altercation during which Ms. Crockett “took [M-L] to the floor.” AR 233. M-L made several statements as to injury to her wrist/arm and that her wrist was sore for a time. Ms. Crockett testified that M-L was not harmed in the altercation. See, generally, AR 005. As a result of the foregoing, Ms, Crockett was founded for physical abuse. AR 002.

On the morning of August 24, 2013, AR 090, M-L texted with her friend Dishawn, during which conversation she told him, “My adopted moms (sic)

husband raped me which is why I went to go stay with my grandmother.” AR 092. On August 26, 2013, AR 236, M-L called her biological brother Savaughn in Tennessee and told him about the altercation the week before. AR 171. M-L also said she told Savaughn that James had molested her in 2008. *Id.* Savaughn acknowledged to the detective that M-L had called him and told him about the altercation, but he said she didn’t tell him anything about James molesting her. AR 236. M-L posted something on Facebook that led an anonymous friend to call law enforcement on August 26 that M-L might have been the victim of sexual abuse.<sup>1</sup> AR 146, RP 69, 73.

Law enforcement and CPS investigated and M-L was removed from the home. The founded letter was sent to Ms. Crockett on September 13, 2013. AR 134. James Crockett was convicted in of four counts of second degree rape of a child in December 2014. AR 215–15. Ms. Crockett appealed the founded letter and a hearing was had which upheld the CPS finding.

The ALJ’s credibility finding was as follows:

4.26 At the hearing, the Appellant’s testimony conflicted with other evidence in this case. The Appellant presented her own testimony that she did not know that James Crockett had “molested” or touched Mil-Lindsey inappropriately. In resolving this conflict, *I carefully considered and weighed all of the evidence, including witness demeanor (as determined by voice, attitude, reasonableness, and consistency of testimony throughout the hearing), the motivation of*

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<sup>1</sup> The record does not indicate the date the Facebook post was made nor was a copy of the post entered into the record.

*each party, and the totality of the circumstances presented.* I find that the Appellant is not credible on the issue of whether she was aware that James Crockett had “molested” or engaged in inappropriate sexual contact with Mil-Lindsey. I also find Mil-Lindsey credible that she suffered pain from the physical altercation she had with the Appellant that lasted longer than a week. I make these findings for the following reasons: . . . [which will be addressed below]

AR 035 (emphasis added). The ALJ then set forth reasons, none of which identified any demeanor, voice or attitude of any witness. Ms. Crockett sought review before the Board of Appeals, which upheld the ALJ. The RJ, perhaps recognizing the ALJ had identified no demeanor, voice or attitude, modified the ALJ’s “credibility” finding to remove any indication of personal observation of the witnesses, modified the credibility finding as follows, omitting the foregoing italicized language of the ALJ at CL 19, AR 012:

At the hearing, the Appellant’s testimony conflicted with other evidence in this case. The Appellant presented her own testimony that she did not know that James had “molested” or touched M-L inappropriately. In resolving this conflict, it is found that the Appellant is not credible on the issue of whether she was aware that James had “molested” or engaged in inappropriate sexual contact with M-L. It is also found that M-L suffered pain from the physical altercation she had with the Appellant that lasted longer than a week. These findings are based on the following reasons: . . .

AR 005-06. The reasons given were virtually unchanged from those given by the ALJ, and are addressed below in the Factual Analysis section—none of which reasons address demeanor, voice or attitude.

Ms Crockett then appealed to Thurston County Superior Court, which denied her Petition for Judicial Review. This appeal timely followed.

### C. SUMMARY OF CASE

Though all issues stated above are relevant, this appeal can be summarized as three dispositive issues: (a) Whether 12-year-old M-L on Thanksgiving Day 2008 told her mother no touching besides touching of her leg near her knee and touching her side? (b) Whether Rhonda Crockett took appropriate protective measures for both her children<sup>2</sup> after M-L's allegations on Thanksgiving Day 2008? and (c) Whether any, if the RJ properly construed RCW 9A.16.100, any injury sustained by M-L in August 2013 was reasonable and moderate and inflicted by Ms. Crockett for the purpose of restraining her out-of-control 17-year-old daughter?

#### I. FACT ANALYSIS—MS. CROCKETT, NOT M-L, WAS CREDIBLE.

##### A. There were no demeanor-related findings, but all credibility findings were based on statements and speculation.

This case consists of two incidents: a conversation and family meeting on Thanksgiving Day 2008, and an altercation on August 18, 2013. Both the ALJ and the RJ decided the case incorrectly by according credibility to M-L and denying it to Ms. Crockett, based on specific statements.

The determination that M-L was credible and that Ms. Crockett was not, FF 20, AR 005–6, was based entirely on what transpired on Thanksgiving

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<sup>2</sup> One wonders why Ms. Crockett was determined negligent only as to M-L, who alleged abuse five years earlier but was never subsequently abused, but not as to her younger daughter LW, who lived in the home those same five years and was never abused?

Day 2008. No reasons were given that addressed credibility as to the 2013 altercation. The RJ's conclusion regarding the 2013 altercation also hinges on his questionable at best analysis of RCW 9A.16.100 based upon his incontrovertible distortion of the record. *See*, p. 37.

The RJ's findings on credibility, FF 20, AR 006–07, were not based on demeanor but only on the statements set forth in FF 20(a)–(c). There is therefore nothing in the record—apart from the speculation, bias or arbitrary and capricious decisions of the RJ—to allow the conclusion that the appellant was not credible and that M-L was<sup>3</sup>. Apart from the statements of M-L, there is nothing in the record to indicate the appellant lied in her testimony. On the other hand, there is significant evidence in the record regarding M-L's inconsistent statements and motivation to lie, contrary to the Review Officer's finding. In finding M-L had no motivation to lie, FF 20(e), AR 006, the RJ must disregard clear evidence of M-L's dishonesty. For some reason, unless Ms. Crockett's testimony supported a finding *against* her, the RJ have disregarded virtually her entire case—her testimony, witnesses and exhibits.

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<sup>3</sup> Det. Brooks, however, did describe Ms. Crockett's demeanor the day Det. Brooks and SW Campbell came to her house unannounced, VRP 1:26:1–4, on August 29, 2013 and were invited in. AR 233. She said Ms. Crockett was calm, answered all questions put to her and in a matter of fact manner, and that she appeared to be forthcoming with information. VRP 2:63. It could be inferred Ms. Crockett testified in the same manner at the hearing, as even the transcript and her Request for Review, AR 126–130, would suggest.

B. The RJ and ALJ Disregarded Evidence of M-L's Lack of consistency, accuracy and reliability.

The RJ listed at Finding 20(3) why he found M-L credible.<sup>4</sup>

**1. Evidence of M-L's dishonesty suggesting motivation to lie.**

The RJ said: "M-L has no motivation to lie by reporting the molestation by James or the physical altercation she had with the Appellant." AR 006

a. After the "attack" M-L, almost 18, told someone: "*Just know I'll be okay ... Me and my brother have a plan to get justice.*" AR 87, August 19, 2013. This shows M-L was well capable of motive and planning.

b. M-L told Dishawn in August 2013: "*My adopted moms (sic) husband raped me which is why I went to go stay with my grandmother.*" AR 092. The actual reason M-L visited her biological grandmother was because her adopted mother allowed her to maintain a relationship with her biological family. It had nothing to do with molestation five years prior which had not

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<sup>4</sup> One reason the RJ gave for finding M-L credible is not addressed herein because it is an example of the logical fallacy known as "begging the question"—when an argument takes for granted what it is supposed to prove. Specifically, the RJ listed the following reason: "[M-L] disclosed to the Appellant that she was being molested by James who was later found guilty on multiple counts of child rape after a jury trial." The fallacy in this reason given for M-L's credibility, which led the RJ to believe M-L rather than Ms. Crockett, the RJ takes for granted that M-L disclosed to Ms. Crockett facts indicating M-L had been molested by James. Yet that point is a central issue to be determined in Ms. Crockett's theory of the case. Her testimony was that what 12-year-old M-L called "molesting" on Thanksgiving Day 2008 turned out to be touching that was not of a sexual nature. The RJ's reason identified here thus begged the question, taking for granted what the state had to prove.

reoccurred. VRP 2:192–193; 3:60:3–8. *See also*, note 6. The lie to Dishawn reveals how easily lying came to M-L, as Ms. Crockett testified. AR 127.

c. M-L posted on Facebook that Ms. Crockett “*almost broke my neck*”, AR 182, though she did not state this to Det. Bloom and social worker Campbell. AR 169

d. M-L said on Facebook she was pregnant “*because I [k]new ppl would think I was and I wanted to see what ppl would say.*” AR 086, August 14, 2013. This shows that M-L, at four months from adulthood, was willing to lie and had no problem with lying to serve her own purposes.

e. M-L said: “*I feel bad always going to my brother and my grandmother for everything I have to pay for.*” AR 086, August 14, 2013. M-L also said: “*She’s controlling as hell. . . . She just don’t want me to have my own money, because she used all my money.*” AR 092, August 24, 2013. On the contrary, Ms. Crockett testified that beginning in August 2009 she gave M-L an allowance of \$125 per month and increased it incrementally until M-L was receiving \$300 per month by August 2013. VRP 3:61. (What child gets \$125.00 per month allowance, let alone \$300.00?)

f. M-L’s wild tale about her once having “run away” shows truth is unimportant to her even when speaking with friends, such as with Hadiya:

Had: Hiw she find u

M-L: *Her friend was driving down the street saw me and talked me into going back.*

Had: Where did u stay

M-L: *On the street*

Had: Omg

M-L: *Yeah but it was for a night*

Had: That's fucking crazy! I'd never sleep outside. Wtf, at least you were okay

M-L: *Yeah and I was going to my boyfriend's house but I didn't want to get caught out at night by the police so I hid in a park till the morning*

AR 095, 117, August 26, 2013. The true story, however, was provided by Cynthia Quinn, a mandated reporter, VRP 1:91:10–13. She testified that after M-L left home on foot, she followed M-L in her car, talked her into going to Starbucks and in 30 minutes took ML home. VRP 1:94–97; 3:67–68. Again, ML has no problem lying to her friends, improbable though her story was.

g. Lillian told the detective and the social worker that M-L was a “liar” because her mother and stepfather wouldn't do the things reported by M-L. VRP 2:149. It appears the investigators disregarded LW's comment. Unfortunately, however, they failed to ask LW questions about specific things she might have seen in the home, such as whether she had seen any injury to M-L's wrist. VRP 2:148–150.

h. Ms. Crockett said she had known M-L for seventeen years and “has a history of lying and sharing information that is not accurate”. AR 127. And she gave one historical example of M-L's dishonesty when she harmed herself at school and blamed it on another student. AR 129.

i. M-L's 2012 journal, AR 084–85, aligns with other character

traits addressed here:

*I like to be in control and have my way sometimes like Jezebel. I am very strong-willed, sharp-tongued, impatient and unwilling to admit I'm wrong. ...I find it hard to take control of my words when I am mad....When I want something, I want it now in a hurry. I become angry or discourage (sic) if it doesn't happen soon.*

j. In addition, M-L tacitly acknowledged in testimony that she lied to her mother on Thanksgiving Day 2008. *See*, discussion on page 23.

**2. M-L did not care about “losing her family” and she said threatening and hateful things about her adopted mother.**

The RJ said: “M-L has also lost her family over the allegations and resulting physical altercation.” AR 006.

a. On September 13, 2015, M-L told Dr. Mandell she had gradually grown to hate her adoptive mother. AR 205.

b. *“Long story short my mom is treating me like dirt and I'm sick of it. And I don't want to let myself get to mad because I feel like driving a knife through her sometimes and other times I feel like letting it go and forgiving her and going on with my life either way I don't want to live here and she was like if you go anywhere I'm gonna find you and hurt you but I ducking hate it here I just want to leave and go back to Tennessee with my real family and they want me back too they didn't even want me to leave in July.”* AR 094, August 26, 2013; AR 118.

c. *“No but I honestly dgaf what happens to her or goes on in her life she has been evil to me my whole life and I tried to past it [sic] but this is my breaking point.”* AR 094, August 26, 2013.

d. *“But I’ve never worked and wouldn’t know where to go for a job and I am going to see if I can nice [sic] back to Tennessee second semester and Naw I’m cool off talking to her and writing letters I been trying to do that my whole life I’m at the point where I don’t care how she feels or what she says or does. I just know that if she keeps talking to me like I’m stupid and I’m the devil I’m going to kill her.”*AR 094, August 26, 2013.

e. Hadiya: *“Didn’t you run away before?”* M-L: *“Yeah. And I regret that I let the dumb rattle snake find me. She treated me like ish when they brought me back. I should kept running.”* AR 094–95, August 26, 2013.

**3. M-L’s statements were not consistent regarding the Aug 18, 2013 altercation.**

The RJ said: *“Also, she has been consistent when describing the injury resulting from the physical altercation.”* AR 006

Q: *Could you tell the Judge how you were hurt?*

A: *Um, my, um, wrist was, um -- it was kind of bruised, and it was, um, aching for a couple of day (sic). And, um, I think that’s all.*

VRP 1:43:5–8.

a. Where and how did Ms. Crockett strike M-L? M-L and Ms. Crockett agree that she hit (smacked) M-L with an open hand at the back of her head or neck, VRP 2:16:25, AR 233. But M-L also told the social worker

Ms. Crockett “punched” her in face with a closed fist and an open hand and “punched” her in the arm, AR 156, and that Ms. Crockett was hitting her in the face. VRP 1:42:19. She told her bio sister Christina that Ms. Crockett “punched” her in the face and the ribs. AR 236. She told no one else she had been struck in the ribs. Det. Brooks said M-L said Ms Crockett “punched” M-L in the hand as well as “the face”. VRP 2:16–17. Yet when M-L testified what her injuries were, she said nothing about her face, her ribs or her hand (or the back of the head/neck). And only Christina was told about being hit in the ribs. Nor was there evidence of any bruising that would have resulted at least from being punched in the face, the arm and the ribs.

b. Where did Ms. Crockett’s nails dig in? M-L testified Ms. Crockett’s nails dug into her arm, VRP 1:43:11, and also told Det. Brooks, AR 169, and Mara Campbell, AR 156, the nails dug into her arm. M-L testified that it was “just . . . a little indent, and not like a scratch or bleeding,” VRP 1:43:12–15, and didn’t scratch or break the skin. VRP 1:54:4–7. But when asked where the marks were, M-L stated not her arm but, “On my wrist.” VRP 1:43:17. And again, when she was asked on cross-exam if the nails dug into her wrist, M-L said, “Yes.” VRP 1:54:19.

c. Why was M-L’s wrist sore and for how long? She told Det. Brooks and Mara Campbell she had a swollen wrist for a week and a half, AR 169, 156. Yet M-L testified her wrist was aching a couple days, VRP 1:43:06,

was lightly discolored a couple days, VRP 1:54, and she acknowledged that indentation goes away pretty quickly. VRP 1:54:24–55:3. M-L’s sister, LW, saw M-L cutting her wrist the night of the altercation with her mother, AR 129; VRP 3:55:11–56:1. Mara Campbell said Ms. Crockett might have told Ms. Campbell about what LW had said about cutting. VRP 2:187.

Nobody else saw M-L’ swollen wrist, nor did M-L tell anyone about it while it was supposedly swollen or aching. Though M-L called her biological relatives—brother, two sisters and mother—in Tennessee eight days later on August 26, 2013 and told them about the altercation, *not one* of the four indicated she said anything about a swollen or aching wrist. AR 236–237. M-L herself said her “lightly discolored” wrist did not prevent her from doing anything, including playing the piano. VRP 1:54. Her sister LW did not say she had seen any problem with M-L’s wrists following the altercation. It must not have been important to Det. Brooks, VRP 2:48:17–55:20, or Campbell, VRP 2:150:9–11, because they did not ask LW about the wrist even though LW had been around M-L after the altercation.

Nor is it clear from testimony or the exhibits what the source of the purported slight injury to M-L’s wrist was. It could have come from the cutting LW observed the night of the altercation (and the investigators did not inquire of M-L whether she cut herself that night, VRP 2:164–65); it could have come from Ms. Crockett grabbing M-L’s wrists; and it could have been

caused by M-L herself—who was out of control, VRP 2:174:18–19—by her own struggling when her wrists were in her mother’s grasp. That question was also not asked, however, in the investigation. VRP 2:178.

**4. The RJ said M-L had no motivation to lie, but M-L in fact wanted the money Ms. Crockett was receiving on her behalf.**

The RJ said: “The Appellant believes M-L is lying because she wanted to receive a social security benefit.” AR 006

a. *“Yeah. But ill be 18 in Dec. And l’m just ready to be in control of my own life... Damn. . . . my adopted mom won’t even let me get a job... She controlling as hell and the way she see it I get so much ssi and money from the state of TN I don’t need to work. She just don’t want me to have. My own money. Because she use all my money. . . . Yeah she take all my money.”*

AR 092, August 24, 2013. Rhonda Crockett testified she had told M-L in July and August 2013 that M-L’s SSA and SSI benefits had increased to \$1,200 and that M-L got the money after she left home. VRP 3:62

b. *“Once I turn 18 she won’t be able to cash my checks from the state of Tennessee so for a while money won’t be a thing.”* AR 094, August 26, 2013.

**5. The RJ said M-L had no motivation to lie, but M-L in fact wanted to return to her biological family.**

The RJ said: “The Appellant believes M-L is lying because she ... wanted to reunite with her biological family.” AR 006

a. To her bio-mother: *“If anything ever happened to you I would not be able to handle it. I love you soo much and I can’t wait to get back so we can form a actual mother daughter relationship.”* AR 089, August 21, 2013; AR 098–104.

b. *“I just left Knoxville temporarily. [I went back to] Washington state. For a few months ... for my senior year...well 1 semester anyway. I’m going to college in Knoxville so I can be close to my mom (referring to biological mother) ...”* AR 090–92, August 24, 2013.

c. *“I was living with my grandmother but I had to go back with my adopted mom to Washington.”* AR 091, August 24, 2013.

d. Dishawn: *“Oh so by next semester you should be back with your mom.”* M-L: *“I’m trying to.”* AR 091, August 24, 2013.

e. *“Oh I might be moving to Knoxville with my grandmother in December or January. . . I hope I can move back. I can’t stay here anymore.”* AR 093, August 24, 2013.

f. *“I just want to leave and go back to Tennessee with my real family and they want me back too they didn’t even want me to leave in July.”* AR 094, August 26, 2013; AR 118.

g. M-L told Det. Bloom and social worker Campbell on August 29, 2013 that she spent 30 days with her biological family in Tennessee and that she would like to live with them “at this time”. AR 171.

**6. M-L's statements were not consistent regarding allegations of molestation.**

The RJ said: "M-L has remained consistent in her reports and has participated in a criminal trial related to the sexual abuse that resulted in multiple guilty verdicts." AR 006.

Probably no statement of the RJ is as clearly wrong as his statement that M-L "remained consistent in her reports." M-L was in fact *inconsistent* both in what she said about what happened and also about to whom she had told what happened. The RJ's disregard of M-L's glaring and pervasive inconsistencies shows his bias and the arbitrary and capricious nature of his Review Decision and Final Order. On a practical level, it also shows the RJ did not pay careful attention to the record.

a. M-L told different stories, even in the course of her testimony at the hearing.

(1) M-L first said she told Ms. Crockett on Thanksgiving Day 2008, VRP 1:46:3–4, that James was "molesting" her but when she was asked, "[D]id you provide *any* other details to [Ms. Crockett]? (emphasis added)," M-L answered, "*Um, not in that, um conversation.*" VRP 1:46:22–25. Having explained the conversation between Ms. Crockett, James Crockett and herself, M-L then answered "*Um, no*" when asked if she "remember[ed] anything else about that conversation". VRP 1:46:15–47:21.

(2) M-L confirmed her answer on cross-examination when asked the following question: "[Y]ou said you didn't say anything else that

day about what he had done except, ‘How can he expect me to respect him when he’s molesting me.’ Right? That’s the only thing. Didn’t you say that earlier when she asked you if there was something else -- you said anything else that day? You said that was it?” Answer: “*Yes.*” VRP 1:62:14–20.

(3) M-L confirmed her answer yet again at the end of cross. She was asked whether when she testified at the criminal trial of James whether she had gone into “a lot of detail about what he had done sexually,” to which she again answered, “*Yes.*” The very next question was, “[A]nd you didn’t give your mother *any* of that detail, did you?” (Emphasis added.) Answer: “*No.*” VRP 1:65:12–14.

(4) Then on redirect, when asked if she remembered what she had said in the conversation, M-L came up with still another statement: “*And then, I remember, um, just, um, saying one thing that he had touched me, um, over my clothes. And that’s it. That’s all I said.*” VRP 1:66:11–14.

(5) But when the AAG asked, “What did you tell me?”—M-L finally said, “*I just said that, um, he touched me, um, on my breasts and in my private area.*” VRP 1:66:22–24.

(6) By the hearing M-L had graduated high school, claiming a 3.5 to 3.7 grade average, and was in school to be a building inspector. VRP 1:41:10–21. How can an A student testify (1) she did not provide any other details, (2) she did not remember anything else, that was it, (3) she didn’t tell

her mother any of the detail she testified to at trial nine months earlier, (4) come up with one thing that he had touched her over her clothes, that's it, that's all I said, VRP 1:66:11–14, and then (5) after all that say, oh, he touched me on my breasts and in my private area? VRP 1:66:22–24.

Was her first emphatic statement—“And that's it. That's all I said”—evidence of M-L not being truthful just as she was not truthful in other situations, *supra*, at 11–14? Was it because she did not have a clear memory as a 19-year-old of a conversation that had occurred almost seven years earlier when she was only twelve? Was it because her anger at the time on Thanksgiving Day 2008 at James, VRP 2:212:6–213:6, had distorted her memory? Was it because she did not take seriously the obligation to testify accurately under oath? Or perhaps she was not as intelligent as her high school GPA might suggest. Maybe it was a combination of these or other factors. But whatever the reason for her inconsistency as to what she had told Ms. Crockett on Thanksgiving Day 2008 seven years earlier, the RJ's finding that M-L made consistent reports is a capricious misstatement of the record.

(7) M-L's statements made outside the hearing reveal even more inconsistency. On August 29, 2013, M-L spoke with Det. Bloom and social worker Campbell, providing significant detail of what James had done to her between July and Thanksgiving Day 2008. AR 169–170. Det. Bloom's report states: “[M-L] said she told Rhonda about the touching on

Thanksgiving Day 2008.” AR 170. Neither Bloom or Campbell asked M-L any specifics as to what she had told Ms. Crockett, and Bloom used no quote marks in the report; but it would appear M-L may have only used the word “touched” when speaking of what she told Ms. Crockett.

Six days after the Bloom/Campbell interview, M-L called Det. Bloom on September 4, 2013, who reported asking M-L if she had told Ms. Crockett in 2008 that James touched her “vagina area”. AR 170. The report goes on to say, again without any quote marks:

[S]he said she didn’t think she told her specifics. She said she told her that he touched her and where he touched her (vaginal area), but didn’t tell her that it was under the clothes or that there was penetration. She said Rhonda really didn’t ask her for details and she didn’t tell her.

*Id.* Here’s yet a different story, in her first statement to Det. Bloom of details she told Ms. Crockett, she did not say James touched her breasts. Contrary to the RJ, it is not consistent with M-L’s testimony at the hearing, where she said she told Ms. Crockett James touched her “on” her breasts and “in” her private area, VRP 1:66:22–24, over her clothes. VRP 1:66:11–14. So, which time was she telling the truth?

(8) In fact, her testimony at the hearing tacitly admits she lied to her mother on Thanksgiving Day 2008. Whereas her interview with Det. Bloom and social worker Campbell includes significant detail of James touching her bare skin on her breasts and vagina, and even digital penetration, she testified under oath at the hearing that she told her mother James had

touched her “over my clothes”. If she was not lying at the hearing, she must have lied when she told her mother in 2008 because she now said James had done much more than touch her “over [her] clothes”. But if she was lying at the hearing, then what else was a lie? If the RJ had paid closer attention to the record, he would have realized M-L was at the very least inconsistent. Or as the old maxim goes, “Falsus in uno, falsus in omnibus.” How did the RJ determine when M-L was credible and when she was not?

If the RJ really wanted to find consistency—and recognizing that M-L either lied to her mother in 2008 (if we believe her testimony at the hearing “over my clothes”), or she lied at the hearing, VRP 1:66:11–24, or she lied to Det. Bloom, AR 235—then the statement with which M-L *is* consistent is that of Ms. Crockett regarding M-L lying: “I have known [M-L] for seventeen years and she has a history of lying and sharing information that is not accurate.” AR 127.

- b. M-L was not consistent in the statements she made about whom she had told that James had molested her as a 12-year-old in 2008. Again, her story kept changing.

(1) When asked if she told anybody between 2008 and when she told law enforcement in on August 29, 2013, AR 169, about James “touching you”, M-L testified, “A: Um, I don’t -- I don’t remember. I don’t remember.” VRP 1:64:21–25. Yet only 5 days prior to speaking with the

police, she had posted to Facebook on August 24, 2013 that James had “raped” her. AR 182. *See also*, AR 092.

(2) By the time of the end of her testimony, however, just as with the issue of what she had told Ms. Crockett on Thanksgiving Day 2008, M-L again changes her testimony and *now* she remembers she told someone. The ALJ asked: “And was August 201[3] the first time that you ever disclosed the sexual abuse to anybody, when you did it on Facebook?” (Emphasis added.) M-L answered, “*Um, to, I think, one other -- one or two other friends. . . . Um, it was my friend Aubrey and, um, I don’t remember the other person.*” VRP 1:72:12–73:3.

(3) M-L was interviewed by Det. Bloom and social worker Campbell on August 29, 2013 at 8:40 am. AR 169. At the end M-L told them she called her biological brother Savaughn in Tennessee after the altercation with Ms. Crockett *and* told him about James molesting her but didn’t give him many details. Specifically, Det. Bloom wrote: “She told Sevaughn (sic) also about James molesting her but didn’t give him any details.” AR 171. M-L then confirmed to Det. Bloom that everything she told her was the truth.

(a) When Det. Bloom followed up with Savaughn on September 9, 2013, Savaughn confirmed M-L had called him on August 26 and told him about the altercation with Ms. Crockett. But contrary to what

M-L had told Bloom on August 29, 2013, AR 169, however, Savaughn told Det. Bloom that M-L did *not* tell him anything about James molesting her.<sup>5</sup> AR 236. This is a clear inconsistency and also further evidence of the RJ's bias or lack of attention to the record when he wrongly stated: M-L was "consisten[t ]in her reports".

(b) Det. Bloom also contacted M-L's biological sister, Krystal Sara, who said she had spoken with M-L when she visited the biological family in Tennessee. Krystal said M-L told her James had touched her in inappropriate places, but when asked if M-L had told her she had told Ms. Crockett, M-L told Krystal she had not told Ms. Crockett. M-L also told Krystal Sara she hadn't told anyone about the sexual abuse. AR 237. Since the visit with Krystal had to have occurred after 2008,<sup>6</sup> Krystal could have

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<sup>5</sup> The glaring question that demands to be answered—to which the RJ appears to have been oblivious—is whether M-L's memory can be relied on. If M-L was not lying to Det. Bloom on August 29 that she had told Savaughn—three days earlier—she had been molested by James, then Savaugh's statement to Det. Bloom that M-L he had not told him of molestation is additional clear evidence of M-L's poor memory.

<sup>6</sup> Krystal Sara said M-L told her in 2008 when she was visiting that James had molested her. But Krystal must have gotten the year wrong because the Crocketts were married in July 2008 and M-L did not go to Tennessee that year. VRP 1:201. M-L said the abuse started after James moved in. She also said she told only Ms. Crockett in 2008. VRP 1:67:10–11. M-L testified she had visited her bio family three times, the last being 2013. AR 171. Ms. Crockett testified the first time was in 2002, VRP 2:229:14–17, and the next time was 2009. VRP 2:230:12–16. Krystal thus saw M-L in 2009.

been *the* other person M-L told the ALJ she might have told about James molesting her. VRP 1:72:22–23.

So did M-L lie to Krystal—at a time when the prior Thanksgiving was less than a year past and when she had not gradually grown to hate her mother by age 17, thus having some motive to lie? AR 205. Or did she lie to the detective social worker in 2013 and the ALJ in 2015? *Supra*, at 20–24.

Krystal’s statements thus prove Ms. *Crockett’s* credibility. Krystal was told by M-L after 2008 that M-L had not told Ms. Crockett and had not told *anyone* about the sexual abuse. This supports Ms. Crockett’s testimony that M-L did not tell her in 2008 James sexually abused her. Ms. Crockett testified that M-L had told her James had touched her side and her leg near her knee, VRP 2:214:3–215:22; AR 234. These were not sexual touches.

- c. It is immaterial to M-L’s or Ms. Crockett’s credibility that M-L “participated in a criminal trial related to the sexual abuse that resulted in multiple guilty verdicts.” AR 006.

As clarified in note 4, the issue here is not whether James sexually abused M-L. The issue is what M-L told Ms. Crockett on Thanksgiving Day in 2008. Moreover, apart from the statement she “didn’t give [her] mother any of that detail” she said in the criminal VRP trial, 1:65:1–14, there is nothing in the record as to what *if anything* M-L specifically testified at the criminal trial that she had told Ms. Crockett on Thanksgiving Day 2008. By basing his

credibility findings in part on M-L's having testified at a criminal trial in which her testimony led to conviction, AR 177, the RJ begs the question.

**7. M-L admitted to having serious anger and mental health issues, which supports Ms. Crockett's contention M-L is lying to serve her own needs.**

The RJ said: "The Appellant provided no support for her contention M-L is lying to serve her own needs." AR 006.

Apart from the evidence identified in paragraphs 1–6 above and Ms. Crockett's own testimony, M-L had her own character issues, supporting Ms. Crockett's contention M-L lied "to serve her own needs." Again, the RJ begs the question and reveals his bias, saying Ms. Crockett provided *no* support for her contention that M-L lied.<sup>7</sup> In fact, Ms. Crockett provided ample support in testimony and exhibits—how could the RJ miss it, even if not believed?

a. *"Personally military life isn't for me . . . Because I don't take disrespect well because I get mad if someone is yelling at me and in the military getting disrespected is inevitable no matter what rank you are some one is always above you."* AR 091.

b. M-L's texts show her character. AR 091, 109–110.

M-L: *"And they insist that I go to college then join the military as an officer in training because I would get treated better than enlisted ranks but I've heard sergeants take out all their anger out on officers in training and I'll be done fought somebody."*

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<sup>7</sup> RJ appears here to shift the burden of proof from CPS to Ms. Crockett.

Dishawn: Lol so you are a fighter

M-L: *Lol sometimes. But I don't fight just because I can.*

Dishawn: You do it to teach ppl respect

M-L: *Yeah. I mean I do it to teach people just because I'm quiet and short doesn't mean you can treat any kind of way.*

Dishawn: They always say the quite one is the deadliest.

M-L: *Aha. Yeah I've heard that.*

c. *"I've snapped twice already but each time I catch myself but third times the charm."* AR 092.

d. *"I'm fine I just had a breakdown. And there'll probably be more of those through out the next 10 months."* AR 119, August 26, 2013.

C. The Review Judge's Conclusions as to Ms. Crockett's Credibility, FF 20 (1), (2) Were Based on Speculation and Fallacious Reasoning.

As in the RJ's determination that M-L *was* credible, his determination Ms. Crockett was *not* credible was equally wrong and based primarily on speculation. AR 006, FF 20(1), (2).

**1. The RJ falsely stated Ms. Crockett "blames M-L for ruining her family".**

The RJ said Ms. Crockett "blames M-L for ruining her family." AR 006.

a. *Nowhere* in the record does Ms. Crockett blame M-L for ruining her family—not in Ms. Crockett's testimony; not in M-L's testimony; not in Det. Bloom's testimony; not in social worker Campbell's testimony; not in M-L's text messages, AR 086–096; not in Ms. Crockett's request for review to Children's Administration, AR 126–130; not in Det. Bloom's

interview of Ms. Crockett, AR 233–235; and not even in social worker Campbell’s notes, AR 163–164.

b. Again, the RJ begs the question—attacking Ms. Crockett’s credibility because he has already determined M-L is credible. The *only* place in the record where the idea of ruining the family is stated is in Det. Bloom’s interview of M-L. And even M-L did not claim Ms. Crockett said it. Rather, as Det. Bloom wrote, “[M-L] said she didn’t tell her mother sooner because she was afraid her mother would blame her for ruining her happiness.” AR 170. Again, the RJ does not pay careful attention to the record but ascribes to Ms. Crockett what comes from M-L’s mouth.

**2. The RJ has scant if any basis beyond speculation to say Ms. Crockett would lie.**

The RJ said, “The Appellant is motivated to protect herself and James.” AR 006.

*Ms. Crockett would not lie to protect James.* It is true that at the time of the hearing, Ms. Crockett was still married to James, visited him in prison and testified on his behalf at his criminal trial. AR 006, FF 20(1). But again, what happened to James is not in issue. Again, *see*, note 4. The basic issue is whether M-L informed Ms. Crockett on Thanksgiving Day 2008 of any sexual touching. It is pure speculation to say that Ms. Crockett would *lie* about it; there is nothing in the record that supports the speculation.

**3. The RJ again begs the question, claiming Ms. Crockett is not credible because he has already determined she is not.**

The RJ said: When M-L reported to the Appellant that James had “molested” her, the Appellant chose to handle the matter at home instead of reporting it to the authorities as James had wanted to do. AR 006.

Not calling the police is only a problem if M-L actually provided Ms. Crockett with evidence of sexual touching. And James crying was immaterial when M-L had already explained the touching that was not sexual.

(1) Ms. Crockett took it very seriously in 2008 when M-L rushed into the house saying James had “molested” her. Even M-L told Det. Bloom when she “ran in the house and told Rhonda that James had been touching her[,] Rhonda dropped the silverware when she told her”. AR 170. This is what Ms. Crockett testified to as well. M-L was having an argument while shopping and James spoke forcefully to her to be quiet. M-L came in the house, slammed the door and said James had been “molesting” her. Ms. Crockett said, “And, at that point, I stopped everything that I was doing in the kitchen, and I waited for him to come in. Lillian came in with him right kind of there together. And I said, ‘I need to talk to you.’ “ VRP 2:212–213.

(2) Ms. Crockett then asked M-L what she meant and M-L said James had “touched” her. Though M-L said Ms. Crockett never asked her for details, AR 235, Ms. Crockett testified she asked where he had touched her and M-L pointed to her side above her waist and the inside of the

knee, AR 215—neither of which constituted sexual touching. She then asked M-L several questions: if James had touched her breasts; if he put his mouth on her breasts; if he put his hand on her private area; if he pulled her pants down, even her panties; and if he touched the bare private areas. M-L answered “No” to all her questions, confirming to Ms. Crockett there had been no sexual touching. She then told M-L that what James had done was not molesting. AR 214–218; AR 234. Do we believe M-L who is a proven liar by her own words? Or do we believe Ms. Crockett, about whom only speculation will support that she lied?

(3) At one point in the meeting, James was crying and offered to call the police. Ms. Crockett did not know why he was crying. VRP 2:220. But since the “touching” M-L described was not sexual, Ms. Crockett determined that they would deal with it in the family and that James would call his son to tell him about the situation so someone else would know. They ended up calling two of his sisters. *Id.* M-L testified almost seven years later she had wanted him to go to jail. AR 214–219.

**4. The RJ again begs the question, claiming Ms. Crockett is not credible because she instituted a safety plan.**

The RJ said: “The Appellant restricted contact between M-L and James and told M-L to hurt James if he touched her again.” AR 006.

(1) Thereafter, Ms. Crockett immediately instituted a safety plan in the home, such that James was not to be alone with the girls. She told

M-L that she should hurt James if he tried to touch her again. And if Ms. Crockett was gone from the home she would hire older adults as sitters who would come into the home. If James had to transport the girls, they were both to ride in the back seat of the car. Ms. Crockett also asked M-L to watch out for her younger sister. In addition, Ms. Crockett asked both girls 3–4 times per year whether there were any other problems, and each time the girls said James had not done anything to hurt them. AR 219–238. Ms. Crockett also offered M-L to have counseling but she was not interested. In addition, Ms. Crockett had previously cautioned James about wrestling with the girls which she did not feel was appropriate. VRP 2:203–204.

(2) M-L testified James had never done anything else sexually after Thanksgiving Day 2008 when they had the family meeting. VRP 1:63:21–64:1 The safety plan was kept in place, though as M-L got older and less cooperative in 2011, she began disregarding Ms. Crockett and began riding in the front seat with James when they went to church, which concerned Ms. Crockett. AR 223–225.

**5. No evidence suggests loss of ability to pursue occupation motivated Ms. Crockett to lie.**

The RJ said: “the Appellant will not be allowed to volunteer or work with minor children or vulnerable adults and be relicensed as a speech language pathologist if the Department’s Founded Finding is affirmed.” AR 006.

It is true if the Founded Finding is affirmed, the Appellant will not be allowed to volunteer or work with minor children or vulnerable adults and be relicensed as a speech language pathologist. But the RJ's reliance on this as suggesting Ms. Crockett would therefore be motivated to lie would apply to anyone who was ever accused. For the RJ to even say this almost suggests he creates a presumption that if one is accused and they stand to lose their occupation as a result, they are not credible. This is another example of the arbitrary and capricious approach of the RJ.

**6. The RJ also claims Ms. Crockett had motivation to minimize the allegations.**

The RJ said: "the Appellant's motivation to minimize or dismiss the allegations are clear, she was newly married for the first time and had recently began sharing a home with James." AR 006.

*a. Ms. Crockett did not "minimize".* Whatever Ms. Crockett testified to, it was not "minimization". The RJ appears to be engaging in some type of psychological assessment that was never testified to at trial. The fact is, there was no testimony supporting any "minimization" by Ms. Crockett. Either she lied or she didn't. Either M-L lied or she didn't. Ms. Crockett learned from M-L on Thanksgiving Day 2008 that James had not touched her in a sexual manner. There was nothing to minimize.

*b. The RJ begs the question—again.* Nevertheless, the RJ, with no basis in the record apart from the bare facts, states Ms. Crockett was

motivated to minimize the allegations because she was newly married for the first time, she had recently begun sharing a home with James, and therefore reporting the allegations to the authorities would more than likely result in the destruction of her new family. Again, the RJ begs the question. The RJ assumes she “minimizes”, uses that as proof she is not credible, and therefore finds she minimized rather than told the truth.

**7. Creating a safety plan does not mean Ms. Crockett believed James molested M-L.**

The RJ says Ms. Crockett’s “actions after M-L disclosed the sexual abuse by James strongly indicate that the Appellant knew that James had engaged in inappropriate sexual contact with M-L.” AR 006.

Again, the RJ indulges in rank speculation fueled by his having begged the question yet again. The creation of the safety plan could just as strongly indicate Ms. Crockett didn’t want M-L’s lack of understanding of what “molest” meant to affect the family while at the same time constructively addressing M-L’s concerns. And as it turns out, the actions of Ms. Crockett were completely effective. The RJ knows there was sexual abuse only because James was convicted. Ms. Crockett did not know until 2013 because (1) on questioning M-L on Thanksgiving Day 2008, and (2) asking her and LW over the years, and (3) following the safety plan, no abuse ever occurred after Thanksgiving Day 2008; and until 2013, Ms. Crockett never learned

from anybody of the abuse that had occurred from late July to Thanksgiving Day 2008. Yet again, the RJ begs the question.

**8. The RJ creates another straw man regarding Ms. Crockett's response to M-L's previous allegations of sexual abuse by a foster father.**

The RJ said: "The Appellant did not have any personal connection to the previous abuser and no motivation to minimize or dismiss the allegations." AR 006.

Ms. Crockett reported previous allegations of sexual abuse M-L had made against a foster father in Tennessee.<sup>8</sup> Having determined that Ms. Crockett had minimized when she said M-L had only told her James touched her on the knee and side, the RJ has to rationalize that Ms. Crockett took seriously her obligation as a mandated reporter. So the RJ creates a theory Ms. Crockett didn't know the prior abuser. But because this was her husband, she must be minimizing now. Again, anything can be proved if assumed at the outset. In fact, Ms. Crockett took her reporting obligation seriously because she worked with children and would not jeopardize her license. AR 234.

**9. The RJ disregards the consistency of Ms. Crockett's statements and testimony.**

Unlike M-L who told inconsistent stories of what happened, Ms. Crockett was consistent in all her statements: her testimony, VRP 2:191–234, 3:8–98;

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<sup>8</sup> The abuse by the Tennessee foster father included that he would have M-L touch his penis with his foot. AR 126–27. Interestingly, M-L told the police that is what James did. AR 170.

her interview by Det. Bloom, 233–235, and her request for review to Children’s Administration. AR 126–130. It is baffling—and is evidence that the RJ was arbitrary and capricious—that while he overlooked significant inconsistency of M-L to find her “consistent”, he overlooked Ms. Crockett’s significant consistency and said she was motivated to minimize. As one proverb puts it, the RJ strained at a gnat and swallowed a camel.

D. The Review Judge misread the record as to how M-L got to the floor in the altercation.

The RJ made a major part of his finding based upon an inaccurate understanding of the facts, choosing instead to select an almost provably inaccurate statement of how M-L went to the floor. By his arbitrary and capricious cherry-picking of the record, the RJ was able to justify the finding he wished to make. Specifically, he created for his own purposes the words “threw” and “throwing”—which do not appear in the testimony and for which the RJ gives no citation to the record, AR 010, par. 13—in order to find Ms. Crockett’s actions in the altercation were presumed unreasonable under RCW 9A.16.100. That the RJ can twist the record as he has done here suggests the rest of his decision is also not correctly decided.

**1. Both M-L and Ms. Crockett do not say she was thrown to the floor.**

To begin, M-L does not say she was “thrown” to the floor. Rather, she said, “I fell on the floor to my knees.” VRP 1:42:20–21. M-L also told Det.

Brooks Ms. Crockett “pulled her to the floor.” AR 169, hardly a description of being “thrown”. Similarly, Ms. Crockett stated she “brought her down to the floor,” AR 128, explaining in substantial detail her training in Tennessee as a special ed teacher of children “with high needs . . . and severe, extreme behavior problems.” VRP 3:28:22–30:25.

**2. Others do not say she was thrown to the floor.**

Other instances in the record address the takedown. Officer Chell told CPS intake Ms. Crockett reported she pulled M-L to the ground. AR 151. Det. Brooks placed in quotations that Rhonda “took her to the floor” AR 233. Det. Brooks testified at hearing that Rhonda told her on 8/29/13 she “took [M-L] down to the floor. Uh, pulled her down to the ground.” VRP 2:26:21–22, 27:7–8.

**3. Campbell alone used the term “tossed” to the ground.**

The only evidence that approaches “throwing” is in the Founded letter, AR 135, and the findings of the Investigative Assessment, AR 156, which both say Ms. Crockett “tossed [M-L] to the ground” (quotation marks in original), as well as the notes section of the Investigative Assessment, AR 163, which stated that during the joint interview on 8/29/13 with Det. Bloom and social worker Campbell, Ms. Crockett “tossed [M-L] to the ground” (quotation marks *not* in original). Both the foregoing documents were written by Ms. Campbell.

**4. Campbell Remembered Ms. Crockett had to “take” M-L to the ground.**

However, when Ms. Campbell had the Investigative Assessment before her on cross-examination, and having her attention directed to the second to the last paragraph, VRP 2:174:10–11, of AR 163—which included the words “tossed to the ground” (*not* in quotation marks)—and she was asked what she remembered of Det. Bloom’s interview of Ms. Crockett, Ms. Campbell said she remembered “some pieces” of the interview. VRP 2:174:8–15. When asked what pieces she did remember, she spontaneously stated in part, “[Ms. Crockett] talked about M-L, um, being out of control. And having to take her to the ground.” VRP 2:174:18–20. Thus, though she wrote “tossed” (*not* in quotes) in her assessment, her actual memory was “having to take her to the ground”—consistent with every other statement in the record of Ms. Crockett putting M-L on the floor.

Again, when Ms. Campbell is cross-examined about Det. Bloom’s report of the interview on 8/29/13, and she was asked, “. . . how did Rhonda take her to the floor?”, she answered in part, “My understanding from M-L is that Rhonda grabbed her. And that’s when she took her to the ground.” When Campbell explained what happened, she didn’t challenge Det. Brooks’ report of the manner of takedown. She thus does not appear wedded to the idea that Ms. Crockett “tossed down” M-L.<sup>9</sup>

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<sup>9</sup> See Appendix A for analysis of the validity and likely source of “tossed”.

**5. *M-L alleged no pain or injury from having been taken down to the floor.***

Further evidence that Ms. Crockett did not “throw” or “toss” M-L to the floor can be seen from the reaction of M-L herself. M-L never told anyone she was harmed in any way when she was taken down, VRP 1:43:5–44:6, and Ms. Crockett said M-L made no expression of pain. VRP 3:30:20. This also comports with Ms. Crockett’s description of how she actually took M-L down: “She didn’t hit anything. It was a safe maneuver. . . [meaning] I was kind of holding her – I was guarding her going down with my body. I was using my hands, but I was also guarding going down with my body.”

**6. *The altercation provides no basis for a finding of abuse.***

Ms. Crockett did not “throw” M-L so as to activate the presumption that her act was unreasonable, RCW 9A.16.100. But even if it were to be considered “throwing” M-L, Ms. Crockett clearly rebutted the presumption in her uncontradicted testimony, having safely and carefully taken M-L down. Finally, the proof is in the “putting”—M-L made no expression of pain when taken down nor did she testify that she sustained any injury or even pain when she “fell on the floor to [her] knees.” The RJ’s blatant manipulation of the record to draw the desired outcome clearly fails on the issue of the takedown. On the other hand it offers yet another strong indication the RJ was biased and arbitrary. And his injection of the words “threw” and

“throwing” are most definitely a capricious treatment of the record in order to support his contorted legal analysis concluding physical abuse.

## II. LEGAL ANALYSIS

The Final Order violated RCW 34.05.570((3)(d), erroneous interpretation of the law, (e) the order is not supported by substantial evidence in light of the whole record, and (i), the order is arbitrary or capricious.

### A. Ms. Crockett Did Not Commit Negligent Treatment or Maltreatment.

The RJ held Ms. Crockett neglectful, as follows:

Appellant committed negligent treatment or maltreatment of her child by chronically failing to act on the knowledge that her daughter had been sexually molested, thereby creating a substantial risk of injury to the physical, emotional, and cognitive development of the child pursuant to WAC 388-15-009(5)(b). This Appellant was notified in November 2008, that her husband had been sexually molesting her child. However, in spite of this notification, the Appellant failed to notify the proper authorities, and instead decided to “handle the situation as a family and pray.” . . . The Appellant’s lack of appropriate action clearly demonstrated a serious disregard for her child’s health and welfare, and created a clear and present danger to her child’s safety.

CL 18, BR 012. Former WAC 388-15-009(5)(c) stated:

Actions, failures to act, or omissions that result in injury to or which create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child.

The RJ cited no authority for the holding Ms. Crockett actions had been neglectful. Even if M-L’s statement to her communicated actual sexual abuse, there was no legal requirement un criminal law that she report to the authorities. James was not a registered sex offender in 2008, RCW

9A.42.100; Ms. Crockett did not witness the actual commission of a sexual offence, RCW 9.69.100(1)(b). Nor did she even have an obligation under the reporting statute, RCW 26.44.030(1)(d):

The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse . . . [meaning] any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling

CL 18, quoted above, and despite the safety plan, yet failing to contact authorities was “clearly” neglectful—yet the RJ provides no authority but the word “clearly”. Even if Ms. Crockett was told of sexual touching—which she denies—her actions did not create a create a substantial risk of injury to M-L. She immediately stopped preparation of Thanksgiving dinner. She then asked M-L thorough questions. She then immediately instituted a strict safety plan, RP 2:221-226, which even M-L acknowledged. RP 64. She made sure another adult was always present or that the girls rode in the back seat together when James had to drive them. She also restricted James from the girls’ rooms. She also questioned the girls regularly, about 3–4 times per year. Her safety plan paid off because neither of the girls were molested by James after Thanksgiving 2008. In fact, CPS tacitly acknowledged she took appropriate steps because Ms. Crockett was not founded as to LW who was also in the home for the entire relevant period and was never molested.

Without addressing any real criteria, the RJ concluded that Ms. Crockett committed negligent treatment or maltreatment, apparently holding her to a negligence standard. Yet the court has specifically made clear it is error to consider negligent treatment or maltreatment under former RCW 26.44.020(15) is the common law negligence “reasonable person” standard. *Brown v. DSHS*, 190 Wn. App. 572, 360 P.3d 875 (2015). As *Matter of Dependency of Lee*, 200 Wn. App. 414, 404 P.3d 575 (Div I 2017), noted:

*Brown* simply confirmed that a determination of abuse or neglect cannot be based on a finding of common law negligence. This is consistent with the legislature’s desire to avoid sanctioning parents for simple negligence—a standard that would “place every Washington parent in jeopardy.” *Brown*, 190 Wn. App. at 593, 360 P.3d 875.

200 Wn. App. at 437. In distinguishing neglect from negligence, *Brown* held:

We see no difference between “serious disregard” and “reckless disregard.” Reckless and serious disregard signifies a higher degree of culpability than acting unreasonably or affording “negligent treatment.” . . . The legislature’s use of the word “magnitude” implies *Brown*’s misconduct must be of a greater level of fault than negligence. . . . [U]se of the idiom “clear and present danger” in RCW 26.44.020(16) further suggests more serious misconduct than mere negligence.

*Brown*, 190 Wn. App. at 590–91.

Ms. Crockett’s immediate actions indicate the opposite of “reckless disregard,” and there was no disregard of consequences, let alone disregard of magnitude, and her safety plan—again, even if M-L did actually relate

sexual abuse—prevented any danger being clear and present. The RJ therefore should be reversed.

B. Ms. Crockett Did Not Physically Abuse M-L When She Took Her down to the Floor.

The RJ’s finding of physical abuse is based on RCW 9A.16.100(1) and WAC 388-15-009(1)(a) and (2). Specifically, due to his arbitrary view of the record, his capricious analysis failed in his attempt to cram the square peg (“threw”) into the round hole (“took down”). The Order thus fails as to physical abuse.

However, though the Order is not clear, the RJ also seems to rely on RCW 9A.16.100(1)(a) and WAC 388-15-009(1)(f), again based on his incorrect credibility findings.

The following actions are presumed unreasonable when used to correct or restrain a child: (1) Throwing, kicking, burning, or cutting a child;

RCW 9A.16.100(1)(a). Specifically, the RJ strained to bring the case within this statute by claiming that Ms. Crockett “threw” M-L. The purported “throwing” is seen to be a fabrication of the RJ. *See*, pp. 37–41, *supra*.

Then The RJ concluded from the statute and WAC that M-L’s “pain and marks” lasting a “few days” was abuse. (*Cf.* FF 21, “more than one week” *with* VRP 1:43:06 “couple days”).<sup>10</sup>

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<sup>10</sup> By what criteria did the RJ conclude M-L was credible as to “more than a week” but not as to “a couple days”?

First, the fingernail indent went away “pretty quickly”. VRP 1:43:12–15  
Second, there is no evidence (or finding for that matter, see, FF 17–19, 21) that any wrist soreness or mark was caused *by* Ms. Crockett, only that they were “after” the altercation. The state did not meet its burden and the RJ did not address causation. The most that could be said is found in CL 13 and 15, “pain and marks resulting” when Ms. Crockett “threw” M-L to the ground, and they were minor and transient. See, Appendix B, Legislative History. Even if the mark and soreness were not minor and transient and were caused by Ms. Crockett, there is no finding and evidence such were “likely” to be caused by the takedown when there was no other harm or even pain. Finally, injury is not per se illegal if reasonable and moderate. Given M-L’s age there is no evidence the injury, if caused by Ms. Crockett, was not reasonable or moderate. The takedown was carefully done. VRP 3:28–30.

C. The RJ’s “credibility” finding is deficient and need not be accepted because it was not a true credibility determination.

A court will not substitute its judgment regarding credibility determinations of the RJ regarding witness credibility. *Chandler v. State, Office of Ins. Com’r*, 141 Wn. App. 639, 648, 173 P.3d 275 (2007). “A Review Judge may substitute his or her findings for those of the ALJ, but she cannot reject credibility determinations without substantial evidence to the

contrary in the record.” *Id.* at 657. RCW 34.05.464(4) requires that the RJ give due regard to the ALJ’s opportunity to observe the witnesses.”

As noted, *supra* at 7–8, 10, the ALJ’s made no specific credibility finding addressing demeanor, apart from baldly stating “I carefully considered and weighed all of the evidence, including witness demeanor (as determined by voice, attitude, reasonableness, and consistency of testimony throughout the hearing), the motivation of each party, and the totality of the circumstances presented,” AR 035, none of the reasons for the ALJ’s credibility finding went to demeanor. Perhaps it was for that reason the RJ, as allowed by RCW 34.05.464(4), modified the credibility findings to remove the foregoing language of the ALJ. *Hardee v. State, Dep’t of Soc. & Health Servs., Dep’t Early Learning*, 152 Wn. App. 48, 59, 215 P.3d 214 (2009), *aff’d sub nom. Hardee v. State, Dep’t of Soc. & Health Servs.*, 172 Wn.2d 1, 256 P.3d 339 (2011). Demeanor thus plays no part in the RJ’s credibility determination or in this appeal. Demeanor no longer relevant to credibility, consistency and motivation in the whole record are pivotal factors.

In *Chandler*, the RJ rejected the ALJ’s credibility determination:

[T]he ALJ rejected [Husby’s] testimony because it was inconsistent, not because her demeanor was untrustworthy or unreliable. Like the Review Judge, we can look at the record to determine whether her testimony was substantively consistent. As such, the ALJ was not making a true credibility determination. We agree with the Review Judge that Ms. Husby’s testimony was consistent throughout.

*Id.* at 657.

Like *Chandler*, the RJ here modified the ALJ credibility finding by removing demeanor as a factor because the ALJ did not make “a true credibility determination”. Unlike *Chandler*, however, the RJ here took the ALJ’s non-demeanor findings virtually verbatim and thus overlooks the many inconsistencies and evidences of wrongful motivation in M-L’s testimony.

It is up to the reviewing court to now recognize the RJ also did not make “a true credibility determination”. As noted *supra* in the extensive factual analysis, Finding 20(1)–(3) overlooks M-L’s significant inconsistencies and motivations and disregards Ms. Crockett’s consistency and speculates regarding her motivation. Having done so, the court can see there is not substantial evidence to support the RJ’s Order.

This issue has been addressed in Oregon:

A determination of a witness’ credibility can be based on a number of factors other than the manner of testifying, including the inherent probability of the evidence, internal inconsistencies, whether or not the evidence is corroborated, and whether human experience demonstrates that the evidence is logically incredible. See *Lewis and Clark College v. Bureau of Labor*, 43 Or.App. 245, 256, 602 P.2d 1161 (1979), *rev. den.*, 288 Or. 667 (1980) (Richardson, J., concurring in part, dissenting in part). We evaluate the hearing officer’s determinations of credibility in that light.<sup>6</sup>

<sup>6</sup> Because the hearing officer did not rely on the witnesses’ demeanor in determining credibility, all of the evidence on the credibility issue is in the record.

*Tew v. Driver & Motor Vehicle Servs. Branch (DMV)*, 179 Or. App. 443, 449, 40 P.3d 551, 555 (2002). This is the case here. Though FF 20 is identified

as the basis for credibility, its statement from the records and its speculative statements without basis in the record are all available to the appellate court.

### III. APPELLANT IS ENTITLED TO ATTORNEYS FEES ON APPEAL.

RCW 4.84.350(1) states as follows:

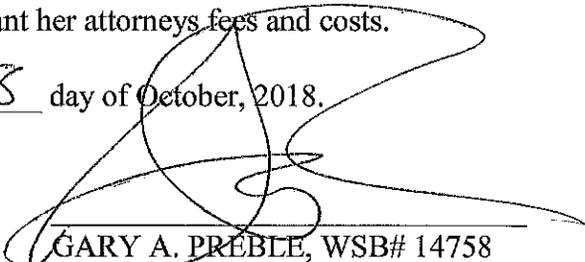
(1) Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

Appellant requests that fees and costs, title 14 RAP, RAP 18.1, be awarded her should she prevail in this matter, up to the statutory maximum at both the Superior Court level and at the Court of Appeals.

### E. CONCLUSION

Based on the foregoing, and in light of M-L's lies *supra*, at 11-14, animus toward her mother, *supra*, at 14-15, inconsistencies, *supra*, at 15-18, 20-27, financial and social motives, *supra*, at 18-19, and emotional instability, *supra*, at 28-29, Appellant Rhonda Crockett requests the court to reverse the RJ decision and to grant her attorneys fees and costs.

Respectfully submitted this 8 day of October, 2018.

  
GARY A. PREBLE, WSB# 14758  
Attorney for Appellant

**ANALYSIS OF SOCIAL WORKER CAMPBELL'S  
USE OF THE WORD "TOSSED"**

AR 156, 163, 176

The question arises as to how Det. Bloom and social worker Campbell could observe the same interview of Ms. Crockett on 8/29/13 and make such divergent statements as Det. Bloom's "took her to the floor" (quotation marks in original), AR 233, and Campbell's "tossed her to the ground" (quotation marks *not* in original), AR 163. One explanation is that the police report is much more detailed. Whereas SW Campbell wrote of the interview with Ms. Crockett in the two full paragraphs at the bottom of AR 163, Bloom wrote 2 $\frac{1}{3}$  pages of detailed notes, AR 234–36, suggesting certainly greater detail but also greater accuracy.

Second, though it is not clear when Bloom wrote her notes of the 8/29/13 interview at the Crockett home, it would appear to have been done no later than 5 days later, the date of the next entry. Campbell, on the other hand, did not enter her notes for a full two weeks, as indicated at AR 159, second to the last row, Subject Interview, Rhonda Crockett. The fourth column shows the interview was 8/29/13 at 10:20 am, which comports with Bloom's time, AR 233. The last column is the creation date (see AR 157), which for that interview was 9/13/13 at 11:56 am.

**APPENDIX A-1**

Thus, while SW Campbell likely took handwritten notes, she did not enter them in the computer for two full weeks.

SW Campbell testified the word “tossed” would not have been hers. AR 176–77. This writer believes Campbell’s handwritten note that she took two weeks to transcribe may have been difficult to read but she could see it started with a “to”. Bloom wrote “took”, but Campbell read her notes as “tossed”, which also fit the general meaning of getting M-L to the floor. However, she did not put the word in quotes, AR 163, indicating a lack of certainty as of the time she transcribed it.

However, when she completed her Assessment on 09/19/2013, AR 156, she selected language from her previous notes. AR 176. It was at that point in filling out the “Support of Findings/ CAPTA Narrative” section that she put quote marks around the words “tossed her to the ground”, quoting herself to lend an air of certainty to the language that was in fact undeserved. The same quote was also used in the Founded letter, AR 133, compounding the appearance of certainty.

Finally, it is suggested that law enforcement have superior training in forensic principles and documentation. The brevity of Campbell’s notes, her untimely transcription, her misleading use of quotation marks, and her own testimony at the hearing are proof of the likely accuracy of this suggestion as to social worker Campbell’s use of the word “tossed”.

## **APPENDIX A-2**

## SPEAKER'S RULING

The Speaker: "Representative Sommers, the Speaker has examined the floor amendment and the bill. The Speaker would like to note that the title is 'An Act Relating to deleting of statutory duties of the Legislative Budget Committee.' In fact, the Speaker would like to note that the bill itself deals with the reduction of duties, and in addition, it eliminates a report of the Secretary of State by responsibility of submitting a report to the Legislative Budget Committee, while the amendment only reduces or diminishes the responsibilities or duties of the Legislative Budget Committee. The Speaker, after examining both, finds that it is within the scope and object of the bill and your point is not well taken."

Mr. Vekich spoke in favor of the amendment, and Ms. Belcher spoke against it

## POINT OF ORDER

Mr. Vekich: "Mr. Speaker, I think my motives are being impugned. This amendment has nothing to do with salary surveys."

## SPEAKER'S RULING

The Speaker: "Representative Belcher, I was distracted talking about a technical matter so I wasn't able to hear your remarks, so I cannot judge as to whether or not you were straying from the issue and impugning the remarks. I'm sure you would not, now or in the future do so, so please continue on the issue before us."

Ms. Belcher continued her remarks in opposition to the amendment. Representatives Vander Sloep, Holland, Tilly, J. King, R. King, Sommers and Prince spoke against the amendment, and Representatives Sutherland, Schmidt and Walk spoke in favor of it.

With the consent of the House, Mr. Vekich withdrew the amendment:

On motion of Mr. Appelwick, the rules were suspended, the second reading considered the third, and the bill was placed on final passage.

Ms. Belcher spoke in favor of passage of the bill.

## ROLL CALL

The Clerk called the roll on the final passage of Senate Bill No. 4452, and the bill passed the House by the following vote: Yeas, 85; nays, 12; excused, 1.

Voting yea: Representatives Addison, Allen, Appelwick, Armstrong, Ballard, Barnes, Barrett, Basich, Baugher, Belcher, Braddock, Brekke, Bristol, Brooks, Brough, Cole, Crane, Day, Dellwo, Doly, Ebersole, Fisch, Fisher, Gallagher, Grimm, Hankins, Hargrove, Hastings, Haugen, Hine, Holland, Isaacson, Jacobsen, King J. King P. King R. Kremen, Leonard, Lewis, Locke, Long, Lux, Madsen, May, McMullon, Miller, Nelson D., Nelson G., Niemi, Nutley, O'Brien, Padden, Peery, Rayburn, Rust, Sanders, Sayan, Schoon, Scott, Silver, Smith C., Smith L., Smitherman, Sommers, Sutherland, Tanner, Taylor, Thomas, Tilly, Todd, Unsoeld, Valle, Vander Sloep, Vekich, Walk, Walker, Wang, West, Williams B., Wilson K., Wilson S., Wineberry, Winsley, Zellinsky, and Mr. Speaker - 85.

Voting nay: Representatives Belozoff, Bond, Chandler, Dobbs, Fuhrman, Lundquist, Nealey, Patrick, Prince, Schmidt, Van Luvan, Williams J - 12

Excused: Representative van Dyke - 1

Senate Bill No. 4452, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

**SUBSTITUTE SENATE BILL NO. 4814**, by Committee on Ways & Means (originally sponsored by Senators McDermott and Bailey)

Providing education for children on abuse and neglect and creating a pilot project on educating and training young mothers.

The bill was read the second time. Committee on Ways & Means recommendation: Majority, do pass as amended by Committee on Ways & Means and without Committee on Education amendments. (For amendments, see Journal 50th Day, March 3, 1986.)

Mr. Braddock moved adoption of the committee amendment

On motion of Mr. Schoon, the following amendment to the committee amendment was adopted:

On page 1, line 21 after "Any" strike "assault" and insert "use of force"

Mr. Schoon moved adoption of the following amendment to the committee amendment:

On page 1, line 18 following "parent" insert ", teacher"

Representatives Schoon, Locke, Taylor, Fuhrman and Barnes spoke in favor of the amendment; to the amendment, and Representatives Cole and K. Wilson opposed it.

Representatives Schoon and Locke spoke again in favor of the amendment to the amendment.

The amendment to the committee amendment was adopted.

Mr. Hargrove moved adoption of the following amendment to the committee amendment:

On page 1, line 27 strike "never reasonable" and insert "presumed unreasonable"

Representatives Hargrove, Dellwo and Padden spoke in favor of the amendment to the amendment and it was adopted.

Mr. West moved adoption of the following amendments to the committee amendment:

On page 1, line 13 following "use" strike "more effective and less dangerous"

On page 1, line 15 following "children" insert "that are not dangerous to the children"

Representatives West and Locke spoke in favor of the amendments to the committee amendment, and they were adopted.

Mr. Dellwo moved adoption of the following amendment by Representatives Dellwo, K. Wilson, Long, Locke, G. Nelson and Lewis to the committee amendment:

On page 2, line 3 after "pain" strike all material through "child" on line 7 and insert "or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate."

Mr. Dellwo spoke in favor of the amendment

## POINT OF INQUIRY

Mr. Dellwo yielded to question by Mr. Hargrove

Mr. Hargrove: "Representative Dellwo, is the phrase 'minor temporary marks' intended to include minor temporary bruises, redness and welts?"

Mr. Dellwo: "Yes, it is."

Mr. Hargrove spoke in favor of the amendment to the amendment, and it was adopted

The Clerk read the following amendment by Representative West to the committee amendment:

On page 2, following line 9 insert

"Sec. 2. Section 41 chapter 262, Laws of 1984 and RCW 9A8A.050 are each amended to read as follows:

A person who:

(1) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct; (or)

(2) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct; or

(3) Knowingly exposes a minor to visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct is guilty of a class C felony punishable under chapter 9A of RCW

((3)); (4) As used in this section, 'minor' means a person under ((sixteen)) eighteen years of age

With the consent of the House, Mr. West withdrew the amendment

**PREBLE LAW FIRM, P.S.**

**October 08, 2018 - 7:54 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52541-1  
**Appellate Court Case Title:** Rhonda Crockett, Appellant v. WA State DSHS, Respondent  
**Superior Court Case Number:** 16-2-01307-1

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