



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Department of Corrections

- Permanent Rule
- Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) January 1, 2006 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: Revise the procedures for operation of work release and standardize serious infractions for prison and work release offenders.

Citation of existing rules affected by this order:

Repealed: WAC 137-28-260
 Amended: WAC 137-56
 Suspended:

Statutory authority for adoption: RCW 72.01.090, RCW 72.09.130 & RCW 9.94.070

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 05-21-105 on October 18, 2005 (date).
 Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone ()
 Address: _____ fax ()
 e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted:

11/28/05

NAME (TYPE OR PRINT)

Harold W. Clarke

SIGNATURE

TITLE

Secretary

CODE REVISER USE ONLY

CODE REVISER OFFICE
 STATE OF WASHINGTON
 FILED

NOV 28 2005

TIME 2:14

WSR 05-24-009

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	Amended	Repealed
Federal rules or standards:	New	Amended	Repealed
Recently enacted state statutes:	New	Amended	Repealed

The number of sections adopted at the request of a nongovernmental entity:

New	Amended	Repealed
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The number of sections adopted in the agency's own initiative:

New	<u>3</u>	Amended	<u>23</u>	Repealed	<u>1</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>3</u>	Amended	<u>23</u>	Repealed	<u>1</u>
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The number of sections adopted using:

Negotiated rule making:	New	Amended	Repealed			
Pilot rule making:	New	Amended	Repealed			
Other alternative rule making:	New	<u>3</u>	Amended	<u>23</u>	Repealed	<u>1</u>

Chapter 137-25 WAC

SERIOUS INFRACTIONS--TOTAL AND PARTIAL CONFINEMENT FACILITIES

NEW SECTION

WAC 137-25-010 Application of chapter. The definitions and serious infractions described herein apply to offenders committed to both full and partial confinement facilities.

NEW SECTION

WAC 137-25-020 Definitions. For the purposes of this chapter, the following words have the following meanings:

Abusive sexual contact - an incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:

- Intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

Adult correctional institution and institution - a facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.

Aggravated assault - an assault resulting in physical injury and requiring medical care (see definition of medical care).

Assault - a physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

Attempted suicide - an unsuccessful attempt to kill oneself as determined by a medical or mental health professional.

Attempt - putting forth an effort to commit any infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault.

Bodily harm - physical pain or injury, illness, or impairment

of physical condition.

Cell tag - if contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.

Conspiracy - an agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.

Deputy secretary - the deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.

Discovery - when a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.

Earned time - means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.

Earned release time - means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.

Good conduct time credits - that portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

Hearing officer - staff member(s) designated by the superintendent or hearings program administrator to conduct disciplinary hearings.

Infraction - commission of, attempt to commit, or conspiracy with another to commit any violation of rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.

Infraction review officer - staff member(s) designated by the superintendent to review a serious infraction.

Lesser included offense - any infraction that must necessarily have been committed in order to commit another infraction.

Medical care - any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.

Mental health professional - an individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at affecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.

Mitigating factors - factors to be considered by the infracting officer in deciding whether to charge a #328 general

infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

Possession - established when an item(s) is found on a person or in an area which is under the control of the individual(s) charged.

Promptly - to act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

Secretary - the secretary of the Washington state department of corrections, or the secretary's designee.

Sexual harassment - any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

Sexually explicit - means a depiction of one of the following:

- One of the participants in the sexual act is, or appears to be, nonconsenting;

- One of the participants in the sexual act appears to be forceful, threatening, or violent;

- One of the partners in the sexual act is dominating one of the other participants and one of the individuals is obviously in a submissive role or one of the participants is degraded, humiliated, or willingly engages in behavior that is degrading or humiliating;

- One of the participants in the sexual act is a minor, or appears to be a minor, or a minor alone is depicted in a sexually suggestive way;

- Actual penetration, be it penile/vaginal-oral, penile-anal, or penile-vaginal; digital-anal; digital-vaginal; or insertion of any inanimate object in the vaginal or anal cavity, and the depiction in the context presented is deemed to be a threat to legitimate penological objectives;

- Any bodily excretory function which is sexual in nature;

- Bestiality, sadomasochistic behavior, bondage; or

- Material reasonably deemed to be a threat to legitimate penological objectives.

Staff member - for purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.

Superintendent - superintendent of an adult correctional institution or the superintendent's designee.

Working days - Monday through Friday, excluding weekends and holidays.

NEW SECTION

WAC 137-25-030 Serious infractions.

Category A

501 - Committing homicide.
502 - Aggravated assault on another offender.
507 - Committing a felony.
511 - Aggravated assault on a visitor or community member.
521 - Taking or holding any person hostage.
550 - Escape or attempted escape.
601 - Possession, manufacture, or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.
602 - Possession, manufacture, or introduction of any gun, firearm, weapon, sharpened instrument, knife, or poison or any component thereof.
603 - Possession, introduction, use or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug, mind altering substance, or drug paraphernalia.
604 - Aggravated assault on a staff member.
611 - Nonconsensual sexual assault on a staff member.
612 - Attempted nonconsensual sexual assault of staff.
613 - Abusive sexual contact with staff.
635 - Nonconsensual sexual assault on another offender.
636 - Attempted nonconsensual sexual assault of another offender.
637 - Abusive sexual contact with another offender.
650 - Rioting.
651 - Inciting others to riot.

Category B

762 - Failing to comply with DOSA requirements.

Category B - Level 1

504 - Engaging in sexual acts with others within the facility with the exception of approved conjugal visits.
553 - Setting a fire.
560 - Unauthorized possession of items or materials likely to be used in an escape attempt.
588 - Causing a valid and documented threat of transmission of a contagious disease to any person due to intentional, negligent or reckless action.
633 - Assault on another offender.
704 - Assault on a staff member.
711 - Assault on a visitor or community member.

744 - Making a bomb threat.

Category B - Level 2

505 - Fighting with any person.
556 - Refusing to submit or cooperate in a search when ordered to do so by a staff member.
607 - Refusing to submit to a urinalysis and/or failure to provide a urine sample when ordered to do so by a staff member within the allotted time frame.
608 - Refusing or failing to submit to a breathalyzer or other standard sobriety test when ordered to do so by a staff member.
609 - Refusing or failing to submit to testing required by policy, statute, or court order, such as DNA blood tests when ordered to do so by a staff member.
652 - Engaging in or inciting a group demonstration.
655 - Making intoxicants, alcohol, controlled substances, narcotics, or possession of ingredients, equipment, items, formulas, or instructions that are used in making intoxicants, alcohol, controlled substances, or narcotics.
682 - Engaging in or inciting an organized work stoppage.
707 - Possession, introduction, or transfer of any alcoholic or intoxicating beverage.
716 - Unauthorized use of prescribed or over the counter medication.
736 - Possession, manufacture or introduction of unauthorized keys.
750 - Indecent exposure.
752 - Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.
830 - Any escape from work release with voluntary return within 24 hours.

Category B - Level 3

503 - Extortion, blackmail, demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
506 - Threatening another with bodily harm or with any offense against another person, property, or family.
509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area.
525 - Violating conditions of a furlough.
557 - Refusing to participate in an available education or work program or other mandatory programming assignment.
558 - Interfering with staff members, medical personnel, fire fighters, or law enforcement personnel in the performance of their duties.

600 - Tampering with, damaging, blocking, or interfering with any locking or security device.
605 - Impersonating any staff member, contracted staff member, volunteer, other offenders or visitor.
653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction.
654 - Counterfeiting, forgery, altering, falsification, or unauthorized reproduction of any document, article, or identification, money, security, or official paper.
660 - Unauthorized possession of money or other negotiable instruments the value of which is five dollars or more.
709 - Out-of-bounds; Being in another offender's cell or other area in the facility where not assigned or authorized; being in an area in the facility with one or more offenders without authorization.
738 - Possession of clothing of a staff member.
739 - Possession of personal information about currently employed staff, contractors, or volunteers, or their immediate family members, not voluntarily given to the offender by the individual involved; including, but not limited to: Social Security numbers, unpublished home addresses or telephone numbers, driver's license numbers, medical, personnel, financial, or real estate records, bank or credit card numbers, or other like information not authorized by the court or the superintendent.
745 - Refusing a transfer to another institution.
746 - Engaging in or inciting an organized hunger strike.
777 - Causing injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.
813 - Unauthorized/unaccounted time in the community or being in an unauthorized location in the community.
814 - Violation of an imposed special condition.
831 - While in work release, failure to return from an authorized sign out.
879 - Operating a motor vehicle without permission.

Category C - Level 1

508 - Throwing objects, materials, substances, or spitting at staff, visitors, or other offenders.
517 - Committing a misdemeanor.
555 - Theft of property or possession of stolen property.
563 - Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other fire fighting equipment or devices.

610 - Unauthorized accumulation of prescribed medication greater than a single or daily dose.
620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.
659 - Sexual harassment.
663 - Using physical force, intimidation or coercion against any person.
702 - Possession, manufacture or introduction of an unauthorized tool.
708 - Organizing or participating in unauthorized group activity or meeting.
714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another offender or that offender's friend(s) or family, the value of which is ten dollars or more.
717 - Causing a threat of injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.
720 - Flooding a cell or other area of the institution/facility.
724 - Refusing a cell or housing assignment.
734 - Participating or engaging in the activities of any unauthorized club, organization, gang or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang or security threat group.

Category C - Level 2

552 - Causing an innocent person to be penalized or proceeded against by providing false information.
554 - Mutilating, altering, defacing, or destroying any item the value of which is ten dollars or more and that is not the personal property of the offender.
559 - Gambling; possession of gambling paraphernalia.
656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service.
706 - Giving false information when proposing a release plan.
710 - Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia.
718 - Use of mail or telephone in violation of court order or local, state, or federal law.
726 - Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.
727 - Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary action.

728 - Possession of any written photographic or hand drawn material, that depicts sexually explicit acts as defined in department policy.
740 - Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.
742 - A pattern of creating a false emergency by feigning illness.
778 - Providing a false and/or adulterated urine sample.

Category C - Level 3

551 - Providing false information to the disciplinary hearings officer or on a disciplinary appeal.
606 - Possession, introduction, or transfer of any tobacco, tobacco products, matches, or tobacco paraphernalia.
657 - Being found guilty of four or more general infractions arising out of separate incidents within a 90-day period.
658 - Failing to comply with any administrative or posthearing sanction imposed for committing any general or serious infraction.
662 - Soliciting goods or services for which the provider would expect payment when the offender knows or should know that no funds are available to pay for those goods or services.
712 - Attempted suicide as determined by mental health staff.
713 - Self-mutilation or self-harm.
741 - Theft of food the value of which is more than five dollars.
755 - Misuse or waste of issued supplies, goods, services, or property the replacement value of which is ten dollars or more.
810 - Willful failure to seek/maintain employment or training oneself financially or being terminated from a job for negative or substandard performance.
811 - Entering into an unauthorized contract.
812 - Failure to report/turn in all earnings income.
854 - Destroying or damaging state property, or the property of another person.
861 - Performing or taking part in an unauthorized marriage.

Definitions: Attempting to commit or aiding another person to commit a serious infraction - such action shall be considered the same as commission of the offense itself.

WAC 137-28-260 Serious infractions.

~~(((1) Assault/threatening actions/causing injury to
another person~~

- ~~501 = Committing homicide.~~
- ~~502 = Aggravated assault on another offender.~~
- ~~503 = Extortion, blackmail, or demanding or
receiving money or anything of value in return
for protection against others, or under threat
of informing.~~
- ~~505 = Fighting with any person.~~
- ~~506 = Threatening another with bodily harm or with
any offense against another person, property
or family.~~
- ~~508 = Throwing objects, materials, substances or
spitting at staff, visitors, or other inmates.~~
- ~~511 = Aggravated assault on a visitor.~~
- ~~521 = Taking or holding any person hostage.~~
- ~~588 = Causing a valid and documented threat of
transmission of a contagious disease to any
person due to intentional, negligent or
reckless action.~~
- ~~604 = Aggravated assault on a staff member.~~
- ~~611 = Sexual assault on a staff member.~~
- ~~612 = Attempted sexual assault of staff.*~~
- ~~613 = Abusive sexual contact with staff.~~
- ~~633 = Assault on another offender.~~
- ~~635 = Sexual assault on another offender.~~
- ~~636 = Attempted sexual assault on another
offender.*~~
- ~~637 = Abusive sexual contact with another offender.~~
- ~~663 = Using physical force, intimidation or coercion
against any person.~~
- ~~704 = Assault on a staff member.~~
- ~~711 = Assault on a visitor.~~
- ~~717 = Causing a threat of injury to another person
by resisting orders, resisting assisted
movement or physical efforts to restrain.~~
- ~~777 = Causing injury to another person by resisting
orders, resisting assisted movement or
physical efforts to restrain.~~

~~Unauthorized possession~~

- 559 = Gambling, possession of gambling paraphernalia:
- 601 = Possession, manufacture or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition:
- 602 = Possession, manufacture or introduction of any gun, firearm, weapon, sharpened instrument, knife, or poison or any components thereof:
- 620 = Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail:
- 660 = Unauthorized possession of money, stamps, or negotiable instruments, the value of which is five dollars or more:
- 702 = Possession, manufacture or introduction of an unauthorized tool:
- 736 = Possession, manufacture or introduction of unauthorized keys:
- 738 = Possession of the clothing of a staff member:
- 739 = Possession of personal information about currently employed staff, contractors or volunteers, or their immediate family members, not voluntarily given to the offender by the individual involved, including, but not limited to: Social Security numbers, unpublished home addresses or telephone numbers, drivers license numbers, medical, personnel, financial or real estate records, bank or credit card numbers, or other like information not authorized by the court or the superintendent:

Tattooing

- 710 = Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia:

Theft/possession of stolen property

- 555 = Theft of property or possession of stolen property:
- 741 = Theft of food, the value of which is more than five dollars:
- 755 = Misuse or waste of issued supplies, goods, services or property, the replacement value of which is ten dollars or more:

Forgery

- 654 = Counterfeiting, forging, altering or unauthorized reproduction of any document, article of identification, money, security, or official paper:

Setting fire, damaging or destroying property

- 553 = Setting a fire:

- 554 = Mutilating, altering, defacing or destroying any item, the value of which is ten dollars or more and that is not the personal property of the inmate.
- 563 = Making a false fire alarm, tampering, damaging, blocking or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other fire fighting equipment or devices.
- 600 = Tampering with, damaging, blocking, or interfering with any locking or security device.
- 720 = Flooding a cell or other area of the institution.

Inciting others/participation in unacceptable group behavior

- 650 = Rioting.
- 651 = Inciting others to riot.
- 652 = Engaging in or inciting a group demonstration.
- 682 = Engaging in or inciting an organized work stoppage.
- 708 = Organizing or participating in an unauthorized group activity or meeting.
- 734 = Participating or engaging in the activities of any unauthorized club, organization, gang or security threat group, or wearing or possessing the symbols of an unauthorized club, organization, gang or security threat group.
- 746 = Engaging in or inciting an organized hunger strike.

Inappropriate sexual behavior

- 504 = Engaging in sexual acts with others with the exception of spouses during approved extended family visits.
- 659 = Sexual harassment; any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.
- 728 = Possession of any written, photographic or hand-drawn material that depicts a sexually explicit act as defined in WAC 137-28-160.
- 750 = Indecent exposure.

Providing false statements

- 551 = Providing false information to a disciplinary hearing officer or on a disciplinary appeal.
- 552 = Causing an innocent person to be penalized or proceeded against by providing false information.
- 706 = Giving false information about proposed community residence when proposing a release plan, community placement, etc.

Interfering with staff/impersonating

- 558 = Interfering with staff members, medical personnel, fire fighters, or law enforcement personnel in the performance of their duties.
- 605 = Impersonating any staff member, other inmate or visitor.

Failure to follow orders and rules

- 509 = Refusing a direct order by any staff member to proceed to or disperse from a particular area.
- 556 = Refusing to submit to or cooperate in a search when ordered to do so by a staff member.
- 557 = Refusing to participate in an available education or work program or other mandatory programming assignment.
- 609 = Refusing or failing to submit to testing required by policy, statute, or court order, such as DNA blood tests, when ordered to do so by a staff member.
- 658 = Failing to comply with any administrative or posthearing sanction imposed for committing any general or serious infraction.
- 724 = Refusing a cell or housing assignment.
- 745 = Refusing a transfer to another facility.

Counts/unauthorized absence

- 653 = Causing an inaccurate count by means of unauthorized absence, hiding, concealing ones self or other form of deception or distraction.

Escape/attempted escape

- 525 = Violating conditions of furlough.
- 550 = Escape or attempted escape.
- 560 = Unauthorized possession of items or materials likely to be used in an escape attempt.

Committing crimes/excess infractions

- 507 = Committing any act that is a felony under state or federal law that is not otherwise included in these rules.
- 517 = Committing any act that is a misdemeanor under local, state, or federal law that is not otherwise included in these rules.
- 657 = Being found guilty of four or more general infractions which have been reported in writing arising out of separate incidents, all of which occur within a six-month period.

Unacceptable communication

- 718 = Use of mail or telephone in violation of court order or local, state or federal law.
- 726 = Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.

- 727 = Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary actions.

Misuse of controlled substances, drugs, alcohol and related programs

- 603 = Possession, introduction, or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug or drug paraphernalia.
- 606 = Possession, introduction or transfer of any tobacco, tobacco products, matches, or tobacco paraphernalia.
- 607 = Refusing to submit to a urinalysis and/or failure to provide a urine sample when ordered to do so by a staff member.
- 608 = Refusing or failing to submit to a breathalyzer or other standard sobriety test when ordered to do so by a staff member.
- 610 = Unauthorized accumulation of prescribed medication greater than a single or daily dose.
- 655 = Making intoxicants, alcohol, controlled substances, narcotics, or the possession of ingredients, equipment, items, formulas or instructions that are used in making intoxicants, alcohol, controlled substances, or narcotics.
- 707 = Possession, introduction, or transfer of any alcoholic or intoxicating beverage.
- 716 = Unauthorized use of drugs, alcohol or other intoxicants.
- 752 = Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.

Soliciting/fraud

- 656 = Giving, offering or receiving from any person a bribe or anything of value for an unauthorized favor or service.
- 662 = Soliciting goods or services for which the provider would expect payment when the inmate knows or should know that no funds are available to pay for those goods or services.
- 714 = Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another inmate or that inmate's friend(s) or family, the value of which is ten dollars or more.
- 740 = Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.

Creating an emergency situation

- 712 = Attempted suicide as determined by mental health staff.
- 713 = Self-mutilation or self-harm.
- 742 = Creating a false emergency by feigning illness when contrary to medical/mental health screening results.
- 744 = Making a bomb threat.

— (2) In determining whether a #728 infraction or a #328 infraction pursuant to WAC 137-28-220 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-28-160.

— *Attempts to commit infractions #611 or #635 are now separate infractions #612 and #636 for the Prison Rape Elimination Act (PREA) reporting purposes only and do not impact the definition in WAC 137-28-160 which includes "attempts.")

See WAC 137-25-030 for the list of serious infractions.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-010 Definitions. (1) "Secretary" is the secretary of the department of corrections or his/her designee.

~~(2) ("Director" is the director, division of community services, department of corrections.~~

~~(3) "Assistant director" is the assistant director, division of community corrections, department of corrections or his/her designee and is the staff member assigned by the director to administer and supervise the work/training release programs in a specific geographic area.~~

~~(4))~~ "Department" is the department of corrections.

~~((5))~~ (3) "Work/training release facility supervisor" is a staff member assigned by the community corrections regional administrator to administer and supervise a specific work/training release facility and includes his/her designee.

~~((6))~~ (4) "Work/training release community corrections officer" is a staff member assigned by the work/training release facility supervisor to supervise and counsel a caseload of work/training release residents at a specific work/training release facility.

~~((7))~~ (5) "Contract staff" is the staff member(s) of an agency under contract to the department of corrections to provide housing and monitoring for work/training release residents.

~~((8) "Work/training release coordinator" is a staff member assigned by the superintendent of an adult correctional institution to act as liaison between the institution and work/training release facility personnel.~~

~~(9))~~ (6) "Work/training release (~~resident~~) offender" is any offender committed to or transferred to the department's custody pursuant to a valid criminal conviction who has been approved by the department for placement in a designated work/training release facility.

~~((10))~~ (7) "Sponsor-escort" is a responsible citizen assigned to escort and monitor a resident during official and social activities outside of the work/training release facility.

~~((11))~~ (8) "Work/training release facility" is an establishment approved for housing and monitoring of work/training release residents during the resident's stay in a work/training release program.

~~((12))~~ (9) "One working day" is a nine-hour day, 8:00 a.m. to 5:00 p.m. excluding weekends and holidays.

(10) "Hearing officer" means an employee of the department authorized to conduct disciplinary/department hearings.

(11) "Hearings program administrator" means the administrator of the hearings unit of the department, or the hearing program

administrator's designee.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-015 Disposition of earnings. Reasonable payment as determined by the department of board and room charges will be deducted from the work/training release residents' earnings. For purposes of this section, earnings shall constitute all income and money received or possessed by the work/training release ~~((resident))~~ offender while under a work release plan. Nothing in this section shall prohibit the department's authority to obtain reimbursement for moneys advanced to a work/training release ~~((resident))~~ offender by the department.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-030 Reasons for ~~((which given))~~ placement in a work release program. Work/training release may be authorized for one or more of the following:

(1) To ~~((take))~~ participate in full-time employment or part-time employment ~~((or to make application to or be interviewed by a prospective employer))~~ at specialized programs;

(2) To ~~((take))~~ participate in a vocational training program, including attendance at an accredited college.

(3) To ~~((make use of transitional))~~ secure services to support transition back to the community.

(4) As a sanction for violating ~~((release))~~ community supervision conditions.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-040 ~~((Application--Who may apply.))~~ Eligibility criteria. (1) An ~~((inmate may apply))~~ offender is eligible for work/training release provided that:

(a) He or she has a minimum security status;

(b) ~~((His or her minimum term has been fixed by the indeterminate sentence review board,~~

~~(c))~~ He or she is within the last one hundred eighty days of their confinement (~~((SRA offenders only))~~).

(2) (~~(Persons)~~) Offenders convicted of rape in the first degree shall not be eligible for work/training release at any time during the first three years of confinement.

(3) (~~(Persons)~~) Offenders convicted of murder first degree are not eligible for work/training release, without the written approval of the secretary.

(4) Offender who violates condition(s) of community supervision and is sanctioned to a term less than one hundred eighty days.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-050 Application--Consideration. (1) (~~((The inmate shall submit his or her application for work/training release to his or her counselor on forms prescribed by the department.~~

~~(2) The classification committee shall make its recommendations to the superintendent, giving written documentation of the information which the committee relied on and giving reasons for the recommendation.~~

~~(3) Probationers/parolees/SRA offenders may be referred by the superior court or indeterminate sentence review board.)~~ Based on the offender's request to participate in a work release program and/or the offender's need to transition through a work release program, the facility classification review team will refer the offender to the appropriate program.

(2) The community corrections officer can make recommendation for placement in a work release program as a result of violation of conditions of supervision in the community.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-070 ((~~Plan--Investigation.~~)) Screening referrals. (1) (~~((Upon receipt of a community release plan,))~~) The work/training release facility supervisor or his or her designee shall screen the ((information)) offenders referred to the program.

(2) The work/training release screening process will be based on established criteria (~~(and any additional factors which may affect the resident's ability to successfully complete a work/training release program.~~

~~(3) The screening decision will be forwarded by the~~

~~work/training release facility supervisor to the referral source indicating the action taken))~~.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-080 Plan--Approval or denial. (1) ~~((The division director, or his or her designee has the authority to approve or disapprove a plan.~~

~~(2) If approved, the resident shall sign and agree under oath, to the standard rules of work/training release. (See WAC 137-56-100.)~~

~~(3) If the plan is disapproved, the director, or his or her designee shall state the reasons for denial in writing with a copy to the superintendent and inmate and will set a date when the inmate can reapply.)) The work release supervisor or designee's screening decision will be documented by the work/training release facility supervisor/designee on the offender tracking system indicating the action taken.~~

(2) Approved offenders will be placed in the program based on priority with high risk offenders being placed first. Disapproved offenders can obtain the reasons for the denial, as documented on the offender tracking system.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-090 Plan--Restrictions. ~~((1) A resident may be permitted to travel outside the state for the purpose of employment, training, or treatment with prior written permission of the facility supervisor and agreement to waive extradition.~~

~~(2)) The work or training site shall be within reasonable commuting distance (in most circumstances not more than fifty miles) of the work/training release facility ((or institution)) in which the ((resident)) offender is confined.~~

~~((3) If the resident has been placed in a work/training release facility for the purpose of developing a plan and the plan is not secured within a reasonable period of time as determined by the department from the date of issuance of transfer orders, the resident may be returned to the institution without prejudice.~~

~~(4) A purpose of work/training release is to provide a transition period prior to release. Before a work/training release plan is approved, the staff will have a reasonable expectation that the resident will be released in a period of time which will~~

normally not exceed six months. If a release date is not fixed within six months of placement in a work/training release plan, the assistant director, or his or her designee will review the case on an individual basis and may return the resident to the institution if it appears that the resident will be on work/training release for an extended period of time.)

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-095 ((Notification)) Orientation. (1) At the time of admission, each work/training release ((resident)) offender shall be advised in writing of:

(a) ((His/her rights and responsibilities,
(b) Acts prohibited in the work release facility, and))
Program goals and services available.

(b) Rules governing conduct and program rules.
(c) Disciplinary action which may be taken in the event of a serious infraction or violation of ((local)) rules((-

(2) Each resident, upon entering the work release facility, shall be given a copy of the rules in this chapter and of all local rules of the work/training release facility to which he/she is assigned.

(3)) or special conditions. To include, but not be limited to:

(i) Remain confined to the work/training release premises at all times other than the time necessary to implement the plan or when authorized under WAC 137-56-140. Any work/training release resident approved for placement under a work/training release plan who willfully fails to report to his or her designated assignment or return to the designated place of confinement at the time specified may be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced in accordance with state law.

(ii) Have employment or other approved resources in order to maintain himself or herself financially.

(iii) Not consume, ingest, inject, or possess nonprescription narcotic or "dangerous" drugs or controlled substances or alcoholic beverages.

(iv) Report all income to the work/training facility supervisor or his or her designee. All income from any source shall be immediately placed in the resident's inmate banking account by the facility supervisor or his/her designee. A receipt will be issued.

(2) All amendments or additions to ((this chapter and all amendments or additions to local)) disciplinary rules, policies, and procedures shall be posted at a specifically designated place or places in each work/training release facility in advance of

their effective date if possible and for at least thirty days after their effective date. Work/training release ~~((residents))~~ offenders shall be responsible for informing themselves of such postings. Complete and up-to-date copies of these rules and all ~~((local))~~ program rules shall be available at each work/training release facility for examination.

~~((+4))~~ (3) The work/training release facility supervisor shall ensure that each work/training release resident has the opportunity to understand rules which relate to his/her conduct. If the resident is unable to read or understand English, the rules shall be read to him/her promptly in his/her accustomed language.

(4) All offenders will receive orientation within forty-eight hours of arrival. Orientation must be completed before the offender can leave the facility. The offender must sign the appropriate form indicating he/she will comply with all the work release policies and program rules.

AMENDATORY SECTION (Amending WSR 99-16-078, filed 8/3/99, effective 8/18/99)

WAC 137-56-110 Serious infractions. ~~((Any of the following acts or omissions of the work/training release resident described and codified in the form below shall constitute a))~~ Refer to chapter 137-25 WAC, serious infractions.

~~((Infraction~~

Code — Act/Omission

- 800 - Creating a risk to the orderly operation of the facility or the health and safety of its residents, staff, or visitors.
- 801 - Assaulting any person which results in the hospitalization of the person assaulted.
- 802 - Assaulting any person.
- 803 - Extortion, blackmail, demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
- 804 - Engaging in sexual acts with others within the facility boundaries.
- 805 - Fighting with any person, provided, however, that self-defense may be a defense to a serious infraction for fighting.
- 806 - Threatening another with bodily harm or with any offense against his/her person.
- 810 - Intentionally failing to seek or maintain employment or training or to maintain oneself financially.

((Infraction

Code — Act/Omission

- 811 — Entering into an unauthorized contract.
- 812 — Failing to report or turn in all earnings or income.
- 813 — Modifying a work release plan by the releasee without authorization.
- 814 — Violating a special condition of work release plan.
- 815 — Failing to comply with all federal, state, and local laws, or court orders.
- 816 — Tampering with or blocking any locking device.
- 817 — Possessing or introducing into the facility an explosive or any ammunition or components of explosives or ammunitions.
- 818 — Possessing or introducing into the facility any unauthorized tool.
- 819 — Possessing or introducing into the facility any gun, firearm, weapon, sharpened instrument, knife, or components thereof.
- 821 — Holding a person hostage or restraining a person against his/her will.
- 825 — Violating conditions of furlough.
- 830 — Escaping/absconding with voluntary return within twenty-four hours.
- 831 — Failing to return to the facility from an authorized sign-out.
- 832 — Escape from the facility.
- 833 — Using physical force in the act of escape.
- 834 — Escape and apprehension out-of-state.
- 842 — Receiving a positive test result for use of marijuana.
- 843 — Possessing, introducing, or using alcohol.
- 844 — Possessing or introducing marijuana or related paraphernalia.
- 845 — Possessing, introducing, or transferring any narcotics, controlled substance, or related paraphernalia unless authorized by the supervisor pursuant to a valid prescription or order issued in the course of professional treatment by a licensed medical practitioner.
- 846 — Refusing to submit to a urinalysis, breathalyzer, or other sobriety test.
- 847 — Receiving a positive test result for use of unauthorized drugs, controlled substances or intoxicants.
- 851 — Lying to a hearing committee.

((Infraction

Code — Act/Omission

- 852 — Lying to a staff member which causes an innocent person to be penalized, disciplined, or proceeded against.
- 853 — Intentionally or recklessly setting a fire.
- 854 — Intentionally or recklessly destroying or damaging state property, or the property of another person.
- 855 — Stealing (theft) or knowingly possessing stolen property.
- 856 — Refusing to submit to a body search when lawfully ordered to do so by staff.
- 857 — Refusing and/or failing to work or attend regularly scheduled assignments.
- 858 — Intentionally interfering with a staff member in the performance of his/her duties.
- 859 — Gambling.
- 860 — Possessing money or other negotiable instruments without prior authorization.
- 861 — Performing or participating in a marriage ceremony in the facility or on the facility grounds, except when such marriage was approved by the supervisor.
- 870 — Rioting.
- 871 — Inciting others to riot.
- 872 — Engaging in or inciting prohibited group demonstration.
- 873 — Intentionally interfering with the taking of count.
- 874 — Counterfeiting, forging, falsification, or unauthorized reproduction of any document, article of identification, money, security, or official paper.
- 875 — Making intoxicants, narcotics, or other controlled substances.
- 876 — Giving or offering any official staff member or volunteer a bribe or anything of value for favor or unauthorized service.
- 877 — Committing four or more general infractions within a ninety-day period all of which arise out of separate incidents and have been reported in writing.
- 878 — Intentionally failing to comply with an administrative or post-hearing sanction.
- 900 — Attempting to commit or aiding another person to commit a serious infraction as enumerated in this section. Such action shall be considered the same as commission of the offense itself.

((Infraction
Code — Act/Omission

901 - Operating a motor vehicle without
permission.))

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94,
effective 5/1/94)

WAC 137-56-120 Provisions of supervision. In meeting its responsibilities for ~~((the care of residents, a work/training release facility shall provide))~~ providing supervision of offenders in the program, the following will be provided at the work release facility:

(1) ~~((A))~~ Staff on duty twenty-four hours ~~((duty and an office within the facility so that the staff can monitor the activities of the residents))~~ a day, seven days a week;

(2) A check-in and check-out system to ensure that the stated whereabouts of the ~~((resident))~~ offender is known at all times, including checks ~~((on the resident))~~ at school, work, furlough, sponsored outing, pass, etc.;

(3) Bed checks or head counts to account for the resident's whereabouts; a minimum of three counts ~~((per shift))~~ daily shall be required;

(4) Provide adequately for the resident with respect to sleeping quarters, bathroom facilities, and accommodations for cooking, dining, lounging and leisure time activities;

(5) Comply with state and local fire codes and applicable building, safety, and sanitation codes.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94,
effective 5/1/94)

WAC 137-56-140 Limits of confinement. A work/training release ~~((resident))~~ offender shall be confined to the facility at all times except:

(1) When ~~((interviewing prospective employers))~~ seeking or arranging for registration at a school or training facility;

(2) When working at paid employment or attending a training facility in a vocational or academic program;

(3) ~~((If enrolled in an on-campus training program and housed in an on-campus facility, when participating in customary and official on-campus activities or mandatory field trips;~~

~~(4))~~ When authorized a point-to-point pass not to exceed two

hours, excluding travel, for the purpose of transacting personal business including a treatment regimen, between the hours of ~~((8:00))~~ 7:00 a.m. and 10:00 p.m. and/or outside that time frame with written permission of the facility supervisor or designee;

~~((+5+))~~ (4) When authorized to participate in social and recreational activities in company with a sponsor-escort between 8:00 a.m. and midnight;

~~((+6+))~~ (5) When on furlough;

~~((+7+))~~ (6) When on authorized medical appointments or court appearances;

~~((+8+))~~ (7) When ordered to perform community service;

(8) When seeking employment as approved on an approved job search pass.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-150 Sponsor-escort. (1) A sponsor-escort shall be a responsible citizen who shall accompany and monitor a work/training release ~~((resident))~~ offender during a social or recreational activity. The sponsor-escort must be approved by the work/training release facility supervisor or designee; and the sponsor and resident must sign an agreement with the department which describes his or her responsibilities.

(2) Persons who are on active/inactive felony probation or parole or under an active SRA sentence, shall not be approved as sponsor-escorts. Persons who have a past felony conviction and who have earned a discharge may be approved as sponsor-escorts on an individual basis by the ~~((assistant director))~~ work release supervisor, or his or her designee.

(3) Sponsor-escorts must complete a sponsor orientation provided by the work/training release facility before eligibility under this section.

(4) Sponsor-escorts may not be party to an active no-contact order with the offender.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-160 Termination of plan. ~~((+1+))~~ At any time after approval has been granted to any work/training release ~~((resident))~~ offender to participate in the work/training release program, such approval may be revoked, and ~~((if the work/training release resident has been released from))~~ the offender may be sent

~~to a state correctional institution ((on a work release plan, he/she may be returned to a state correctional institution, or the plan may be modified, in the sole discretion of the secretary.~~

~~(2) Without limiting the authority of the secretary under subsection (1) of this section, a work/training release plan may be terminated or disciplinary action taken by the classification/disciplinary committee pursuant to this chapter) or jail. A work release offender may be terminated from the program as a result of a disciplinary or classification decision or the following:~~

~~((a)) (1) If requested in writing by the work/training release ((resident)) offender;~~

~~((b) If the work/training release facility refuses to accept or continue to serve the work/training release resident in accordance with its contract with the department;~~

~~(c) If the plan is discontinued or modified so that it no longer meets agency standards or if the work/training release resident becomes unable to comply with the terms of the plan;~~

~~(d)) (2) If the work/training release ((resident)) offender lacks aptitude for the assignment or is improperly placed; or~~

~~((e)) (3) If the work/training release ((resident)) offender has been unable to adjust or adapt to the conditions of the work/training release facility; or~~

~~((f) If the work/training release resident has demonstrated through his or her behavior an unwillingness to respond to counseling by staff; or~~

~~(g)) (4) If the work/training release ((resident's)) offender's situation and circumstances have significantly changed; or~~

~~((h)) (5) If the work/training release ((resident)) offender has failed to comply with federal or state laws or local ordinances(, or~~

~~(i) If the work/training release resident has failed to comply with standard work/training release rules as enumerated in WAC 137-56-100; or~~

~~(j) If the work/training release resident has failed to comply with such other written facility rules as are promulgated by the facility supervisor; or~~

~~(k) If the work/training release resident has failed to comply with such other specific restrictions or behavior expectations which have previously been called to the attention of the work/training release resident by the work/training release facility supervisor and are documented in writing; or~~

~~(l) If the work/training release resident has committed a serious infraction as enumerated in WAC 137-56-110)).~~

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-170 Service of notice of proposed disciplinary action. (1) If disciplinary action is proposed, the work/training release facility supervisor or community corrections officer may suspend the work/training release plan and place the ((resident)) offender in custody pending a disciplinary hearing.

(2) The work/training release facility supervisor or designee shall advise the ((resident)) offender in writing of the factual allegations which provide the basis for the proposed disciplinary action within one working day after the suspension of the work/training release plan.

(3) If the work/training release plan is not suspended pending the disciplinary hearing, then the facility supervisor or designee shall advise the offender at least twenty-four hours prior to the scheduled hearing.

(4) The factual allegations may be amended and/or new allegations added at any time prior to the disciplinary hearing, provided that the work/training release ((resident)) offender shall have notice of such new and/or amended allegations at least twenty-four hours prior to the disciplinary hearing unless such notice shall be waived in writing by the ((resident)) offender.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-175 ((Facility)) Alternatives to the formal disciplinary hearing ((committee)). ~~((1) The disciplinary hearing committee shall consist of at least two members, including the work/training release facility supervisor, or his/her designee, and a member of the contractor's staff, if the facility is under contract with the department. No resident may be a member of this committee. The facility supervisor or designee shall serve as chairperson and shall have the authority to make the final decision. The facility supervisor or his or her designee shall inform the resident, in writing, of the disciplinary hearing committee's decision within three working days.~~

~~(2) At institutions, prerelease facilities, and noncontract work/release facilities, a single hearing officer or the classification committee may serve as the disciplinary hearing committee for work/training release residents housed at those facilities. If the hearing is conducted by a single hearing officer, the hearing must be taped and the tape kept for a minimum of one hundred twenty days after the date of the appeal decision or court action, whichever is later.~~

~~(3) No person making an allegation involved in the incident, or called as a witness, shall be a member of the disciplinary~~

hearing committee. Persons called as witnesses must be approved by the disciplinary hearing committee chairperson and must have information or facts which are relative to the allegations being considered. In the event that an individual is disqualified, or disqualifies himself or herself, under this rule or for any other reason, a replacement may be designated by the facility supervisor.) When addressing serious infractions, the work/training release community corrections officer may, with the facility supervisor's permission, choose to address the infraction behavior using either a department authorized stipulated agreement or the negotiated sanction agreement process.

AMENDATORY SECTION (Amending WSR 95-22-060, filed 10/30/95, effective 12/1/95)

WAC 137-56-180 Disciplinary hearing. (1) A work/training release ((resident)) offender served with allegations providing the basis for a proposed disciplinary action shall be notified in writing that a hearing has been set before (~~a disciplinary hearing committee/~~) department hearing officer. An allegation involving the commission by the ((resident)) offender of a serious infraction may be amended at anytime by the department, provided that twenty-four hours notice be given to the ((resident)) offender or the ((resident)) offender agrees in writing to waive notice to respond to the allegations. The hearing will be ((set)) held within ((five)) eight working days of the suspension of the work/training release plan, unless a longer time is approved by the (~~area assistant director~~) hearings program administrator or his or her designee. The written notice of hearing shall be given to the ((resident)) offender at least twenty-four hours before the hearing unless notice is waived, in writing, and advise the ((resident)) offender of his or her rights, including the following:

(a) The ((resident)) offender shall be present at all stages of the hearing, except during deliberation in appropriate circumstances.

(b) The ((resident)) offender shall present his or her own case to the (~~disciplinary hearing committee/~~) hearing officer. If there is a language or communications barrier, the (~~disciplinary hearing committee chairperson/~~) hearing officer shall appoint an advisor.

(c) The ((resident)) offender may have an attorney present at his/her expense, only when a felony has been alleged. Such representation is limited to advising the ((resident)) offender of his or her rights to remain silent, and does not include the right to act as an advocate throughout the hearing.

(d) The ((resident)) offender may testify during the hearing or remain silent, and his or her silence will not be held against him or her.

(e) The work/training release ((resident)) offender may, in preparation for the hearing, ask the ((~~disciplinary hearing committee chairperson/~~)) hearing officer that certain department or contract staff members, other work/training release ((residents)) offenders, and other persons be present as witnesses at the hearing. The ((~~disciplinary hearing committee/~~)) hearing officer shall grant such request if it is determined by the ((~~disciplinary hearing committee chairperson/~~)) hearing officer that to do so would not be unduly hazardous to the work/training release facility's safety or correctional goals: Provided, however, Limitations may be made by the ((~~disciplinary committee~~)) hearing officer if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the work/training release ((resident's)) offender's case.

(2) Attendance at the hearing shall be limited to parties directly concerned. The ((~~disciplinary hearing committee chairperson/~~)) hearing officer may exclude unauthorized persons.

(3) ((~~The disciplinary hearing committee/hearing officer shall make an evaluation of the resident and may make a recommendation to the indeterminate sentence review board regarding good time credits and readiness for parole.~~)) Hearings shall be recorded and a copy of the recording maintained in accordance with the statewide retention schedule.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-200 Disciplinary hearing--Waiver. (1) At any time after having been served with an allegation providing the basis for a proposed disciplinary action, the ((resident)) offender may choose to waive his or her right to a hearing by signing an admission of the allegation and request that the hearing be dispensed with entirely or limited only to questions of disposition. Also, the ((resident)) offender may waive, in writing, the twenty-four hour notice.

(2) The ((resident)) offender may admit in writing to part of the allegations and thereby limit the scope of the hearing.

(3) In those cases where the allegation involves misbehavior or other culpability on the part of the ((resident)) offender, he or she shall be advised in writing that in admitting the violation and waiving the hearing, a report will be submitted which may result in the loss of work/training release status, good time credits and/or the extension of the minimum term.

AMENDATORY SECTION (Amending WSR 95-22-060, filed 10/30/95, effective 12/1/95)

WAC 137-56-210 Disciplinary hearing--Rules of evidence. (1)

All relevant and material evidence is admissible which, in the opinion of the (~~(disciplinary hearing committee chairperson)~~) hearing officer, is the best evidence reasonably obtainable having due regard for its necessity, availability, and trustworthiness.

(2) All evidence material to the issues raised in the hearing shall be offered into evidence. All evidence forming the basis for the (~~(department's)~~) hearing officer's decision in a matter shall be offered into evidence.

(3) The work/training release (~~(resident)~~) offender shall be allowed to call witnesses approved by the (~~(disciplinary hearing committee chairperson)~~) hearing officer pursuant to WAC 137-56-180 (1)(e) and to present documentary evidence in his/her defense at the hearing when permitting the work/training release (~~(resident)~~) offender to do so will not be unduly hazardous to the work/training release facility's safety or correctional goals unless the testimony to be presented by the witness and/or the information desired to be presented is deemed by the (~~(disciplinary hearing committee chairperson)~~) hearing officer to be irrelevant, immaterial, unnecessarily duplicative of other information and/or testimony before the (~~(disciplinary hearing committee)~~) hearing officer, or otherwise found to be unnecessary to the adequate presentation of the work/training release (~~(resident's)~~) offender's case. The testimony of all witnesses from outside the work/training release facility shall be considered in writing. In the event the (~~(disciplinary hearing committee chairperson)~~) hearing officer determines that the presence of a witness is appropriate, the (~~(disciplinary hearing committee)~~) hearing officer should call the witness, or in its discretion, may continue the hearing if the witness is unavailable, but will become available within a reasonable period of time: Provided, however, That if the witness is unavailable, the (~~(disciplinary hearing committee)~~) hearing officer may, in (~~(its)~~) his or her discretion, consider the written testimony previously submitted.

(4) The work/training release (~~(resident)~~) offender may question witnesses against him/her at the discretion of the (~~(disciplinary hearing committee chairperson)~~) hearing officer. If the (~~(disciplinary hearing chairperson)~~) hearing officer determines that a source of information would be subject to risk or harm if his/her identity were disclosed, testimony of the confidential source may be introduced by the testimony of a staff member. The confidential testimony may be provided by the source or by the written and signed statement of the source. If the staff member to whom the source provided information is unavailable, the written statement of this staff member may be used. The (~~(disciplinary hearing chairperson)~~) hearing officer shall, out of the presence of all work/training release (~~(residents)~~) offenders and off the record, identify the confidential source, and how the testifying staff member received the confidential information. The staff

member presenting the information from a confidential source shall identify the source and the circumstances surrounding the receipt of the confidential information to the ~~((disciplinary hearing chairperson))~~ hearing officer, off the record. The ~~((disciplinary hearing chairperson))~~ hearing officer shall make an independent determination regarding the reliability of the confidential source, the credibility of the confidential information, and the necessity of not revealing the source of the confidential information. In determining whether the confidential source is reliable and the confidential information is credible, the ~~((disciplinary hearing chairperson))~~ hearing officer should consider all relevant circumstances including, but not limited to:

- (a) Evidence from other staff members that the confidential source has previously given reliable information;
- (b) Evidence that the confidential source had no apparent motive to fabricate information;
- (c) Evidence that the confidential source received no benefit from providing the information;
- (d) Whether the confidential source is giving first-hand information;
- (e) Whether the confidential information is internally consistent and is consistent with other known facts; and
- (f) The existence of corroborating evidence.

The ~~((disciplinary hearing chairperson))~~ hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information. The reliability and credibility determination and the need for confidentiality must be made on the record.

(5) Documentary evidence, including written statements submitted by interested parties on behalf of the ~~((resident))~~ offender, may be received. Such evidence may include copies of documents, excerpts from documents and incorporation of written material by reference, including depositions.

~~(6) ((The chairperson of the disciplinary hearing committee may exclude relevant evidence if the probative value is outweighed by the danger of unfair prejudice, confusion of the issues, misleading the committee or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.~~

~~(7))~~ The ~~((disciplinary hearing committee))~~ hearing officer should determine if the ~~((resident))~~ offender is competent to understand the charges and proceedings or needs an interpreter to participate therein. If the ~~((resident))~~ offender is not competent or needs an interpreter, the ~~((disciplinary hearing committee))~~ hearing officer should postpone the hearing to secure a report on the competency of the ~~((resident))~~ offender, provide an interpreter, or take such other action as will assure the fairness and orderliness of the hearings.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-220 Disciplinary hearing--Findings and conclusions. (1) At the conclusion of the hearing, the ~~((disciplinary hearing committee))~~ hearing officer will make a finding of fact ~~((within one working day))~~ as to whether or not the allegations made against the ~~((resident))~~ offender have been proven by a preponderance of the evidence presented at the hearing.

(2) If the ~~((disciplinary hearing committee))~~ hearing officer determines that the allegations have not been proven by a preponderance of the evidence presented at the hearing, the ~~((resident))~~ offender shall be restored/continued on work/training release status.

(3) If the ~~((disciplinary hearing committee))~~ hearing officer determines that one or more of the allegations have been proven by a preponderance of the evidence presented at the hearing, the ~~((disciplinary hearing committee))~~ hearing officer will proceed to a disposition.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-230 Disciplinary hearing--Disposition. (1) The hearing officer shall seek and consider input from the community corrections officer, the facility contract staff and pertinent treatment providers.

(2) The ~~((disciplinary hearing committee))~~ hearing officer will consider the ~~((resident's))~~ offender's total background, adjustment on work/training release, attitude, recommendations of interested parties, and any other information relative to the ~~((resident's))~~ offender's ability to continue in the program. The ~~((disciplinary hearing committee))~~ hearing officer shall make a determination as to whether or not the ~~((resident))~~ offender has earned good time credits toward release, and whether the matter should be referred to the indeterminate sentence review board or the court for possible increase in the inmate's or ~~((resident's))~~ offender's minimum term.

~~((2))~~ (3) The ~~((resident))~~ offender shall be present at all stages of the hearing, except for deliberation and even during deliberation when appropriate, and shall have the opportunity to make argument in his or her own behalf.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-240 Disciplinary hearing--Decision. (1) The ~~((disciplinary hearing committee))~~ hearing officer may:

(a) Restore the work/training release ~~((resident))~~ offender to his or her work/training release status under the same or modified conditions as the original plan; or

(b) Restrict the ~~((resident))~~ offender to the work/training release facility for up to thirty days; or

(c) Require restitution be made by the work/training release ~~((resident))~~ offender; or

(d) Require extra duty to be performed by the ~~((resident))~~ offender; or

(e) Revoke approval of an approved sponsor; or

(f) Deny good conduct time; or

(g) ~~((Require additional time in prerelease, or~~

~~(h)))~~ Terminate the work/training release plan and return the work/training release ~~((resident))~~ offender to an institution/jail, or facility~~(, or~~

~~(i) Refer the offender to the court or the indeterminate sentence review board for final disposition)).~~

(2) Nothing in this section shall preclude subsequent reclassification of the work/training release ~~((resident))~~ offender or placement into administrative segregation if demonstrable cause exists to support this action.

(3) The ~~((facility supervisor or designee))~~ hearing officer shall notify the ~~((resident))~~ offender orally within one working day and confirm the decision in writing within five working days. The written decision shall specify the evidence upon which the ~~((disciplinary hearing committee))~~ hearing officer relied and shall include a description of the circumstances surrounding the allegation(s) upon which the termination of the work/training release is based, the reasons for the decision, a discussion of the ~~((resident's))~~ offender's personal culpability in the actions which have led to the termination, and an evaluation of the ~~((resident's))~~ offender's progress, attitudes, need for further programs including work training alternatives ~~((and readiness for release)).~~

AMENDATORY SECTION (Amending WSR 95-22-060, filed 10/30/95, effective 12/1/95)

WAC 137-56-250 Disciplinary hearing--Appeal. The ~~((resident))~~ offender may appeal the decision of the ~~((facility disciplinary hearing committee))~~ hearing officer to the ~~((assistant director, or his or her designee))~~ area appeals panel. Appeal requests must be in writing, must be specific and based on

objection to the procedures used or the information available to the ~~((committee))~~ hearing officer in making ~~((its))~~ his or her decision. Appeals must be submitted within ~~((five working))~~ seven calendar days of the ~~((committee's oral))~~ hearing officer's written decision. For reasons of community protection, all sanctions ordered by the ~~((disciplinary hearing chairperson))~~ hearing officer will be imposed following the hearing and will not be stayed. The ~~((assistant director, or his or her designee))~~ appeals panel, upon receipt of an appeal, will review the findings and decision of the ~~((disciplinary hearing committee))~~ hearing officer and either:

(1) Affirm, or affirm and modify to a lesser sanction the decision of the ~~((facility disciplinary hearing committee))~~ hearing officer; or

(2) Reverse the decision of the ~~((facility disciplinary hearing committee))~~ hearing officer; or

(3) Remand ~~((the decision for additional findings or))~~ for a rehearing.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 137-56-060

Application--Decision,

WAC 137-56-100

Standard rules.