

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

DEPARTMENT OF CORRECTIONS

(agency name)

Administrative Order No. 84-12

(1) I, Amos E. Reed, director of the Department of Corrections

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

ADOPT: Chapter 137-28 WAC, Prisons -- Discipline
REPEAL: Chapter 275-88 WAC, Adult Correctional Institutions -- Discipline

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. filed with the code reviser on. These rules shall take effect:
- thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
- at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, Amos E. Reed, Secretary, Department of Corrections, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

The immediate adoption of Chapter 137-28 WAC is necessary because staff shortages due to budgetary constraints mandate a change from a three person hearing committee to a sole hearing officer.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

- (a) This rule is promulgated pursuant to RCW and is intended to administratively implement that statute.
(b) This rule is promulgated pursuant to RCW which directs that the

has authority to implement the provisions of (agency) (name of act or RCW citation)

(c) This rule is promulgated under the general rule-making authority of the DEPARTMENT OF CORRECTIONS

(agency) as authorized in RCW 72.01.090

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED FILED July 13 1984 By Amos E. Reed, Secretary Title (Form CR-7: Rev. 7/23/82)

## Chapter 137-28 WAC

## PRISONS--DISCIPLINE

NEW SECTION

WAC 137-28-005 PURPOSE. (1) The rules in this chapter shall provide a standardized system consistent with constitutional due process for ascertaining whether misconduct by an inmate of an adult correctional institution has occurred.

(2) The rules in this chapter shall not apply to proceedings of the board of prison terms and paroles.

NEW SECTION

WAC 137-28-006 DEFINITIONS. For the purposes of this chapter the following words shall have the following meanings:

(1) "Promptly" means to act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

(2) "Working days" means normal Monday through Friday work days, excluding weekends and holidays.

(3) "Director" means the director of the division of prisons of the Washington state department of corrections or his/her designee.

(4) "Superintendent" means a superintendent of an adult correctional institution or his/her designee.

(5) "Directors review committee" means a committee appointed by the director.

(6) "Earned time" means that portion of the inmate's available sentence reduction which, by department of corrections' policy is earned specifically for program participation.

(7) "Good-conduct time credits" means that portion of an inmate's potential reduction to his/her minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which is gained by not receiving serious infractions as listed in WAC 137-28-030.

(8) "Earned-early release" means that combined earned time and good-conduct time credits which, together, allow an inmate to earn up to one-third reduction off the minimum term established by the board of prison terms and paroles or sentencing court.

(9) "Adult correctional institution" and "institution" mean a facility identified in PCW 72.01.050(2) and any similar facility hereafter established.

NEW SECTION

WAC 137-28-010 SUPPLEMENTARY RULES. The superintendent of an adult correctional institution may promulgate supplementary rules, policies, and procedures including the creation of new general and/or serious infractions, the reclassification of general and/or serious infractions set out in these rules, and the creation of new sanctions. All such new or reclassified infractions and sanctions shall be approved in writing by the director before being put into effect.

NEW SECTION

WAC 137-28-015 NOTIFICATION. (1) Each inmate of an adult correctional institution shall be advised in writing of:

- (a) His/her rights and responsibilities;
- (b) Acts prohibited in the institution; and
- (c) Disciplinary action which may be taken in the event of misconduct.

(2) Each inmate shall be provided with a copy of the rules in this chapter and upon his/her arrival at the institution shall be given a copy of all local disciplinary rules.

(3) 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 institution in advance of their effective date if possible and for at least thirty days after their effective date. Inmates shall be responsible for informing themselves of such postings. Complete and up-to-date copies of these rules and all local rules shall be available at each institution for inmate examination.

(4) The superintendent shall ensure that each inmate has the opportunity to understand rules which relate to his/her conduct. If the inmate is unable to read or understand English, the rules shall be read to him/her promptly in his/her accustomed language.

NEW SECTION

WAC 137-28-020 DEFINITION OF MISCONDUCT. Misconduct shall consist of:

- (1) Any act described in WAC 137-28-025 as a general infraction;
- (2) Any act described in WAC 137-28-030 as a serious infraction;

or

(3) Any act proscribed by a rule adopted by an institution pursuant to WAC 137-28-010.

NEW SECTION

WAC 137-28-025 GENERAL INFRACTIONS. Any of the following types of behavior shall constitute a general infraction:

- 051 - Unauthorized possession of money or other negotiable instruments totaling less than five dollars;
- 052 - Loaning of property for profit;
- 053 - Possession of anything not authorized for retention or receipt by an inmate and/or not issued to him/her by regular institutional channels;
- 055 - Intentionally mutilating, altering, defacing or destroying items issued by the state the value of which is less than five dollars;
- 103 - Refusing to obey a lawful order of any staff member;
- 104 - Unexcused absence from work or any assignment;
- 110 - Theft of food;
- 202 - Abusive language directed to a staff member;
- 203 - Lying or knowingly providing a false statement to a staff member;
- 205 - Participating in a meeting or gathering that has been disapproved in advance, in writing, by the institution administrative staff;
- 210 - Being in an area identified by an institution as an area where the presence of inmates is unauthorized;

- 211 - Intentional failure to follow published safety or sanitary regulations;
- 212 - Using any equipment or machinery which is not specifically authorized;
- 213 - Using any equipment or machinery contrary to instructions or posted safety standards;
- 214 - Intentional failure to stand count;
- 251 - Smoking where prohibited;
- 301 - Failure to keep one's person and one's quarters in accordance with published and posted standards, rules, or regulations;
- 302 - Tattooing or self-mutilation;
- 303 - Unauthorized use of mail or telephone;
- 305 - Correspondence or conduct with a visitor in violation of published and posted regulations;
- 351 - Giving, selling, or trading money or anything of value to, or accepting or purchasing money or anything of value from another inmate, a member of his/her family, or his/her friend, except when authorized; or
- 400 - Attempting to commit any of the above offenses, or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

#### NEW SECTION

WAC 137-28-030 SERIOUS INFRACTIONS. Any of the following types of behavior shall constitute a serious infraction:

- 501 - Committing homicide;
- 502 - Assaulting any person;
- 503 - Extortion, blackmail, demanding or receiving money or anything of value in return for protection against others, or under threat of informing;
- 504 - Engaging in sexual acts with others, with the exception of conjugal visits authorized by the superintendent;
- 505 - Fighting with any person except in self-defense;
- 506 - Threatening another with bodily harm or with any offense against his/her person;
- 507 - Committing an act not otherwise proscribed by these regulations which constitutes a felony or misdemeanor under state or federal law;
- 508 - Throwing objects or material at staff members, institution visitors, or other inmates;
- 521 - Holding a person hostage;
- 525 - Violation of conditions of furlough;
- 550 - Escape or attempted escape;
- 551 - Lying to the hearing committee;
- 552 - Lying to a staff member with the intention of causing an innocent person to be penalized or proceeded against;
- 553 - Intentionally or recklessly setting a fire;
- 554 - Intentionally or recklessly destroying or damaging state property, or the property of another person in excess of five dollars;
- 555 - Stealing (theft) or knowing possession of stolen property;
- 556 - Refusing to submit to a body search when lawfully ordered to do so by a staff member;
- 557 - Refusing and/or failing to work or attend other regularly scheduled assignments;
- 558 - Intentionally interfering with a staff member in the performance of his/her duties;
- 559 - Gambling;
- 600 - Tampering with or blocking any locking device or seal;

- 601 - Possession or introduction of an explosive, poison, or any ammunition or components thereof;
- 602 - Possession or introduction of any gun, firearm, weapon, sharpened instrument, knife, or unauthorized tool or components thereof;
- 603 - Possession, introduction, transfer, or use of any narcotics, controlled substance, or related paraphernalia; possession, transfer, or use of any intoxicant or drug not prescribed or authorized for the inmate or for the inmate to whom transferred, if applicable, by the medical staff; or being intoxicated, or under the influence of an unauthorized drug, narcotic, controlled substance, or other intoxicant;
- 605 - Unauthorized possession of any officer's or staff's clothing;
- 607 - Refusing to submit to a urinalysis or blood test under medically acceptable conditions, when requested in writing to do so by a supervisory employee of the rank of shift commander or above, by licensed medical staff, or by others designated by the superintendent;
- 608 - Refusing to submit to a breathalyzer or other standard sobriety test;
- 650 - Rioting;
- 651 - Inciting others to riot;
- 652 - Engaging in or inciting a prohibited group demonstration;
- 653 - Intentionally interfering with the taking of count;
- 654 - Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper;
- 655 - Making intoxicants, controlled substances, narcotics;
- 656 - Giving or offering any official or staff member or a volunteer a bribe or anything of value for a favor or unauthorized service;
- 657 - Four or more general infractions arising out of separate incidents, all of which occur within the previous six-month period, and which have been reported in writing;
- 658 - Intentional failure to perform according to an administrative action taken pursuant to WAC 137-28-050(2), or resisting posthearing sanctions as provided for in WAC 137-28-105;
- 660 - Unauthorized possession of money or other negotiable instruments of five dollars or more;
- 661 - Performing or taking part in performing a marriage in the institution buildings or on the institutional grounds, except when such marriage was approved by the superintendent of the institution, which may, in appropriate cases, also be deemed a violation of a visiting rule that can subject an inmate to the sanction contained in WAC 137-28-105 (1) (d), as well as other sanctions available for serious infractions;
- 662 - Solicitation of goods and/or services for which the provider would expect payment when the inmate knows or should have known he/she has no funds available to pay for such goods or services;
- 700 - Attempting to commit or aiding another person to commit a serious infraction as enumerated in this rule, and such action shall be considered the same as commission of the offense itself; or
- 701 - Commission of any general infraction as enumerated in WAC 137-28-025 or any local rule denominated as a general infraction in such a manner as likely to result in danger to life or limb or to create a risk to the orderly operation of the institution or the health and safety of its inmates, staff, or visitors shall be considered a serious infraction, provided there is substantial evidence which establishes there was such a danger.

NEW SECTION

WAC 137-28-031 CELL TAG. Each inmate of a multiple-inmate cell will be held accountable for an infraction that occurs within the confines of such cell unless he/she can establish a lack of involvement in the infraction.

NEW SECTION

WAC 137-28-032 EARNED TIME, GRANTING AND DENIAL. An inmate may receive earned time sentence reduction for participating or attempting to participate in institution work, education, or training programs in accordance with department policy. Prior to a denial of earned time, the basis for the proposed denial shall be explained to the inmate. Should the inmate wish to contest the proposed denial, he/she may request a hearing, which shall be held at least twenty-four hours after the inmate has received written notice scheduling the hearing and indicating the basis for the proposed denial. The hearing shall be before an impartial official designated by the superintendent, pursuant to WAC 137-28-065. The inmate shall be provided a written statement from the hearing official showing the evidence relied on and the reasons for the decision. The hearing shall be conducted in accordance with WAC 137-28-090. Such a hearing and its result shall not be considered disciplinary in nature and the decision of the hearing shall be limited to recommending to the superintendent that earned time credits be granted or denied in whole or in part. Granting or denial of earned time credits for out-of-state inmates shall be handled in substantial accord with this rule.

NEW SECTION

WAC 137-28-035 REPORTING TO LAW ENFORCEMENT AUTHORITIES. (1) It shall be the duty of the superintendent to report any violation of a federal, state, or local law to law enforcement authorities.

(2) If a violation has been reported to law enforcement authorities, the inmate shall not be questioned about the incident, outside of a formal disciplinary hearing or an administrative segregation hearing, held pursuant to this chapter, until after it has been determined that no prosecution will occur or until a finding of guilt is made.

(3) The provisions in this rule shall not preclude the reasonable segregation of the inmate in accordance with administrative segregation rules appearing in this chapter.

NEW SECTION

WAC 137-28-040 INFRACTIONS--ON-SITE ADJUSTMENT. In the event of a general infraction, a staff member may make an on-site adjustment which may consist of:

(1) Counseling, warning, or reprimanding the inmate; and/or  
 (2) Causing the inmate to remove himself/herself from the situation immediately involved in the violation.

(3) An on-site adjustment under this rule cannot be considered a general infraction for the purposes of determining whether a 657 serious infraction under WAC 137-28-030 has occurred.

NEW SECTION

WAC 137-28-045 INFRACTIONS--REPORT ON. (1) In the event of a general infraction a staff member may prepare and submit an infraction report. In the event of a serious infraction the staff member shall prepare and submit an infraction report.

(2) The infraction report shall include:

- (a) A description of the incident;
- (b) The time and place of the incident;
- (c) The names of witnesses;
- (d) The specific rule alleged to have been violated;
- (e) A description of any action taken; and
- (f) A recommendation of any action to be taken.

(3) The infraction report shall be signed by the staff member and submitted promptly to the supervisory employee or unit team designated by the superintendent to receive such reports.

NEW SECTION

WAC 137-28-050 GENERAL INFRACTION REPORT--ACTION ON REPORT. The supervisory employee or unit team receiving a general infraction report shall decide within five working days of receipt of the report, unless an extension is granted by the superintendent, whether to

(1) Take no further action, in which case the report shall be destroyed promptly; or

(2) Take administrative action as provided for in WAC 137-28-105(1).

(3) General infractions handled under this rule may be accumulated for purposes of invoking the provisions of WAC 137-28-030 with respect to serious infraction 657.

NEW SECTION

WAC 137-28-065 APPOINTMENT AND DISQUALIFICATION OF HEARING OFFICER. (1) Hearings shall be conducted by a single hearing officer designated by the superintendent.

(2) The hearing officer may not function in such capacity when he/she has direct personal knowledge or interest in the incident under consideration. Such officer must disqualify himself/herself by giving notice to the superintendent, who will select a replacement.

(3) "Direct personal knowledge or interest," as that phrase is used in this rule, shall mean knowledge or interest acquired through witnessing or directly participating in the incident under consideration. This rule shall not preclude the hearing officer's participation where the individual has acquired knowledge or interest indirectly or through review of the incident which is conducted as part of the individual's regular institutional responsibilities.

(4) The hearing officer may disqualify himself/herself or be disqualified if it is felt the hearing officer is biased for or against the inmate so that he/she cannot render a fair judgment in the hearing, regardless of the manner by which such bias was acquired.

NEW SECTION

WAC 137-28-072 OUT-OF-STATE INMATES. Inmates committed to the department of corrections who have been transferred to a prison in another state shall be subject to the disciplinary rules and procedures applicable in the prison to which they have been transferred except that such prison may, in its discretion, utilize any presumptive sanction guidelines in current effect in Washington state institutions.

NEW SECTION

WAC 137-28-075 PREHEARING PROCEDURES--RIGHTS OF INMATES. (1) Before being questioned about an alleged rule infraction, an inmate alleged to have committed a rule infraction shall be advised that his/her refusal to testify at the hearing may be used against him/her.

(2) The inmate shall retain his/her institutional status and corresponding rights and privileges prior to and during the hearing except as provided in WAC 137-28-080.

NEW SECTION

WAC 137-28-080 PREHEARING PROCEDURES--RESTRICTION OF INMATE.

(1) Prior to and during a hearing on a serious infraction:

(a) An inmate in minimum security status may be restricted to a security area without loss of his/her classification status when there is a reasonable belief that he/she is a substantial security risk; or

(b) An inmate who is reasonably believed to be of danger to himself/herself or to others, in serious danger from others, or a danger to the order and security of the institution may, upon written verification by the shift commander that such danger is reasonable believed to exist, be restricted to his/her own room or cell or placed in segregation. Such restriction must be approved by the superintendent within twenty-four hours after the confinement;

(c) An inmate shall not be confined or segregated for more than seventy-two hours exclusive of weekends and holidays unless there is an intervening hearing on the incident involved or the inmate or the institution, for good cause, require additional time not to exceed seventy-two hours to prepare its or his/her case for the hearing, or there is an administrative segregation hearing in accordance with the provisions of this chapter.

(2) Confinement or restriction as authorized in this rule shall not limit the right of an inmate to prepare an adequate defense to the charge(s) against him/her.

(3) An inmate confined or restricted as authorized in this section shall be entitled to the same rights as those committed to segregation by the hearing officer following the hearing, as set forth in WAC 137-28-110.

(4) An inmate confined or restricted as authorized in this section shall receive credit for time served in such manner if he/she is subsequently found guilty of the offense by the hearing officer.

NEW SECTION

WAC 137-28-085 HEARING OFFICER--PREPARATION FOR HEARING. In preparation for the hearing, the clerk of the hearing officer shall at least twenty-four hours in advance of the hearing:

- (1) Provide copies of the infraction report to the inmate;
- (2) Advise the inmate, both orally and in writing, of his/her rights, subject to the relevant provisions and limitations of these rules:
  - (a) To have a hearing;
  - (b) That if he/she chooses not to testify at the hearing, his/her silence may be used against him/her;
  - (c) To present written statements from other inmates, staff or other persons in his/her behalf;
  - (d) To ask that staff members, other inmates, and other persons be present as witnesses for the hearing if it is determined by the hearing officer that to do so would not be unduly hazardous to institution's safety or correctional goals: PROVIDED, HOWEVER, Limitations may be made by the 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 inmate's case;
  - (e) To have a staff advisor to assist in preparation/presentation of his/her case when it is determined that the inmate is unable to adequately represent himself/herself on the basis of literacy or competence in accordance with WAC 137-28-097; and
  - (f) To have access to nonconfidential reports and records utilized by the hearing officer during the fact-finding stage: PROVIDED, HOWEVER, Where reports and records contain information, the disclosure of which to an inmate might reasonably compromise the security and/or safety of the institution or its inmates, such reports and records shall be specifically identified as confidential and withheld, and in such cases, the inmate shall be provided with a summary of such written documents with the classified information deleted.
- (3) Obtain written acknowledgment of the receipt by the inmate of the information provided in accordance with WAC 137-28-085 (2);
- (4) Determine from the inmate whether he/she wishes to contest the allegation;
- (5) Schedule the hearing within five working days after discovery of the incident, unless such time is extended by the superintendent; and
- (6) Notify any staff member who witnessed the infraction of the hearing.

NEW SECTION

WAC 137-28-090 CONDUCT OF HEARING. (1) The hearing officer shall assure that the inmate is competent to understand the charge against him/her and the proceedings, and to participate therein. He/she may order a postponement of the hearing to secure a report on the competence of the inmate, or take such other action as will assure the fairness and orderliness of the hearing.

(2) The inmate shall be present at all stages of the hearing except during the decisional deliberations and any inquiry the hearing officer may wish to make concerning the identity of unidentified witnesses. An inmate may waive his/her presence at a hearing.

(3) The inmate shall be informed that if he/she chooses not to testify in the hearing, his/her silence may be used against him/her.

(4) The clerk shall be responsible for presenting all appropriate paperwork to the hearing officer, but shall not be responsible for orally presenting facts and circumstances surrounding the incident.

(5) The hearing officer shall divide the hearing into two stages consisting of:

- (a) Determination of the guilt or innocence of the inmate; and

(b) Determination of further action to be taken.

(6) Evidence, testimony, questions, and examinations shall be limited to facts relevant to the alleged infraction, or disposition if an infraction has been found.

(7) Where institution staff members are witnesses against the inmate, every effort shall be made to have such witnesses present to testify at the hearing: PROVIDED, HOWEVER, The written statements of such staff members may be considered in their absence upon a showing of good cause.

(8) The hearing officer shall have the authority to cross-examine the staff member reporting the infraction.

(9) The inmate shall be allowed to call witnesses and present documentary evidence in his/her defense when permitting him/her to do so will not be unduly hazardous to institutional safety or correctional goals unless the witness and/or information desired to be presented is deemed to be irrelevant, immaterial, unnecessarily duplicative of other information before the hearing officer, or otherwise found to be unnecessary to the adequate presentation of the inmate's case. The testimony of all witnesses from outside the institution shall be considered in writing. In the event the hearing officer determines that the presence of a witness is appropriate, the hearing officer will call the witnesses or continue the hearing until such time as the witness is available. If the witness is unavailable, the hearing officer may, in his/her discretion, consider the written testimony previously submitted.

(10) The inmate may question witnesses against him/her in the discretion of the hearing officer. If the hearing officer determines that an inmate witness would be subject to risk of harm if his/her identity were disclosed, testimony of the inmate witness may be introduced by the testimony of a staff member to whom the information was provided by the inmate witness and/or the affidavit of the inmate witness. If the staff member to whom the inmate witness provided information is, for good cause, unavailable, the written statement of such uninvolved staff member may be used.

(11) The hearing officer shall, out of the presence of all inmates, inquire as to the identity of any anonymous inmate witness, and as to how the testifying staff member received such information. The refusal of the staff member presenting the testimony of the unidentified inmate witness to identify such inmate shall make the testimony inadmissible unless the refusal to identify the witness is approved by a staff member with the rank of captain or above based on that staff member's determination of good cause for nondisclosure and that the informant is reliable. The hearing officer must make an independent determination as to the reliability of informant and credibility of information offered, except that the hearing officer may accept an assurance of credibility from a staff member who approves the nondisclosure of identity of the inmate witness.

#### NEW SECTION

WAC 137-28-093 DECISION OF HEARING OFFICER,. (1) A report of the hearing shall be made by a secretary and shall include the charge, names of witnesses, summary of the testimony and cross-examination, a description of the physical evidence used, and the decisions and reasons therefore. The written report shall be placed in the inmate's institutional file if he/she is found guilty. All reports shall be maintained by the clerk as part of the hearing officer's records. A complete taped record of the hearing shall be taken but the tape shall not become a part of the inmate's file, and may be destroyed one hundred twenty days after the date of the hearing or the appeal decision, or any court proceedings resulting from the hearing, whichever is later.

(2) In reaching its decision on the guilt or innocence of the inmate, the hearing officer must rely solely on evidence presented in the hearing. However, during the dispositional stage of the hearing, such factors as the inmate's institutional file, prior conduct, and overall institution adjustment may be considered.

(3) The inmate shall be informed personally of the decisions of the hearing officer. Such information shall be given to him/her orally within twenty-four hours of the hearing and in writing within seventy-two hours of the hearing unless such periods are extended by the superintendent.

(4) The inmate shall be informed of his/her right to appeal the decisions of the hearing officer to the superintendent.

#### NEW SECTION

WAC 137-28-095 FINDING OF NO INFRACTION. If the hearing officer determines that no infraction occurred, the inmate shall be reinstated to his/her previous status and all records pertaining to the charge shall be removed from the inmate's central file but may be retained for statistical and record-keeping purposes.

#### NEW SECTION

WAC 137-28-097 STAFF ADVISORS. (1) An inmate may have a staff advisor appointed by the hearing officer to prepare for a hearing. The hearing officer shall consider such factors as the literacy, the complexity of the issue and the inmate's overall ability to speak for himself/herself and adequately present his/her case, prior to assigning a staff advisor. The assignment of a staff advisor will only be necessary when considering such factors, and should not be construed to mean that a staff advisor must be assigned. The staff advisor will be a staff member and not involved in the observation of the infraction. The staff advisor may attend the hearing, but shall not be responsible for presentation of the inmate's case, questioning witnesses, or making other oral presentation unless requested to do so by the hearing officer.

(2) A list of approved staff advisors will be maintained by the superintendent.

(3) Staff advisors shall be provided with:

(a) Copies of the written decisions of the hearing officer and the superintendent in cases in which the staff advisors are involved;

(b) An opportunity to have private conversation with inmates they are representing;

(c) Access to written information to be used by the hearing officer in the fact-finding stage as far in advance of the hearing as is reasonably possible; and

(d) Reasonable access to all witnesses.

#### NEW SECTION

WAC 137-28-100 SANCTIONS--AUTHORITY TO IMPOSE. (1) If the hearing officer determines that an inmate is guilty of a serious infraction as enumerated in WAC 137-28-030, he/she may impose one or more of the sanctions provided in WAC 137-28-105.

(2) If the hearing officer determines that more than one infraction occurred, he/she shall not impose consecutive sanctions for the separate infractions but shall consider them together and impose penalties for the group of infractions.

(3) The hearing officer may suspend the execution of a proposed disciplinary sanction for a fixed period of time, not to exceed six months, subject to the good behavior of the inmate and/or meeting other conditions as specified by the hearing officer. If the subsequent behavior of the inmate is appropriate, the hearing officer shall, at or prior to the end of the fixed period, cancel execution of the penalty. A suspended sentence may be revoked upon the inmate's being found guilty of either a general or serious infraction and/or violating the conditions attached to the original suspension. A suspended sentence may be revoked only by the institution hearing officer following notice to the inmate of possible revocation and an in-person meeting with the inmate.

(4) The hearing officer may review any decision he/she has previously made and may modify downward any sanction previously imposed.

(5) Sanctions shall not be imposed while an appeal from the hearing officer's decision is under consideration by the superintendent.

(6) In all cases, regardless of whether an appeal is taken, the superintendent may review a sanction imposed and may reduce its severity.

#### NEW SECTION

WAC 137-28-105 SANCTIONS--TYPES. (1) For general infractions enumerated in WAC 137-28-025 or classified as general infractions by supplementary local rules, one or more of the following sanctions may be imposed:

(a) Reprimand and/or warning;

(b) Loss of specified privileges for not more than ten days on a first offense, twenty days on a second offense, and thirty days on a third offense within a six-month period;

(c) Confinement to room or cell except for attendance at work or school assignment, religious service, or meals, not to exceed ten days;

(d) Interruption or termination of correspondence or visiting with specified individuals for a maximum of ninety days, when there has been an infraction of rules on visits or correspondence as stated in chapters 137-48 and 275-80 WAC or in local rules regarding correspondence and/or visitors; and

(e) Up to one hundred twenty hours of extra work duty.

(2) For serious infractions enumerated in Wac 137-28-030, one or more of the following sanctions may be imposed:

(a) Any of the sanctions enumerated in WAC 137-28-105;

(b) Loss of specified privileges for a period of time not to exceed twenty days except that an inmate shall not be deprived of an opportunity for daily exercise;

(c) Evening lockup or confinement to quarters for ten days;

(d) Weekend and/or holiday lockup or confinement to quarters for a thirty-day period. For purposes of this rule, a "weekend" shall be deemed to begin at the end of the Friday workday;

(e) Confinement to cell except for meals, or with meals in cell, with or without curtailment of job assignment for a period not to exceed ten days;

(f) Recommendation to the classification committee/classification officer for reconsideration of custody classification and/or, when the infraction committed is directly related to the inmate's program, recommendation of program change;

(g) Recommendations to the classification committee/classification officer for transfer to another institution only when, as a result of the infraction committed, the inmate is unable to function

in the institution of present confinement, or if other disciplinary methods have been attempted and failed;

(h) Transfer to the maximum security or segregation section, for a period not to exceed thirty consecutive days;

(i) Confinement in an isolation cell for a period not to exceed ten consecutive days: PROVIDED, That where a serious infraction occurs during a period of isolation imposed under this rule, additional periods of isolation not to exceed ten days may be imposed PROVIDED FURTHER, That in such situation when an inmate may be in isolation for more than ten consecutive days, the director's prior approval shall be required unless the inmate is released from isolation at least for seventy-two consecutive hours between the expiration of one isolation sentence and the imposition of another, where the combined time would exceed ten consecutive days;

(j) Restitution for damage done to any property or loss of any property assigned to the inmate. Funds may be withdrawn from the inmate's account to make restitution under this rule: PROVIDED, That an inmate's account shall not be reduced to less than ten dollars under this subparagraph;

(k) Recommendation to the superintendent that he/she not certify good conduct time credit for an inmate to the board of prison terms and paroles, pursuant to RCW 9.95.070 or that he/she deny good conduct time credit for those inmates not under jurisdiction of the board. Such recommendation will be consistent with guidelines established by the secretary of the department of corrections. Any sanctions for loss of good-conduct credits in excess of the guidelines established by the secretary of the department of corrections must have final approval by the director, division of prisons;

(l) Recommendation to the board of prison terms and paroles for a disciplinary hearing or reconsideration of minimum term should occur only with infractions providing for actual time loss of twelve months or more and consistent with guidelines established by the department;

(m) The sanction for the following major infractions will not result in loss of good-time credit: 557; 559; 653; 657; 661; and 701.

#### NEW SECTION

WAC 137-28-110 SANCTIONS--LIMITATIONS. (1) No inmate shall be subject to disciplinary action for violation of inmate conduct rules unless there has been reasonable advance notice to the inmate of the specific prohibited behavior unless such rule has been adopted on an emergency basis.

(2) Lowering the quantity or quality of food and deprivation of clothing, bedding, bed, or normal hygienic implements shall not be used as sanctions.

(3) Corporal punishment and physical restraint shall not be used as sanctions.

(4) An inmate placed in segregation shall:

(a) Be confined to an environment with healthful temperatures in cells substantially similar to those used for general population;

(b) Be provided the same opportunities for personal hygiene as are available to the general population;

(c) Be afforded his/her rights to correspondence, reading, and legal representation;

(d) Be provided daily opportunity for at least one hour of exercise unless staffing, space, institutional security, order and/or safety, or other similar circumstances make this unfeasible, in which cases such inmate shall be allowed as much exercise as is feasible in the judgment of staff; provided, however, any limitations of exercise shall be approved in advance by a staff member with the rank of lieutenant or higher; and

(e) Be visited by a physician or designated health care personnel at least three times per week; provided, however, if a physician has

not personally visited the inmate for three consecutive days, a physician shall review the condition of the inmate with the health care personnel who have visited and shall review written comments and requests, and a record of visits by medical personnel shall be maintained; and provided further that inmates of forestry honor camps or small correctional institutions, as so designated by the director shall receive medical care and observation in accordance with standard procedures in effect at such facility specified by the director of prisons.

(5) An inmate placed in isolation shall:

(a) Be confined in an environment with healthful temperatures in cells substantially similar to those used for the general population;

(b) Be provided the same opportunities for personal hygiene as are available to the general population;

(c) Retain his/her rights to correspondence, reading, and legal representation except that literature may be limited to educational, religious, legal, or program involvement material;

(d) Be visited by a physician or health care personnel at least once per day; provided, however, if a physician has not personally visited the inmate for three consecutive days, a physician shall review the condition of the inmate with the health personnel who have visited and shall review written comments and requests, and a record of visits by medical personnel shall be maintained; and provided, further, that inmates of forestry honor camps or small correctional institutions, as so designated by the director, shall receive medical care and observation in accordance with standard procedures in effect at such facility to be specified by the director of prisons;

(e) Upon approval by the superintendent, be released immediately to an appropriate setting when medical personnel recommends such release on medical or psychological grounds;

(f) Be visited by a staff member at least twice during each daily shift to ascertain his/her well being, and each such visit and findings shall be recorded; and

(g) Be accessible to the counselor assigned to him/her.

#### NEW SECTION

WAC 137-28-115 APPEAL TO SUPERINTENDENT. (1) An inmate may appeal the decision of the hearing officer to the superintendent by filing a written request for review and his/her reasons therefor with the clerk within twenty-four hours, exclusive of weekends and holidays, after receiving written notice of the decision of the hearing officer. The superintendent may, in his/her discretion, consider appeals filed beyond the twenty-four hour period.

(2) The clerk shall promptly transmit the request for review and the hearing officer record to the superintendent.

(3) The superintendent shall act on the request within five working days of its receipt by affirming the decision of the hearing officer, stating his/her reasons therefor; reducing the severity of the sanctions imposed; vacating the judgment of the hearing officer, or remanding the matter for a new hearing. Any new hearing may not result in an increase of the severity of the sanctions originally imposed.

(4) Pending the decision of the superintendent, the sanctions shall not be imposed on the inmate nor shall his/her custody be subject to change unless there are grounds for detention as provided in WAC 137-28-080 or if the superintendent has reason to believe that he/she is a substantial security risk.

(5) The inmate shall promptly be notified of the decision of the superintendent.

(6) In all cases where the superintendent approves a sanction requiring the loss of more than one hundred eighty days of future good conduct time credits, or the superintendent recommends that a parole

board disciplinary hearing be scheduled, the case will be referred to the director for review and approval. This review may result in approval of the sanction imposed or a lesser sanction.

#### NEW SECTION

WAC 137-28-120 REPORTS TO THE PAROLE BOARD. (1) Whenever the hearing officer finds an inmate guilty of a serious infraction, and recommends either loss of good conduct time credits or an adjustment upward of the inmate's minimum term, it shall be the duty of the hearing clerk to inform the board of prison terms and paroles of that decision within ten days or, if an appeal is taken, within ten days of the superintendent's decision. Said report shall include a copy of the summary of the hearing prepared by the hearing officer reporter.

(2) In all other cases where a finding of guilt is made for a serious infraction, it shall be the duty of the clerk to inform the parole board of that decision within thirty days, or if an appeal is taken, within thirty days of the superintendent's decision. Said report shall include a copy of the summary of the hearing prepared by the hearing officer reporter.

(3) Where an inmate is found guilty of a serious infraction within forty-five days of an apparent release date, the board of prison terms and paroles shall be notified telephonically, with written notification to follow promptly.

#### NEW SECTION

WAC 137-28-130 TIME LIMITATIONS. The time limitations expressed in these regulations shall not be deemed to be jurisdictional and failure to adhere to any particular time regulation shall not be grounds for automatic reversal and/or dismissal of a disciplinary proceeding.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- (1) WAC 275-88-005 PURPOSE.
- (2) WAC 275-88-006 DEFINITIONS.
- (3) WAC 275-88-010 SUPPLEMENTARY RULES.
- (4) WAC 275-88-015 NOTIFICATION.
- (5) WAC 275-88-020 DEFINITION OF MISCONDUCT.
- (6) WAC 275-88-025 GENERAL INFRACTIONS.
- (7) WAC 275-88-030 SERIOUS INFRACTIONS.
- (8) WAC 275-88-035 REPORTING TO LAW ENFORCEMENT AUTHORITIES.
- (9) WAC 275-88-040 INFRACTIONS--ON-SITE ADJUSTMENT.
- (10) WAC 275-88-045 INFRACTIONS--REPORT ON.
- (11) WAC 275-88-050 GENERAL INFRACTION REPORT--ACTION ON REPORT.
- (12) WAC 275-88-055 APPEAL TO HEARING COMMITTEE.
- (13) WAC 275-88-060 APPEAL TO HEARING COMMITTEE--COMPOSITION OF COMMITTEE.
- (14) WAC 275-88-065 APPEAL TO HEARING COMMITTEE--DISQUALIFICATION OR ABSENCE OF MEMBER.
- (15) WAC 275-88-070 APPEAL TO HEARING COMMITTEE--JURISDICTION.
- (16) WAC 275-88-075 PREHEARING PROCEDURES--RIGHTS OF RESIDENTS.
- (17) WAC 275-88-080 PREHEARING PROCEDURES--RESTRICTION OF RESIDENT.
- (18) WAC 275-88-085 HEARING COMMITTEE--PREPARATION FOR HEARING.
- (19) WAC 275-88-090 CONDUCT OF HEARING.
- (20) WAC 275-88-093 DECISION OF HEARING COMMITTEE.
- (21) WAC 275-88-095 FINDING OF NO INFRACTION.
- (22) WAC 275-88-097 LAY ADVISORS.
- (23) WAC 275-88-100 SANCTIONS--AUTHORITY TO IMPOSE.
- (24) WAC 275-88-105 SANCTIONS--TYPES.
- (25) WAC 275-88-110 SANCTIONS--LIMITATIONS.
- (26) WAC 275-88-115 APPEAL TO SUPERINTENDENT.
- (27) WAC 275-88-120 REPORTS TO THE PAROLE BOARD.
- (28) WAC 275-88-130 TIME LIMITATIONS.