



STATE OF WASHINGTON

DEPARTMENT OF CORRECTIONS

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ATTORNEY GENERAL
OF WASHINGTON
CORRECTIONS DIVISION

July 10, 1995

Mr. Gary Reid
Chief Assistant Code Reviser
Office of the Code Reviser
Legislative Building
PO Box 40551
Olympia, WA 98504-0551

Dear Mr. Reid:

The following attached Department of Corrections WAC rules 137-28-140, 137-28-150, 137-28-160, 137-28-170, 137-28-180, 137-28-190, 137-28-200, 137-28-210, 137-28-220, 137-28-230, 137-28-240, 137-28-250, 137-28-260, 137-28-270, 137-28-280, 137-28-290, 137-28-300, 137-28-310, 137-28-320, 137-28-330, 137-28-340, 137-28-350, 137-28-360, 137-28-370, 137-28-380, 137-28-390, 137-28-400, 137-28-410, 137-28-420, and 137-28-430 are submitted for publication in the Register and the Washington Administrative Code. WAC 137-28-005 is submitted for repeal. Pertinent information is as follows:

- a. Amended rules 137-28-140 through 430 were adopted on June 15, 1995.
- b. The effective date of these amended rules and repeal of 137-28-005 is August 15, 1995.
- c. I certify pursuant to RCW 34.05.030(c) that Rules 137-28-140 through 430 are exempt from the APA.
- d. The purpose is to provide a standardized system to determine whether misconduct by an inmate of an adult correctional institution has occurred.

Thank you for your assistance. Please contact me if you have questions or concerns.

Sincerely,

Chase Riveland
Secretary

cc: Kay Wilson-Kirby

CODE REVISER
STATE OF WASHINGTON
FILE #
JUL 17 1995
1-19
95-15-044

NEW SECTION

WAC 137-28-140 Purpose. The rules in this chapter provide a standardized system to determine whether misconduct by an inmate of an adult correctional institution has occurred.

The rules in this chapter shall not apply to proceedings of the indeterminate sentence review board or the division of community corrections.

The following rules set forth procedural guidelines. They do not create any procedural or substantive rights in any person, including any liberty interests in time credits, levels of custody, classification status, or other privileges. In accordance with Washington statutes, such matters are governed solely by the discretion of the department of corrections.

NEW SECTION

WAC 137-28-150 Authority. The authority for this chapter is RCW 72.01.090.

NEW SECTION

WAC 137-28-160 Definitions. For the purposes of this chapter, the following words have the following meanings:

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.

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.

Director - the director of the division of prisons of the Washington state department of corrections, or the director's designee.

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

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 to conduct disciplinary hearings.

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

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.

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

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 137-28-170 Supplementary rules. (1) The superintendent may promulgate local supplementary rules, policies, and procedures including:

- (a) The creation of new infractions, either general or serious;
- (b) The reclassification of any infractions set out in these rules;
- (c) The creation of new sanctions.

(2) All new or reclassified supplemental infractions and sanctions shall be approved in writing by the director before being put into effect.

(3) The secretary, department of corrections, or designee, has the authority to amend or supplement the rules set forth in this chapter by written policy or directive.

NEW SECTION

WAC 137-28-180 Notification. (1) All inmates of an adult correctional institution shall have access to policies and rules regarding:

(a) Their rights and responsibilities in disciplinary matters;

(b) Acts prohibited in the institution; and

(c) Disciplinary action that may be taken in the event of misconduct.

(2) All inmates shall have access to a copy of the local disciplinary policies of the institution to which they are assigned.

(3) Inmates unable to read or understand English shall be provided access to a written or tape recorded translation of these rules in their accustomed language.

(4) Inmates should be provided access to changes to disciplinary policies or rules in advance of their effective date.

(a) Under normal circumstances, announcements of these changes should be posted at designated places for at least thirty days prior to their effective date or sent to the affected inmates.

(b) Complete and up-to-date copies of these rules and all local policies shall be available at each institution for inmate examination.

(c) Inmates shall be responsible to take steps necessary to inform themselves of changes and posted updates.

(5) All infraction(s) should be heard at the facility where the infraction(s) occurred. If it is necessary to transfer an inmate to another facility prior to resolution of unheard infractions, his/her infraction(s) will be forwarded to the new facility for hearing.

NEW SECTION

WAC 137-28-190 Reporting to law enforcement authorities. (1) The superintendent shall report any felony under state or federal law to law enforcement authorities.

(2) If a violation has been reported to law enforcement authorities, inmates who have been charged with an infraction shall not be questioned about the incident outside of a formal disciplinary hearing or an administrative segregation hearing until after it has been determined that no prosecution will occur or until a finding of guilty is made.

(3) No provisions of these rules shall prevent the administrative segregation of any inmate.

NEW SECTION

WAC 137-28-200 Out-of-state inmates. (1) 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 to the prison to which they have been transferred. That prison may, in its discretion, use any presumptive sanction guidelines in current effect in Washington state institutions.

(2) Inmates committed from other jurisdictions to the control of the Washington department of corrections shall be subjected to the disciplinary rules and procedures applicable to the facility to which they are assigned. In addition:

(a) A summary of all serious infraction reports, including sanctions, shall be forwarded to the originating jurisdiction.

(b) Loss of good time shall be handled in accordance with this policy. A copy of all infraction reports resulting in loss of good time shall be forwarded to the originating jurisdiction by the institution record office with a request for approval. The loss of good time shall be considered pending until confirmed or modified by the originating jurisdiction.

NEW SECTION

WAC 137-28-210 Hearing officers. (1) Each hearing shall be conducted by a hearing officer(s) within the rank/classification of lieutenant or above, designated by the superintendent.

(2) The hearing officer(s) will receive training in the disciplinary process and in the identification of inmates who may be impaired in their ability to understand the hearing process and participate in their own defense.

(3) Hearing officers may not function in that capacity when they have direct personal involvement in the infraction under consideration. Such officers must disqualify themselves by giving notice to the superintendent, who will select a replacement.

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

(5) Hearing officers may disqualify themselves or may be disqualified by the superintendent if actually biased for or against any inmate so that they cannot render a fair judgment in the hearing.

(6) Hearing officers must notify an infractioned inmate if they are related to the infracting officer or the victim. The inmate may request another hearing officer or continue with the same hearing officer.

NEW SECTION

WAC 137-28-220 General infractions. Any of the following types of behavior constitutes a general infraction:

Unauthorized possession/theft

- 051 - Unauthorized possession of money, stamps or negotiable instruments the total value of which is less than five dollars.
- 053 - Possession of anything not authorized for retention or receipt by an inmate and/or not issued to an inmate by regular institutional channels.
- 255 - Misuse or waste of issued supplies, goods, services or property, the replacement value of which is less than ten dollars.
- 310 - Pretending or failing to take prescribed medication that the inmate has accepted by concealing or retaining a single or daily dose.
- 354 - Theft of food, the value of which is five dollars or less.
- 356 - Possession of unauthorized amount of otherwise authorized clothing, bedding, or issued supplies.

Loaning/trading

- 052 - Loaning of property for profit.
- 351 - 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 less than ten dollars.

Altering/destroying property

- 055 - Mutilating, altering, defacing or destroying any item valued at less than ten dollars and that is not the personal property of the inmate.

Disruptive behavior/lying

- 202 - Abusive language, harassment or other offensive behavior directed to or in the presence of staff, visitors, inmates, or other persons or groups.
- 203 - Lying to a staff member.
- 244 - Unauthorized displays of sexual affection with another inmate.
- 353 - Disruptive behavior.
- 355 - Horseplay, roughhousing or any other unauthorized physical contact between inmates.

Failure to follow rules and orders

- 102 - Failure to follow any written rules or policies adopted by the institution and not specified within this chapter or in local disciplinary rules.
- 103 - Refusing or failing to obey an order, oral or written, of any staff member.
- 210 - Out of bounds; being in an area where the presence of the inmate is unauthorized.
- 214 - Interfering or failing to comply with count procedures.
- 251 - Smoking where prohibited.
- 301 - Failure to keep your person or your quarters in accordance with institution rules or policies.

Unauthorized communication/visitor contact

- 303 - Unauthorized use of mail or telephone.
- 304 - Unwanted written and telephonic communications to any person.
- 305 - Correspondence or conduct with a visitor in violation of published or posted rules and policies.
- 309 - Unauthorized display of affection with a visitor.

Inappropriate use of equipment

- 212 - Using any equipment or machinery when not specifically authorized.
- 213 - Using any equipment or machinery contrary to instructions or safety standards.

Unexcused absence/feigning illness

- 104 - Unexcused absence from work or any assignment, scheduled meeting, appointment, or call out.
- 352 - Pretending to be ill or injured contrary to medical/mental health screening results.

NEW SECTION

WAC 137-28-230 General infraction procedure. Infraction report.

(1) In the event of a general infraction, a staff member may make an on-site adjustment. An on-site adjustment may consist of counselling, warning, or reprimanding the inmate and/or causing the inmate to remove him/herself from the situation immediately. An on-site adjustment under this rule cannot be considered a general infraction for the purposes of determining whether a #657 serious infraction has occurred.

(2) In the event of a general infraction where a staff member does not make an on-site adjustment, the staff member may prepare and submit an infraction report. The infraction report shall include:

- (a) Name, number and housing location of the offender;
- (b) A description of the incident;
- (c) The time and place of the incident;

(d) The names of witnesses, victims, and other persons involved;

(e) The specific rule(s) alleged to have been violated;

(f) A description of any action taken and copies of any relevant documentation or supplemental reports;

(g) Name and signature of reporting staff.

(3) The general infraction report shall be submitted promptly to the supervisor or unit team designated by the superintendent to receive such reports.

(4) The supervisor or unit team receiving a general infraction report shall decide whether the inmate is guilty or not guilty within five working days of receipt of the report. An extension to the five days may be granted by the hearing officer. This decision of the supervisor or unit team can be reached by:

(a) Taking no further action, in which case the report shall not be retained in the inmate's files, but may be retained in other institutional files designated for statistical, recordkeeping, or litigation purposes;

(b) Deciding the infraction without a hearing upon a determination that the inmate is guilty, the supervising employee or unit team may impose any appropriate sanction; or

(c) Scheduling an informal hearing with the inmate present at which the supervising employee or unit team may allow witnesses and documentary evidence. Upon finding that an inmate is guilty, the supervising employee or unit team may impose any appropriate sanction.

NEW SECTION

WAC 137-28-240 General infractions. Sanctions.

For being found guilty of any general infraction, one or more of the following sanctions may be imposed:

(1) Reprimand or warning;

(2) Issuance of a written order to cease a problematic behavior. The order will include a warning that if the behavior is repeated within a specified period (not to exceed one hundred eighty days) the inmate will be charged with violation of serious violation (WAC 137-28-260) #658.

(3) Loss of a privilege or privileges as specified by the supervisor or unit team 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;

(4) Confinement to room or cell except for attendance at work or school assignment, religious service, or meals, or law library if a documented court deadline has been imposed, not to exceed ten days;

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

NEW SECTION

WAC 137-28-250 Appeals. (1) The sanctions for a finding of guilty of a general infraction may be appealed by the inmate to the major hearing officer of the institution.

(a) The appeal must be in writing and must include the reason why the inmate believes the action taken was incorrect.

(b) The appeal must be delivered to the hearing officer within twenty-four hours after the inmate receives notice of the action taken.

(c) Failure to follow appeal procedures will be deemed a waiver of the appeal.

(2) Within ten working days after receipt of the appeal, unless the time is extended by the superintendent, the hearing officer will decide either to:

(a) Schedule a hearing on the appeal; or

(b) Affirm, modify downward, or reverse the finding of guilty without a hearing.

(3) Once a decision of the hearing officer is made, the inmate shall be notified within seventy-two hours, unless the time period is extended by the superintendent.

NEW SECTION

WAC 137-28-260 Serious infractions.

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.
- 520 - Unauthorized demonstration, practice or use of martial arts.
- 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.
- 599 - Careless behavior that causes injury to another offender.
- 604 - Aggravated assault on a staff member.
- 633 - Assault on another offender.
- 663 - Using physical force, intimidation or coercion against any person.
- 699 - Careless behavior that causes injury to a staff member.

- 704 - Assault on a staff member.
- 711 - Assault on a visitor.
- 717 - Causing a threat of injury to another person by disregard of orders, careless behavior, resisting assisted movement or physical efforts to restrain.
- 777 - Causing injury to a staff member by resisting orders, resisting assisted movement or physical efforts to restrain.
- 799 - Careless behavior that causes injury to a visitor.

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.
- 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.

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 or tampering with, 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.
- 661 - Performing or taking part in an unauthorized marriage.
- 682 - Engaging in 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 - Participating in or inciting others to go on a 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 sexually explicit acts as defined in DOC 450.100.
- 750 - Indecent exposure.

Providing false statements

- 551 - Lying to the disciplinary hearing officer or lying on a disciplinary appeal.
- 552 - Causing an innocent person to be penalized or proceeded against by lying.
- 706 - Lying or 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 or failing to comply with a work or 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.
- 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 or self-mutilation.
- 742 - Creating a false emergency by feigning illness when contrary to medical/mental health screening results.
- 744 - Making a bomb threat.

NEW SECTION

WAC 137-28-270 Serious infraction procedure. Infraction report.

(1) In the event of a serious infraction, the staff member who discovers such violation shall prepare and submit an infraction report. The infraction report shall be submitted promptly upon discovery of the incident or upon completion of an investigation. The infraction report must include:

- (a) Name, number and housing assignment of offender;
- (b) A description of the incident;
- (c) The time and place of the incident;
- (d) The names of witnesses, victims, and other persons involved;
- (e) The specific rule alleged to have been violated;
- (f) A description of any action taken;

(g) Copies of any relevant documentation or supplemental reports. Confidential information and the identities of confidential informants shall not be included;

(h) Name and signature of reporting staff.

(2) The infracting staff member may recommend action to be taken on the infraction to the hearing officer. This may include a recommendation that the inmate be referred for a mental health consultation.

(3) Serious infraction reports may be reviewed by the infracting staff member's supervisor who may:

(a) Approve the report and forward it to the hearing clerk;

(b) Require the report be revised, rewritten or reinvestigated by the reporting staff member to ensure that the alleged facts support the charges;

(c) Add, delete or reduce the indicated WAC violations as appropriate, based upon the information and/or evidence provided by the reporting staff member;

(d) Recommend referral to a mental health professional for consultation if there is a question whether:

(i) Mental illness contributed to the behavior that led to the infraction; or

(ii) The inmate's mental health status may need to be monitored.

(4) If a negotiated hearing process is in place in the facility, the report may be forwarded to the designated hearings officer.

NEW SECTION

WAC 137-28-280 Temporary prehearing confinement. (1) Before a hearing, an inmate may be temporarily confined to his/her cell or demoted to a higher custody level or housing assignment, such as segregation, when it is reasonably believed that the inmate presents a risk to the security of the institution, a risk of escape, danger to themselves or to others, or is in danger from others.

(2) Confinement decisions under this rule shall be made by the shift commander in writing. All segregation placement must be approved by the superintendent within one working day of the confinement.

(3) Confinement imposed under this section may not be for more than three working days unless either the inmate or the institution, for good cause, requires additional time to prepare for the disciplinary hearing, or there is an administrative segregation hearing.

(4) An inmate confined under this section shall be subject to the same rules and restrictions as other inmates in the unit or status.

(5) An inmate confined under this rule shall be afforded reasonable opportunities to prepare a defense to the charges against him/her.

(6) An inmate confined on prehearing confinement or restricted under this rule shall receive credit against the sanction for time served if found guilty of the infraction.

(7) If an inmate is on prehearing confinement and a sanction of further segregation or isolation is given and the inmate indicates he/she wishes to appeal, the inmate may remain on prehearing confinement status pending disposition of the appeal, unless released by the superintendent.

NEW SECTION

WAC 137-28-290 Preparations for hearing. In preparation for the hearing, the hearing clerk or designee 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 in writing:

(a) Of his/her right to have a hearing;

(b) That if he/she chooses not to testify at or attend the hearing, his/her silence may be used against him/her;

(c) To present written statements from other inmates, staff, or other persons only if those statements would be relevant to the infraction and have a tendency to demonstrate his/her innocence;

(d) To request that staff members, other inmates, and other persons be present as witnesses in his/her defense for the hearing if it is determined by the hearing officer that to do so would not be unduly hazardous to institutional safety or correctional goals. 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 assist in preparation of the inmate's case when it is determined by appropriate staff that the inmate is unable to adequately represent him/herself on the basis of literacy, competence, or other disability;

(f) To have access to nonconfidential reports and records used by the hearing officer during the fact-finding stage. However, where reports and records contain information that might reasonably compromise the security or safety of the institution or its inmates, these reports and records shall be identified as confidential and withheld. A summary of the confidential information shall be provided to the inmate. This summary may be included in the infraction report.

(g) The inmate must establish that any requested witness has relevant and exculpatory evidence to present at the hearing. The inmate must list all intended witnesses on the notice of hearing. The hearing officer may, in his/her discretion, allow additional witnesses for good cause shown;

(3) Advise the inmate that he/she does not have a right:

(a) To cross-examine witnesses;

(b) To have the infracting staff member present at the hearing;

(c) To a polygraph or other supplemental tests;

(4) Obtain written acknowledgement of the inmate's receipt of the information;

(5) Determine from the inmate whether the inmate wishes to contest the allegation;

(6) Schedule the hearing within ten working days after discovery of the incident. If an inmate is placed in prehearing confinement, a hearing shall be held within three working days after the day of placement, unless the time is extended by the superintendent. If the hearing is continued, a determination shall be made whether the inmate should remain on prehearing confinement and the reasons for that confinement.

NEW SECTION

WAC 137-28-300 Conduct of hearing. (1) The hearing officer shall ensure that the inmate is capable of understanding the charge against him/her, the nature of the proceedings, and is able to adequately take part in the hearing. If there is reason to doubt the inmate's understanding or ability, the hearing officer may order a continuance of the hearing in order to obtain additional information. If the hearing officer determines that the inmate is not able to understand or take part in the proceedings, the hearing officer shall assign a staff advisor to the inmate. If the inmate's mental status impairs the inmate's ability to participate in the hearing, the staff advisor appointed should be a mental health professional or a staff member with mental health training or experience.

(2) The inmate shall be present at all stages of the hearing except during deliberations and any inquiry the hearing officer may make concerning the source of confidential information.

(3) The hearing officer may consider relevant evidence presented outside the hearing when not feasible to present that evidence within the hearing. The inmate shall be apprised of the content of that evidence and shall be allowed to rebut that evidence during the hearing. An inmate may waive his/her presence at a hearing. Failure without good cause to attend a scheduled hearing may be deemed a waiver of personal attendance. An inmate may be removed from his/her disciplinary hearing and the hearing may be continued in the inmate's absence if the inmate's behavior disrupts the disciplinary hearing.

(4) Where institution staff members are witnesses against the inmate, a written statement from the staff member may be considered by the hearing officer instead of in-person testimony, except where the hearing officer determines that the staff member's presence is necessary to an adequate understanding of the issues in the case.

(5) The hearing officer has the authority to question all witnesses. The inmate may submit proposed questions to be asked of witnesses, but the hearing officer has discretion over the questions asked.

(6) The inmate shall be allowed to present witnesses in his/her defense and to 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. Testimony

of witnesses from outside the facility will be submitted in writing.

(a) The hearing officer may deny the admission of evidence or testimony if the hearing officer determines that the testimony or evidence is 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.

(b) The testimony of witnesses that is adverse to the inmate may be given in person, in writing, or by telephone.

(c) The hearing officer shall document on the written record the reasons for denial of in-person testimony that is requested in writing by the inmate.

(7) If the hearing officer determines that a source of information would be subject to risk of 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.

(a) The hearing officer shall, out of the presence of all inmates and off the record, identify the confidential source, and how the testifying staff member received the confidential information.

(b) 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 hearing officer, off the record. The hearing officer shall make an independent determination regarding the reliability of the confidential source, the credibility of the 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 hearing officer should consider all relevant circumstances including, but not limited to:

(i) Evidence from other staff members that the confidential source has previously given reliable information;

(ii) Evidence that the confidential source had no apparent motive to fabricate information;

(iii) Evidence that the confidential source received no benefit from providing the information;

(iv) Whether the confidential source is giving first-hand information;

(v) Whether the confidential information is internally consistent and is consistent with other known facts; and

(vi) The existence of corroborating evidence.

The 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.

NEW SECTION

WAC 137-28-310 Decision of hearing officer. (1) A report of the hearing shall be made.

(a) The report shall include:

(i) The charge;

(ii) Names of witnesses;

(iii) Inmate plea(s);

(iv) Summary of the testimony and cross-examination;

(v) A description of the physical evidence used;

(vi) Reasons for denying witnesses or the fact that written witness statements were not returned to the hearing officer; and

(vii) The decisions and reasons.

(b) The written report shall be placed in the inmate's institutional file if he/she is found guilty.

(c) All reports and attachments shall be maintained by the clerk as part of the hearing officer's permanent 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 unless the hearing officer becomes aware that an appeal or court proceeding is pending.

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

(3) The inmate shall be informed of the decision of the hearing officer in writing within three working days of the hearing, unless extended by the superintendent.

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

NEW SECTION

WAC 137-28-320 Lesser included and related infractions. (1) The hearing officer is authorized to find an inmate guilty of a lesser included offense without issuing a new infraction report or conducting a new hearing.

(2) Where the evidence suggests an inmate is guilty of an offense not charged and which is not a lesser included offense to a charged offense, the hearing officer may recommend that new charges be filed to address such offenses. The inmate may waive the right to a separate hearing on the new charges and may allow the hearing officer to enter a finding of guilty or not guilty and impose sanctions.

NEW SECTION

WAC 137-28-330 Finding of not guilty. If the hearing officer determines that the inmate is not guilty of all charged infractions, disciplinary sanctions shall not be imposed on the inmate and all records pertaining to the charge(s) shall not be placed in the inmate's central file but may be retained for statistical, litigation, and recordkeeping purposes.

NEW SECTION

WAC 137-28-340 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 the following factors prior to assigning a staff advisor:

(a) The inmate's literacy;

(b) The complexity of the issue;

(c) The inmate's overall ability to speak for himself/herself and adequately present his/her case;

(d) The mental status of the inmate, in which case the staff advisor should be a mental health professional or other staff member with mental health training or experience;

(e) The inmate's ability to communicate in English;

(f) Any disability that might impair the inmate's ability to adequately defend him/herself.

(2) The assignment of a staff advisor will only be necessary after considering these factors. This section should not be construed to mean that a staff advisor must be assigned.

(3) The staff advisor will be a staff member who is not involved in the observation or investigation of the infraction.

(4) The staff advisor shall attend the hearing, in person or telephonically, but shall not be responsible for presenting the inmate's case, questioning witnesses, or making other oral presentation, unless requested to do so by the hearing officer.

(5) Where a hearing is continued under this section, an advisor shall be appointed immediately and instructed to help the inmate in preparing his case to the extent necessary to present a valid defense.

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

(7) Staff advisors shall be provided with:

(a) An opportunity to meet and confer with inmates they are representing;

(b) 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;

(c) Reasonable access to all witnesses; and

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

(8) Conversations between staff advisors and inmates are neither confidential nor privileged.

NEW SECTION

WAC 137-28-350 Sanctions--Authority to impose. (1) If the hearing officer determines that an inmate is guilty of a serious infraction, he/she may impose one or more of the following sanctions:

- (a) Any of the sanctions available for general infractions;
- (b) Any of the sanctions available under DOP 320.150 disciplinary sanctions directive;
- (c) Loss of a privilege or privileges as specified by the hearing officer not to exceed: Thirty days on a first offense, ninety days on a second offense, and one hundred eighty days on a third offense, within a one-year period;
- (d) Evening lockup or confinement to quarters for ten days;
- (e) Weekend and/or holiday lockup or confinement to quarters for a period of one or more weekends but not to exceed twelve consecutive weekends per incident. For purposes of this rule, a "weekend" shall begin at the end of the Friday workday and terminate at the beginning of the Monday workday;
- (f) Confinement to quarters except for meals, or with meals in cell, with or without curtailment of job assignment for a period not to exceed thirty days;
- (g) Recommendation to the unit team/classification committee/assignment officer for reconsideration of custody classification or program change;
- (h) Recommendations to the classification committee/classification officer for transfer to another institution 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;
- (i) Confinement on segregation status for a period not to exceed thirty consecutive days;
- (j) Confinement on isolation status for a period not to exceed ten consecutive days; however, 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. In situations where an inmate is in isolation for more than ten consecutive days, the director's prior approval is required unless the inmate is released from isolation for at least seventy-two consecutive hours between the end of one isolation sanction and the beginning of another;
- (k) Restitution;
- (l) Recommendation to the superintendent that he/she not certify good conduct time credit for an inmate subject to the jurisdiction of the indeterminate sentence review board, pursuant to RCW 9.95.070 or that he/she approve the denial of good conduct time credit for those inmates not under the jurisdiction of the board.
 - (i) The recommendation will be consistent with guidelines established by the secretary of the department of corrections.
 - (ii) 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.
 - (iii) For inmates not under the board's jurisdiction, all awards of good conduct time shall be considered tentative and

therefore all good conduct time credits earned or to be earned may be addressed under this rule;

(m) Recommendation to the indeterminate sentence review board 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;

(n) Interruption of visitation between the offender and a specified individual(s) for a period of up to one hundred eighty consecutive days when there has been an infraction for visit related behavior or behavior that presents a security or safety threat. In cases of multiple or very serious offenses, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s);

(o) Restrictions, interruption or termination of correspondence, and/or telephone privileges with specified individuals. Sanctions for offense(s) within any one-year period may not exceed: Up to ninety consecutive days for the first offense, one hundred eighty consecutive days for the second offense and permanent loss for the third offense. Termination of correspondence and/or telephone privileges may be permanent for the first offense if:

(i) The recipient so requests; or

(ii) A parent or guardian of the recipient, if a minor or an incompetent person, so requests; or

(iii) A felony was involved in the incident; or

(iv) If the contact violates a court order.

(2) If the hearing officer determines that more than one infraction occurred as a result of the same incident, 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 disciplinary sanction for a fixed period of time, not to exceed three hundred sixty-five consecutive days, subject to the good behavior of the inmate or to meeting other conditions as specified by the hearing officer. If the subsequent behavior of the inmate is appropriate, the hearing officer may, at or before the end of the fixed period, cancel the sanction. A suspended sanction may be imposed if the inmate has been found guilty of a general or serious infraction or of violating the conditions attached to the original suspension. A suspended sanction may be imposed by the hearing officer following notice to, and an in-person meeting with, the inmate.

(4) The hearing officer may review any decision he/she 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 whether an appeal is taken, the superintendent may review a sanction imposed and may reduce its severity.

(7) Nothing in this section limits the superintendent's discretion to grant, deny, suspend, or revoke any privilege.

NEW SECTION

WAC 137-28-360 Sanctions and mental status. In determining an appropriate sanction, the hearing officer should consider the inmate's mental health and his/her intellectual, emotional, and maturity levels and what effect a particular sanction might have on the inmate in light of such factors. The hearing officer may request the assistance of other department staff, including mental health staff, in determining appropriate sanctions.

NEW SECTION

WAC 137-28-370 Sanctions--Limitations. (1) No inmate shall be subject to discipline for violation of inmate conduct rules unless there has been reasonable advance notice to the inmate of the prohibited behavior unless the rule was adopted on an emergency basis.

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

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

(4) An inmate placed in disciplinary segregation shall be:

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

(b) Provided reasonable opportunities for personal hygiene;

(c) Afforded correspondence, reading, and access to the courts in accordance with written policy and procedure;

(d) 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 the inmate shall be allowed as much exercise as is feasible in the judgment of staff. Any limitations of exercise shall be approved in advance by a staff member with the rank of lieutenant or higher; and

(e) Provided adequate medical treatment.

(5) An inmate placed in isolation shall be:

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

(b) Provided reasonable opportunities for personal hygiene;

(c) Afforded correspondence, reading, and access to courts in accordance with written policy and procedure. Reading literature may be limited to educational, religious, legal, or program involvement material;

(d) Provided adequate medical treatment;

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

(f) Have reasonable access to a counselor and religious staff member.

NEW SECTION

WAC 137-28-380 Appeal to superintendent. (1) An inmate or the inmate's staff advisor may appeal the decision of the hearing officer to the superintendent by filing a written request for review with his/her reasons with the clerk within twenty-four hours, exclusive of weekends and holidays, after receiving notice of the decision of the hearing officer. The superintendent may consider appeals filed beyond the twenty-four-hour period.

(2) The clerk shall promptly transmit the appeal and the hearing record to the superintendent.

(3) The superintendent shall act on the appeal within ten working days of its receipt. The superintendent may affirm the decision of the hearing officer; reduce the charge to a lesser included offense; reduce the severity of the sanctions imposed; vacate the judgment of the hearing officer; or remand the matter for a new hearing. Any new hearing may not result in an increase in the severity of the sanctions originally imposed unless the inmate is charged with related or additional offenses.

(4) Pending the decision of the superintendent, disciplinary sanctions shall not be imposed on the inmate.

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

NEW SECTION

WAC 137-28-390 Reports to the indeterminate sentence review 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 increase in the inmate's minimum term, the records office must inform the indeterminate sentence review board of that decision within ten days or, if an appeal is taken, within ten days of the superintendent's decision. This report shall include a copy of the summary of the hearing prepared by the hearing officer.

(2) In all other cases where a finding of guilty is made for a serious infraction, the records office must inform the indeterminate sentence review board of that decision within thirty days, or if an appeal is taken, within thirty days of the superintendent's decision. This 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 indeterminate sentence review board shall be notified promptly with written notification to follow.

(4) This section shall apply only to inmates who are under the jurisdiction of the indeterminate sentence review board.

NEW SECTION

WAC 137-28-400 Time limitations. The time limitations expressed in these regulations are not jurisdictional and failure to adhere to any particular time limit shall not be grounds for reversal or dismissal of a disciplinary proceeding.

NEW SECTION

WAC 137-28-410 Restitution. (1) If restitution has been imposed as a sanction, a hearing officer shall determine the amount of restitution owed. A determination of the amount of restitution owed shall be made at the infraction hearing. However, the hearing officer may continue the hearing in order to secure additional evidence. If continued, the inmate shall be present at the continued/reconvened hearing.

(2) The amount of restitution normally shall be the replacement value of the item, the cost of repair, or the cost of any unnecessary expense caused by the inmate's misconduct.

(3) The inmate shall be given an opportunity to appeal the amount of restitution within the time limits of this policy. If under appeal, the amount of restitution will be held in the inmate's account but funds will not be withdrawn from the inmate's account until the superintendent has decided the appeal.

(4) Funds may be:

(a) Withdrawn from the inmate's account to make restitution provided the inmate's account shall not be reduced to less than ten dollars; or

(b) Twenty percent of all funds being placed into the inmate's account may be taken until the restitution is paid in full.

NEW SECTION

WAC 137-28-420 Continuances. (1) At any time during the disciplinary process, the hearing officer may continue the hearing for any reasons, including the following:

(a) To determine the inmate's mental status or competency.

(b) To appoint a staff advisor.

(c) To obtain an interpreter.

(d) To obtain witnesses or witness statements.

(e) To order an investigation into the incident.

(f) To correct errors.

(g) To obtain a replacement hearing officer.

(h) To obtain crime lab reports or other documentation.

(i) Due to the inmate's and/or witness' unavailability.

(j) Because the inmate is on escape, court-ordered custody, at a non-DOC facility, in transit, etc.

(k) A reasonable request by the inmate.

(l) To determine restitution costs.

(2) Continuances shall be for no longer than necessary, but shall not exceed twenty working days, unless approved by the superintendent.

(3) Hearings for inmates on escape status, court-ordered custody, in transit at a nondivision of prisons facility or otherwise unavailable may be continued up to a period not to exceed twenty working days after their return to the facility where the infraction originated.

NEW SECTION

WAC 137-28-430 Evidence. (1) Physical evidence of infractions shall be secured and protected from contamination, loss, or damage, when possible.

(2) A documented record of the chain of custody of physical evidence shall be maintained by the evidence custodian. The evidence custodian shall be supervised by the hearing officer.

(3) When physical evidence is no longer needed for appeal or litigation, it may be disposed of according to policy.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 137-28-005 Purpose.
- WAC 137-28-006 Definitions.
- WAC 137-28-010 Supplementary rules.
- WAC 137-28-015 Notification.
- WAC 137-28-020 Definition of misconduct.
- WAC 137-28-025 General infractions.
- WAC 137-28-030 Serious infractions.
- WAC 137-28-031 Cell tag.
- WAC 137-28-032 Earned time, granting and denial.
- WAC 137-28-035 Reporting to law enforcement authorities.
- WAC 137-28-040 Infractions--On-site adjustment.
- WAC 137-28-045 Infractions--Report on.
- WAC 137-28-050 General infraction report--Action on report.
- WAC 137-28-055 Appeal to hearing officer.
- WAC 137-28-065 Appointment and disqualification of hearing officer.
- WAC 137-28-072 Out-of-state inmates.
- WAC 137-28-075 Prehearing procedures--Rights of inmates.
- WAC 137-28-080 Temporary prehearing confinement.
- WAC 137-28-085 Hearing officer--Preparation for hearing.
- WAC 137-28-090 Conduct of hearing.
- WAC 137-28-093 Decision of hearing officer.
- WAC 137-28-094 Lesser included and related infractions.
- WAC 137-28-095 Finding of no infraction.
- WAC 137-28-097 Staff advisors.

WAC 137-28-100 Sanctions--Authority to impose.
WAC 137-28-105 Sanctions--Types.
WAC 137-28-107 Sanctions and mental status.
WAC 137-28-110 Sanctions--Limitations.
WAC 137-28-115 Appeal to superintendent.
WAC 137-28-120 Reports to the board of prison terms and
paroles.
WAC 137-28-130 Time limitations.