



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

1000 4th Avenue, Olympia, Washington 98504-1000, (360) 358-1571
AN HONORABLE OFFICE

December 13, 1996

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

Dear Mr. Reid:

The following enclosed Department of Corrections WAC rules are amended: 137-28-40, 137-28-160, 137-28-220, 137-28-260, 137-28-350; WAC 137-55 is a new WAC. All are submitted for publication in the Register and the Washington Administrative Code. Pertinent information is as follows:

- a. 137-55 is a new rule and is adopted as of February 4, 1997.
- b. The effective date of this rule is February 4, 1997.
- c. The purpose of this rule is to establish a system for the acquisition of personal hygiene items for offenders of the Department of Corrections.
- d. 137-28-140 is amended and establishes a system that clearly links the offender's behavior and participation in available education and work programs.
- e. 137-28-160 is amended and adds a definition of "earned time" and "earned release time" to the already established definitions.
- f. 137-28-220 is amended and under sec. 251 of the rule, adds possession of tobacco products as prohibited conduct.
- g. 137-28-260 is amended and under sec. 620, which is a new section of the rule, adds "receipt or possession of contraband during participation in off-grounds activity" as unauthorized possession. Sec. 557 of the rule also adds "refusing to participate in an available education or work program" as a penalty for the failure to follow orders or rules. Sec. 606 of the rule also adds "possession of tobacco products and or matches in close/maximum housing units" as misuse of controlled substances.
- h. 137-28-350 is amended and under sec. (k) adds "or fines" under authority to impose. Under sec. (p) of the rule, "the loss of available earned release credits and other privileges" are added as sanctions for infractions under #557.
- i. I certify pursuant to RCW 34.05.030(c) that the above rules are exempt from the APA.
- j. The effective date of the amended rules under 137-28 is February 4, 1997.

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

JAN 10 1997

TIME: 8:17
WSR 97-03-041

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

A handwritten signature in black ink, appearing to read 'Chase Riveland', written over the word 'Sincerely,'.

Sincerely,

Chase Riveland

Chapter 137-55 WAC

ADULT CORRECTIONAL INSTITUTIONS--ACQUISITION
OF PERSONAL HYGIENE ITEMS

NEW SECTION

WAC 137-55-010 Purpose. The purpose of these rules is to establish a uniform procedure for the acquisition and replenishment of personal hygiene items within all department of corrections facilities.

NEW SECTION

WAC 137-55-020 Definitions. (1) "Personal hygiene items" shall consist of items directed towards a particular individual, which are used to promote or preserve that individual's health and to contribute to the prevention of disease or infection.

(2) "Indigent" for purposes of this rule shall be defined as an offender who has less than a ten-dollar balance of disposable income in his or her institutional account on the day the request is made to use funds or during the thirty days previous to the request.

(3) "Acquisition" for the purpose of this rule shall refer to the act of acquiring or locating personal hygiene items.

(4) "Replenishment" for the purposes of this rule shall refer to the act of adding to or obtaining a new supply of new personal hygiene items.

NEW SECTION

WAC 137-55-030 Acquisition of items. (1) All offenders incarcerated within department of corrections facilities shall be responsible for the acquisition and replenishment of personal hygiene items after the initial issuance of those items at the reception center.

(2) Initial issuance of personal hygiene items shall include the department's issuance of the following items to individual offenders:

(a) Bath soap;

- (b) Tooth brush;
- (c) Tooth paste;
- (d) Razor - one each;
- (e) Comb or hair pick - one each;
- (f) Shampoo - thirty-day supply (optional issuance for offenders in the reception center only);
- (g) Deodorant - thirty-day supply (optional issuance for offenders in the reception center only); and
- (h) State issued sanitary napkins will be made available to female offenders on an as needed basis without charge.

NEW SECTION

WAC 137-55-040 Replenishment. (1) "Replenishment" of offender personal hygiene items shall be in accordance with the department's established usage factors for personal hygiene items.

(2) The guideline usage for each personal hygiene item shall be as follows:

- (a) Bath soap - seven days per bar;
- (b) Tooth brush - sixty days;
- (c) Tooth paste - thirty days;
- (d) Razor - five days;
- (e) Comb - sixty days; and
- (f) Hair pick - one hundred eighty days.

(3) Department replenishment of personal hygiene items shall be issued to those offenders meeting the definition of indigent and those offenders that do not have sufficient money available.

(4) If a nonindigent offender does not have sufficient money for a single item issue, any money available will be deducted and a debt established for the balance and collected in accordance with the offender financial debt collection procedure.

(5) State issued sanitary napkins will be made available to female offenders on an as needed basis without charge.

NEW SECTION

WAC 137-55-050 Indigent offender. (1) Those offenders meeting the definition of indigent offenders, shall not be denied access to personal hygiene items in terms of both initial acquisition and later replenishment.

(2) The department of corrections shall establish uniform issue by quantity per item.

(3) The state shall be reimbursed for the cost of the personal hygiene supplies in accordance with established department of corrections procedures as stated in the offender financial debt collection procedure.

NEW SECTION

WAC 137-55-060 Nonindigent offenders. Nonindigent offenders who have sufficient money shall purchase personal hygiene items through their facility commissary program.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

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, and to provide a system that clearly links an offender's behavior and participation in available education and work programs as determined through classification with the receipt or denial of earned early release time and other privileges.

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.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

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.

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

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

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

Hearing officer - Staff member(s) designated by the superintendent 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.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

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 and possession of tobacco products 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.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

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.
- 620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.
- 660 - Unauthorized possession of money, stamps, or negotiable instruments, the value of which is five dollars or more.
- 702 - Possession, manufacture or introduction of an unauthorized tool.
- 736 - Possession, manufacture or introduction of unauthorized keys.
- 738 - Possession of the clothing of a staff member.

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~~) to participate in an available education or work program or other mandatory programming assignment.

- 609 - refusing or failing to submit to testing required by policy, statute, or court order, such as DNA blood tests, when ordered to do so by a staff member.
- 658 - Failing to comply with any administrative or posthearing sanction imposed for committing any general or serious infraction.
- 724 - Refusing a cell or housing assignment.
- 745 - Refusing a transfer to another facility.

Counts/unauthorized absence

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

Escape/attempted escape

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

Committing crimes/excess infractions

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

Unacceptable communication

- 718 - Use of mail or telephone in violation of court order or local, state or federal law.
- 726 - Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.
- 727 - Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary actions.

Misuse of controlled substances, drugs, alcohol and related programs

- 603 - Possession, introduction, or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug or drug paraphernalia.
- 606 - Possession of tobacco products and/or matches in close/maximum housing units where strictly prohibited.
- 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.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

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 or fines;

(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;

(p) The sanction for infraction #557 shall be the loss of available earned release credits and other privileges as outlined in division directives. Progressively more severe sanctions will be utilized for subsequent infractions #557.

(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.