

# Chapter 381-90 WAC

## PROCEDURES FOR CONDUCTING HEARINGS FOR DETERMINATION OF RELEASE TO COMMUNITY CUSTODY

### WAC

381-90-010	Purpose.
381-90-020	Authority.
381-90-030	Scope.
381-90-040	Definitions.
381-90-050	Release determination.
381-90-060	Release determination after community custody revocation.
381-90-070	Conditions of community custody.
381-90-080	Inmate to be served notice.
381-90-090	Inmate shall be advised of rights.
381-90-100	Conducting a hearing.
381-90-110	Continuances.
381-90-120	Inmate to be present.
381-90-130	Oaths and affirmations.
381-90-140	Admissibility of information.
381-90-150	Disposition.
381-90-160	Statement of decision and reasons.
381-90-170	Hearing record preservation.

**WAC 381-90-010 Purpose.** The purpose of this chapter is to specify policies and procedures for hearings conducted to determine the release of community custody board inmates sentenced under RCW 9.94A.507. The following regulations set forth procedural guidelines. These guidelines do not create procedural or substantive rights in any person, and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution or the Washington state Constitution. The regulations should be interpreted to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-010, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-020 Authority.** RCW 9.95.420 and 9.94A.507.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-020, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-030 Scope.** The provisions of this chapter shall apply to offenders sentenced under RCW 9.94A.507 and 9.95.420.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-030, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-040 Definitions.** For purposes of this chapter, the following words have the following meanings:

"Actuarial risk assessment instruments" means the tools used by the department of corrections to assess an inmate's risk of reoffense.

"Board" means the appointed members of the indeterminate sentence review board created under chapter 9.95 RCW.

"Classification counselor" means an employee of the department of corrections responsible for carrying out spe-

(3/31/09)

cific duties concerning the supervision of sentenced offenders in the prison system.

"Community custody" means that portion of an offender's sentence of confinement served in the community subject to the controls placed on the offender's movement and activities by the court, board and department of corrections.

"Department" means the Washington state department of corrections.

"End of sentence review process" means the review and report issued by the end of sentence review committee in compliance with RCW 72.09.340, 72.09.345 and where appropriate RCW 72.09.370.

"In person" means physical presence, or presence via teleconference or videoconference.

"ISRB" means the indeterminate sentence review board.

"Revocation" means a repeal of community custody and a return to prison.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-040, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-050 Release determination.** (1) RCW 9.95.420 requires that any convicted person sentenced under the provisions of RCW 9.94A.507 shall be subject to a board hearing to determine releasability. The hearing must be held no later than ninety days before the expiration of the minimum term. However the hearing cannot be held unless the board has received:

(a) The results from the end of sentence review process;  
(b) Recommendations for conditions of community custody from the department.

(2) The end of sentence review committee report may include, but is not limited to:

(a) A prediction based upon the administration of actuarial risk assessment instruments and the sexual and criminal history of the offender, of the likelihood that the offender will commit new sex offenses if released;

(b) The institutional progress report(s) covering the inmate's adjustment, achievement, infractions and program participation during incarceration;

(c) Psychiatric or psychological reports, such as IQ appraisals, personality inventories, actuarial risk assessments and sexual history polygraphs;

(d) Behavioral details of the crime(s) of conviction, such as law enforcement reports, prosecutor's statements, court records, and presentence investigation reports;

(e) Recommendations for conditions of community custody in addition to those set by the sentencing court;

(f) The department's risk management level and the sex offender notification level;

(g) Written confirmation that the inmate has had an opportunity to review the information the department is submitting to the board and an opportunity to make a written statement.

(3) The board shall determine whether it is more likely than not that the offender will engage in sex offenses if released to the community in spite of board-imposed conditions of community custody. The board decision related to an offender's likelihood of sexual reoffense is based upon a preponderance of the evidence.

(4) In making a release decision the board may also consider:

(a) The length of time necessary for the offender to complete treatment and programming;

(b) The offender's failure to participate in required evaluations;

(c) The offender's proposed release plan; and

(d) Other pertinent information.

(5) If the board finds the offender not releasable, the board may add up to sixty months to the minimum term.

(6) If the offender is found not releasable and time is added to the minimum term:

(a) The offender may petition for an earlier review when the offender completes required treatment or programming.

(b) The board retains the authority to schedule an earlier review at its discretion.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-050, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-060 Release determination after community custody revocation.** The board may set a new minimum term if the offender is returned to prison on a revocation. The new minimum term shall not exceed the remaining portion of the sentence. Subsequent release determinations will be conducted as set out in WAC 381-90-050.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-060, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-070 Conditions of community custody.** Conditions of community custody include those ordered by the court and the board. The conditions are monitored by the department of corrections and enforced by the board.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-070, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-080 Inmate to be served notice.** The board will send the hearing notice to the institution superintendent/designee in advance of any hearing. The hearing notice shall specify the reason for the hearing, time, date, and place.

(1) Upon receipt of the hearing notice, the superintendent or designee shall serve the inmate with the document.

(2) The original hearing notice is to be signed by the inmate with date of service noted and returned to the board headquarters. The department should retain a copy in the inmate's institutional file and provide a copy to the inmate.

(3) In cases where the inmate refuses to sign the notice, the superintendent or designee shall note the date of service and obtain the signature of a witness to such service.

[Ch. 381-90 WAC—p. 2]

(4) The inmate will be allowed to review a copy of the end of sentence review report with supporting documents prior to the hearing. The inmate shall sign an acknowledgment form that the documents have been reviewed, noting the date and amount of time spent in review. If an interpreter assisted the offender, the interpreter shall also sign and date the acknowledgment form.

(5) The inmate shall be given the opportunity to make a written statement to the board.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-080, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-090 Inmate shall be advised of rights.** Each inmate who becomes the subject of a hearing conducted under the provisions of RCW 9.95.420 shall be advised of their rights at the time(s) he/she is served with a notice of the hearing. The written notice provided by the board will advise the inmate of the following rights:

(1) To participate in a hearing before a panel of the board and to testify under oath. The board may hold the hearing with the inmate in person or via video conferencing;

(2) To submit letters or statements in support of release;

(3) To review the ESRC report and supporting documents prior to the hearing; and

(4) To receive a written decision from the board.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-090, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-100 Conducting a hearing.** All hearings conducted under the provisions of this chapter shall be held before a panel of at least two members of the indeterminate sentence review board. One member shall be designated, by decision of the panel, as the presiding member.

At the time of the hearing under the provisions of RCW 9.95.420, the presiding member will determine if the inmate was given proper notice of the hearing, was advised of the reason for the hearing, and was properly advised of their rights.

A limited number of observers may be present by prior approval of the panel members conducting the hearing, provided that the superintendent or designee authorizes such observers in the facility.

The board reserves the right to exclude any person from the room during a hearing upon its own motion or the motion of any party to the hearing provided that good cause for such exclusion is articulated on the record.

The presiding member may recess the hearing at any time for consultation with the other panel member(s).

The panel conducting the hearing will submit its recommendation to the full board for final determination.

In the event of a language and/or communication problem, a certified interpreter shall be present to interpret and assist.

The board will accept written information pertaining to the inmate from any interested person.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-100, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-110 Continuances.** Prior to the hearing, any party may make a written request for continuance. The

(3/31/09)

board may grant continuances of scheduled hearings prior to and during hearings, either in the interest of justice or for good cause.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-110, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-120 Inmate to be present.** The subject of any hearing conducted under the provisions of this chapter may participate in the hearing. However, in the event the inmate refuses to appear, the board will continue the hearing until the next available docket. The ISRB will notify the inmate that if they refuse to attend the next scheduled hearing, the hearing will be conducted in absentia and the board's decision will be based on all available evidence.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-120, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-130 Oaths and affirmations.** The presiding member conducting hearings under the provisions of this chapter shall have the authority to administer oaths and affirmations.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-130, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-140 Admissibility of information.** All relevant information shall be admissible.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-140, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-150 Disposition.** The board shall make a finding of whether or not it is more likely than not that the inmate will commit another sex offense if released to the community.

A list of factors that the board may consider includes, but is not limited to:

(1) Refusal to participate in available programs or resources designed to assist an inmate to reduce the risk of reoffense (e.g., stress and anger management, victim awareness, substance abuse treatment, sex offender treatment).

(2) Serious and repetitive disciplinary infractions during incarceration.

(3) Evidence of an inmate's continuing intent or propensity to engage in sex offenses.

(4) Statements or declarations by the inmate of intent not to comply with conditions of community custody.

(5) End of sentence review determination based on actuarial assessments identifying risk to sexually reoffend.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-150, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-160 Statement of decision and reasons.** The board will make a written statement of the decision and reasons in each case heard under the provisions of this chapter.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-160, filed 3/31/09, effective 5/1/09.]

**WAC 381-90-170 Hearing record preservation.** There will be a recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be

(3/31/09)

preserved at the offices of the ISRB in Olympia in compliance with the current record retention schedule. Parties requesting a copy of any hearing must do so in writing. Parties may be required to reimburse the ISRB for the costs involved in duplication.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-170, filed 3/31/09, effective 5/1/09.]