

Chapter 381-30 WAC

FIXING MINIMUM TERMS/NEW MINIMUM TERMS

Reviser's note: The following chapter has **not** been adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was filed in the code reviser's office and was published as WSR 91-14-029 in the Washington State Register. It is published in the Washington Administrative Code exactly as filed by the agency with history notes added by the code reviser's office.

WAC

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WAC 381-30-010 Purpose. The purpose of this chapter is to specify board practice pertaining to the fixing of minimum prison terms. The following regulations set forth procedural guidelines. They 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. 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.

[WSR 93-23-077, § 381-30-010, filed 11/17/93, effective 8/23/93. WSR 91-14-029, § 381-30-010, filed 6/26/91, effective 7/27/91.]

WAC 381-30-020 Authority. Chapter 9.95 RCW, RCW 9.95.040, 9.95.009(2).

[WSR 91-14-029, § 381-30-020, filed 6/26/91, effective 7/27/91.]

WAC 381-30-030 Scope. The provisions of this chapter shall apply to persons convicted of felony offenses in the state of Washington under the indeterminate sentencing system and sentenced to confinement in an adult corrections facility; and those officials charged with processing such convicted persons through the adult corrections system.

[WSR 91-14-029, § 381-30-030, filed 6/26/91, effective 7/27/91.]

WAC 381-30-040 Minimum term. After July 1, 1986, the minimum term of each offender sentenced, under the indeterminate sentencing system, to a Washington state corrections facility, shall be fixed by the sentencing court in accordance with RCW 9.95.011.

[WSR 91-14-029, § 381-30-040, filed 6/26/91, effective 7/27/91.]

(4/15/98)

WAC 381-30-050 New minimum term. New minimum terms of parole violators (pursuant to RCW 9.95.125) will be set by the board within thirty days of admission. Factors considered in setting a new minimum term include:

(1) The length of time previously incarcerated for the commitment offense from which the individual is on parole.

(2) The SRA ranges of the original offense from which the individual was on parole.

(3) The original recommendation of the committing judge and prosecuting attorney.

(4) Whether or not the parole violation behavior also resulted in an SRA conviction.

(5) Nature of both the original committing offense and the parole violation behavior.

(6) The requirements of Personal Restraint of Locklear (118 Wn2d 409) and Personal Restraint of Cashaw (123 Wn2d 138).

[WSR 98-09-045, § 381-30-050, filed 4/15/98, effective 4/13/98. WSR 92-22-008 § 381-30-050, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-30-050, filed 6/26/91, effective 7/27/91.]

WAC 381-30-060 No minimum term for certain crimes. The board does not fix minimum terms for persons sentenced or committed as follows:

(1) Sentenced to death;

(2) Sentenced to a maximum term of life imprisonment for aggravated murder in the first degree;

(3) Sentenced to treason.

[WSR 91-14-029, § 381-30-060, filed 6/26/91, effective 7/27/91.]

WAC 381-30-070 Minimum terms for mandatory life sentences. The board shall fix a minimum term for all persons committed to the custody of the department of corrections under a mandatory life sentence (except those committed under a life sentence without the possibility of parole) for a crime or crimes committed prior to July 1, 1984.

The minimum term for persons covered by this section shall be fixed within six months after the admission or readmission of the convicted person to the custody of the department of corrections, whichever is later. All hearings will be in-person. At least thirty days prior to the hearing, each convicted person will receive a packet of documents, pursuant to *In Re Sinka* (92 Wn.2d 555, 1979), containing information which the board will consider in setting a minimum term. Information contained in the documents may be refuted in writing prior to the hearing or in-person at the hearing.

At the conclusion of each hearing, the board panel will take a deferred decision. All terms will be established by a full board vote.

[WSR 92-22-008, § 381-30-070, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-30-070, filed 6/26/91, effective 7/27/91.]

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WAC 381-30-080 Pretrial detention applied to minimum terms. Pursuant to *In Re Phelan*, 97 Wn.2d 590 (1983), and *State v Phelan*, 100 Wn.2d 508 (1983), which direct that time served in a county jail before sentencing should be credited against the discretionary minimum term and the maximum term, the board herein adopts the following policy and procedure.

County jail time certified by the county of commitment, or a court of competent jurisdiction, shall be credited to the appropriate cause against the inmate's discretionary minimum term, mandatory minimum term, and maximum sentence.

Pursuant to *In Re Knapp*, 102 Wn.2d 175 (1984), which holds that time spent in a state mental hospital pursuant to a valid criminal conviction should be credited against the offender's maximum and discretionary minimum sentences, the board herein adopts the following policy and procedure. State mental hospital time, certified by the mental facility in which the offender served or recognized by court of competent jurisdiction, shall be credited to the appropriate cause against the offender's discretionary minimum term, mandatory minimum term, and maximum sentence.

Minimum terms which have not been set will have the sentencing ranges used in the setting of the minimum term adjusted downward to reflect jail time and time spent in a state hospital where properly certified. Adjustments will be made to the cause number for which the time was actually served.

[WSR 91-14-029, § 381-30-080, filed 6/26/91, effective 7/27/91.]

WAC 381-30-090 Documents required. The board shall require certain documents pertaining to those offenders sentenced to a Washington state correctional facility under the indeterminate system and whose minimum term was fixed by the sentencing court as follows:

- (1) Original judgment and sentence;
- (2) Warrant of commitment;
- (3) Signed statement of the prosecuting attorney approved by the sentencing judge;
- (4) Institution admission summary;
- (5) Presentence investigation report or other field reports, if extant;
- (6) An accurate certification of credits for presentence and probationary jail time.

The prosecuting attorney of each county and the secretary, department of corrections, are enjoined to provide the applicable aforementioned documents to the board at its offices in Olympia within twenty-one calendar days after the arrival of each convicted person at an adult correctional facility.

[WSR 91-14-029, § 381-30-090, filed 6/26/91, effective 7/27/91.]

WAC 381-30-100 Case preparation. The board shall prepare every case thoroughly prior to fixing the new minimum term or establishing the next board action on a case. Preparation includes:

- (1) Establishing case file;
- (2) Reviewing all pertinent documents;
- (3) Scoring all cases to determine the standard range pursuant to RCW 9.94A.040;

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(4) Entering data into the offender based tracking system.

The board will take whatever amount of time is necessary for appropriate deliberation and decision on each case.

[WSR 91-14-029, § 381-30-100, filed 6/26/91, effective 7/27/91.]

WAC 381-30-110 Panel decisions. All minimum term decisions will be conducted by a panel of at least two members of the indeterminate sentence review board. All such decisions will be fully supported by reasons for the decision.

[WSR 91-14-029, § 381-30-110, filed 6/26/91, effective 7/27/91.]

WAC 381-30-120 Deferred decisions. In those cases where the board panel conducting a minimum term review cannot agree as to the term, a deferred decision shall occur and such cases will be referred to the full board for resolution. No decision will be communicated until all board members have voted. In addition, the panel may take a deferred decision in cases where more information is required prior to setting the term.

[WSR 91-14-029, § 381-30-120, filed 6/26/91, effective 7/27/91.]

WAC 381-30-130 Preminimum term conferences prohibited. No member or members of the indeterminate sentence review board shall engage in a personal conference with anyone regarding a convicted and committed person prior to the fixing of a minimum or new minimum term. The board will, however, accept written statements from anyone regarding such a convicted committed person.

[WSR 91-14-029, § 381-30-130, filed 6/26/91, effective 7/27/91.]

WAC 381-30-140 Minimum term decisions. New minimum term and minimum term decisions within its jurisdiction will be set by a panel of the board after full administrative review. The board reserves the right to schedule an in-person meeting.

In the event of an in-person meeting, the convicted person and such institutional persons as the members conducting the meeting deem appropriate may be present. A limited number of observers may be present by prior approval of the panel members conducting the meeting, provided that the inmate who is the subject of the meeting and the superintendent of the institution where the meeting is to be conducted do not object. However, no family members, friends, relatives, or interested parties shall be present. No attorneys or advocates will be permitted at admissions meetings. The board will accept and consider written statements submitted by individuals expressly excluded from in-person meetings.

[WSR 91-14-029, § 381-30-140, filed 6/26/91, effective 7/27/91.]

WAC 381-30-150 Minimum term challenges. The indeterminate sentence review board shall fix and review minimum terms in accordance with RCW 9.95.040 and 9.95.009(2). Inmates shall be provided in writing the information used in arriving at the minimum term. Inmates wishing to challenge adverse information used by the board for just cause may do so in writing to the board through their institution counselor. The burden of proof in refuting such adverse information shall lie with the inmate.

(4/15/98)

[WSR 91-14-029, § 381-30-150, filed 6/26/91, effective 7/27/91.]

WAC 381-30-160 Concurrent/consecutive sentences.

The board shall observe RCW 9.92.080, *In Re Chapman*, 105 Wn.2d 211 (1986) and *In Re Irwin*, 110 Wn.2d 175 (1988), in fixing concurrent or consecutive sentences in cases where there are multiple convictions.

[WSR 91-14-029, § 381-30-160, filed 6/26/91, effective 7/27/91.]

WAC 381-30-170 Time start. An individual's sentence will begin on the date the judgment and sentence is signed.

If he is at liberty following the signing of the judgment and sentence, credit on his sentence will begin on the date that his parole was suspended or the date of service, whichever was later, if he was not in custody at the time his parole was suspended.

[WSR 91-14-029, § 381-30-170, filed 6/26/91, effective 7/27/91.]

WAC 381-30-180 Order of minimum term. Orders fixing the new minimum term will be signed by the members who fixed the term. The original order will be maintained in the board file and a copy of such order will be mailed to the institution of confinement.

[WSR 91-14-029, § 381-30-180, filed 6/26/91, effective 7/27/91.]