

# Chapter 137-28 WAC

## PRISONS—DISCIPLINE

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

137-28-005	Purpose. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-005, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-005.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.	137-28-055	Appeal to hearing officer. [Statutory Authority: RCW 72.01.090. WSR 85-01-060 (Order 84-16), § 137-28-055, filed 12/17/84.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-006	Definitions. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-006, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-006, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-006.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.	137-28-065	Appointment and disqualification of hearing officer. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-065, filed 8/14/84, effective 10/10/84.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-010	Supplementary rules. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-010, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-010.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.	137-28-072	Out-of-state inmates. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-072, filed 8/14/84, effective 10/10/84.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-015	Notification. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-015, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-015.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.	137-28-075	Prehearing procedures—Rights of inmates. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-075, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-075.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-020	Definition of misconduct. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-020, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-020.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.	137-28-080	Temporary prehearing confinement. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-080, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-080, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-080.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-025	General infractions. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-025, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-025, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-025.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.	137-28-085	Hearing officer—Preparation for hearing. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-085, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-085.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-030	Serious infractions. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-030, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 85-08-026 (Order 85-	137-28-090	Conduct of hearing. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-090, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-090, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-090.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

- 137-28-093 Decision of hearing officer. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-093, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-093.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-094 Lesser included and related infractions. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-094, filed 1/27/89, effective 3/1/89.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-095 Finding of no infraction. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-095, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-095.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-097 Staff advisors. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-097, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-097, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-097.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-100 Sanctions—Authority to impose. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-100, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-100.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-105 Sanctions—Types. [Statutory Authority: RCW 72.01.090. WSR 85-01-060 (Order 84-16), § 137-28-105, filed 12/17/84; WSR 84-17-058 (Order 84-13), § 137-28-105, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-105.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-107 Sanctions and mental status. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-107, filed 1/27/89, effective 3/1/89.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-110 Sanctions—Limitations. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-110, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-110.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-115 Appeal to superintendent. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-115, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-115.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-120 Reports to the board of prison terms and paroles. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-120, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-120.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-130 Time limitations. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-130, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-130.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-320 Lesser included and related infractions. [WSR 95-15-044, § 137-28-320, filed 7/13/95, effective 8/15/95.] Repealed by WSR 00-10-079, filed 5/2/00, effective 6/2/00. Statutory Authority: RCW 72.01.090.

**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.

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 accor-

dance with Washington statutes, such matters are governed solely by the discretion of the department of corrections.

[Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-140, filed 5/2/00, effective 6/2/00; WSR 97-03-041, § 137-28-140, filed 1/10/97, effective 2/4/97. WSR 95-15-044, § 137-28-140, filed 7/13/95, effective 8/15/95.]

**WAC 137-28-150 Authority.** The authority for this chapter is RCW 72.01.090, 72.09.130, and 9.94.070.

[Statutory Authority: RCW 72.09.130, 72.01.090 and 9.94.070. WSR 98-04-086, § 137-28-150, filed 2/4/98, effective 3/7/98. WSR 95-15-044, § 137-28-150, 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:

Abusive sexual contact - An incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:

• Intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

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.

Attempted suicide - An unsuccessful attempt to kill oneself as determined by a medical or mental health professional.

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.

Deputy secretary - The deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary'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.

**Infraction review officer** - Staff member(s) designated by the superintendent to review a serious 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.

**Mental health professional** - An individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at effecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.

**Mitigating factors** - Factors to be considered by the infracting officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

**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.

**Secretary** - The secretary of the Washington state department of corrections, or the secretary's designee.

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

**Sexually explicit** - Materials consist of any item displaying, portraying, depicting, or describing:

(a) Nudity, which includes exposed/visible (in whole or part, including under or through translucent/thin materials

providing intimate physical detail) genitals/genitalia, anus, and/or female/transgender breast nipple(s);

(b) A sex act(s) which includes, but is not limited to, genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration, genital or anal contact/penetration with an inanimate object, masturbation, sadistic/masochistic abuse, bondage, bestiality, and/or bodily excretory behavior which appears to be sexual in nature;

(c) A participant(s) who appears to be nonconsenting, dominated, degraded, humiliated, or in a submissive role, and/or acting in a forceful, threatening, dominating, or violent manner which appears to be sexual in nature; and/or

(d) Minor(s), or models depicting minors, in a sexually suggestive setting/pose/attire.

**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.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 13-18-002, § 137-28-160, filed 8/21/13, effective 9/21/13; WSR 09-01-195, § 137-28-160, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090. WSR 05-16-033, § 137-28-160, filed 7/26/05, effective 8/26/05. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-160, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-160, filed 5/2/00, effective 6/2/00; WSR 97-03-041, § 137-28-160, filed 1/10/97, effective 2/4/97. WSR 95-15-044, § 137-28-160, filed 7/13/95, effective 8/15/95.]

**WAC 137-28-170 Supplementary rules.** (1) The superintendent may promulgate local supplementary rules, policies, and procedures including the creation of new sanctions.

(2) All new or supplemental sanctions shall be approved in writing by the deputy secretary before being put into effect.

[Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-170, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-170, filed 7/13/95, effective 8/15/95.]

**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.

[WSR 95-15-044, § 137-28-180, filed 7/13/95, effective 8/15/95.]

**Reviser's note:** Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

**WAC 137-28-185 Creation or amendment of serious infractions.** (1) The secretary or designee may create and/or amend serious infractions.

(2) Prior to the creation or amendment of a serious infraction, the secretary or designee shall follow the rule-making procedures of chapter 34.05 RCW, the Administrative Procedure Act.

(3) Nothing herein shall be construed as limiting the department of corrections' exclusion from the Administrative Procedure Act under RCW 34.05.030 (1)(c).

[Statutory Authority: RCW 72.01.090, WSR 00-10-079, § 137-28-185, filed 5/2/00, effective 6/2/00.]

**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) When an offender knowingly commits an additional serious infraction after losing all potential earned early release time credits, the superintendent will report that offender to local law enforcement authorities for possible felony prosecution under RCW 9.94.070.

(3) 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.

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

[Statutory Authority: RCW 72.09.130, 72.01.090 and 9.94.070, WSR 98-04-086, § 137-28-190, filed 2/4/98, effective 3/7/98. WSR 95-15-044, § 137-28-190, filed 7/13/95, effective 8/15/95.]

**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

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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.

[WSR 95-15-044, § 137-28-200, filed 7/13/95, effective 8/15/95.]

**Reviser's note:** Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

**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, or corrections specialist, 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 infracted 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.

[WSR 06-24-087, § 137-28-210, filed 12/4/06, effective 1/4/07. WSR 95-15-044, § 137-28-210, filed 7/13/95, effective 8/15/95.]

**Reviser's note:** Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

**WAC 137-28-220 General infractions.** (1) Any of the following types of behavior may constitute 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.
- 357 - Unauthorized demonstration, practice or use of martial arts.

**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 or 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.

**Inappropriate sexual behavior**

- 328 - Possession of any written, photographic or hand-drawn material that depicts a sexually explicit act as defined in WAC 137-28-160.

(2) In determining whether a #328 infraction or a #728 infraction pursuant to WAC 137-25-030 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-28-160.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 06-21-054, § 137-28-220, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-220, filed 5/28/02, effective 6/28/02. WSR 01-22-094, § 137-28-220, filed 11/6/01, effective 12/6/01. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-220, filed 5/2/00, effective 6/2/00; WSR 97-03-041, § 137-28-220, filed 1/10/97, effective 2/4/97. WSR 95-15-044, § 137-28-220, filed 7/13/95, effective 8/15/95.]

**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 mem-

ber 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. The supervisor or unit team may upgrade the general infraction to a serious infraction. If the infraction is upgraded, the supervisor or unit team shall forward the serious infraction report to the hearing clerk for preparation for a hearing on the serious infraction.

(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 disciplinary hearing officer. This decision of the supervisor or unit team can be reached by 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.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 09-01-195, § 137-28-230, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-230, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-230, filed 7/13/95, effective 8/15/95.]

#### **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.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-240, filed 5/28/02, effective 6/28/02. WSR 01-22-094, § 137-28-240, filed 11/6/01, effective 12/6/01. WSR 95-15-044, § 137-28-240, filed 7/13/95, effective 8/15/95.]

**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.

(4) Sanctions are not stayed upon appeal.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 06-21-054, § 137-28-250, filed 10/13/06, effective 11/13/06. WSR 95-15-044, § 137-28-250, filed 7/13/95, effective 8/15/95.]

**WAC 137-28-260 Serious infractions.** See WAC 137-25-030 for the list of serious infractions.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-28-260, filed 11/28/05 and 12/28/05, effective 5/1/06. Statutory Authority: RCW 72.01.090. WSR 05-16-033, § 137-28-260, filed 7/26/05, effective 8/26/05. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 04-07-163, § 137-28-260, filed 3/23/04, effective 4/23/04; WSR 02-12-023, § 137-28-260, filed 5/28/02, effective 6/28/02. WSR 01-22-094, § 137-28-260, filed 11/6/01, effective 12/6/01. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-260, filed 5/2/00, effective 6/2/00; WSR 97-03-041, § 137-28-260, filed 1/10/97, effective 2/4/97. WSR 95-15-044, § 137-28-260, filed 7/13/95, effective 8/15/95.]

**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) A summary of any confidential information;
- (h) Copies of any relevant documentation or supplemental reports. Confidential information and the identities of confidential informants shall not be included;
- (i) 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 infraction review officer 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, dismiss, delete or reduce the indicated WAC violations as appropriate, based upon the information and/or evidence provided by the reporting staff member and any mitigating factors;

(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.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 09-01-195, § 137-28-270, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-270, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-270, filed 7/13/95, effective 8/15/95.]

**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 by administrative segregation placement 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.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 09-01-195, § 137-28-280, filed 12/24/08, effective 1/24/09. WSR 95-15-044, § 137-28-280, filed 7/13/95, effective 8/15/95.]

**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 seven 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.

[Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-290, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-290, filed 7/13/95, effective 8/15/95.]

**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, refer the inmate to a mental health staff member for assessment, appoint a mental

health staff member to represent the inmate at the hearing, or request a staff advisor.

(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 reli-

ability 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.

[Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-300, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-300, filed 7/13/95, effective 8/15/95.]

**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 in accordance with the department's archive retention schedule 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 hearing officer may not find an inmate guilty of committing a #328 or #728 infraction if the inmate possesses sexually explicit materials depicting **only** actual penetration and such sexually explicit material was screened and approved by a mail room staff member prior to delivery to the inmate. Nothing herein shall be construed to limit the ability to remove such material from the inmate's possession and cell.



(4) The hearing officer shall consider mitigating factors in determining whether to reduce a #728 serious infraction to a #328 general infraction.

(5) 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.

(6) 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.

(7) 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.

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

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 06-21-054, § 137-28-310, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-310, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-310, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-310, filed 7/13/95, effective 8/15/95.]

**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.

[WSR 95-15-044, § 137-28-330, filed 7/13/95, effective 8/15/95.]

**Reviser's note:** Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

**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.

[WSR 95-15-044, § 137-28-340, filed 7/13/95, effective 8/15/95.]

**Reviser's note:** Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

#### **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 DOC 320.150;

(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 deputy secretary.

(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 and #810 shall be the loss of available earned release credits and other privileges as outlined in department policy. Progressively more severe sanctions will be utilized for subsequent infractions #557 and #810.

(q) The sanction for infraction #882 shall include a mandatory loss of telephone privileges, with the exception of legal calls, for sixty consecutive days for the first offense,

ninety consecutive days for the second offense and one hundred eighty consecutive days for a third or subsequent offense within any one-year period.

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

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

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 09-01-195, § 137-28-350, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-350, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-350, filed 5/2/00, effective 6/2/00; WSR 97-03-041, § 137-28-350, filed 1/10/97, effective 2/4/97. WSR 95-15-044, § 137-28-350, filed 7/13/95, effective 8/15/95.]

**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.

[WSR 95-15-044, § 137-28-360, filed 7/13/95, effective 8/15/95.]

**Reviser's note:** Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

**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.

[WSR 95-15-044, § 137-28-370, filed 7/13/95, effective 8/15/95.]

**Reviser's note:** Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

**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 fifteen days, exclusive of weekends and holidays, after receiving notice of the decision of the hearing officer. The superintendent may consider appeals filed beyond the fifteen-day 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 a #728 serious infraction to a #328 general infraction based upon mitigating factors; 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.

(8/21/13)

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

(5) Sanctions are not stayed upon appeal.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 06-21-054, § 137-28-380, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-380, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-380, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-380, filed 7/13/95, effective 8/15/95.]

**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.

[WSR 95-15-044, § 137-28-390, filed 7/13/95, effective 8/15/95.]

**Reviser's note:** Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

**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.

[WSR 95-15-044, § 137-28-400, filed 7/13/95, effective 8/15/95.]

**Reviser's note:** Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

**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.

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(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.

[WSR 95-15-044, § 137-28-410, filed 7/13/95, effective 8/15/95.]

**Reviser's note:** Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

**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 correct errors.

(f) To obtain a replacement hearing officer.

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

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

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

(j) A reasonable request by the inmate.

(k) 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 nondepartment of corrections' 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.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 06-21-054, § 137-28-420, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-420, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-420, filed 7/13/95, effective 8/15/95.]

**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.

[WSR 95-15-044, § 137-28-430, filed 7/13/95, effective 8/15/95.]

**Reviser's note:** Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.