

Chapter 381-70 WAC

PROCEDURES FOR CONDUCTING PAROLE REVOCATION HEARINGS

WAC

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WAC 381-70-010 Purpose. The purpose of this chapter is to specify policies and procedures relating to parole revocation hearings. 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, § 381-70-010, filed 11/17/93, effective 8/23/93. WSR 91-14-029, § 381-70-010, filed 6/26/91, effective 7/27/91.]

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 381-70-020 Authority. RCW 9.95.120 through 9.95.130 and 9.95.009(2).

[WSR 91-14-029, § 381-70-020, filed 6/26/91, effective 7/27/91.]

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 381-70-030 Scope. (1) The provisions of this chapter shall apply to adult felony offenders granted parole from a Washington prison sentence who are alleged to have violated the terms of their order of parole, those state officials charged with the supervision of such parolees, and parties to parole revocation hearings.

(2) The indeterminate sentence review board will exercise its authority over parolees in a manner that:

(a) Places a high priority on public safety.

(b) Facilitates sentencing system transition consistent with the purposes of the Sentencing Reform Act.

(c) Imposes only those reasonable and enforceable conditions of parole necessary to encourage responsibility, and to assist the offender's lawful reintegration into the community.

(d) Supports the role and responsibility of the community corrections officer to assist offenders to reenter the community in a law abiding manner.

(3) The indeterminate sentence review board, as the successor agency to the board of prison terms and paroles, was directed by the legislature to facilitate the transition to the determinate sentencing system and to implement a gradual phase out of the indeterminate system. Violations of parole, including felony behavior being prosecuted under the Sentencing Reform Act, shall be considered.

(4) In making a parole revocation or reinstatement decision, the indeterminate sentence review board will consider the following factors in addition to factors that are case specific:

(a) Whether or not the parole violation behavior also resulted in an SRA conviction;

(b) The relationship of the parole violations behavior to the committing offense and the nature of the violation;

(c) The length of time the parolee has been on parole as well as time previously served on the conviction;

(d) The perspective and recommendation of the victim;

(e) The recommendation and supporting reasons offered by the community corrections officer, the parolee, and the assistant attorney general;

- (f) The level of risk to the community posed by the parolee;
- (g) The previous board action during the period of parole;
- (h) Purposes and ranges of the SRA as well as the original judge and prosecutor's recommendations;
- (i) The sanction range under the administrative sanction grid.

[WSR 98-09-045, § 381-70-030, filed 4/15/98, effective 4/13/98. WSR 92-22-008 § 381-70-030, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-70-030, filed 6/26/91, effective 7/27/91.]

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 381-70-040 Notice of arrest. Whenever a community corrections officer is notified of a parolee's arrest, he shall submit a notice of arrest to the board (and the attorney general) within twenty-four hours, excluding weekends and holidays. Such notice shall include a concise but complete statement concerning the circumstances of the arrest, reason for arrest, and the date the community corrections officer found there is probable cause to believe that the parolee violated one or more conditions of parole. The community corrections officer shall state whether or not an order of suspension, arrest, and detention has been:

- (1) Issued, with the approval of a supervisor;
- (2) Issued without the supervisor's approval;
- (3) Requested but not approved; or
- (4) Not requested.

The community corrections officer shall state reasons for subsection (2), (3), or (4) of this section.

[WSR 91-14-029, § 381-70-040, filed 6/26/91, effective 7/27/91.]

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 381-70-050 Notice of suspension. The community corrections officer shall notify the board on-site desk of the suspension of parole by telephone within twenty-four hours of service of the suspension order.

[WSR 93-23-077, § 381-70-050, filed 11/17/93, effective 11/15/93. WSR 91-14-029, § 381-70-050, filed 6/26/91, effective 7/27/91.]

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 381-70-060 Notice of suspension and request for arrest. Whenever a community corrections officer requests the arrest and detention of a parolee, he shall issue an order suspending said parolee's parole, and submit a copy of the order to the board and the attorney general within twenty-four hours of service.

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[WSR 91-14-029, § 381-70-060, filed 6/26/91, effective 7/27/91.]

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 381-70-070 Notice of closure. Whenever a community corrections officer requests the arrest and detention of a parolee and issues an order of parole suspension and the parolee is not apprehended and detained within a reasonable period of time, the community corrections officer may close his interest with a report which will include the disposition of the unserved suspension warrant. Copies of such report will be forwarded to the board and the attorney general.

[WSR 91-14-029, § 381-70-070, filed 6/26/91, effective 7/27/91.]

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 381-70-080 Board to reinstate. Whenever a community corrections officer suspends, arrests, or detains a parolee, such parolee shall not be reinstated on parole or released from custody on bail or personal recognizance, except by the board and the issuance by the board of an order of reinstatement on parole to the same or modified conditions of parole.

[WSR 91-14-029, § 381-70-080, filed 6/26/91, effective 7/27/91.]

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 381-70-090 Administrative reinstatements. Whenever a community corrections officer has suspended a parole and after investigation determines:

- (1) That the alleged violations are unfounded;
- (2) That the seriousness of the alleged violations is mitigated by new information; or
- (3) Otherwise believes that further custody is deemed unwarranted and a parole revocation hearing is unnecessary; he shall submit a written request or report with recommendations to the board. The board will accept and act on telephonic reports of the community corrections officer or supervisory personnel pending receipt of the officer's written report within ten working days. The board may exercise the option of administrative reinstatement when not recommended by the supervising community corrections officer, when such reinstatement is consistent with criteria identified within WAC 381-70-030.

[WSR 91-14-029, § 381-70-090, filed 6/26/91, effective 7/27/91.]

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 381-70-100 Conditional release pending hearing. An administrative review of the parole violation report and of information submitted by the alleged violator or his attorney shall be conducted by the board after the paroledee has been arrested, to determine probable cause for suspension. If probable cause is found then a determination is made whether the violation requires a revocation hearing, and to determine whether there is reason to allow the paroledee to be conditionally released on parole pending the revocation hearing. Such administrative review shall take place within fifteen days after the service of the order of parole suspension, arrest, and detention.

[WSR 91-14-029, § 381-70-100, filed 6/26/91, effective 7/27/91.]

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 381-70-110 Board to notify attorney general. The board shall promptly provide the attorney general with copies of orders of reinstatement on parole issued prior to a parole revocation hearing which has been previously scheduled.

[WSR 91-14-029, § 381-70-110, filed 6/26/91, effective 7/27/91.]

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 381-70-120 Service of factual allegations. Whenever a community corrections officer is notified of the arrest and detention of an alleged parole violator and such alleged parole violator's parole has been suspended, or is suspended by the community corrections officer, the community corrections officer shall personally serve the paroledee with a copy of the factual allegations within three working days of the suspension of parole. Such allegations of violation shall be submitted to the board with a copy to the attorney general within twenty-four hours of service.

If, after service of alleged violations as set forth above, additional alleged violations are brought forth by the community corrections officer, the CCO shall personally serve the paroledee with a copy of those allegations. The paroledee will have ten calendar days from the date of service of those allegations before the board will consider those additional allegations at an on-site parole revocation hearing. The paroledee may waive the ten calendar days notice and proceed with those allegations at an already scheduled on-site parole revocation hearing. Such allegations of violation shall be submitted to the board with a copy to the attorney general within twenty-four hours of service.

[WSR 91-14-029, § 381-70-120, filed 6/26/91, effective 7/27/91.]

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.

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WAC 381-70-130 Contents of factual allegations. The factual allegations of the violations of each condition shall include:

- (1) The circumstances of violation;
- (2) Date of violation or approximation thereof; and
- (3) Location or place where violation occurred.

Whenever a paroledee is accused of a violation of his parole which includes the commission of, and conviction for, a felony or misdemeanor, the community corrections officer shall request that verification of such conviction be forwarded from the court of conviction to the board.

[WSR 91-14-029, § 381-70-130, filed 6/26/91, effective 7/27/91.]

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 381-70-140 Parolee to be advised of rights. Whenever an alleged parole violator is served with the factual allegation of the violation of the conditions of parole and with an order suspending parole, the community corrections officer shall advise the paroledee orally and in writing of his right to an administrative review to determine probable cause and whether there is reason to allow the paroledee to be conditionally released pending the revocation hearing. The community corrections officer shall also advise the paroledee of his right to an on-site parole revocation hearing, and of his rights and privileges pertaining to each proceeding.

[WSR 91-14-029, § 381-70-140, filed 6/26/91, effective 7/27/91.]

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 381-70-150 Rights and privileges relating to administrative review. The paroledee's rights and privileges pertaining to an administrative review are as follows:

- (1) An administrative review shall be conducted by a board hearing officer within fifteen days of service of the order of parole suspension, arrest, and detention.
- (2) The paroledee shall be advised at the time of service of the order of suspension, arrest, and detention that he and his attorney may submit information in writing to the board which shall be considered by the board. Proper forms shall be given the paroledee to allow the paroledee to submit information concerning family stability, job situation, etc., as well as the opportunity to add whatever additional comments or information that is deemed appropriate.

[WSR 91-14-029, § 381-70-150, filed 6/26/91, effective 7/27/91.]

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.

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WAC 381-70-160 Rights and privileges relating to revocation hearings. (1) An alleged parole violator shall be entitled to a fair and impartial hearing of the charges of the parole violation within thirty days of service of suspension in the state of Washington, reasonably near the site of the alleged violation(s).

(2) The alleged parole violator shall be entitled to be represented by an attorney of his own choosing and at his own expense and shall have the right to present evidence and witnesses.

Upon satisfactory evidence of indigency and upon request, the board may cause the appointment of an attorney to represent the parolee at an on-site parole revocation hearing. In such cases, the cost of representation shall be paid by the board at a rate determined by legislative appropriation.

Counsel may ask, in writing, for exception to the established rate. Such requests should be directed to the executive secretary, indeterminate sentence review board.

(3) Discovery. The community corrections officer shall provide, within ten days of suspension of parole, the parolee's defense attorney with a copy of the violations specified, the violation report, and all evidence relating to the violations charged intended for introduction at the hearing, either as factual evidence or in support of a dispositional recommendation.

Such documents, materials, and information may include, but not be limited to, copies of the parole order and addenda, copies of prior violation reports submitted to the board, and copies of all board actions or hearing findings issued during the current parole.

In addition, the CCO must provide to the parolee's attorney any material or information within the CCO's knowledge or possession which tends to negate the parolee's guilt as to the violations charged.

(4) The board shall have the authority to issue subpoenas for compulsory attendance of witnesses and production of evidence, provided that an offer has been made to pay the statutory fees and mileage.

(5) The alleged parole violator may be requested to testify during the on-site hearing and any such testimony shall not be used against him in any criminal prosecution (RCW 9.95.124).

(6) The allegations of violations of the conditions of parole must be proven by a preponderance of evidence. At the conclusion of the hearing, or within ten days thereafter, the board shall make written findings and conclusions concerning the allegations.

(7) If the member, having heard the matter, should conclude that the allegations of violations of conditions of parole have not been proven by a preponderance of evidence or those that have been proven by a preponderance of evidence are not sufficient cause for revocation of parole, then the parolee shall be reinstated on parole on the same or modified conditions.

(8) If the member or members, having heard the matter, should conclude that the allegations of violations of conditions of parole have been proven by a preponderance of evidence and constitute sufficient cause for revocation of parole, then such member or members shall enter an order of parole revocation and return to state custody. Within thirty days of the return of such parole violator to a state correctional insti-

tution for convicted felons, the board shall enter an order determining a new minimum sentence, not exceeding the maximum penalty provided by law for the crime for which the parole violator was originally convicted or the maximum fixed by the court.

(9) A parolee who has been convicted and sentenced to prison on a new felony charge will have the right to a hearing pertaining to disposition only pursuant to *In Re Akridge*, 90 Wn.2d 350 (1978), and the hearing will be held at the institution of confinement. Chapter 98, Laws of 1969 provides that an alleged parole violator, after service of the allegations of violations of the conditions of parole and the advice of rights, may admit to one or more of the alleged violations and waive the on-site hearing. If the board accepts the waiver, it shall either:

(a) Reinstate the parolee on parole under the same or modified conditions; or

(b) Revoke the parole of the parolee and enter an order of parole revocation and return to state custody for determination of a new minimum sentence. Such determination shall be made within thirty days of the return of such parole violator to a state correctional institution for convicted felons, and the board shall enter an order determining the new minimum sentence, not exceeding the maximum penalty provided by law for the crime for which the parole violator was convicted or the maximum fixed by the court.

[WSR 91-14-029, § 381-70-160, filed 6/26/91, effective 7/27/91.]

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 381-70-170 Acknowledgment of rights. Signed copies of the receipt and acknowledgment of these rights shall be forwarded with copies of the factual allegations to the board and the attorney general.

[WSR 91-14-029, § 381-70-170, filed 6/26/91, effective 7/27/91.]

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 381-70-180 Refusal to acknowledge. Should the parolee refuse to sign either the violations specified or notification of rights, the community corrections officer shall note the time and place of service. The community corrections officer shall certify that he has fully advised the parolee of his rights under this law.

[WSR 91-14-029, § 381-70-180, filed 6/26/91, effective 7/27/91.]

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 381-70-190 Opportunity to waive. The community corrections officer shall give the parolee opportunity to complete the violations specified and waiver form immediately after the parolee has been advised of the factual allegations of parole violations and advised of his rights.

(1) If the parolee wishes to sign the violations specified and waiver form, the community corrections officer will witness the signature. The original of the completed waiver will be forwarded with the factual alleged violations and signed copy of receipt and acknowledgment of rights to the board with copies to the attorney general.

(2) If the parolee does not wish to admit to one or more violations or sign the waiver, the community corrections officer will so note in the space provided and forward with the factual alleged violations and signed copy of receipt and acknowledgment of rights.

(3) The parolee may sign the violations specified and waiver form at any time up to and including the date and time of his on-site parole revocation hearing.

[WSR 91-14-029, § 381-70-190, filed 6/26/91, effective 7/27/91.]

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 381-70-200 Violation report to be submitted by community corrections officer. The community corrections officer shall submit the report of violation to the board and the attorney general within ten calendar days from the date of service of the factual allegations.

This report will include a list of witnesses whom the parole officer may wish to have called for testimony. It should also include a recommendation whether or not waivers should be accepted by the board.

[WSR 91-14-029, § 381-70-200, filed 6/26/91, effective 7/27/91.]

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 381-70-210 Violation report to be submitted by community corrections officer in the event of a waiver. Notwithstanding a waiver of an on-site parole revocation hearing by the alleged parole violator, the supervising community corrections officer or his designee shall submit a report of violation for consideration by the board.

[WSR 91-14-029, § 381-70-210, filed 6/26/91, effective 7/27/91.]

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 381-70-220 Issuance of subpoenas. The board shall provide to the attorney general and the department of corrections upon request, subpoenas to be completed at the discretion of the attorney general and the department of cor-

rections, provided that such subpoenas are executed without expense to the board.

[WSR 91-14-029, § 381-70-220, filed 6/26/91, effective 7/27/91.]

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 381-70-230 Board to schedule hearings. The board shall schedule all on-site parole revocation hearings and shall provide notice to the alleged parole violator of the time and place of the hearing. Such notice shall also be provided to the department of corrections, the attorney general, and to counsel for the parolee, if known, at least seven days prior to the hearing. The board reserves the right to select and change the place of the on-site parole revocation hearing.

[WSR 91-14-029, § 381-70-230, filed 6/26/91, effective 7/27/91.]

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 381-70-240 Service of papers—By whom served. The board shall cause to be served all notices, orders, and other papers issued by it, personally or by first class mail, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it with the board with proof of service, either personally or by affidavit of service by first class mail upon the parties and all counsel.

[WSR 91-14-029, § 381-70-240, filed 6/26/91, effective 7/27/91.]

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 381-70-250 Upon whom served. All papers served and filed by the board, or any party, shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel.

[WSR 91-14-029, § 381-70-250, filed 6/26/91, effective 7/27/91.]

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 381-70-260 Methods of service. Except as otherwise provided by these rules and RCW 9.95.120 through 9.95.125, service of papers shall be made personally or by first class mail, or registered, or certified, return receipt requested.

[WSR 91-14-029, § 381-70-260, filed 6/26/91, effective 7/27/91.]

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 381-70-270 When service complete. Service upon parties shall be regarded as complete when documents are deposited in the United States mail properly stamped and addressed, or when served personally upon the intended party.

[WSR 91-14-029, § 381-70-270, filed 6/26/91, effective 7/27/91.]

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 381-70-280 Filing with the board. Papers required to be filed with the board shall be deemed filed, upon actual receipt by the board at its offices in Olympia, or by a member at any place within the state accompanied by proof that service was made upon the parties required to be served.

[WSR 91-14-029, § 381-70-280, filed 6/26/91, effective 7/27/91.]

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 381-70-290 Subpoenas—Where provided by law—Form. Every subpoena, where authorized by law, shall state "indeterminate sentence review board," the title of the proceeding, if any, the number assigned and shall command the person to whom it is directed to attend and give testimony or produce designated documents or things under his control at a specified time and place.

[WSR 91-14-029, § 381-70-290, filed 6/26/91, effective 7/27/91.]

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 381-70-300 Issuance to parties. Upon application of counsel for any party to a parole revocation case, there shall be issued to such parties subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding.

The board may issue subpoenas to a party not represented by counsel upon request and upon showing of general relevance and reasonable scope of testimony or evidence sought.

[WSR 91-14-029, § 381-70-300, filed 6/26/91, effective 7/27/91.]

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.

[Ch. 381-70 WAC p. 6]

WAC 381-70-310 Quashing subpoenas. Upon motion made promptly, and in any event, at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the board or its authorized member may:

(1) Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter at issue; or

(2) Condition denial of the motion upon just and reasonable conditions.

[WSR 91-14-029, § 381-70-310, filed 6/26/91, effective 7/27/91.]

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 381-70-320 Subpoenas—Enforcement. Upon application and for good cause shown, the board or the member conducting the hearing may seek judicial enforcement of subpoenas in accordance with RCW 9.95.120 through 9.95.-125, issued to parties and which have not been quashed.

[WSR 91-14-029, § 381-70-320, filed 6/26/91, effective 7/27/91.]

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 381-70-330 Subpoenas—Geographical scope. Attendance of witnesses and the production of evidence by subpoena may be required from any place in the state of Washington, to any designated place of hearing.

[WSR 91-14-029, § 381-70-330, filed 6/26/91, effective 7/27/91.]

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 381-70-340 Conducting a hearing—Presiding officer. All hearings conducted under this chapter shall be heard by a member of the indeterminate sentence review board. It shall be the duty of the member to conduct hearings in cases assigned in an impartial and orderly manner, and he or she shall have the authority, subject to the other provisions of these rules, to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas on request of any party;

(3) Rule on all procedural matters, objections, and motions;

(4) Rule on offers of proof and receive relevant evidence;

(5) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter; and

(6) Take any other action necessary and authorized by these rules and the law.

[WSR 91-14-029, § 381-70-340, filed 6/26/91, effective 7/27/91.]

(2/7/06)

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 381-70-350 Appearance and practice before agency—Who may appear. No person may appear in a representative capacity before the board or any member thereof at a parole revocation hearing other than the following:

(1) Attorneys at law, qualified and entitled to practice before the supreme court of the state of Washington.

(2) Out-of-state attorneys must comply with Admission to Practice Rule 7 (see Washington Court Rules).

[WSR 91-14-029, § 381-70-350, filed 6/26/91, effective 7/27/91.]

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 381-70-360 Standards of ethical conduct. All persons appearing in parole revocation proceedings before the board or any member thereof in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington. If any such person does not conform to such standards, the board may decline to permit such person to appear in a representative capacity in any proceeding before it or any member thereof.

[WSR 91-14-029, § 381-70-360, filed 6/26/91, effective 7/27/91.]

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 381-70-370 Continuances. Any party to a parole revocation hearing, or his or her counsel, who desires a continuance shall, immediately upon receipt of notice of hearing, or as soon thereafter as circumstances requiring such continuance come to his knowledge, notify the board by telephone followed by a written request stating in detail the reasons why such continuance is necessary.

Requests for continuances shall arrive at the board offices in Olympia not less than seventy-two hours prior to the scheduled hearing. The board or member thereof, in passing upon a request for continuance, shall consider whether such request was promptly and timely made for good cause and whether the parolee will be substantially prejudiced in the presentation of his or her defense. The board may continue a hearing on its own motion if local prosecution is pending or if other circumstances require rescheduling. Appropriate board staff will notify all parties when continuances are granted. During a parole revocation hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the member or members conducting the hearing may, in their discretion or upon motion of counsel, continue the hearing and fix a date for the introduction of additional evidence or presentation or argu-

ment. Such oral notice shall constitute the final notice of such continued hearing.

[WSR 91-14-029, § 381-70-370, filed 6/26/91, effective 7/27/91.]

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 381-70-380 Prehearing conference. In any proceeding, the presiding office, upon his or her own motion or upon the motion of one of the parties or their representatives, may direct the parties to appear at a specified time and place for a conference, or such conference may be immediately prior to the parole revocation proceeding, to consider:

(1) The simplification of the issues;

(2) Necessities of amendments to any of the papers filed with the board;

(3) Possibility of obtaining stipulations, admissions of fact, and of documents;

(4) Limitation of the number of witnesses; and

(5) Such other matters as may aid in the disposition of the proceeding.

[WSR 91-14-029, § 381-70-380, filed 6/26/91, effective 7/27/91.]

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 381-70-390 Hearings—Persons present. Parole revocation hearing shall be open to the public unless the board, for a specifically stated reason, closes the hearing in whole or in part.

[WSR 91-14-029, § 381-70-390, filed 6/26/91, effective 7/27/91.]

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 381-70-400 Rules of evidence—Admissibility.

All relevant evidence shall be admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness.

"Relevant evidence" means evidence having a tendency to make the determination of the action more or less probable than it would be without the evidence. In passing upon admissibility of evidence, the presiding officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior courts in the state of Washington. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The presiding officer may, in his or her discretion, either with or without objection, exclude inadmissible evidence, or order accumulative evidence discontinued. Parties objecting to the introduction of evidence shall

state the precise grounds of such objection at the time such evidence is offered. If the sole evidence to support the allegation is hearsay that would be inadmissible in a superior court proceeding and is not substantiated or corroborated, the board shall not enter a finding of guilt. If the sole evidence presented to substantiate the allegation is the result of a polygraph examination, a finding of guilty shall not be made.

The results of polygraph examinations shall not be admissible into evidence at parole revocation hearings unless the following circumstances are present:

(1) The parties have stipulated that the polygraph examination be conducted and the results be admissible in a parole revocation hearing. Such stipulation may be evidenced by showing that the parolee has submitted to a condition of parole that he or she submit himself or herself to polygraph examination at the request of the community corrections officer and that the results of said examination(s) shall be admissible at a subsequent parole revocation hearing. Other stipulations shall be in writing, signed by the community corrections officer or his agent and by the parolee; and

(2) The board panel or member specifically finds that the polygraph examiner is qualified and the proper conditions existed during administration of the test; and

(3) The parties have been afforded an opportunity to confrontation of the examiner, unless good cause for nonconfrontation is specifically found or confrontation is waived.

The board will require polygraph examinations in appropriate cases. Polygraphs will be provided to indigent parolees at state expense, through the department of corrections. Parolees who are not indigent will be required to obtain a polygraph at his/her own expense.

[WSR 95-06-008, § 381-70-400, filed 2/16/95, effective 2/13/95. WSR 91-14-029, § 381-70-400, filed 6/26/91, effective 7/27/91.]

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 381-70-410 Hearing record presentation.

There will be a recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved for not less than six months subsequent to the hearing at the offices of the board in Olympia. Parties requesting partial or total duplication of any hearing must submit a request in writing along with blank tapes to receive the copy.

[WSR 98-09-045, § 381-70-410, filed 4/15/98, effective 4/13/98. WSR 91-14-029, § 381-70-410, filed 6/26/91, effective 7/27/91.]

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 381-70-420 New minimum term. Procedures specified in chapter 381-30 WAC shall be followed in setting new minimum terms for revoked parole violators. Special note should be made of WAC 381-30-050 which requires such terms to be set within thirty days of admission.

[Statutory Authority: RCW 34.05.220 (1)(b), 42.17.250. WSR 06-05-029, § 381-70-420, filed 2/7/06, effective 3/10/06. WSR 91-14-029, § 381-70-420, filed 6/26/91, effective 7/27/91.]

WAC 381-70-430 Suspended parole cases. If a parole violator is returned to a Washington state correctional facility and his or her parole has been suspended but not revoked by the board, the board shall determine if there is sufficient cause for revocation. If not, the violator's parole shall be reinstated and he or she shall be released from confinement under the same or modified conditions of parole.

[WSR 91-14-029, § 381-70-430, filed 6/26/91, effective 7/27/91.]

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 381-70-440 Determination of competency.

(1) Whenever, as a preliminary matter to a parole revocation hearing, the parolee or his defense counsel raises the issue of the parolee's competency, or there is reason to doubt his competency, the board member conducting the hearing shall designate at least two qualified experts or professional persons, one of whom shall be approved by the assistant attorney general representing the community corrections officer, or the community corrections officer (if no assistant attorney general is present) to examine and report upon the mental condition of the defendant. For purposes of the examination, the board member may order the defendant committed to a hospital or other suitable facility for a period of time necessary to complete the examination, but not to exceed fifteen days.

A competency examination may be performed by one examiner provided that the examiner is mutually agreeable to all relevant parties and mutual agreement is reached in advance of the examination and the agreement is reduced to written form executed by respective counsel.

(2) The board member hearing the parole revocation hearing may direct that a qualified expert or professional person retained by or appointed for the parolee be permitted to the examinations authorized by the above paragraph and he shall have access to all information obtained by the board appointed experts or professional persons. The defendant's expert or professional persons shall have the right to file his or her own report following the guidelines of subsection (3) of this section. If the parolee is indigent, the board shall, upon request of the defendant, assist him or her in obtaining an expert or professional person.

(3) The report of the examination shall include the following:

- (a) A description of the nature of the examination;
- (b) A diagnosis of the mental condition of the parolee;
- (c) If the parolee suffers from a mental disease or defect, an opinion as to his or her competency;
- (d) If the parolee has indicated his or her intention to rely on the fact of his or her incompetency at the time of the specified violations during the dispositional phase of his parole revocation hearing, an opinion as to the parolee's sanity at the time of the act that constituted the specified violation or violations;

(e) When directed by the board, an opinion as to the capacity of the parolee to have a particular state of mind which is an element of the specified violation(s) charged;

(f) An opinion as to whether the parolee is of danger to other persons, or under further control by the board or other persons or institutions.

(4) At the time the competency evaluation is ordered, the fact determination phase of the parole revocation hearing shall be entered and completed. The dispositional phase shall be continued (as requested by the parolee) for a reasonable time until the competency evaluation can be submitted to the board for its consideration and inclusion in the dispositional phase of the parole revocation hearing.

(5) Dispositional phase: The board shall not lose jurisdiction of a parolee at the dispositional phase, regardless of the outcome of the competency evaluation.

Once the dispositional phase has been convened, the board shall consider the results of the evaluation in making its decision on whether or not to revoke or reinstate the parolee. At the dispositional phase of the parole revocation hearing, the board member shall determine, based on the evaluation and evidence presented therein by both parties, whether or not the individual is competent. Should the board determine that the individual is competent, the board may proceed to reinstate the parolee to parole with special or modified conditions or may revoke the parolee's parole and return him to the state correctional authorities.

Should the board member determine that the parolee is incompetent, the board may reinstate the parolee with the special condition that the parolee voluntarily commit himself or herself under chapter 71.05 RCW, or the board may revoke the parolee's parole and recommend that the parolee be transferred to a state mental institution pursuant to RCW 72.68.-031.

[WSR 91-14-029, § 381-70-440, filed 6/26/91, effective 7/27/91.]

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.