

WAC 137-104-050 Hearing procedures. (1) The hearing shall be conducted by a hearing officer in the department's hearing unit, and shall be considered as an offender disciplinary proceeding and shall not be subject to chapter 34.05 RCW, the Administrative Procedure Act.

(2) Hearings for community custody offenders, who are being held in total confinement prior to a hearing, shall be conducted within five working days, but not less than twenty-four hours, after service of the notice of allegations, hearing and rights, and waiver form.

(3) The hearing officer will:

- (a) Administer oaths and affirmations;
- (b) Ensure the hearing is electronically recorded;
- (c) Prohibit and disclose ex parte communications;
- (d) Verify the offender has received proper notice;
- (e) Verify jurisdiction and foundation;
- (f) Weigh the credibility of witnesses;
- (g) Receive relevant evidence including hearsay evidence;
- (h) Render or defer a decision;
- (i) Specify on the record the basis for the findings and decisions;
- (j) Provide a written hearing and decision summary to the parties; and
- (k) Take any other actions necessary as authorized by the department policy, these rules, and applicable laws.

(4) The parties may call witnesses to testify at the hearing.

(a) The hearing officer may exclude witnesses or limit the scope of testimony to matters relevant to the allegations and/or disposition.

(b) Witnesses may be excluded and testimony may be limited to maintain the safety and security of the facility, offender, staff, or others.

(c) Witnesses may testify outside the presence of the offender when there is substantial likelihood that the witness will suffer significant psychological or emotional trauma if the witness testifies in the presence of the offender, or when there is substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender. The hearing officer will provide the offender an opportunity to submit questions to be asked of the witness.

(d) The hearing officer will state the basis for limiting testimony or excluding witnesses on the record.

(5) The department has the obligation of setting forth evidence supporting the allegations of violations and of offering recommendations for disposition.

(6) The department has the obligation of proving each of the alleged violations by a preponderance of the evidence.

(7) Hearing officers may continue the hearing for good cause if doing so does not unduly delay the hearing.

(8) Notice per WAC 137-104-040 is not required except the offender will be notified of the date and location of the continued hearing and will be provided any additional evidence supporting the allegations not less than twenty-four hours prior to the hearing unless the offender waives the right to such notice.

[Statutory Authority: RCW 72.01.090. WSR 19-19-044, § 137-104-050, filed 9/12/19, effective 10/13/19. WSR 01-04-044, § 137-104-050, filed 2/1/01, effective 3/1/01.]