

WSR 24-12-050
PERMANENT RULES
INDETERMINATE SENTENCE
REVIEW BOARD

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Following is chapter 381-100 WAC for filing. The indeterminate sentence review board is exercising its exemption to the Administrative Procedure Act under RCW 34.05.030 (1)(c) and is requesting the code revisor's office publish the revisions to this chapter as contained in the attachment.

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Executive Director

OTS-5471.1

Chapter 381-100 WAC
PROCEDURES FOR CONDUCTING COMMUNITY CUSTODY ((BOARD)) VIOLATION HEARINGS

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-010 Purpose. The purpose of this chapter is to specify policies and procedures relating to community custody ((board)) violation hearings. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person((r)) and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution, the Washington Constitution, or state law. 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.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-020 Authority. RCW 9.95.150, 9.95.420, 10.95.030(2), 9.94A.730, 9.95.425, 9.95.430, 9.95.435, 9.95.440, 9.94A.507, and 9.95.900.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-030 Scope. The provisions of this chapter shall apply to ((adult felony offenders)) individuals granted community custo-

dy from a prison sentence (~~(under RCW 9.94A.507)~~) pursuant to RCW 9.95.420, 10.95.030(2), or 9.94A.730, who are alleged to have violated the (~~(terms)~~) conditions of their order of release.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-040 Definitions. For purposes of this chapter, the following words have the following meanings:

"Appeals panel" means three reviewing officers designated by the chair of the board or their designee with the authority to review decisions made by a board member or hearing officer, and to affirm, reverse, or modify decisions and sanctions in accordance with RCW 9.95.435.

"Board" means the members of the indeterminate sentence review board.

"Board warning" means a letter served to the individual to address alleged violation behavior and notify the individual of consequences of violation behavior.

"Business day" means working day.

"Community corrections officer (CCO)" means an employee of the department of corrections responsible for carrying out specific duties concerning the supervision of (~~(sentenced offenders)~~) individuals and monitoring of sentence conditions.

"Community custody" means that portion of an (~~(offender's)~~) individual's sentence served in the community subject to controls placed on the (~~(offender's)~~) individual's movement and activities by the board and supervised by the department of corrections. (~~(Offenders supervised on "community custody board" placement are those)~~)

"Community custody board" means the board when acting in relation to individuals who have been ((sentenced under RCW 9.94A.712.)) released, or are releasable, under RCW 9.95.420.

"Department" means the department of corrections.

"Electronically" when used in reference to submission of documents to the board, means via facsimile, electronic mail or other generally accepted electronic means.

"Graduated sanction system" means structured incremental responses designed to reduce risk to the public, effectively intervene in noncompliant behavior, where possible, repair harm to the community, and make efficient use of limited state resources. The graduated sanction system provides the board options for sanctions in response to violations to the conditions of supervision and the board may choose a sanction commensurate to the violation. Sanctions may include, but are not limited to, work release; home detention with electronic monitoring; work crew; community restitution; inpatient treatment; daily reporting; curfew; educational or counseling sessions; supervision enhanced through electronic monitoring; or any other sanctions available in the community; or, may include board warnings, stipulated agreements, or suspension or revocation of the release to community custody.

"Hearing officer" means a member, employee, or designee of the indeterminate sentence review board authorized to preside over community custody (~~(board)~~) violation hearings.

(~~("Offender" means any person in the custody of or subject to the jurisdiction of the board.)~~)

"Individual" means any person under the jurisdiction of the ISRB pursuant to RCW 9.95.420, 10.95.030, or 9.94A.730.

"ISRB" means the indeterminate sentence review board.

"Juvenile board" means the board when acting in relation to individuals who have been released by the board pursuant to RCW 10.95.030 or 9.94A.730.

"On-site desk" means the board's designee that receives notice of violations of community custody (~~board~~) conditions and schedules violation hearings.

"Presiding officer" means a member, employee or designee of the board authorized to act as a hearing officer to preside over community custody (~~board~~) violation hearings.

"Probable cause" means a determination, made by a hearing officer, that there is cause to believe a violation has occurred.

"Stipulated agreement" means an agreement between the (~~offender~~) individual and the board in which the (~~offender~~) individual admits violations and agrees to comply with intermediate sanctions. For the purposes of this subsection, "intermediate sanction" means board-imposed sanctions that are served in the community rather than total confinement.

"Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for (~~twenty-four~~) 24 hours a day, to include, but not be limited to, adult correctional facilities, camp and prerelease facilities, or (~~a~~) county or municipal jails.

"Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the criminal conduct of the (~~offender~~) individual. (~~"Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.~~)

"Working day" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-050 Intent. (1) The indeterminate sentence review board will exercise its authority over (~~offenders~~) the individuals under its jurisdiction in a manner that:

- (a) Places a high priority on public safety;
- (b) Imposes only those reasonable and enforceable conditions of community custody necessary to facilitate the safety of previous victims and potential victims, encourage responsibility, and to assist the (~~offender's~~) individual's lawful reintegration into the community; and
- (c) Supports the role and responsibility of the community corrections officer to assist (~~offenders~~) individuals to reenter the community in a law-abiding manner.

(2) In making a decision on sanctions, community custody revocation or reinstatement, the indeterminate sentence review board may consider the following factors in addition to factors that are case specific:

- (a) Whether or not the community custody violation behavior (~~(a) has~~) has resulted, or may result in a criminal conviction;
- (b) The relationship of the community custody violation behavior to the committing offense and the nature of the violation;
- (c) The length of time the (~~(offender)~~) individual has been on community custody as well as time previously served on the conviction;
- (d) The perspective and recommendation of victim(s) and/or other concerned citizens;
- (e) The recommendation and supporting reasons offered by the community corrections officer, the (~~(offender)~~) individual and/or attorney, and the assistant attorney general;
- (f) The level of risk to the community posed by the (~~(offender)~~) individual;
- (g) The previous board action during the current or prior periods of community custody;
- (h) The number of previous violation (~~(hearings)~~) processes and (~~(offender)~~) compliance with resulting sanctions; (~~(and)~~)
- (i) The (~~(sanction range under the administrative sanction grid)~~) graduated sanction system;
- (j) Relevant case law; and
- (k) Adjustment to supervision.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-055 Board notification of alleged violations. (1)

Whenever (~~(the CCO receives notification)~~) a CCO becomes aware of an (~~(offender's)~~) individual's alleged violation behavior, the CCO must notify the ISRB (~~(hearing officer)~~) of the alleged violation(s) within one working day. Notification (~~(may be made via telephone or electronic means)~~) should be submitted electronically.

(2) Notifications are to include:

- (a) The factual circumstances of the alleged violation; and
- (b) The date of violation or approximation thereof.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-070 Notice of suspension of community custody.

When a community corrections officer becomes aware of an individual's arrest by law enforcement or causes the arrest and detention of an (~~(offender)~~) individual under the jurisdiction of the ISRB, the community corrections officer shall (~~(cause a suspension of)~~) suspend the individual's community custody by personally serving the order (~~(to be personally served)~~) for arrest and detention on the (~~(offender within twenty-four hours of arrest, excluding weekends and holidays)~~) individual within one working day of the arrest or becoming aware of arrest, whichever is later. The community corrections officer shall electronically submit a copy of the (~~(suspension of community custody)~~) order for arrest and detention to the board (~~(and the attorney general)~~) within one working day of service (~~(of the suspension order)~~).

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-090 Administrative reinstatements. (1) ~~((When a community corrections))~~ A community corrections officer shall submit a written request for reinstatement or report with recommendations to the ISRB when the officer has caused the arrest and detention of an ((offender)) individual and after investigation determines:

(a) That the alleged violations are unfounded; or

(b) That the seriousness of the alleged violations is mitigated by new information; or

(c) That further custody is unwarranted and a community custody ~~((board revocation))~~ violation hearing is unnecessary ~~((; the officer shall submit a written request for reinstatement or report with recommendations to the ISRB))~~.

(2) The board may ~~((exercise the option of administrative reinstatement absent))~~ reinstate the individual on community custody with or without a recommendation of the community corrections officer under the same or modified community custody conditions, when such reinstatement is consistent with criteria identified ~~((within))~~ in WAC 381-100-050 and RCW 9.95.440.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-100 ((Notice and allegations.)) Violations specified. (1) **In custody((-):** When ~~((a community corrections officer is notified of the arrest and detention by law enforcement of an alleged community custody violator and/or the))~~ community custody is suspended by the community corrections officer, the community corrections officer shall cause the ~~((offender))~~ individual to be personally served with a copy of the ~~((Notice of Allegations))~~ Violations Specified and Rights and Privileges forms within three working days of the service of ~~((suspension of))~~ the order for arrest and detention suspending community custody. The CCO shall submit the ~~((notice of allegations))~~ signed forms electronically to the board ~~((with a copy to the attorney general within twenty-four hours of service, excluding weekends and holidays))~~ within one working day of service.

(2) **Out of custody((-):** If an out of custody hearing is requested by the community corrections officer and/or ordered by the board, the ~~((notice of allegations))~~ Violations Specified and Rights and Privileges forms shall be served on the ~~((offender))~~ individual within three working days of ~~((written notice of probable cause from the board, but not less than two working days prior to the hearing))~~ notice to the board of the discovery of alleged violations of conditions of supervision occurring in WAC 381-100-055. The CCO shall submit the ~~((notice of allegations))~~ signed violations specified form electronically to the board ~~((with a copy to the attorney general within twenty-four hours of service, excluding weekends and holidays))~~ within one working day of service.

(3) **New or amended allegations.** If, after service of ~~((alleged violations))~~ the Violations Specified and Rights and Privileges forms as set forth above, the CCO ~~((brings forth additional alleged))~~ alleges additional violations or changes ~~((to))~~ the existing alleged violations, the CCO shall cause the ~~((offender))~~ individual to be personal-

ly served with a copy of the new or amended allegations in the form of a new violations specified document. The ~~((offender))~~ individual will have two working days from the date of service of the new or amended allegations before the board will consider the allegations. The ~~((offender))~~ individual may waive the two working days' notice and proceed with those new or amended allegations at an already scheduled hearing.

(a) The CCO shall electronically submit such new or amended allegations of violation electronically to the board with a copy to the attorney general and defense counsel if applicable, within one working day of service on the ~~((offender))~~ individual.

(b) The board will determine probable cause upon receipt of the new or amended allegations of violation(s) pursuant to WAC 381-100-110.

(c) The board will not accept new or amended violations later than two working days before the scheduled hearing. If the CCO discovers new or revises the alleged violations less than two working days before the scheduled hearing, the board may choose to:

(i) Schedule a new hearing to address the new alleged violations and allow all parties to review the new information;

(ii) Address any unamended violations in the current hearing and schedule a new hearing to address the amended violations; or

(iii) Pursue the amended violations in the scheduled hearing with agreement from the individual and/or their attorney.

(4) **Interpreter services.** Community corrections officers shall obtain interpreter services for ~~((offenders))~~ individuals with known language or communication barriers when serving documents. For a board hearing, ~~((court-certified))~~ state contracted interpreters shall be used ~~((when possible. The CCO shall obtain interpreter services for the offender's board hearing))~~.

(5) ~~((Contents of factual allegations.))~~ **Specifying the violations.** The ~~((factual allegations))~~ specifications of the violations of each condition shall include:

(a) The factual circumstances of the alleged violation(s); and

(b) Date of violation or approximation thereof ~~((; and~~

~~((location or place where violation occurred))~~.

(6) **Allegations of a new crime.** Whenever an ~~((offender))~~ individual is accused of a violation of their community custody conditions that ~~((includes the commission of))~~ may constitute a felony or misdemeanor, the community corrections officer shall advise the board of the status of any pending criminal charge(s). In the case of pending criminal ~~((allegations))~~ charges, the board may defer any board hearing pending the outcome or may dismiss without prejudice one or more ~~((allegations))~~ alleged violations. If the ~~((offender))~~ individual is convicted of a new crime, the CCO shall provide the board with a certified copy of the judgment and sentence within two working days of receipt.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-110 Probable cause review. A probable cause review shall be conducted by the board's designee within ~~((forty-eight hours))~~ two working days of the board's receipt of the ~~((factual allegation(s))~~ most recent signed violations specified form to determine whether probable cause exists to believe the ~~((violation or))~~ alleged

violation(s) occurred. A written probable cause finding will be issued. If the hearing officer finds probable cause, the hearing officer will ~~((decide))~~ recommend to the board if the ~~((offender will be))~~ individual should be reinstated, conditionally released, or remain in custody pending further action by the board.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-120 Notice of violation report to be submitted by community corrections officer. (1) ~~((For community custody board offenders who are being held in total confinement))~~ Prior to a hearing, the community corrections officer shall ((cause the offender to be personally served a violation report within five working days after receipt of written notice of probable cause from the board.

~~(2) For community custody board offenders who are not being held in total confinement prior to the hearing, the community corrections officer shall cause the offender to be personally served a violation report within ten working days after receipt of written notice of probable cause from the board.~~

~~(3) The violation report shall be submitted to the board and the attorney general within two business days from the date of service of the notice of violations on the offender.~~

~~(4) The violation report may be submitted electronically.~~

~~(5))~~ electronically submit the notice of violation report to the board, as well as serve the notice of violation report on the individual, within five working days of serving the violations specified and rights and privileges forms on the individual.

(2) The notice of violation report shall contain the following:

~~(a) ((The specific conditions alleged to have been violated;))~~ The alleged violations as listed in the violations specified document;

~~(b) A summary of facts supporting the allegations;~~

~~(c) Any mitigating information;~~

~~(d) The evidence relating to the violations to be introduced at the hearing; and~~

~~(e) A preliminary recommendation for disposition.~~

~~((6))~~ (3) The notice of violation report should include a list of witnesses whom the community custody officer may wish to have called for testimony.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-130 Administrative review. (1) Following receipt of the notice of violation report, a board hearing officer will conduct an administrative review within 15 working days of the board's receiving notice of the individual's alleged violation under WAC 381-100-055 to determine the next board action.

~~(2) The ((offender))~~ individual and/or attorney may submit information in writing that the board shall consider in an administrative review within 15 days from the notice of the alleged violations occurring in WAC 381-100-055.

(3) The board will notify the community corrections officer if the next action is to reinstate or conditionally release the individual.

(4) If the next board action is to retain the individual in custody pending a violation hearing, the hearing officer shall:

(a) Appoint defense counsel for the individual.

(i) Prior to the violation hearing, the individual may request appointment of new counsel for good cause, such as appointed counsel's actual conflict of interest, irreconcilable conflict between attorney and the individual, or a complete breakdown in communication between attorney and the individual.

(ii) The individual's loss of confidence in appointed counsel, a disagreement over strategy, or a breakdown in communication caused by the individual is insufficient to constitute good cause;

(b) Notify the community corrections officer, the attorney general's office, and defense counsel of the probable cause findings for each of the alleged violations;

(c) Request that the community corrections officer electronically provide any served documents as well as discovery material to the attorney general's office, defense counsel, and the ISRB immediately.

NEW SECTION

WAC 381-100-135 Opportunity to waive hearing. (1) The individual, after service of the violations specified and rights and privileges forms, may waive their right to a community custody violation hearing, and admit guilt to the alleged violations.

(2) If the waiver is accepted by the board, the board may do one or more of the following:

(a) Reinstate the individual on community custody with the same or modified conditions of supervision;

(b) Impose an appropriate sanction short of revocation; or

(c) Revoke the individual's community custody, enter an order of community custody revocation, and return the individual to prison. A determination of a new minimum sentence shall be made within 30 days of return to state custody.

(3) If the waiver is rejected by the board, a community custody violation hearing will be scheduled.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-140 Scheduling community custody ((board)) violation hearings. (1) The board shall schedule all community custody ((board)) violation hearings ((and)).

(2) Out of custody hearing: The board shall provide notice to the community corrections officer and alleged community custody violator of the time and place of the out of custody hearing no less than five working days prior to the hearing.

((2) Such notice shall also be provided) (3) In custody hearing: The board shall provide notice to the ((department of corrections)) community corrections officer, the attorney general, and to counsel for the ((offender, if retained or appointed)) individual, no

less than ~~((two))~~ five working days prior to ~~((the))~~ an in-custody violation hearing.

~~((3))~~ (4) The board reserves the right to select and change the place of the community custody ~~((board))~~ violation hearing.

~~((4))~~ (5) The CCO will arrange interpreter services for ~~((offenders))~~ individuals with known language or communication barriers for violation hearings and will provide the information to the board prior to the scheduling of a hearing.

(6) Hearings may be held in person, via telephone or videoconference.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-150 Rights and privileges relating to violation hearings. (1) An alleged community custody violator shall be entitled to a fair and impartial hearing of the charges of the community custody violation within ~~((thirty))~~ 30 working days, but not less than two working days, after notice of service of violations specified is received by the board.

(2) The board shall notify the ~~((offender))~~ individual of the right to:

(a) Be present during the fact finding and disposition phases of the hearing. If the ~~((offender))~~ individual waives this right, acts in a persistently disruptive manner during the hearing, or refuses to ~~((participate in))~~ attend the hearing, the board may conduct the hearing in the absence of the ~~((offender))~~ individual and may impose sanctions ~~((that could include loss of liberty of the offender))~~, including the revocation of community custody;

(b) Have the assistance of an interpreter if the ~~((offender))~~ individual has a known language or communications barrier;

(c) Testify or remain silent;

(d) Call witnesses and present documentary evidence ~~((, provided, however:~~

~~((i) At an in-custody hearing, outside witnesses may be excluded due to institutional or community concerns; or~~

~~((ii) The presiding officer may exclude persons from the hearing upon a finding of good cause; or~~

~~((iii) The presiding officer may allow a witness to testify outside of the offender's presence when there is substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender during the hearing. The offender may submit a list of questions to ask such witness and testimony may be limited to evidence relevant to the issues under consideration;~~

~~((iv) The presiding officer may allow telephonic testimony of witnesses.))~~ subject to the provisions in WAC 381-100-250;

(e) Question witnesses who testify subject to WAC 381-100-250;

(f) Be represented by counsel if revocation of the release to community custody is a probable sanction for the violation, unless the individual waives or forfeits the right to counsel;

(g) Receive a copy of the findings and conclusions ~~((This includes the evidence relied upon, a finding of guilty or not guilty, the reasons to support the findings, and any sanction(s) imposed));~~

(h) Receive notice of the right to appeal the sanction to the board; and

- (i) Receive notice of the right to file a personal restraint petition ~~((under court rules after the final decision of the board.~~
- ~~(3) The board may not revoke the release to community custody of any offender who was not represented by counsel at the hearing, unless the offender has:~~
- ~~(a) Waived the right to counsel; and/or~~
 - ~~(b) Waived their right to appear; and/or~~
 - ~~(c) Refused to participate in the hearing).~~

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-160 Acknowledgment of rights. The community corrections officer shall forward to the board and attorney general signed copies of the receipt and acknowledgment of ~~((these))~~ the rights set forth in WAC 381-100-150 along with copies of the ~~((factual allegations))~~ violations specified. Should the ~~((offender))~~ individual refuse to sign either the ~~((factual allegations))~~ violations specified or ~~((notification of rights))~~ the rights and privileges, the community corrections officer shall witness the refusal and note the time and place of service.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-170 Discovery. (1) The community corrections officer shall provide the ~~((department's AAG))~~ attorney general, the ~~((offender and/))~~ unrepresented individual, or the ~~((offender's))~~ represented individual's defense attorney with a copy of the ~~((factual allegations))~~ violations specified, the ~~((violation report, and))~~ notice of violation report, all evidence ~~((relating to))~~ relevant to establishing the violations charged that is intended for introduction at the hearing, ~~((either as factual evidence or in support of a))~~ and all evidence relevant for the dispositional recommendation at least two working days prior to the scheduled hearing. ~~((Such documents, materials, and information should include, but not be limited to, copies of the community custody 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 community custody.))~~

(2) The ~~((offender))~~ unrepresented individual or defense counsel shall provide to all parties ~~((, including the board, such documents, materials, and information that may))~~ and the board all documentary evidence to be introduced at the hearing at least two working days prior to the scheduled hearing.

(3) The community corrections officer and defense shall provide to all parties ~~((, including the board,))~~ a list of witnesses they may wish to call for testimony.

~~((4) In addition, the CCO must provide to the offender and/or offender's attorney any material or information within the CCO's knowledge or possession which tends to negate and/or mitigate the offender's guilt as to the violations charged.))~~

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-180 Filing with the board. (~~Papers~~) Materials 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 or designee presiding at a hearing at any place within the state~~) as recorded by electronic date stamp in the digital record.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-190 Subpoenas. (1) The board (~~shall have~~) has the authority to issue subpoenas for compulsory attendance of witnesses and production of evidence at community custody revocation or violation hearings under RCW 9.95.123.

(2) Every subpoena, where authorized by law, shall state "indefinite sentence review board," and the title of the proceeding. The subpoena shall command the person to whom it is directed to (~~attend and/or give testimony or~~) appear for testimony, produce designated documents at a specified time and place, or both.

(3) Subpoenas (~~requiring the attendance and/or testimony of witnesses or the production of evidence~~) may be issued upon application of any party, provided that such subpoenas are executed without expense to the board.

(4) 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 quash the subpoena.

(5) Subpoena enforcement: The board may seek judicial enforcement of the subpoena in accordance with RCW 9.95.123, unless the subpoena was quashed.

(6) Geographical scope: Attendance of witnesses and the production of evidence may be required by subpoena from any place in the state of Washington to any designated place of the hearing. The board will consider requests for reasonable accommodations brought to its attention.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-200 Hearing procedures—Presiding officer. All hearings conducted under this chapter will be heard by a minimum of one member of the board or a designee of the board, serving as the presiding officer. It is the duty of the presiding officer to conduct hearings in an impartial and orderly manner. (~~He or she~~) They shall have the authority, subject to other provisions of these rules and the law, to:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas;
- (3) Rule on all procedural matters, objections, and motions;

~~((3))~~ (4) Rule on offers of proof and receive relevant evidence;

~~((4))~~ (5) Question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;

~~((5))~~ (6) Render or defer a decision; and

~~((6))~~ (7) Take any other action necessary and authorized by these rules and the law.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-210 Hearing procedures—Prehearing conference. In any proceeding, the presiding officer, ~~((on his or her))~~ upon their own motion or on the motion of one of the parties or their representatives, may direct the parties to appear in person or through electronic means at a specified time and place for a prehearing conference. Such conference may be held immediately prior to the community custody violation ~~((proceeding))~~ hearing. A prehearing conference is for the purpose of considering:

(1) Simplification of the issues;

(2) Amendments to any of the ~~((papers))~~ materials filed with the board;

(3) Obtaining stipulations, admissions of fact, and documents;

(4) ~~((Limitation of))~~ Limiting the number of witnesses; and

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

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-230 Hearing procedures—Appearance and practice before agency—Who may appear. No person may appear before the board in a representative capacity on behalf of the ~~((offender))~~ individual at a community custody ~~((board))~~ violation hearing other than the following:

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

(2) Law students admitted to practice under the Washington admission ~~((to))~~ and practice rules ~~((9 may represent the department of corrections, with the prior permission of the presiding officer))~~.

(3) Out-of-state attorneys must comply with the Washington admission ~~((to))~~ and practice rules ~~((7—(see Washington court rules)))~~.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-250 Hearing procedures—Witnesses. (1) Either party may call witnesses to testify in-person, by telephone, or electronically.

(2) The presiding officer may limit the number of witnesses and the scope of the testimony to matters relevant to the allegations and/or disposition.

(3) Witnesses may be excluded from in-person appearance (~~as follows:~~

~~(a) Due to facility concerns; or~~

~~(b) Upon a finding of)~~ for good cause determined by the presiding officer.

(4) (~~In addition~~) Specifically, the presiding officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of the presence of the (~~offender~~) individual when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony in the (~~offender's~~) individual's presence (~~during the hearing~~).

(a) In this circumstance, if the (~~offender~~) individual is not represented by counsel, (~~the offender~~) they shall be provided the opportunity to submit a list of questions for any witness testifying outside of their presence. This list shall be made part of the hearing record. The presiding officer shall present these questions to the witness on the record to the extent they seek to elicit relevant testimony.

(b) If the (~~offender~~) individual is represented by counsel, the attorney shall be allowed to question the witness on the record, but outside the presence of the (~~offender~~) individual.

(5) In all cases, the presiding officer shall take reasonable precautions related to the safety concerns of witnesses.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-260 Hearing procedures—Continuances. (1) Any party to a community custody (~~board~~) violation hearing who desires a continuance shall notify the board in writing and state the reasons why the continuance is necessary. If represented by counsel, all continuance requests by the individual must come from the representing counsel.

(2) Requests for continuances must (~~arrive at the board offices in Olympia not less than twenty-four hours~~) be received by the board at least one business day prior to the scheduled hearing. The presiding officer shall consider whether the request was timely and made for good cause and whether the (~~offender~~) individual will be substantially prejudiced in the presentation of their defense.

(3) The board may continue a hearing on its own motion if local prosecution is pending or if other circumstances require rescheduling.

(4) The board will notify all parties when continuances are granted.

(5) During a community custody (~~board~~) violation hearing, the presiding officer may, in their discretion or upon motion of (~~counsel~~) a party, continue the hearing for the introduction of additional evidence, presentation or argument.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-270 Hearing procedures—Persons present. Community custody (~~board~~) violation hearings are open to the public (~~unless~~) to attend virtually given the facility has the resources to accommodate virtual or telephonic hearings. The presiding officer(~~(r)~~) may preclude public attendance for a specifically stated reason, close(~~s~~) the hearing in whole or in part, or limits the number of persons that may be present. For in-custody hearings where the facility does not allow for virtual public attendance, the public may attend dependent on facility rules.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-280 Rules of evidence—Admissibility. (1) 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~~) has the same meaning as in Washington rule of evidence 401.

(2) In passing upon admissibility of evidence, the presiding officer shall give consideration to, but shall not be bound to follow, the Washington rules of evidence (~~governing civil proceedings, in matters not involving trial by jury, in the superior courts in the state of Washington~~).

(3) When objection is made to the admissibility of evidence, the evidence may be received subject to a later ruling.

(4) The presiding officer may, in (~~his or her~~) their discretion, either with or without objection, exclude inadmissible evidence, or order cumulative evidence discontinued.

(5) Parties objecting to the introduction of evidence shall state the precise grounds of objection at the time such evidence is offered.

(6) A certified laboratory report or a copy of such shall be admissible without further authentication.

(7) 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.

(8) 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 community custody violation hearings unless the parties have stipulated that the polygraph examination be conducted and the results be admissible in community custody violation hearing. Such stipulation may be evidenced by:

(a) Showing that the individual has submitted to a condition of supervision that they submit themselves 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 community custody violation hearing; or

(b) Presenting a written stipulation entered by the individual, signed by the community corrections officer or their designee and by the individual before the polygraph examination in question was taken.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-290 Hearing procedures—Findings and conclusions.

(1) Alleged violations of the conditions of community custody must be proven by a preponderance of evidence.

(2) No finding of a violation of conditions may be based on unsubstantiated or uncorroborated hearsay evidence alone.

(3) If the presiding officer concludes that none of the alleged violations of conditions of community custody have ~~((not))~~ been proven by a preponderance of evidence, the ~~((offender))~~ individual shall be reinstated on community custody on the same or modified conditions.

(4) If the presiding officer concludes that at least one of the alleged violations of conditions of community custody ~~((have))~~ has been proven by a preponderance of the evidence, the presiding officer may, in accordance with the graduated sanction system, impose sanctions ~~((in accordance with an adopted graduated sanction grid))~~ reasonably related to at least one of the following: The crime of conviction, the violation committed, the individual's risk of reoffending, or the safety of the community. If the sanction is revocation of the ~~((offender's))~~ individual's community custody, the board shall enter an order of community custody revocation and return the ~~((offender))~~ individual to prison.

(5) After issuance of a revocation sanction, the board will set a new minimum term ~~((in a timely manner))~~ within 30 days of return to state custody in accordance with WAC 381-90-060.

(6) An ~~((offender))~~ individual convicted and sentenced to incarceration on a new criminal charge will have the right to a dispositional violation hearing by the board where the individual has the rights and privileges set forth in WAC 381-100-150. The individual may waive the right to a dispositional violation hearing. The board may:

(a) Revoke the community custody of the ~~((offender))~~ individual and enter an order of community custody revocation or impose other appropriate sanctions.

(b) Reinstatement the ~~((offender))~~ individual on community custody supervision under the same or modified conditions.

(7) The presiding officer shall make written findings and conclusions concerning the allegations ~~((in a timely manner following the decision))~~ within 10 working days of the hearing.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-310 Hearing record preservation. There will be

~~((a))~~ an audio recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved in accordance with the indeterminate sentence review board's records retention policies. Parties requesting duplication of any hearing must submit a

request in writing; response to all such requests shall be governed by the applicable public disclosure statutes.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-320 Appeal of community custody violation sanctions.

(1) The ~~((offender))~~ individual may appeal the sanction of the community custody ~~((board))~~ violation hearing. Appeals must be filed with the board within seven days after the ~~((offender))~~ individual receives the findings and conclusions.

(2) The chair of the board or the chair's designee shall appoint a panel of three reviewing examiners to consider the appeal.

(3) The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to ~~((any))~~ at least one of the following:

- (a) The crime of conviction;
- (b) The violation committed;
- (c) The ~~((offender's))~~ individual's risk of reoffending; or
- (d) The safety of the community.

NEW SECTION

WAC 381-100-330 Determination of competency. (1) If, at any time prior to, or at the beginning of, the violation hearing, the individual or defense counsel raises the issue of the individual's competency, or there is reason to doubt competency, the presiding board member may order an evaluation of competency to be completed.

(2) The certified evaluator shall have access to all information obtained by the board including the ISRB file.

(3) The evaluation/assessment should include:

- (a) A diagnosis of the mental condition of the individual;
- (b) If the individual has indicated their intention to rely on the fact of their competency at the time of the specified violations, an opinion as to the individual's competency at the time of the alleged violation behavior;
- (c) An opinion as to whether the individual is a danger to themselves or other persons;
- (d) An opinion as to whether the individual is able to understand the nature of the proceeding and/or assist in their own defense.

(4) At the time the competency evaluation is ordered, the fact determination phase of the hearing may be completed. The dispositional phase of the hearing shall be continued until the competency evaluation can be submitted to the board for consideration and inclusion in the dispositional phase of the hearing.

(5) The board shall not lose jurisdiction of an individual, regardless of the outcome of the competency evaluation.

(6) Once the dispositional phase has been convened, the board shall consider the results of the evaluation and the evidence presented by both parties in making its decision to revoke or reinstate the individual.

(7) Should the board determine that the individual is competent, the board may reinstate the individual to supervision with special or

modified conditions, revoke the individual and return them to a state correctional institution, or impose other appropriate sanctions.

(8) Should the board member determine that the individual is not competent, the board may reinstate the individual with the special condition that the individual utilize the voluntary commitment provisions under chapter 71.05 RCW, or the board may revoke the individual and recommend that the individual seek further mental health services while at the correctional institution.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 381-100-060 Notice of arrest by law enforcement officer.
- WAC 381-100-080 Board to reinstate.