

**Chapter 137-28 WAC
DISCIPLINE—PRISONS**

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

137-28-005	Purpose. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-005, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-005.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-006	Definitions. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-006, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-006, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-006.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-010	Supplementary rules. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-010, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-010.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-015	Notification. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-015, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-015.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-020	Definition of misconduct. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-020, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-020.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-025	General infractions. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-025, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-025, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-025.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-030	Serious infractions. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-030, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 85-08-026 (Order 85-06), § 137-28-030, filed 4/1/85; WSR 84-17-058 (Order 84-13), § 137-28-030, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-030.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-031	Cell tag. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-031, filed 8/14/84, effective 10/10/84.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-032	Earned time, granting and denial. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-032, filed 8/14/84, effective 10/10/84.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-035	Reporting to law enforcement authorities. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-035, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-035, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-035.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-040	Infractions—On-site adjustment. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-040, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-040.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-045	Infractions—Report on. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-045, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-045.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-050 General infraction report—Action on report. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-050, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-050.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-055 Appeal to hearing officer. [Statutory Authority: RCW 72.01.090. WSR 85-01-060 (Order 84-16), § 137-28-055, filed 12/17/84.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-065 Appointment and disqualification of hearing officer. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-065, filed 8/14/84, effective 10/10/84.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-072 Out-of-state inmates. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-072, filed 8/14/84, effective 10/10/84.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-075 Prehearing procedures—Rights of inmates. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-075, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-075.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-080 Temporary prehearing confinement. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-080, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-080, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-080.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-085 Hearing officer—Preparation for hearing. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-085, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-085.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-090 Conduct of hearing. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-090, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-090, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-090.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-093 Decision of hearing officer. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-093, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-093.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-094 Lesser included and related infractions. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-094, filed 1/27/89, effective 3/1/89.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-095 Finding of no infraction. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-095, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-095.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-097 Staff advisors. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-097, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-097, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-097.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-100 Sanctions—Authority to impose. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-100, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-100.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-105 Sanctions—Types. [Statutory Authority: RCW 72.01.090. WSR 85-01-060 (Order 84-16), § 137-28-105, filed 12/17/84; WSR 84-17-058 (Order 84-13), § 137-28-105, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-105.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-107 Sanctions and mental status. [Statutory Authority: RCW 72.01.010 and 72.09.010. WSR 89-04-032 (Order 88-02), § 137-28-107, filed 1/27/89, effective 3/1/89.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-110 Sanctions—Limitations. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-110, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-110.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-115 Appeal to superintendent. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-115, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-115.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-120 Reports to the board of prison terms and paroles. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-120, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-120.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-130 Time limitations. [Statutory Authority: RCW 72.01.090. WSR 84-17-058 (Order 84-13), § 137-28-130, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-130.] Repealed by WSR 95-15-044, filed 7/13/95, effective 8/15/95.

137-28-185 Creation or amendment of serious infractions. [Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-185, filed 5/2/00, effective 6/2/00.] Repealed by WSR 15-20-011, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130.

137-28-320 Lesser included and related infractions. [WSR 95-15-044, § 137-28-320, filed 7/13/95, effective 8/15/95.] Repealed by WSR 00-10-079, filed 5/2/00, effective 6/2/00. Statutory Authority: RCW 72.01.090.

137-28-330 Finding of not guilty. [WSR 95-15-044, § 137-28-330, filed 7/13/95, effective 8/15/95.] Repealed by WSR 15-20-011, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130.

137-28-340 Staff advisors. [WSR 95-15-044, § 137-28-340, filed 7/13/95, effective 8/15/95.] Repealed by WSR 15-20-011, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130.

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

137-28-430 137-28-420, filed 7/13/95, effective 8/15/95.] Repealed by WSR 15-20-011, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. Evidence. [WSR 95-15-044, § 137-28-430, filed 7/13/95, effective 8/15/95.] Repealed by WSR 15-20-011, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130.

WAC 137-28-140 Purpose. The rules in this chapter provide a standardized system to determine whether misconduct by an offender has occurred, and to provide a system that clearly links an offender's behavior and participation in available work, training, education, or other programming as determined through classification with the receipt or denial of earned release time and other privileges as outlined in department policy.

The rules in this chapter shall not apply to proceedings of the indeterminate sentence review board.

The following rules set forth procedural guidelines. They do not create any procedural or substantive rights in any person, including any liberty interests in time credits, levels of custody, classification status, or other privileges. In accordance with Washington statutes, such matters are governed solely by the discretion of the department of corrections.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-140, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-140, filed 5/2/00, effective 6/2/00; WSR 97-03-041, § 137-28-140, filed 1/10/97, effective 2/4/97. WSR 95-15-044, § 137-28-140, filed 7/13/95, effective 8/15/95.]

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

[Statutory Authority: RCW 72.09.130, 72.01.090 and 9.94.070. WSR 98-04-086, § 137-28-150, filed 2/4/98, effective 3/7/98. WSR 95-15-044, § 137-28-150, filed 7/13/95, effective 8/15/95.]

WAC 137-28-160 Definitions. For the purposes of this chapter, the following terms have the following meanings:

- (1) Attempting - Putting forth an effort to commit any violation.
- (2) Business days - Monday through Friday, excluding holidays and days the facility is experiencing altered/modified operational status.
- (3) Conspiring - Entering into an agreement with another person(s) to commit a violation.
- (4) Facility - A correctional facility as defined in RCW 72.09.015.
- (5) Hearing officer - A trained staff member designated by the superintendent to conduct disciplinary hearings processes, as well as review appeals of general violations.
- (6) Infraction - A term designating the procedures and documents related to offender misconduct and the facility disciplinary process as a result of a rule violation.
- (7) Infraction review officer - A trained staff member who assesses and evaluates the accuracy of the infraction packet, to include verification of the incident, appropriateness of the violation(s) charged, thoroughness of the information, and verification that sup-

porting documents are included and that all evidence is collected and handled correctly (when applicable) before submittal to the hearing office.

(8) Lesser included offense - A less serious violation than the one charged, but one which the offender necessarily committed in carrying out the charged violation.

(9) Offender - An inmate as defined in RCW 72.09.015.

(10) Possessing - When an item(s) is found on an offender or in an offender's assigned area of responsibility.

(11) Promptly - To act as soon as reasonably possible, consistent with facility goals of safety, security, and rehabilitation.

(12) Staff member - A department of corrections employee, contract staff, or volunteer.

(13) Violation - The act of failing to comply with a rule enumerated in this chapter or chapter 137-25 WAC.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-160, filed 9/24/15, effective 1/8/16; WSR 13-18-002, § 137-28-160, filed 8/21/13, effective 9/21/13; WSR 09-01-195, § 137-28-160, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090. WSR 05-16-033, § 137-28-160, filed 7/26/05, effective 8/26/05. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-160, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-160, filed 5/2/00, effective 6/2/00; WSR 97-03-041, § 137-28-160, filed 1/10/97, effective 2/4/97. WSR 95-15-044, § 137-28-160, filed 7/13/95, effective 8/15/95.]

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

(2) All pilot programs, local supplementary rules, policies, procedures, and new or supplemental sanctions shall be approved in writing by the assistant secretary before being implemented.

[Statutory Authority: RCW 72.01.090. WSR 20-08-037, § 137-28-170, filed 3/24/20, effective 4/24/20. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-170, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-170, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-170, filed 7/13/95, effective 8/15/95.]

WAC 137-28-180 Notification. (1) All offenders confined in a facility shall have access to policies and rules regarding:

(a) Their rights and responsibilities in disciplinary matters;
(b) Acts prohibited in the facility; and
(c) Disciplinary action that may be taken in the event of misconduct.

(2) All offenders shall have access to a copy of the local disciplinary policies of the facility to which they are assigned.

(3) Offenders unable to read or understand English shall be provided access to a written or recorded translation of these rules in their accustomed language.

(4) Offenders should be provided access to changes to disciplinary policies or rules in advance of their effective date.

(a) Complete and up-to-date copies of these rules and all facility disciplinary policies shall be available for offender access at each facility.

(b) Offenders are responsible for informing themselves of changes to the rules and policies.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-180, filed 9/24/15, effective 1/8/16. WSR 95-15-044, § 137-28-180, filed 7/13/95, effective 8/15/95.]

WAC 137-28-190 Referral to law enforcement. (1) The superintendent should report any felony under state or federal law committed in a facility to law enforcement. Any time an offender commits a serious violation after losing all potential earned release time credits, the superintendent should report the offender to local law enforcement for possible felony prosecution under RCW 9.94.070.

(2) The superintendent may report any misdemeanor under state or federal law committed in a facility to law enforcement.

(3) Nothing in this section shall prevent an offender's assignment to administrative segregation.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-190, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.09.130, 72.01.090 and 9.94.070. WSR 98-04-086, § 137-28-190, filed 2/4/98, effective 3/7/98. WSR 95-15-044, § 137-28-190, filed 7/13/95, effective 8/15/95.]

WAC 137-28-200 Out-of-state offenders. (1) Offenders committed to the department of corrections who have been transferred to a prison in another state shall be subject to the disciplinary rules and procedures applicable to that prison. That prison may, in its discretion, use any presumptive sanction guidelines currently in effect in Washington state facilities.

(2) Offenders committed to the department of corrections from other states shall be subject to the disciplinary rules and procedures currently in effect in the Washington state facility to which they are assigned.

(3) Each state shall forward all serious infraction reports and appeals to the originating state within seven days of the final action, and may include a recommendation that the offender return to the originating state.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-200, filed 9/24/15, effective 1/8/16. WSR 95-15-044, § 137-28-200, filed 7/13/95, effective 8/15/95.]

WAC 137-28-210 Hearing officers. (1) Each hearing shall be conducted by a hearing officer designated by the superintendent.

(2) Hearing officers may not preside over a hearing when they are related to the offender, witness, victim, or infracting officer, or have direct personal involvement in the infraction under consideration. For purposes of this section, direct personal involvement means knowledge or interest acquired through witnessing, investigating, or directly participating in the incident under consideration. This rule

shall not preclude hearing officer participation where the hearing officer has acquired knowledge of the incident as part of regular facility responsibilities.

(3) Hearing officers may disqualify themselves or may be disqualified by the superintendent if biased for or against any offender so that they cannot render a fair and impartial decision in the hearing.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-210, filed 9/24/15, effective 1/8/16. WSR 06-24-087, § 137-28-210, filed 12/4/06, effective 1/4/07. WSR 95-15-044, § 137-28-210, filed 7/13/95, effective 8/15/95.]

WAC 137-28-220 General violations. (1) Any of the following types of behavior may constitute a general violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation.

Unauthorized possession/theft

- 051 - Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is less than five dollars
- 053 - Possessing anything not authorized for retention or receipt by an offender and/or not issued to an offender through approved channels
- 255 - Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is less than ten dollars
- 310 - Pretending or failing to take prescribed medication by concealing or retaining the medication
- 354 - Stealing food, the value of which is less than five dollars
- 356 - Possessing an unauthorized amount of clothing, bedding, or issued supplies

Lending/trading

- 351 - Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is less than ten dollars

Altering/destroying property

- 055 - Damaging, altering, or destroying any item that is not the offender's personal property, the value of which is less than ten dollars

Disruptive behavior/lying

- 202 - Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s)
- 203 - Lying to a staff member
- 353 - Engaging in disruptive behavior

- 355 - Roughhousing, or engaging in horseplay or any other unauthorized physical contact with another offender(s)
- 357 - Demonstrating, practicing, or using martial arts or other self-defense tactics

Failure to follow rules and orders

- 103 - Failing to follow any oral/written orders, rules, or policies not otherwise included in these rules
- 105 - Failing to perform a work, training, education, or other programming assignment as directed
- 210 - Out of bounds: Being in an area where the presence of the offender is unauthorized
- 214 - Interfering or failing to comply with count procedures
- 251 - Smoking or possessing tobacco or related products/paraphernalia where prohibited
- 301 - Failing to maintain one's clothing, personal hygiene, or quarters in accordance with facility rules or policies

Unauthorized communication/visitor contact

- 303 - Using the mail, telephone, or electronic communications without authorization
- 304 - Conducting/participating in unwanted written, telephone, or electronic communications with any person
- 305 - Corresponding with or engaging in conduct with a visitor in violation of published or posted rules or policies

Inappropriate use of equipment

- 212 - Using any equipment or machinery when not specifically authorized or contrary to instructions or safety standards

Unexcused absence/feigning illness

- 104 - Being absent from work or any assignment, scheduled meeting, appointment, or call out without authorization
- 352 - Pretending to be ill or injured contrary to medical/mental health screening results

Inappropriate sexual behavior

- 244 - Displaying sexual affection with another offender
- 309 - Engaging in an unauthorized display of affection with a visitor

(2) If contraband or another violation is discovered in an offender's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all offenders assigned responsibility for that area.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-220, filed 9/24/15, effective 1/8/16; WSR 06-21-054, § 137-28-220, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-220, filed 5/28/02, effective 6/28/02. WSR 01-22-094, § 137-28-220, filed 11/6/01, effective 12/6/01. Statutory Authority: RCW

72.01.090. WSR 00-10-079, § 137-28-220, filed 5/2/00, effective 6/2/00; WSR 97-03-041, § 137-28-220, filed 1/10/97, effective 2/4/97. WSR 95-15-044, § 137-28-220, filed 7/13/95, effective 8/15/95.]

WAC 137-28-230 General infraction procedure. (1) In the event of a general violation, a staff member may make an on-site adjustment. An on-site adjustment may consist of counseling, warning, or reprimanding the offender and/or directing the offender to remove himself/herself from the situation immediately. An action addressed through an on-site adjustment cannot be considered a general violation for the purposes of determining whether a #657 serious violation has occurred.

(2) In the event of a general violation where a staff member does not make an on-site adjustment, the staff member will prepare and submit an infraction report per department policy. The staff member will attach copies of any supporting documents.

(3) The general infraction report shall be promptly submitted for review to the supervisor designated by the superintendent. Upon review, if the supervisor determines the action meets the criteria of a serious violation, he/she may return the report to the reporting staff member to upgrade the general violation to a serious violation. If the violation is upgraded, the reporting staff member will forward the serious infraction report to the infraction review officer.

(4) If the action was appropriately charged as a general violation, the supervisor will decide whether the offender is guilty or not guilty within five business days of receiving the report, unless an extension is approved in writing by the hearing officer. The supervisor will conduct an informal hearing at which he/she may allow witnesses and documentary evidence with the offender present.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-230, filed 9/24/15, effective 1/8/16; WSR 09-01-195, § 137-28-230, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-230, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-230, filed 7/13/95, effective 8/15/95.]

WAC 137-28-240 General violations—Sanctions. (1) If the supervisor finds the offender not guilty of a general violation, disciplinary sanctions shall not be imposed on the offender for that violation. Records pertaining to the violation shall not be placed in the offender's file, but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the supervisor finds the offender guilty of any general violation, the supervisor may impose one or more of the following sanctions:

(a) Reprimand or warning;

(b) Issuance of a written order to cease the problematic behavior. The order will include a warning that if the identified behavior is repeated within a specified period (not to exceed one hundred eighty days), the offender will be charged with a serious violation [(#658 under WAC 137-25-030)];

(c) Loss of a privilege or privileges as specified by the supervisor for a period not to exceed ten consecutive days on the first of-

fense, twenty consecutive days on the second offense, and thirty consecutive days on the third offense within a six-month period;

(d) Evening cell/room confinement, except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, not to exceed ten consecutive evenings;

(e) Weekend and/or holiday cell/room confinement, except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period of one or more weekends, not to exceed four consecutive weekends per incident. For purposes of this rule, a "week-end" shall begin at the end of the offender's programming or work day Friday and terminate at the beginning of the offender's programming or work day Monday;

(f) Confinement to cell/room except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period not to exceed ten consecutive days;

(g) Up to one hundred twenty hours of extra work duty.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-240, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-240, filed 5/28/02, effective 6/28/02. WSR 01-22-094, § 137-28-240, filed 11/6/01, effective 12/6/01. WSR 95-15-044, § 137-28-240, filed 7/13/95, effective 8/15/95.]

WAC 137-28-250 General infraction appeals. (1) If the supervisor finds the offender guilty of a general violation, only the offender may appeal the decision and/or sanction(s) to a hearing officer.

(a) The appeal must be in writing and must include the reason(s) why the offender believes the action taken was incorrect and specify the desired relief.

(b) The appeal must be delivered to the hearing officer within two business days of receiving the notice.

(c) Failure to follow appeal procedures shall be deemed a waiver of the appeal, however the hearing officer may consider appeals filed beyond the two business day period.

(2) The hearing officer will review and act on the appeal request within ten business days of receipt unless an extension is approved in writing by the superintendent. The hearing officer may affirm the decision and sanction(s), affirm the decision and reduce the sanction(s), or dismiss/modify downward the decision and sanction(s).

(3) Once a decision is made on the appeal, the offender shall be notified in writing within three business days, unless an extension is approved in writing by the superintendent.

(4) Sanctions will not be stayed upon appeal.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-250, filed 9/24/15, effective 1/8/16; WSR 06-21-054, § 137-28-250, filed 10/13/06, effective 11/13/06. WSR 95-15-044, § 137-28-250, filed 7/13/95, effective 8/15/95.]

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

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-260, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-28-260, filed 11/28/05 and 12/28/05, effective 5/1/06. Statutory Authority: RCW 72.01.090. WSR 05-16-033, § 137-28-260, filed 7/26/05, effective 8/26/05. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 04-07-163, § 137-28-260, filed 3/23/04, effective 4/23/04; WSR 02-12-023, § 137-28-260, filed 5/28/02, effective 6/28/02. WSR 01-22-094, § 137-28-260, filed 11/6/01, effective 12/6/01. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-260, filed 5/2/00, effective 6/2/00; WSR 97-03-041, § 137-28-260, filed 1/10/97, effective 2/4/97. WSR 95-15-044, § 137-28-260, filed 7/13/95, effective 8/15/95.]

WAC 137-28-270 Serious infraction procedure. (1) When a staff member witnesses a serious violation or determines that a serious violation has occurred, he/she shall prepare and submit an infraction report per department policy. The staff member will attach to the report copies of any supporting documents, including a summary of any confidential information, which shall not identify the confidential source(s).

(2) The infraction review officer will review the serious infraction report and any supporting documents and/or evidence. If the report is incomplete or the charge(s) is inappropriate, the infraction review officer will return the report to the reporting staff member to be revised, rewritten, or reinvestigated. Otherwise, the infraction review officer will forward the report to the hearing clerk or designee to schedule a hearing.

The infraction review officer may recommend referral to a mental health professional as defined in department policy for consultation if there is a question whether:

(a) Mental illness contributed to the behavior that led to the violation; or

(b) The offender's mental health status may need to be monitored.

(3) A negotiated hearing process will be used for any violation specifically identified in department policy. The serious infraction report will be forwarded to the designated hearing officer per department policy.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-270, filed 9/24/15, effective 1/8/16; WSR 09-01-195, § 137-28-270, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-270, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-270, filed 7/13/95, effective 8/15/95.]

WAC 137-28-280 Temporary prehearing placement. (1) An offender may be temporarily confined to his/her cell or placed in more restrictive housing, such as segregation, when it is reasonably believed that the offender presents a security risk, a risk of escape, or a danger to himself/herself or to others, or is in danger from others.

(2) Segregation placement decisions must be approved by the superintendent within three business days of the confinement.

(a) Placement may not be for more than three business days, unless either the offender or the facility requires additional time to prepare for the disciplinary hearing, or there is an administrative segregation hearing.

(b) If found guilty of the infraction and sanctioned to segregation, the offender shall receive credit against the sanction for time already served in segregation for that violation.

(3) An offender confined to his/her cell or placed in more restrictive housing shall be afforded reasonable opportunities to prepare a defense to the charges against him/her.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-280, filed 9/24/15, effective 1/8/16; WSR 09-01-195, § 137-28-280, filed 12/24/08, effective 1/24/09. WSR 95-15-044, § 137-28-280, filed 7/13/95, effective 8/15/95.]

WAC 137-28-285 Offender rights. (1) An offender charged with a violation(s) has the right to:

(a) A fair and impartial hearing;

(b) Written notice of the alleged violation(s) and a summary of the supporting evidence at least twenty-four hours before the hearing;

(i) The notice shall include a statement of the rights listed in this section.

(ii) The offender may waive the twenty-four hour notice.

(c) Be present at the hearing or waive presence at the hearing;

(d) Request a department advisor and/or an interpreter to assist the offender in preparing for and participating in the hearing;

(e) Testify or remain silent;

(f) Call witnesses and present documentary evidence, though the hearing officer may exclude witnesses/evidence deemed irrelevant, duplicative, or unnecessary;

(g) Propose questions for the hearing officer to ask witnesses, although the hearing officer may exclude questions deemed irrelevant, duplicative, or unnecessary;

(h) Appeal the hearing officer's finding(s) and/or sanction(s) imposed to the superintendent within fifteen business days of the hearing officer's decision.

(2) Offenders do not have the right to:

(a) Cross-examine witnesses;

(b) Have the reporting staff member present at the hearing;

(c) Receive a polygraph or other supplemental tests;

(d) Examine physical evidence;

(e) Receive confidential information.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-285, filed 9/24/15, effective 1/8/16.]

WAC 137-28-290 Preparations for hearing. (1) When possible, hearings will be held in the facility where the violation(s) occurred. If the offender is transferred to another facility before a hearing is conducted, the sending facility will provide the infraction report, along with any supporting documents, to the receiving facility.

(2) In preparation for the hearing, the hearing clerk or designee shall, at least twenty-four hours before the hearing:

(a) Provide copies of the infraction report and nonconfidential supporting documents, including a summary of the supporting evidence, to the offender;

(b) Advise the offender in writing of the date, time, and location of the hearing and of the rights, restrictions, and responsibilities listed in this chapter;

(c) Obtain written acknowledgment of the offender's receipt of the infraction report and any supporting documents;

(d) Determine whether the offender wishes to contest the allegation;

(e) Determine whether the offender needs a department advisor and/or an interpreter. If assigned, the department advisor and/or interpreter will remain in place throughout the hearing process, unless the offender declines assistance.

(3) If an offender is placed in prehearing confinement in segregation, the hearing will be held within three business days of service of the infraction report and any supporting documents, unless the offender has waived twenty-four hour notice for the hearing or the hearing is continued in writing by the hearing officer. A staff member may be assigned to assist in obtaining witness statements.

If a hearing is continued, a determination shall be made in writing whether the offender should remain in segregation.

(4) For offenders not placed in segregation, the hearing will be held within five business days of service of the infraction report and any supporting documents.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-290, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-290, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-290, filed 7/13/95, effective 8/15/95.]

WAC 137-28-295 Department advisors. (1) A department advisor may be appointed per department policy to help the offender prepare for and participate in the hearing. Before a department advisor is assigned, the following factors will be considered:

(a) The offender's literacy;

(b) The complexity of the issue(s);

(c) The offender's overall ability to speak for himself/herself and adequately present his/her case;

(d) The offender's ability to communicate in English;

(e) Any disability that might impair the offender's ability to adequately defend himself/herself.

(2) The department advisor will be a staff member who is not involved in the observation or investigation of the infraction.

(3) The department advisor shall attend the hearing, in whole or in part, based on the offender's needs. He/she may attend in person or by telephone. He/she shall not present the offender's case, question witnesses, or make any other oral presentation, unless requested by the hearing officer.

(4) When a hearing is continued for the purpose of appointing a department advisor, an advisor shall be appointed immediately.

(5) Conversations between department advisors and offenders are neither confidential nor privileged.

WAC 137-28-300 Conduct of hearing. (1) The hearing officer shall ensure that the offender's rights are protected throughout the hearing. The hearing officer shall ensure that the offender is capable of understanding the charge against him/her and the nature of the proceedings, and is able to adequately participate in the hearing. If there is reason to doubt the offender's understanding or ability, the hearing officer may order a continuance of the hearing in order to obtain additional information.

(2) The offender shall be present at all stages of the hearing, except during deliberations, examination of any physical evidence and/or confidential information, and any inquiry the hearing officer may make concerning the evidence/information presented, including the source(s) of confidential information.

(a) If new evidence/information is introduced outside the hearing, the offender will have an opportunity to rebut the evidence/information during the hearing.

(b) Unless excused, an offender's failure to attend a scheduled hearing will be considered his/her waiver of the right to be present at the hearing.

(3) An audio recording will be made of all category A, B, and C hearings. A written record will also be made of all hearings.

(a) The record shall include:

(i) The name and DOC number of the offender;

(ii) The date, location, and time of the hearing;

(iii) The name of the hearing officer;

(iv) The alleged violation(s);

(v) The offender's plea(s) to the alleged violation(s);

(vi) The names of witnesses;

(vii) A summary of the statements of the offender and any witnesses, and information from any additional sources, including confidential sources;

(viii) A summary of any new evidence/information introduced outside the hearing;

(ix) A description of any physical evidence;

(x) The reasons for denying any witnesses;

(xi) Any witness statements requested by the offender or hearing officer that were not provided or were unavailable, if applicable;

(xii) Any witness questions proposed by the offender that the hearing officer did not ask and the reason(s) the questions were excluded (i.e., irrelevant, duplicative, or unnecessary);

(xiii) The hearing officer's decision, the sanction(s) imposed, and reasons.

(b) If the offender is found guilty, the hearing officer will ensure all related reports, recordings, and attachments become part of the offender's file.

(4) The hearing officer will ensure physical evidence is handled per department policy.

(5) If an offender's behavior disrupts the hearing, he/she may be removed and the hearing will continue on the record in the offender's absence.

(6) If the hearing officer determines that a witness's presence is necessary, the witness may participate by telephone or in person,

at the hearing officer's discretion. If the hearing officer determines that participation would be unduly hazardous to facility safety or correctional goals, the witness will provide a written statement.

(7) The hearing officer has the authority to question all witnesses. The offender may submit proposed questions to be asked of witnesses, but the hearing officer may exclude questions that are irrelevant, duplicative, or unnecessary to the adequate presentation of the offender's case.

(8) Information from a confidential source will be introduced by the testimony of the staff member who received the information.

(a) The hearing officer shall, out of the presence of the offender and off the record, review the confidential information and make an independent determination regarding the reliability of the source, the credibility of the information, and the necessity of not revealing the source. In determining whether the source is reliable and the information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

(i) Evidence from other staff members that the confidential source has previously given reliable information;

(ii) Evidence that the confidential source had no apparent motive to fabricate information;

(iii) Evidence that the confidential source received no benefit from providing the information;

(iv) Whether the confidential source is giving first-hand information;

(v) Whether the confidential information is internally consistent and is consistent with other known facts; and

(vi) The existence of corroborating evidence.

(b) The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information.

(c) The reliability and credibility determination and the need for confidentiality must be made on the record.

[Statutory Authority: RCW 72.01.090. WSR 20-08-037, § 137-28-300, filed 3/24/20, effective 4/24/20. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-300, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-300, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-300, filed 7/13/95, effective 8/15/95.]

WAC 137-28-305 Continuances. (1) At any time during the disciplinary process, the hearing officer may continue the hearing:

(a) To appoint a department advisor;

(b) To obtain an interpreter;

(c) To obtain a witness(es) or witness statement(s);

(d) To obtain a replacement hearing officer;

(e) If the witness(es) is temporarily unavailable;

(f) If the offender is unavailable (e.g., on escape, court-ordered custody, in transit to a nondepartment facility, etc.);

(g) At the reasonable request of the offender;

(h) If the facility is experiencing altered/modified operational status;

(i) To determine restitution costs.

(2) Continuances shall be for no longer than necessary, and shall not exceed twenty business days, unless approved by the superintendent.

(3) Hearings for offenders on escape status, in court-ordered custody, in transit to a facility in another jurisdiction, or otherwise unavailable may be continued for not more than twenty business days after their return to department custody.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-305, filed 9/24/15, effective 1/8/16.]

WAC 137-28-310 Decision of hearing officer. (1) In reaching a decision, the hearing officer will consider only the evidence presented at the hearing.

(2) The hearing officer is authorized to find an inmate guilty of a lesser included offense without issuing a new infraction report or conducting a new hearing.

(3) Where the evidence suggests an inmate is guilty of an offense not charged and which is not a lesser included offense to a charged offense, the hearing officer may recommend that new charges be filed to address such offenses. The inmate may waive the right to a separate hearing and allow the hearing officer to conduct the hearing on the new charge.

(4) The offender shall be informed of the hearing officer's decision in writing within three business days of the hearing, unless extended by the superintendent.

(5) The offender shall be informed of his/her right to appeal the hearing officer's decision to the superintendent.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-310, filed 9/24/15, effective 1/8/16; WSR 06-21-054, § 137-28-310, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-310, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-310, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-310, filed 7/13/95, effective 8/15/95.]

WAC 137-28-350 Sanctions—Authority to impose. (1) If the hearing officer finds the offender not guilty of a violation, disciplinary sanctions shall not be imposed on the offender for that violation. Records pertaining to the violation shall not be placed in the offender's file, but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the hearing officer finds the offender guilty of a serious violation, the hearing officer may impose one or more of the sanctions listed in this section.

If the hearing officer determines that more than one violation occurred as a result of the same incident, he/she shall not impose sanctions for the separate violations, but shall consider them together and impose penalties based on the most serious violation in the group.

(3) Allowable sanctions for serious violations are as follows. The hearing officer may consider factors such as prior documented behavior, infraction history, mental status, and overall facility and program adjustment when determining an appropriate sanction(s):

(a) Any of the sanctions available for general violations;

(b) Any of the sanctions available under department policy;

(c) Loss of a privilege or privileges as outlined in department policy for a period not to exceed: Thirty consecutive days on the first offense, ninety consecutive days on the second offense, and one hundred eighty consecutive days on the third offense within a one-year period;

(d) Confinement to cell/room except for meals (or with meals in cell), attendance at work or school assignments, or religious services, or law library if approved for emergency/priority access per department policy, for a period not to exceed thirty consecutive days;

(e) Recommendation to the facility risk management team for review of custody classification;

(f) Confinement on segregation status for a period not to exceed thirty consecutive days;

(g) With assistant secretary approval, confinement on isolation status for a period not to exceed ten consecutive days. Where a serious violation occurs during a period of isolation, additional periods of isolation not to exceed ten consecutive days may be imposed. In situations where an offender is in isolation for more than ten consecutive days, the assistant secretary's prior approval is required unless the offender is released from isolation for at least seventy-two consecutive hours between the end of one isolation sanction and the beginning of another;

(h) Restitution per WAC 137-28-410;

(i) Recommendation to the superintendent that he/she deny good conduct time credit.

The recommendation will be consistent with guidelines established by the department secretary. Any sanctions in excess of the guidelines require assistant secretary approval;

(j) Suspension or termination of visitation, for certain violations as outlined in department policy, for a period not to exceed: Thirty consecutive days for the first offense, ninety consecutive days for the second offense, and one hundred eighty consecutive days for the third offense within a one-year period. In cases of multiple or very serious violations, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s);

(k) Restriction, interruption, or termination of correspondence, telephone, and/or electronic communication for a period not to exceed: Thirty consecutive days for the first offense, ninety consecutive days for the second offense, and one hundred eighty consecutive days for the third offense in a one-year period. Termination of correspondence, telephone, and/or electronic communication may be permanent:

(i) At the recipient's request;

(ii) At the request of the parent or guardian of the recipient, if the recipient is a minor or an incapacitated person;

(iii) If correspondence perpetuates criminal activity; or

(iv) If the contact violates a court order.

(l) Urinalysis or breath alcohol testing for a period not to exceed ninety days for drug or alcohol related violations.

(4) The hearing officer may review any decision he/she previously made and may modify downward any sanction previously imposed.

(5) In all cases, regardless of whether an appeal is requested, the superintendent may review and reduce a sanction imposed. Once the superintendent has made a decision on the appeal, no modifications will be made by the hearing officer.

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

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-350, filed 9/24/15, effective 1/8/16; WSR 09-01-195, § 137-28-350, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-350, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-350, filed 5/2/00, effective 6/2/00; WSR 97-03-041, § 137-28-350, filed 1/10/97, effective 2/4/97. WSR 95-15-044, § 137-28-350, filed 7/13/95, effective 8/15/95.]

WAC 137-28-360 Sanctions and mental status. In determining an appropriate sanction, the hearing officer should consider the offender's mental health and his/her intellectual, emotional, and maturity levels and what effect a particular sanction might have on the offender in light of such factors. The hearing officer may request the assistance of other department staff members, including mental health staff members, in determining appropriate sanctions.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-360, filed 9/24/15, effective 1/8/16. WSR 95-15-044, § 137-28-360, filed 7/13/95, effective 8/15/95.]

WAC 137-28-370 Sanctions—Limitations. (1) No offender shall be infracted for violation of offender conduct rules unless he/she has been provided reasonable advance notice of the prohibited behavior, unless the rule was adopted on an emergency basis.

(2) Disciplinary sanctions shall not include:

(a) Lowering the quantity or nutritional value of food;

(b) Corporal punishment or physical restraint;

(c) Confinement to an environment with unhealthful temperatures;

(d) Denial of adequate medical treatment.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-370, filed 9/24/15, effective 1/8/16. WSR 95-15-044, § 137-28-370, filed 7/13/95, effective 8/15/95.]

WAC 137-28-380 Serious infraction appeals. (1) If the hearing officer finds the offender guilty of a serious violation, only the offender may appeal the decision and/or sanction(s) to the superintendent.

(a) An appeal request cannot be filed when the offender has pled guilty to the violation.

(b) The appeal request must be in writing and must include the reason(s) why the offender believes the action taken was incorrect and specify the desired relief.

(c) The appeal request must be filed within fifteen business days of receiving the notice.

(d) Failure to follow appeal procedures shall be deemed a waiver of the appeal, however the superintendent may consider appeals filed beyond the fifteen business day period.

(2) The superintendent will review the hearing record and act on the appeal request within ten business days of receipt. The superintendent may affirm the decision and sanction(s), affirm the decision and reduce the sanction(s), or dismiss/modify downward the decision and sanction(s). The superintendent may also reverse the decision and remand the matter for a new hearing, in which case the sanction(s) imposed at the new hearing may not be more severe than the sanction(s) originally imposed.

(3) The offender shall be promptly notified in writing of the superintendent's decision.

(4) Sanctions will not be stayed upon appeal.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-380, filed 9/24/15, effective 1/8/16; WSR 06-21-054, § 137-28-380, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 02-12-023, § 137-28-380, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-380, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-380, filed 7/13/95, effective 8/15/95.]

WAC 137-28-390 Hearing officer reports to the indeterminate sentence review board.

(1) When the hearing officer determines that an offender subject to the jurisdiction of the indeterminate sentence review board is guilty of a serious violation, the hearing officer may recommend to the superintendent that he/she not certify good conduct time credit for the offender pursuant to RCW 9.95.070.

The hearing officer's recommendation will be consistent with guidelines established by the department secretary. Any sanctions for loss of good conduct credits in excess of the guidelines require assistant secretary approval.

(2) Recommendation to the indeterminate sentence review board for a disciplinary hearing or reconsideration of minimum term should occur only with violations providing for actual time loss of twelve months or more and consistent with guidelines established by the department secretary.

(3) Whenever the hearing officer finds an offender under the jurisdiction of the indeterminate sentence review board guilty of a serious violation and recommends either loss of good conduct time credits or an increase in the offender's minimum term, the records office must inform the indeterminate sentence review board of the hearing officer's decision and recommendation within ten days, or within ten days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer. If the offender is within forty-five days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.

(4) In all other cases where an offender under the jurisdiction of the indeterminate sentence review board is found guilty of a serious violation, the records office must inform the indeterminate sentence review board of the hearing officer's decision within thirty days, or within thirty days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer. If the offender is within forty-five days of an apparent release date, the indeterminate sen-

tence review board shall be notified promptly with written notification to follow.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-390, filed 9/24/15, effective 1/8/16. WSR 95-15-044, § 137-28-390, filed 7/13/95, effective 8/15/95.]

WAC 137-28-400 Time limitations. The time limitations expressed in these regulations are not jurisdictional and failure to adhere to any particular time limit shall not be grounds for reversal or dismissal of a disciplinary proceeding.

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

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

WAC 137-28-410 Restitution. (1) If the hearing officer imposes restitution as a sanction, the amount of restitution owed shall be determined at the infraction hearing. However, the hearing officer may continue the hearing in order to secure additional evidence regarding restitution. If continued, the offender shall be present at the continued/reconvened hearing.

(2) The amount of restitution will be the replacement value of the item, the cost of repair, and/or the cost of any unnecessary expense caused by the offender's misconduct.

(3) The offender may appeal the amount of restitution within the time limits of this chapter. If under appeal, the amount of the restitution will be held in the offender's account, but funds will not be withdrawn/withheld until the superintendent has decided the appeal.

(4) Restitution funds may be collected in the following ways:

(a) The funds may be withdrawn from the offender's account to make restitution, provided the offender's account is not reduced to less than ten dollars; or

(b) Twenty percent of all funds being placed in the offender's account may be taken until the restitution is paid in full.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-410, filed 9/24/15, effective 1/8/16. WSR 95-15-044, § 137-28-410, filed 7/13/95, effective 8/15/95.]