

Chapter 137-104 WAC
COMMUNITY CUSTODY VIOLATION HEARINGS

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

137-104-070 Determination of competency. [WSR 01-04-044, § 137-104-070, filed 2/1/01, effective 3/1/01.] Repealed by WSR 19-19-044, filed 9/12/19, effective 10/13/19. Statutory Authority: RCW 72.01.090.

WAC 137-104-010 Purpose. The purpose of this chapter is to specify policies and procedures pertaining to the department of corrections' community custody administrative hearings and violation responses. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution. The regulations should be interpreted as having sufficient flexibility to be consistent with law and permit the department to accomplish its statutory purposes.

[Statutory Authority: RCW 72.01.090. WSR 19-19-044, § 137-104-010, filed 9/12/19, effective 10/13/19. WSR 01-04-044, § 137-104-010, filed 2/1/01, effective 3/1/01.]

WAC 137-104-020 Definitions. For purposes of this chapter, the following words have the following meanings:

(1) "Aggravating factors" are circumstances that elevate a low level violation to a high level violation as defined by department policy.

(2) "Appeals panel" means three reviewing staff designated by the secretary with the authority to review offender appeals of department findings and imposed sanctions.

(3) "Business 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.

(4) "Community corrections officer" means community corrections officer as defined by RCW 9.94A.030.

(5) "Community custody" means community custody as defined by RCW 9.94A.030.

(6) "Department" means the department of corrections.

(7) "Ex parte communication" means any predisposition communication between the hearing officer and a party or other individual on behalf of that party regarding the department hearing and the merits of the matter without notice and opportunity for all parties to participate.

(8) "Hearing officer" means an employee of the department authorized to conduct department hearings.

(9) "Hearings administrator" means the administrator of the hearings unit of the department.

(10) "Mitigating factors" are circumstances that may warrant a reduced violation response.

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

(12) "Partial confinement" means partial confinement as defined by RCW 9.94A.030.

(13) "Total confinement" means total confinement as defined by RCW 9.94A.030.

(14) "Violation" means willful noncompliance with a court-ordered or department-imposed condition, requirement or instruction. High-level and low-level violations are defined per department policy.

(15) "Violation process" means the process by which the court or the department addresses one or more alleged violations.

[Statutory Authority: RCW 72.01.090. WSR 19-19-044, § 137-104-020, filed 9/12/19, effective 10/13/19. WSR 07-08-082, § 137-104-020, filed 4/2/07, effective 5/3/07. WSR 03-16-072, § 137-104-020, filed 8/4/03, effective 9/4/03. WSR 01-04-044, § 137-104-020, filed 2/1/01, effective 3/1/01.]

WAC 137-104-021 General requirements. (1) When addressing the violation the department will ensure that:

(a) The department has jurisdiction to sanction the offender;

(b) The alleged violation was willful; and

(c) The offender is provided the opportunity to respond to the alleged violation.

(2) A low level violation may be aggravated to a high level violation upon review of aggravating factors and approval by a hearing officer.

(3) A reduced response to a violation may be approved as defined by department policy and upon review of mitigating factors.

[Statutory Authority: RCW 72.01.090. WSR 19-19-044, § 137-104-021, filed 9/12/19, effective 10/13/19.]

WAC 137-104-025 Community custody sanctions. (1) The state and its officers, agents, and employees may not be held criminally or civilly liable for violation response decisions made in accordance with law per RCW 9.94A.737.

(2) The sanction the department imposes shall be determined by the offender's violation behavior and prior violation processes and shall be reasonably related to the crime of conviction, the violation committed, the offender's risk of reoffending, or the safety of the community. The department's response to violation behavior will be defined by department policy.

(3) A community custody offender who violates any court-ordered or department-imposed condition, requirement, or instruction will be sanctioned by the department as provided in RCW 9.94A.737, 9.94A.633, 9.94A.660, 9.94A.662, and 9.94A.6332.

(a) The sanction for an offender who commits a low level violation may be a nonconfinement sanction, or a total or partial confinement sanction of not more than three days.

(b) The sanction for an offender who commits a high level violation may be a nonconfinement sanction, or a total or partial confinement sanction of not more than thirty days, unless subject to return under RCW 9.94A.633 or revocation of an alternative sentence under RCW 9.94A.660 and 9.94A.662. The department will credit an offender's sanction time served pending the hearing or negotiated sanction review.

(i) The offender may be out of custody or held in total or partial confinement pending a formal hearing or negotiated sanction review.

(ii) The offender may be held in total or partial confinement to serve an imposed sanction for a high level violation as determined by department policy.

[Statutory Authority: RCW 72.01.090. WSR 19-19-044, § 137-104-025, filed 9/12/19, effective 10/13/19.]

WAC 137-104-030 Hearing officers. (1) Hearing officers will report to and be supervised by the hearings administrator, and will report through a chain of command separate from that of community corrections or prisons divisions.

(2) Hearing officers may not hear a case in which they have direct personal involvement in the incident under consideration and must formally disqualify themselves by notifying the hearings administrator/designee. The hearings administrator/designee will select a replacement hearing officer.

(3) Hearing officers shall disqualify themselves if they believe that they cannot render a fair judgment in the hearing. The hearings administrator/designee may change the hearing officer assigned to hear a case upon a request from an offender and a showing of good cause.

[Statutory Authority: RCW 72.01.090. WSR 19-19-044, § 137-104-030, filed 9/12/19, effective 10/13/19. WSR 07-08-082, § 137-104-030, filed 4/2/07, effective 5/3/07. WSR 01-04-044, § 137-104-030, filed 2/1/01, effective 3/1/01.]

WAC 137-104-040 Notice. (1) The department shall notify each offender on community custody of all court and department imposed conditions, requirements, and instructions and of the department's response to violation behavior.

(2) An offender alleged to have committed a low level violation will be provided notice of the alleged violation at the time the department's violation response is initiated and the offender will be provided an opportunity to respond.

(3) An offender alleged to have committed a high level violation has the right to a hearing prior to imposition of any sanction. The offender will receive notice of a pending hearing as follows:

(a) Written notice will be served upon the offender not less than twenty-four hours prior to the hearing. The offender may waive the right to such notice.

(b) Written notice to the offender will include, but is not limited to:

(i) The offender's rights, including rights specified in WAC 137-104-060 and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(ii) A copy of the judgment and sentence and the imposed conditions;

(iii) The alleged violation; and

(iv) The supporting evidence relating to the violations that will be introduced and relied upon by the department at the hearing.

(c) The alleged violations may be amended and new allegations added at any time prior to the hearing, provided the offender receives written notice of such new or amended allegations and all other supporting evidence at least twenty-four hours prior to the hearing. The offender may waive the right to such notice.

[Statutory Authority: RCW 72.01.090. WSR 19-19-044, § 137-104-040, filed 9/12/19, effective 10/13/19. WSR 01-04-044, § 137-104-040, filed 2/1/01, effective 3/1/01.]

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

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

(3) The hearing officer will:

(a) Administer oaths and affirmations;

(b) Ensure the hearing is electronically recorded;

(c) Prohibit and disclose ex parte communications;

(d) Verify the offender has received proper notice;

(e) Verify jurisdiction and foundation;

(f) Weigh the credibility of witnesses;

(g) Receive relevant evidence including hearsay evidence;

(h) Render or defer a decision;

(i) Specify on the record the basis for the findings and decisions;

(j) Provide a written hearing and decision summary to the parties; and

(k) Take any other actions necessary as authorized by the department policy, these rules, and applicable laws.

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

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

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

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

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

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

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

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

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

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

WAC 137-104-051 Negotiated sanction review. (1) An offender alleged to have committed a high level violation may waive the hearing and recommend a sanction that is negotiated with the department.

(2) The negotiated sanction shall be reviewed by a hearing officer in the department's hearing unit. A negotiated sanction review shall be considered an offender disciplinary proceeding and shall not be subject to chapter 34.05 RCW, the Administrative Procedure Act.

(3) The hearing officer will determine whether:

(a) The offender knowingly and voluntarily admits guilt to all allegations;

(b) The offender knowingly and voluntarily waives his or her right to a hearing and appeal; and

(c) The recommended sanction is reasonable and within the parameters of department policy.

(4) The hearing officer may reject the negotiated sanction and set the matter over to a hearing.

(5) The negotiated sanction review will be recorded and documented in writing.

[Statutory Authority: RCW 72.01.090. WSR 19-19-044, § 137-104-051, filed 9/12/19, effective 10/13/19.]

WAC 137-104-060 Rights specified. An offender subject to a department hearing has rights as specified in RCW 9.94A.737 and the right to:

(1) Receive written notice in accordance with WAC 137-104-040, including the opportunity to examine, no later than twenty-four hours before the hearing, all supporting documentary evidence which the department intends to present during the hearing.

(2) Have an electronically recorded, community custody hearing conducted within five business days of written notice; however, if the offender has not been placed in confinement, the hearing will be conducted within fifteen business days of written notice in accordance with RCW 9.9A.737.

(3) A neutral and detached hearing officer conduct the hearing.

(4) Admit to any or all of the allegations, which may result in limiting the scope of the hearing.

(5) Be present during the hearing. An offender may waive the right to be present at the hearing or because of disruptive behavior, an offender may be removed from the hearing at the hearing officer's discretion; in both cases, the department will conduct the hearing in the offender's absence and may impose sanctions.

(6) Present the case to the hearing officer. If there is a language or communication barrier, the hearing officer may continue the hearing until a qualified individual is identified to interpret or otherwise assist in person or by means of an approved language line.

(7) Request counsel as established by department policy. Counsel may be provided if the hearing officer determines that counsel is necessary due to the complexity of the case or the offender's ability to represent himself or herself.

(8) Cross-examine witnesses testifying at the hearing.

(9) Testify during the hearing or remain silent. Silence will not be held against the offender.

(10) Have witnesses provide written or oral testimony on the offender's behalf, unless the scope of testimony is limited or the witness is excluded by the hearing officer under WAC 137-104-050.

(11) Request a continuance of the hearing for good cause as per department policy.

(12) Receive a written hearing and decision summary including the evidence presented, the finding of guilty or not guilty, the reasons to support the findings of guilt, and the sanction imposed immediately following the hearing or, in the event of a deferred decision, within two business days. Offenders may waive the two business days' requirement.

(13) Obtain a copy of the electronic recording of the hearing upon written request.

(14) Appeal the hearing officer's decision pursuant to WAC 137-104-080.

(15) File a personal restraint petition.

(16) Waive any or all of the above rights in this section.

(17) Waive the hearing and recommend a negotiated sanction.

[Statutory Authority: RCW 72.01.090. WSR 19-19-044, § 137-104-060, filed 9/12/19, effective 10/13/19. WSR 01-04-044, § 137-104-060, filed 2/1/01, effective 3/1/01.]

WAC 137-104-080 Appeals. (1) The offender may, within seven calendar days, appeal the findings and imposed sanctions to an appeals panel. The offender's appeal must be submitted in writing.

(2) The appeals panel shall affirm, reverse, modify, vacate, or remand the decision based on its findings.

(3) If a majority of the panel finds that the sanction was not reasonable, relative to the crime of conviction, the violation committed, the offender's risk of reoffending, or the safety of the community, then the appeals panel shall reverse, vacate, remand or modify the decision.

(4) The appeals panel will also examine evidence presented at the hearing. If a majority of the panel finds that any finding of a violation was based solely on allegations that were not, or could not be confirmed, then the appeals panel shall reverse, vacate, remand or modify the decision.

[Statutory Authority: RCW 72.01.090. WSR 19-19-044, § 137-104-080, filed 9/12/19, effective 10/13/19. WSR 01-04-044, § 137-104-080, filed 2/1/01, effective 3/1/01.]