



STATE OF WASHINGTON

DEPARTMENT OF CORRECTIONS
OFFICE OF ADMINISTRATIVE SERVICES
RULES, CONTRACTS, AND PUBLIC DISCLOSURE

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February 1, 2001

Mr. Dennis W. Cooper, Code Reviser
Office of the Code Reviser
Post Office Box 40552
Olympia, Washington 98504-0552

Dear Mr. Cooper:

Attached are the Department of Corrections' new rules, chapter 137-104 WAC, Community Custody Violation Hearings. These rules are submitted for publication in the Washington State Register and the Washington Administrative Code. Pertinent information follows:

1. Chapter 137-104 WAC, Community Custody Violation Hearings is adopted as of February 1, 2001.
2. The effective date of these rules shall be March 1, 2001.
3. I certify pursuant to RCW 34.05.030 that the rules as stated above are excluded from the Administrative Procedure Act.
4. The new rules establish procedural guidelines for the conduct of hearings for offenders violating the terms of their community custody.

Please contact me if you have any questions or concerns. Thank you for your assistance.

Sincerely,

Joseph D. Lehman
Secretary

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Enclosure

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"Working Together for SAFE Communities"

Chapter 137-104 WAC

COMMUNITY CUSTODY VIOLATION HEARINGS

NEW SECTION

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

NEW SECTION

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

(1) "Appeals panel" means three reviewing officers designated by the secretary with the authority to review hearing officers' decisions, and to affirm, reverse, or modify decisions and sanctions in accordance with RCW 9.94A.205.

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

(3) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time served in the community subject to controls placed on the offender's movement and activities by the department. Offenders supervised on community custody include those subject to community placement (as defined in RCW 9.94A.030), drug offender sentencing alternative (as described in RCW 9.94A.120), community custody for a sex offense (as described in RCW 9.94A.120), community custody max, first-time offender waiver (as described in RCW 9.94A.120), or a work ethic camp program (as defined in RCW 9.94A.030), and those sentenced to

community custody by the court for crimes committed on or after July 1, 2000, whose sentence is less than one year of confinement. For purposes of this subsection, "community custody max" means a term of community custody for certain sex offenders who have completed their maximum sentences of confinement.

(4) "Department" means the Washington state department of corrections.

(5) "Deputy secretary" means the deputy secretary of the office of correctional operations of the department, or the deputy secretary's designee.

(6) "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. Sanctions may include, but are not limited to, partial or total confinement; home detention with electronic monitoring; work crew; community service; inpatient treatment; daily reporting; curfew; educational or counseling sessions; supervisions enhanced through electronic monitoring; or any other sanctions available in the community.

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

(8) "Hearings program manager" means the manager of the hearings unit of the department, or the hearings program manager's designee.

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

(10) "Partial confinement" means confinement in a facility or institution operated or utilized under contract by the state or by any other unit of government, to include, but not be limited to, work release, treatment center, residential facility, or home detention with electronic monitoring.

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

(12) "Secretary" means the secretary of the department, or the secretary's designee.

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

(14) "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 hours a day, to include, but not be limited to, adult correctional facilities, camp and prerelease facilities or a county or municipal jail.

(15) "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.

NEW SECTION

WAC 137-104-030 Hearing officers. (1) Hearing officers will report to and be supervised by the hearings program manager, within the department's office of correctional operations, through an independent chain of command.

(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 program manager. The hearings program manager 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 program manager may change the hearing officer assigned to hear a case upon a written request from an offender and a showing of good cause.

NEW SECTION

WAC 137-104-040 Notice and service. (1) When placed on community custody, offenders shall be provided with written notice of all court and department-imposed conditions and/or requirements.

(2) If an offender is being held in total confinement prior to the hearing for allegedly violating conditions and/or requirements of community custody, the department shall, within three working days of a probable cause determination by the hearings unit, serve the notice of allegations, hearing and rights, and waiver form.

(a) Within three working days of the service of the notice of allegations, hearing and rights, and waiver form, the community corrections officer shall submit to the hearing officer and the offender, a report of alleged violations which shall contain the following: Alleged violations, a summary of facts supporting the allegations, and all other supporting documentary evidence relating to the violations to be introduced at the hearing. The report shall also contain a preliminary recommendation for disposition.

(b) Reports of alleged violations may be submitted electronically.

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

(4) Offenders who have allegedly violated conditions and/or requirements of community custody, but are not detained, shall be served with the notice of allegations, hearing and rights, and waiver form within thirty days of the community corrections officer becoming aware of the alleged violation behavior.

(a) A report of alleged violations and all other supporting documentary evidence shall be provided to the offender at least seven working days prior to the hearing.

(b) The report of alleged violations shall contain the following: Alleged violations, a summary of facts supporting the allegations, and the evidence relating to the violations to be introduced at the hearing. The report shall also contain a preliminary recommendation for disposition.

(c) Reports may be submitted electronically.

(5) Community corrections officers shall obtain interpretive services for offenders with known language or communication barriers when serving documents, and, if required, for the hearing.

NEW SECTION

WAC 137-104-050 Hearing procedures. (1) Offenders accused of violating any of the conditions or requirements of community custody will be entitled to a hearing, prior to the imposition of sanctions by the department.

(2) 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.

(3) 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.

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

(5) If an offender is arrested and detained, without a warrant, for violation of conditions of supervision, a probable cause determination will be made by a hearing officer within three working days of the initial detention.

(6) Prior to the commencement of a hearing, the hearing officer shall verify that proper notice of the hearing has been given and that the offender was properly served with the notice of allegations, hearing and rights, and waiver form, given a copy of the report of alleged violations, and provided with all supporting documentary evidence.

(7) The hearing officer, if requested by the offender or the community corrections officer, shall conduct an administrative review of the violation report and any additional information submitted to determine whether there is reason to allow the offender to be conditionally released pending the violation hearing. Such administrative review will be conducted within

twenty-four hours of the request for conditional release. Such release must be recommended by the reviewing hearing officer and authorized by the hearings program manager or his or her designee.

(8) A hearing shall be held in all instances when an offender is served with a notice of allegations, hearing and rights, and waiver form.

(9) Community custody hearings shall be electronically recorded on audio cassette tape and the hearing tape shall be retained by the department for twelve months. An offender, who is the subject of the hearing, may request a copy of the tape recording of that hearing by submitting a request in writing along with a blank tape.

(10) The offender may call witnesses to testify on his/her behalf at the hearing. The hearing officer may limit the number of witnesses and the scope of the testimony to matters relevant to the allegations and/or disposition.

(11) 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 shall enter findings in the record, as to the necessity of such testimony, and provide the offender an opportunity to submit questions to be asked of the witness.

(12) Community custody violation hearings shall be open to the public unless the hearing officer, for a specifically stated reason, closes the hearing in whole or in part.

(13) At the hearing, the community corrections officer has the obligation of setting forth evidence supporting the allegations of violations and of offering recommendations for disposition.

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

(15) The hearing officer shall:

(a) Administer oaths and affirmation;

(b) Issue warrants, as necessary;

(c) Weigh the credibility of the witnesses;

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

(e) Rule on offers of proof, and receive relevant evidence including hearsay evidence;

(f) Question witnesses called by the parties in an impartial manner to elicit any facts deemed necessary to fairly and adequately decide the matter;

(g) Render or defer a decision; and

(h) Take any other actions necessary and authorized by these rules and law.

(16) The hearing officers may grant a request for a continuance of the hearing as long as such continuation is granted for good cause and does not unduly delay the hearing.

NEW SECTION

WAC 137-104-060 Rights specified. The offender has the right to:

(1) Receive written notice of the alleged violations of the conditions/requirements of supervision.

(2) Have an electronically recorded, community custody hearing conducted within five working days of service of the notice of allegations, hearing and rights, and waiver form; however, if the offender has not been placed in confinement, the hearing will be conducted within fifteen calendar days of service of the notice.

(3) Have a neutral and detached hearing officer conduct the hearing.

(4) Examine, no later than twenty-four hours before the hearing, all supporting documentary evidence which the department intends to present during the hearing.

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

(6) Be present during the fact-finding and disposition phases of the hearing. If the offender waives his/her right to be present at the hearing, the department may conduct the hearing in the absence of the offender and may impose sanctions that could include loss of liberty of the offender.

(7) Present the case to the hearing officer. If there is a language or communication barrier, the hearing officer may appoint someone to interpret or otherwise assist. However, no other person may provide representation in presenting the case. There is no right to an attorney or counsel.

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

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

(10) Have witnesses provide testimony on his/her behalf, either in person or in a witnessed statement/affidavit; provided, however:

(a) In an in-custody hearing, outside witnesses may be excluded due to institutional concerns; or

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

(c) The hearing officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of the offender's presence when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender during the hearing. In either event, the offender may submit a list of questions to ask a witness. Testimony may be limited to evidence relevant to the issues under consideration.

(11) Receive a written hearing and decision summary including the evidence presented, a finding of guilty or not guilty, and 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 working days.

(12) Receive a copy of the full department hearing report.

(13) Obtain a copy of the audio recording of the hearing, provided, the offender provides a blank audio cassette tape to be used for this purpose.

(14) Appeal to the regional appeals panel, in writing, within seven calendar days of receipt of the hearing and decision summary form. The offender may also file a personal restraint petition to appeal the department's final decision through the Washington state court of appeals.

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

NEW SECTION

WAC 137-104-070 Determination of competency. (1) Whenever, as a preliminary matter, the offender or the community corrections officer raises the issue of the offender's competency, or there is reason to doubt his/her competency, the hearing officer shall request a county mental health professional or a qualified expert within the department to examine the offender and report upon the mental condition and competency of the offender to participate in the hearing.

(2) Once the report is delivered to the hearing officer, the hearing shall be reconvened. Based on all evidence, including the competency evaluation, the hearing officer shall determine whether the offender is competent to participate in the hearing and shall determine the appropriate disposition.

NEW SECTION

WAC 137-104-080 Appeals. (1) The offender may appeal the decision of the hearing officer within seven calendar days to the appeals panel. The request for review should be submitted in writing and list specific concerns.

(2) The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to the:

- (a) Crime of conviction;
- (b) Violation committed;
- (c) Offender's risk of reoffending; or
- (d) Safety of the community.

(3) The appeals panel will also examine evidence presented at the hearing and reverse any finding of a violation based solely on unconfirmed or unconfirmable allegations.