



# RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Department of Corrections

- Permanent Rule
- Emergency Rule
- Expedited Rule Making

(1) Date of adoption: March 23, 2004

(2) Purpose: The amendments make the possession of tobacco, or trafficking in tobacco products or paraphernalia an infraction.

(3) Citation of existing rules affected by this order:

- Repealed:
- Amended: WAC 137-28- -260
- Suspended:

(4) Statutory authority for adoption: RCW 72.01.090, RCW 72.09.130 & RCW 9.94.070  
Other Authority:

### PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 04-05-076 on Feb 17, 2004 (date).  
Describe any changes other than editing from proposed to adopted version: An editing change has been made to Infraction #563. The proscribed activity has been clarified and contained within one infraction, #606. The proposed changes to #707 have been withdrawn.

### EMERGENCY RULE ONLY

- Under RCW 34.05.350 the agency for good cause finds:
- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
  - (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:  
 Yes  No If Yes, explain:

(6) Effective date of rule:

#### Permanent Rules

- 31 days after filing
- Other (specify) \_\_\_\_\_\*

#### Emergency Rules

- Immediately
- Later (specify) \_\_\_\_\_

\*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Name (Type or Print)  
Joseph D. Lehman

Signature

Title  
Secretary

Date  
3/23/04

CODE REVISER USE ONLY

CODE REVISER USE ONLY

STATE GENERAL REGISTRATION

FILE

TIME 2:38

WSR 04-05-076

AM PM

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

|   |     |         |          |
|---|-----|---------|----------|
| <b>Federal statute:</b>                 | New | Amended | Repealed |
| <b>Federal rules or standards:</b>      | New | Amended | Repealed |
| <b>Recently enacted state statutes:</b> | New | Amended | Repealed |

**The number of sections adopted at the request of a nongovernmental entity:**

|     |         |          |
|-----|---------|----------|
| New | Amended | Repealed |
|-----|---------|----------|

**The number of sections adopted in the agency's own initiative:**

|     |         |          |          |
|-----|---------|----------|----------|
| New | Amended | <u>1</u> | Repealed |
|-----|---------|----------|----------|

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

|     |         |          |
|-----|---------|----------|
| New | Amended | Repealed |
|-----|---------|----------|

**The number of sections adopted using:**

|                                       |     |         |          |          |
|---------------------------------------|-----|---------|----------|----------|
| <b>Negotiated rule making:</b>        | New | Amended | <u>1</u> | Repealed |
| <b>Pilot rule making:</b>             | New | Amended |          | Repealed |
| <b>Other alternative rule making:</b> | New | Amended |          | Repealed |

**WAC 137-28-260 Serious infractions.**

**(1) Assault/threatening actions/causing injury to another person**

- 501 - Committing homicide.
- 502 - Aggravated assault on another offender.
- 503 - Extortion, blackmail, or demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
- 505 - Fighting with any person.
- 506 - Threatening another with bodily harm or with any offense against another person, property or family.
- 508 - Throwing objects, materials, substances or spitting at staff, visitors, or other inmates.
- 511 - Aggravated assault on a visitor.
- 521 - Taking or holding any person hostage.
- 588 - Causing a valid and documented threat of transmission of a contagious disease to any person due to intentional, negligent or reckless action.
- 604 - Aggravated assault on a staff member.
- 611 - Sexual assault on a staff member.
- 633 - Assault on another offender.
- 635 - Sexual assault on another offender.
- 663 - Using physical force, intimidation or coercion against any person.
- 704 - Assault on a staff member.
- 711 - Assault on a visitor.
- 717 - Causing a threat of injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.
- 777 - Causing injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.

**Unauthorized possession**

- 559 - Gambling; possession of gambling paraphernalia.
- 601 - Possession, manufacture or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.

- 602 - Possession, manufacture or introduction of any gun, firearm, weapon, sharpened instrument, knife, or poison or any components thereof.
- 620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.
- 660 - Unauthorized possession of money, stamps, or negotiable instruments, the value of which is five dollars or more.
- 702 - Possession, manufacture or introduction of an unauthorized tool.
- 736 - Possession, manufacture or introduction of unauthorized keys.
- 738 - Possession of the clothing of a staff member.
- 739 - Possession of personal information about currently employed staff, contractors or volunteers, or their immediate family members, not voluntarily given to the offender by the individual involved, including, but not limited to: Social Security numbers, unpublished home addresses or telephone numbers, drivers license numbers, medical, personnel, financial or real estate records, bank or credit card numbers, or other like information not authorized by the court or the superintendent.

**Tattooing**

- 710 - Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia.

**Theft/possession of stolen property**

- 555 - Theft of property or possession of stolen property.
- 741 - Theft of food, the value of which is more than five dollars.
- 755 - Misuse or waste of issued supplies, goods, services or property, the replacement value of which is ten dollars or more.

**Forgery**

- 654 - Counterfeiting, forging, altering or unauthorized reproduction of any document, article of identification, money, security, or official paper.

**Setting fire, damaging or destroying property**

- 553 - Setting a fire.
- 554 - Mutilating, altering, defacing or destroying any item, the value of which is ten dollars or more and that is not the personal property of the inmate.

- 563 - Making a false fire alarm ((~~or~~), tampering ((with)), damaging, blocking or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other fire fighting equipment or devices.
- 600 - Tampering with, damaging, blocking, or interfering with any locking or security device.
- 720 - Flooding a cell or other area of the institution.

**Inciting others/participation in unacceptable group behavior**

- 650 - Rioting.
- 651 - Inciting others to riot.
- 652 - Engaging in or inciting a group demonstration.
- 682 - Engaging in or inciting an organized work stoppage.
- 708 - Organizing or participating in an unauthorized group activity or meeting.
- 734 - Participating or engaging in the activities of any unauthorized club, organization, gang or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang or security threat group.
- 746 - Engaging in or inciting an organized hunger strike.

**Inappropriate sexual behavior**

- 504 - Engaging in sexual acts with others with the exception of spouses during approved extended family visits.
- 659 - Sexual harassment; any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.
- 728 - Possession of any written, photographic or hand-drawn material that depicts a sexually explicit act as defined in WAC 137-28-160.
- 750 - Indecent exposure.

**Providing false statements**

- 551 - Providing false information to a disciplinary hearing officer or on a disciplinary appeal.
- 552 - Causing an innocent person to be penalized or proceeded against by providing false information.
- 706 - Giving false information about proposed community residence when proposing a release plan, community placement, etc.

**Interfering with staff/impersonating**

- 558 - Interfering with staff members, medical personnel, fire fighters, or law enforcement personnel in the performance of their duties.
- 605 - Impersonating any staff member, other inmate or visitor.

**Failure to follow orders and rules**

- 509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area.
- 556 - Refusing to submit to or cooperate in a search when ordered to do so by a staff member.
- 557 - Refusing to participate in an available education or work program or other mandatory programming assignment.
- 609 - Refusing or failing to submit to testing required by policy, statute, or court order, such as DNA blood tests, when ordered to do so by a staff member.
- 658 - Failing to comply with any administrative or posthearing sanction imposed for committing any general or serious infraction.
- 724 - Refusing a cell or housing assignment.
- 745 - Refusing a transfer to another facility.

**Counts/unauthorized absence**

- 653 - Causing an inaccurate count by means of unauthorized absence, hiding, concealing ones self or other form of deception or distraction.

**Escape/attempted escape**

- 525 - Violating conditions of furlough.
- 550 - Escape or attempted escape.
- 560 - Unauthorized possession of items or materials likely to be used in an escape attempt.

**Committing crimes/excess infractions**

- 507 - Committing any act that is a felony under state or federal law that is not otherwise included in these rules.
- 517 - Committing any act that is a misdemeanor under local, state, or federal law that is not otherwise included in these rules.
- 657 - Being found guilty of four or more general infractions which have been reported in writing arising out of separate incidents, all of which occur within a six-month period.

**Unacceptable communication**

- 718 - Use of mail or telephone in violation of court order or local, state or federal law.
- 726 - Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.

- 727 - Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary actions.

**Misuse of controlled substances, drugs, alcohol and related programs**

- 603 - Possession, introduction, or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug or drug paraphernalia.
- 606 - Possession ~~((of))~~, introduction or transfer of any tobacco, tobacco products ((and/or)), matches ((in close/maximum housing units where strictly prohibited)), or tobacco paraphernalia.
- 607 - Refusing to submit to a urinalysis and/or failure to provide a urine sample when ordered to do so by a staff member.
- 608 - Refusing or failing to submit to a breathalyzer or other standard sobriety test when ordered to do so by a staff member.
- 610 - Unauthorized accumulation of prescribed medication greater than a single or daily dose.
- 655 - Making intoxicants, alcohol, controlled substances, narcotics, or the possession of ingredients, equipment, items, formulas or instructions that are used in making intoxicants, alcohol, controlled substances, or narcotics.
- 707 - Possession, introduction, or transfer of any alcoholic or intoxicating beverage.
- 716 - Unauthorized use of drugs, alcohol or other intoxicants.
- 752 - Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.

**Soliciting/fraud**

- 656 - Giving, offering or receiving from any person a bribe or anything of value for an unauthorized favor or service.
- 662 - Soliciting goods or services for which the provider would expect payment when the inmate knows or should know that no funds are available to pay for those goods or services.
- 714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another inmate or that inmate's friend(s) or family, the value of which is ten dollars or more.
- 740 - Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.

**Creating an emergency situation**

712 - Attempted suicide or self-mutilation.

742 - Creating a false emergency by feigning illness when contrary to medical/mental health screening results.

744 - Making a bomb threat.

(2) In determining whether a #728 infraction or a #328 infraction pursuant to WAC 137-28-220 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-28-160.