



STATE OF WASHINGTON

DEPARTMENT OF CORRECTIONS

October 25, 1995 P.O. Box 31100 • Olympia, Washington 98504-1100 • (206) 253-1573
FAX Number (206) 586-3676 • SCAN 321-3676

Mr. Gary Reid
Chief Assistant Code Reviser
Office of the Code Reviser
Legislative Building
PO Box 40551
Olympia, Washington 98504-0551

Dear Mr. Reid:

The following enclosed Department of Corrections WAC rules: 137-96-010, 137-96-020, 137-96-030, 137-96-040, 137-96-100, 137-96-110, 137-96-120, 137-96-130, 137-96-140, 137-96-150, 137-96-160, are submitted for publication in the Register and the Washington Administrative Code. Chapter 137-95 WAC is submitted for repeal. Pertinent information is as follows:

- a. Amended rules 137-96-010 through 137-96-160 were adopted on September 1, 1995.
- b. The effective date of these amended rules is December 1, 1995.
- c. I certify pursuant to RCW 34.05.030(c) that Rules 137-96-010 through 137-96-160 are exempt from the APA.
- d. The purpose is to conform the Pre-Release disciplinary rules to the Division of Prisons disciplinary rules, Chapter 137-28 WAC

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

Sincerely,

Chase Riveland
Secretary

CR:ms
Enclosures

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

OCT 30 1995

TIME: 11:16
WSR 95-22-059

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 137-95-010 Purpose.
- WAC 137-95-020 Definitions.
- WAC 137-95-030 Secretary's authority to grant or deny.
- WAC 137-95-040 Reasons for placement.
- WAC 137-95-050 Supplementary rules.
- WAC 137-95-060 Notification.
- WAC 137-95-070 Definition of misconduct.
- WAC 137-95-080 General infractions.
- WAC 137-95-090 Serious infractions.
- WAC 137-95-100 Cell tag.
- WAC 137-95-110 Earned time, granting, and denial.
- WAC 137-95-120 Reporting to law enforcement authorities.
- WAC 137-95-130 Infractions--On-site adjustment.
- WAC 137-95-140 Infractions--Report on.
- WAC 137-95-150 General infraction report--Action on report.
- WAC 137-95-160 Appeal to hearing officer.
- WAC 137-95-170 Appointment and disqualification of hearing officer.
- WAC 137-95-180 Prehearing procedures--Rights of offenders.
- WAC 137-95-190 Prehearing procedures--Restriction of offender.
- WAC 137-95-200 Hearing officer--Preparation for hearing.
- WAC 137-95-210 Conduct of hearing.
- WAC 137-95-220 Decision of hearing officer.
- WAC 137-95-230 Finding of no infraction.
- WAC 137-95-240 Staff advisors.
- WAC 137-95-250 Sanctions--Authority to impose.
- WAC 137-95-260 Sanctions--Types.
- WAC 137-95-270 Sanctions--Limitations.
- WAC 137-95-280 Appeal to superintendent.
- WAC 137-95-290 Time limits.

NEW SECTION

WAC 137-96-010 Purpose. The purpose of this chapter is to set forth the rules and regulations governing the administration of the department's prerelease programs.

NEW SECTION

WAC 137-96-020 Definitions. (1) "Secretary" is the secretary of the department of corrections.

(2) "Director" is the director, division of community corrections, department of corrections.

(3) "Assistant director" is the assistant director of the division of community corrections.

(4) "Superintendent" is responsible for the planning, organizing, and implementation of programs at a prerelease facility.

(5) "Contract staff" is the staff member(s) of an agency under contract to the department of corrections to provide programming for offenders at prerelease.

(6) "Prerelease offender" is an offender who has been approved and placed in prerelease.

(7) "Volunteer escort" is a responsible citizen who has been screened, trained, and assigned to escort and supervise offenders during official and approved activities outside of the facility or to participate in approved activities inside the facility.

(8) "Prerelease" is a total confinement facility approved for housing and supervision of offenders under the jurisdiction of the department of corrections. The program provides the transitional services necessary to assist offenders in their successful return into the community.

NEW SECTION

WAC 173-96-030 Secretary's authority to grant or deny. The secretary or his or her designee may grant or deny prerelease as authorized by Title 72 RCW subject to the rules of this chapter.

NEW SECTION

WAC 137-96-040 Reasons for placement. Prerelease may be authorized for one or more of the following:

- (1) Time remaining to release and behavior is appropriate for placement.
- (2) Offender has violated the terms of community placement.
- (3) Offender has violated the conditions of work release.
- (4) Offender has violated the conditions established by the indeterminate sentence review board.
- (5) For any reason deemed appropriate by the department.

NEW SECTION

WAC 137-96-100 Cell tag. Each offender of a multiple-offender cell will be held accountable for an infraction that occurs within the confines of such cell unless he/she can establish a lack of involvement in the infraction.

NEW SECTION

WAC 137-96-110 Earned time, granting, and denial. An offender may receive earned time sentence reduction for participating or attempting to participate in facility work, education, or training programs in accordance with department policy. Prior to a denial of earned time, the basis for the proposed denial shall be explained to the offender. Should the offender wish to contest the proposed denial, he/she may request a hearing, which shall be held at least twenty-four hours after the offender has received written notice scheduling the hearing and indicating the basis for the proposed denial. The hearing shall be before an impartial official designated by the superintendent, pursuant to WAC 137-95-170. The offender shall be provided a written statement from the hearing official showing the evidence relied on and the reasons for the decision. The hearing shall be conducted in accordance with WAC 137-95-210. Such a hearing and its result shall not be considered disciplinary in nature and the decision of the hearing shall be limited to recommending to the superintendent that earned time credits be granted or denied in whole or in part. Granting or denial of earned time credits for out-of-state offenders shall be handled in substantial accord with this rule.

NEW SECTION

WAC 137-96-120 Reporting to law enforcement authorities. (1)

It shall be the duty of the superintendent to report any violation of a federal, state, or local law to law enforcement authorities.

(2) If a violation has been reported to law enforcement authorities, the offender shall not be questioned about the incident, outside of a formal disciplinary hearing or an administrative segregation hearing, held pursuant to this chapter, until after it has been determined that no prosecution will occur or until a finding of guilt is made.

(3) The provisions in this rule shall not preclude the reasonable segregation of the offender in accordance with administrative segregation rules appearing in this chapter.

NEW SECTION

WAC 137-96-130 Infractions--On-site adjustment. (1) In the event of a general infraction, a staff member may make an on-site adjustment which may consist of:

- (a) Counseling, warning, or reprimanding the offender; and/or
- (b) Causing the offender to remove himself/herself from the situation immediately involved in the violation.

(2) An on-site adjustment under this rule cannot be considered a general infraction for the purposes of determining whether an 877 serious infraction under WAC 137-95-090 has occurred.

NEW SECTION

WAC 137-96-140 Purpose. The rules in this chapter provide a standardized system to determine whether misconduct by an inmate of an adult correctional institution has occurred.

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

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.

NEW SECTION

WAC 137-96-150 Authority. The authority for this chapter is RCW 72.01.090.

NEW SECTION

WAC 137-96-160 Definitions. For the purposes of this chapter, the following words have the following meanings:

Adult correctional institution and institution - a facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.

Aggravated assault - an assault resulting in physical injury and requiring medical care (see definition of medical care).

Assault - a physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to weapons, body parts, food products or bodily secretions.

Attempt - putting forth an effort to commit any infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault.

Bodily harm - physical pain or injury, illness, or impairment of physical condition.

Cell tag - if contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.

Conspiracy - an agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.

Director - the director of the division of prisons of the Washington state department of corrections, or the director's designee.

Discovery - when a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.

Good conduct time credits - that portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

Hearing officer - Staff member(s) designated by the superintendent to conduct disciplinary hearings.

Infraction - commission of, attempt to commit, or conspiracy with another to commit any violation of prison rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.

Lesser included offense - any infraction that must necessarily have been committed in order to commit another infraction.

Medical care - any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to bandaging, suturing, surgery,

etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.

Possession - established when an item(s) is found on a person or in an area which is under the control of the individual(s) charged.

Promptly - to act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

Sexual harassment - any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

Staff member - for purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.

Superintendent - superintendent of an adult correctional institution or the superintendent's designee.

Working days - Monday through Friday, excluding weekends and holidays.