



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**

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December 30, 1997

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

Dear Mr. Reid:

The following enclosed Department of Corrections WAC rules, 137-96-010, 137-99-020, 137-96-030, 137-96-040, 137-96-050, 137-96-060, 137-96-070, 137-96-080, 137-96-090, 137-96-105, 137-96-110, 137-96-115, 137-96-120, 137-96-125, 137-96-130, 137-96-135, 137-96-140, 137-96-145, 137-96-150, 137-96-160, 137-96-165, 137-96-170, 137-96-175, 137-96-180, 137-96-185, 137-96-190, 137-96-195 are submitted for publication in the Register and the Washington Administrative Code. Pertinent information is as follows:

- a. WACS 137-96-010, 137-96-020, 137-96-180 are amended sections and are adopted as of February 21, 1998.
- b. The effective date of these amended rules is February 21, 1998.
- c. I certify pursuant to RCW 34.05.030 that the rules as stated above are exempt from the APA.
- d. The purpose is to bring a standardized system to determine whether offender misconduct at the prerelease level has occurred and to provide a system that clearly links the offender's behavior and participation in available education and work programs, as determined through classification with the receipt and denial of earned early release time and other privileges.

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

Sincerely,

Joseph D. Lehman  
 Secretary

JDL:kkv  
 Enclosures

CODE REVISER'S OFFICE STATE OF WASHINGTON FILED	
JAN 7 1998	
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*Withdrawn by Agency  
 do not publish  
 See attached letter*

## Chapter 137-96 WAC

### COMMUNITY CORRECTION PRERELEASE FACILITIES

#### NEW SECTION

**WAC 137-96-010 Purpose.** The rules in this chapter provide a standardized system to determine whether misconduct by an offender in prerelease has occurred, and to provide a system that clearly links an offender's behavior and participation in available education and work programs as determined through classification with the receipt or denial of earned early release time and other privileges.

#### NEW SECTION

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

(2) "Deputy secretary" is the deputy secretary of the office of community operations, department of corrections.

(3) "Regional administrator" is the regional administrator of the office of community operations.

(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) "Earned release time credit (ERT)" is the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the ISRB or the sentencing court.

(7) "Earned time credit" is that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.

(8) "Good conduct time credit" is that portion of time which an offender is eligible to earn by behaving prosocially, i.e., not receiving serious infractions as listed in WAC 137-28-030, chapters 137-56 and 137-96 WAC.

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

(10) "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.

(11) "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 137-96-030 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 137-96-050 Supplementary rules.** The superintendent of a prerelease facility may promulgate local supplementary rules, policies, and procedures including the creation of new general and/or serious infractions, the reclassification of general and/or serious infractions set out in these rules, and the creation of new sanctions. All such new or reclassified infractions and sanctions shall be approved in writing by the director before being put into effect.

The secretary, department of corrections, has the authority to amend or supplement the rules set forth in this chapter by written policy or directive.

## NEW SECTION

**WAC 137-96-060 Notification.** (1) Each offender of a prerelease facility shall be advised in writing of:

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

(2) Each offender upon entering the custody of the prerelease facility shall be given a copy of the rules in this chapter and of all local disciplinary rules of the facility to which he/she is assigned.

(3) All amendments or additions to this chapter and all amendments or additions to local disciplinary rules, policies, and procedures shall be posted at a specifically designated place or places in each facility in advance of their effective date if possible and for at least thirty days after their effective date. Offenders shall be responsible for informing themselves of such postings. Complete and up-to-date copies of these rules and all local rules shall be available at each facility for offender examination. Offenders shall be responsible to take steps necessary to inform themselves of changes and posted updates.

(4) The superintendent shall ensure that each offender has the opportunity to understand rules which relate to his/her conduct. If the offender is unable to read or understand English, the rules shall be read to him/her promptly in their accustomed language.

## NEW SECTION

**WAC 137-96-070 Definition of misconduct.** Misconduct shall consist of:

- (1) Any act described in WAC 137-96-080 as a general infraction;
- (2) Any act described in WAC 137-96-090 as a serious infraction; or
- (3) Any act proscribed by a rule adopted by a facility pursuant to WAC 137-96-050.
- (4) Failure to abide by any written or oral direction.

## NEW SECTION

**WAC 137-96-080 General infractions.** Any of the following types of behavior constitutes a general infraction:

### **Unauthorized Possession/Theft**

- 051- Unauthorized possession of money or other negotiable instruments the total value of which is less than five dollars.

- 053- Possession of anything not authorized for retention or receipt by an offender and/or not issued to an offender by regular institutional channels.
- 354- Theft of food the value of which is five dollars or less.
- 310- Pretending or failing to take prescribed medication by means of accepting then concealing or retaining a single or daily dose.
- 356- Possession of unauthorized amount of otherwise authorized clothing, bedding, or issued supplies.
- 255- Misuse or waste of issued supplies, goods, services or property the replacement value of which is less than ten dollars.

#### **Loaning/Trading**

- 052- Loaning of property for profit.
- 351- Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another offender or that offender's friend(s) or family the value of which is less than ten dollars.

#### **Altering/Destroying Property**

- 055- Mutilating, altering, defacing or destroying any item valued at less than ten dollars and that is not the personal property of the offender.

#### **Disruptive Behavior/Lying**

- 353- Disruptive behavior.
- 202- Abusive language, harassment or other offensive behavior directed to staff, visitors, offenders, or other persons or groups.
- 355- Horseplay, roughhousing or any other unauthorized physical contact between offenders.
- 203- Lying to a staff member, contract employee, or volunteer.
- 244- Unauthorized displays of sexual affection such as holding hands with another offender.

#### **Failure to Follow Rules and Orders**

- 103- Refusing or failing to obey an order, oral or written, of any staff member.
- 102- Failure to follow any written rules or policies adopted by the facility and not specified within this chapter or in local disciplinary rules.
- 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.
- 301- Failure to keep your person or your quarters in accordance with institution rules or policies.
- 251- Smoking where prohibited.

#### **Unauthorized Communication/Visitor Contact**

- 303- Unauthorized use of mail or telephone.
- 304- Unwanted written and telephonic communications to any person.
- 305- Correspondence or conduct with a visitor in violation of published and posted rules and policies.
- 309- Unauthorized display of affection with a visitor.

## **Inappropriate Use of Equipment**

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

## **Unexcused Absence/Feigning Illness**

- 104- Unexcused absence from work or any assignment, scheduled meeting, appointment, or call out.
- 352- Pretending to be ill or injured contrary to medical/mental health screening results to avoid work or other assignments.

## NEW SECTION

**WAC 137-96-090 General infraction procedure.** Infraction report.

(1) In the event of a general infraction, a staff member may make an on-site adjustment. An on-site adjustment may consist of counselling, warning, or reprimanding the offender and/or causing the offender to remove himself from the situation immediately. An on-site adjustment under this rule cannot be considered a general infraction for the purposes of determining whether a #657 serious infraction has occurred.

(2) In the event of a general infraction where a staff member does not make an on-site adjustment, the staff member may prepare and submit an infraction report. The infraction report shall include:

- (a) Name, number and housing location of the offender;
- (b) A description of the incident;
- (c) The time and place of the incident;
- (d) The names of witnesses, victims, and other persons involved;
- (e) The specific rule(s) alleged to have been violated;
- (f) A description of any action taken and copies of any relevant documentation or supplemental reports;
- (g) Name and signature of reporting staff.

(3) The general infraction report shall be submitted promptly to the supervisor or unit team designated by the superintendent to receive such reports.

(4) The supervisor or unit team receiving a general infraction report shall decide whether the offender is guilty or not guilty within five working days of receipt of the report. An extension to the five days may be granted by the superintendent. This decision of the supervisor or unit team can be reached by:

- (a) Taking no further action, in which case the report shall not be retained in the offender's files, but may be retained in other facility files designated for statistical, recordkeeping, or litigation purposes;
- (b) Deciding the infraction without a formal hearing upon a determination that the offender is guilty, the supervising employee or unit team may impose any appropriate sanction; or

(c) Scheduling an informal hearing with the offender present at which the supervising employee or unit team may allow witnesses and documentary evidence. Upon finding that an offender is guilty, the supervising employee or unit team may impose any appropriate sanction.

#### NEW SECTION

**WAC 137-96-105 Appeals.** (1) The sanctions for a finding of guilty of a general infraction may be appealed by the offender to a designated staff member of the facility.

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

(b) The appeal must be delivered to the hearing officer within twenty-four hours after the offender receives notice of the action taken.

(2) Within five working days after receipt of the appeal, unless the time is extended by the superintendent, the hearing officer will decide either to:

(a) Schedule a hearing on the appeal; or

(b) Affirm, modify downward, or reverse the finding of guilty without a hearing.

(3) Once a decision of the hearing officer is made, the offender shall be notified within seventy-two hours, unless the time period is extended by the superintendent.

#### NEW SECTION

**WAC 137-96-110 Serious infractions.**

##### **Assault/Threatening Actions/Causing Injury to Another Person**

501- Committing homicide.

521- Taking or holding any person hostage.

506- Threatening another with bodily harm or with any offense against another person, property or family.

717- Causing a threat of injury to another person by disregard of orders, careless behavior, resisting assisted movement or physical efforts to restrain.

777- Causing injury to a staff member by resisting orders, resisting assisted movement or physical efforts to restrain.

599- Careless behavior that causes injury to another offender.

699- Careless behavior that causes injury to a staff member.

799- Careless behavior that causes injury to a visitor.

588- Causing a valid and documented threat of transmission of a contagious disease to any person due to intentional, negligent or reckless action.

502- Aggravated assault on another offender.

633- Assault on another offender.

- 604- Aggravated assault on a staff member.
- 704- Assault on a staff member.
- 511- Aggravated assault on a visitor.
- 711- Assault on a visitor.
- 505- Fighting with any person.
- 520- Unauthorized demonstration, practice or use of martial arts.
- 508- Throwing objects, materials, substances or spitting at staff, visitors, or other offenders.
- 663- Using physical force, intimidation or coercion against any person.
- 503- Extortion, blackmail, or demanding or receiving money or anything of value in return for protection against others, or under threat of informing.

#### **Unauthorized Possession**

- 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 out of perimeter activity or work detail.
- 736- Possession, manufacture or introduction of unauthorized keys.
- 738- Possession of the clothing of a staff member.
- 559- Gambling; possession of gambling paraphernalia.
- 660- Unauthorized possession of money or other negotiable instruments the value of which is five dollars or more.
- 702- Possession, manufacture or introduction of an unauthorized tool.

#### **Tattooing**

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

#### **Theft/Possession of Stolen Property**

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

#### **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.
- 563- Making a false fire alarm or tampering with, damaging, blocking or interfering with fire alarms, fire



extinguishers, fire hoses, fire extinguishers, or other fire fighting equipment or devices.

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 offender.

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 an organized work stoppage.

708- Organizing or participating in an unauthorized group activities or meetings.

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- Participating in or inciting others to go on a hunger strike.

661- Performing or taking part in an unauthorized marriage.

#### **Inappropriate Sexual Behavior**

504- Engaging in sexual acts with others with the exception of approved conjugal visits.

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

750- Indecent exposure.

728- Possession of any written, photographic or hand drawn material, that depicts sexually explicit acts as defined in DOC 450.100.

#### **Providing False Statements**

551- Lying to the disciplinary hearing officer.

552- Causing an innocent person to be penalized or proceeded against by lying.

706- Lying or giving false information about proposed community residence when proposing a release plan, community placement, etc.

#### **Interfering With Staff/Impersonating**

605- Impersonating any staff member, contracted staff member, volunteer, other offender or visitor.

558- Interfering with staff members, medical personnel, fire fighters, or law enforcement personnel in the performance of their duties.

#### **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 and or failure to participate in an available education or work program or other mandatory programming assignment.
- 724- Refusing a cell or housing assignment.
- 745- Refusing a transfer to another facility except work release.
- 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 post-hearing sanction imposed for committing any general or serious infraction.

#### **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 local, 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 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**

- 716- Unauthorized use of drugs, alcohol or other intoxicants.
- 610- Unauthorized accumulation of prescribed medication.
- 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.
- 752- Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.

- 603- Possession, introduction, or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug or drug paraphernalia.
- 707- Possession, introduction, or transfer of any alcoholic or intoxicating beverage.
- 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.

#### **Soliciting/Fraud**

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

#### **Creating an Emergency Situation**

- 742- Creating a false emergency by feigning illness when contrary to medical/mental health screening results.
- 744- Making a bomb threat.
- 712- Attempted suicide or self-mutilation.

#### **NEW SECTION**

**WAC 137-96-115 Serious infraction procedure.** Infraction report. (1) In the event of a serious infraction, the staff member who discovers such violation shall prepare and submit an infraction report. The infraction report shall be submitted promptly upon discovery of the incident or upon completion of an investigation. The infraction report must include:

- (a) Name, number and housing assignment of offender;
  - (b) A description of the incident;
  - (c) The time and place of the incident;
  - (d) The names of witnesses, victims, and other persons involved;
  - (e) The specific rule alleged to have been violated;
  - (f) A description of any action taken;
  - (g) Copies of any relevant documentation or supplemental reports. Confidential information and the identities of confidential informants shall not be included;
  - (h) Name and signature of reporting staff.
- (2) The infracting staff member may recommend action to be taken on the infraction to the hearing officer. This may include

a recommendatio. hat the inmate be referred or a mental health consultation.

(3) Serious infraction reports may be reviewed by the infracting staff member's supervisor who may:

(a) Approve the report, and forward it to the hearing clerk;

(b) Require the report be revised, rewritten or reinvestigated by the reporting staff member to ensure that the alleged facts support the charges;

(c) Add, delete or reduce the indicated WAC violations as appropriate, based upon the information and/or evidence provided by the reporting staff member;

(d) Recommend referral to a mental health professional for consultation if there is a question whether:

(i) Mental illness contributed to the behavior that led to the infraction; or

(ii) The inmate's mental health status may need to be monitored.

(4) If a negotiated hearing process is in place in the facility the report may be forwarded to the designated hearings officer.

#### NEW SECTION

**WAC 137-96-120 Temporary prehearing confinement.** (1) Before a hearing, an offender may be temporarily confined to his/her cell or demoted to a higher custody level or housing assignment, such as segregation, when it is reasonably believed that the offender presents a risk to the security of the facility, a risk of escape, danger to themselves or to others, or is in danger from others.

(2) Confinement decisions under this rule shall be made by the shift commander in writing. All segregation placement must be approved by the superintendent within one working day of the confinement.

(3) Confinement imposed under this section may not be for more than five working days unless either the offender or the facility, for good cause, requires additional time to prepare for the disciplinary hearing, or there is an administrative segregation hearing.

(4) An offender confined under this section shall be subject to the same rules and restrictions as other offenders in the unit or status.

(5) An offender confined under this rule shall be afforded reasonable opportunities to prepare a defense to the charges against him/her.

(6) An offender confined, on prehearing confinement or restricted under this rule shall receive credit against the sanction for time served if found guilty of the infraction.

(7) If an offender is on prehearing confinement and a sanction of further segregation or isolation is given and the offender indicates he/she wishes to appeal, the offender will remain on prehearing confinement status pending disposition of the appeal, unless released by the superintendent.

NEW SECTION

**WAC 137-96-125 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 137-96-130 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 an offender.

NEW SECTION

**WAC 137-96-135 Appointment and disqualification of hearing officer.** (1) Hearings shall be conducted by a single hearing officer designated by the superintendent.

(2) The hearing officer may not function in such capacity when he/she has direct personal knowledge or interest in the incident under consideration. Such officer must disqualify himself/herself by giving notice to the superintendent, who will select a replacement.

(3) "Direct personal knowledge or interest," as that phrase is used in this rule, shall mean knowledge or interest acquired through witnessing or directly participating in the incident under consideration. This rule shall not preclude the hearing officer's participation where the individual has acquired knowledge or interest indirectly or through review of the incident which is conducted as part of the individual's regular institutional responsibilities.

(4) The hearing officer may disqualify himself/herself or be disqualified if it is felt the hearing officer is biased for or against the offender so that he/she cannot render a fair judgment in the hearing, regardless of the manner by which such bias was acquired.

NEW SECTION

**WAC 137-96-140 Prehearing procedures--Rights of offenders.**

(1) Before being questioned about an alleged rule infraction, an offender alleged to have committed a rule infraction shall be advised that his/her refusal to testify at the hearing may be used against him/her.

(2) The offender shall retain his/her facility status and corresponding rights and privileges prior to and during the hearing except as provided in WAC 137-96-120.

NEW SECTION

**WAC 137-96-145 Hearing officer--Preparation for hearing.** In preparation for the hearing, the clerk of the hearing officer shall at least twenty-four hours in advance of the hearing:

(1) Provide copies of the infraction report to the offender;

(2) Advise the offender, both orally and in writing, of his/her rights, subject to the relevant provisions and limitations of these rules:

(a) To have a hearing;

(b) That if he/she chooses not to testify at the hearing, his/her silence may be used against him/her;

(c) To present written statements from other offenders, staff, or other persons in his/her behalf;

(d) To ask that staff members, other offenders, and other persons be present as witnesses for the hearing if it is determined by the hearing officer that to do so would not be unduly hazardous to the facility's safety or correctional goals: *Provided, however,* limitations may be made by the hearing officer if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the offender's case;

(e) To have a staff advisor to assist in preparation/presentation of his/her case when it is determined that the offender is unable to adequately represent himself/herself on the basis of literacy or competence in accordance with WAC 137-96-170; and

(f) To have access to nonconfidential reports and records utilized by the hearing officer during the fact-finding stage: *Provided, however,* where reports and records contain information, the disclosure of which to an offender might reasonably compromise the security and/or safety of the facility or its offenders, such reports and records shall be specifically identified as confidential and withheld, and in such cases, the offender shall be provided with a summary of such written documents with the classified information deleted;

(3) Obtain written acknowledgment of the receipt by the offender of the information;

(4) Determine from the offender whether he/she wishes to contest the allegation;

(5) Sched. : the hearing within ten working days after discovery of the incident, unless such time is extended by the superintendent; and

(6) Notify any staff member who witnessed the infraction of the hearing.

(7) The offender must establish that any requested witness has relevant and exculpatory evidence to present at the hearing. The offender must list all intended witnesses on the notice of hearing. The hearing officer may, in his/her discretion, allow additional witnesses for good cause shown.

(8) Advise the offender that he/she does not have a right:

(a) To cross-examine witnesses;

(b) To have the infracting staff member present at the hearing;

(c) To a polygraph or other supplemental tests.

#### NEW SECTION

**WAC 137-96-150 Conduct of hearing.** (1) The hearing officer shall assure that the offender is competent to understand the charge against him/her and the proceedings, and to participate therein. He/she may order a postponement of the hearing to secure a report on the competence of the offender, or take such other action as will assure the fairness and orderliness of the hearing.

(2) The offender shall be present at all stages of the hearing except during the decisional deliberations and any inquiry the hearing officer may wish to make concerning the identity of unidentified witnesses. An offender may waive his/her presence at a hearing.

(3) The offender shall be informed that if he/she chooses not to testify in the hearing, his/her silence may be used against him/her.

(4) The hearing officer shall divide the hearing into two stages consisting of:

(a) Determination of the guilt or innocence of the offender; and

(b) Determination of further action to be taken.

(5) Evidence, testimony, questions, and examinations shall be limited to facts relevant to the alleged infraction, or disposition if an infraction has been found.

(6) Where facility staff members are witnesses against the offender, a written statement from the staff member may be considered by the hearing officer instead of in-person testimony, except where the hearing officer determines that the staff member's presence is necessary to an adequate understanding of the issues in the case.

(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 has discretion over the questions asked.

(8) The offender shall be allowed to present witnesses in their defense and to present documentary evidence in his/her defense when permitting him/her to do so will not be unduly

hazardous to facility safety or correctional goals. Testimony of witnesses from outside the facility will be submitted in writing.

(a) The hearing officer may deny the admission of evidence or testimony if the hearing officer determines that the testimony or evidence is irrelevant, immaterial, unnecessarily duplicative of other information before the hearing officer, or otherwise found to be unnecessary to the adequate presentation of the offender's case.

(b) The testimony of witnesses that is adverse to the offender may be given in person, in writing, or by telephone.

(c) The hearing officer shall document on the written record the reasons for denial of in-person testimony that is requested in writing by the offender.

(9) If the hearing officer determines that a source of information would be subject to risk of harm if his/her identity were disclosed, testimony of the confidential source may be introduced by the testimony of a staff member. The confidential testimony may be provided by the source or by the written and signed statement of the source. If the staff member to whom the source provided information is unavailable, the written statement of this staff member may be used.

(a) The hearing officer shall, out of the presence of all offenders and off the record, identify the confidential source, and how the testifying staff member received the confidential information.

(b) The staff member presenting the information from a confidential source shall identify the source and the circumstances surrounding the receipt of the confidential information to the hearing officer, off the record. The hearing officer shall make an independent determination regarding the reliability of the confidential source, the credibility of the information, and the necessity of not revealing the source of the confidential information. In determining whether the confidential source is reliable and the confidential 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.

The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information. The reliability and credibility determination and the need for confidentiality must be made on the record.



NEW SECTION

**WAC 137-96-155 Decision of hearing officer.** (1) A report of the hearing shall be made by a secretary and shall include the charge, names of witnesses, summary of the testimony and cross-examination, a description of the physical evidence used, and the decisions and reasons therefor. The written report shall be placed in the offender's facility file if he/she is found guilty. All reports shall be maintained as part of the hearing officer's records. A complete taped record of the hearing shall be taken but the tape shall not become a part of the offender's file, and may be destroyed one hundred twenty days after the date of the hearing or the appeal decision, or any court proceedings resulting from the hearing, whichever is later.

(2) In reaching its decision on the guilt or innocence of the offender, the hearing officer must rely solely on evidence presented in the hearing. However, during the dispositional stage of the hearing, such factors as the offender's facility file, prior conduct, and overall facility adjustment may be considered.

(3) The offender shall be informed personally of the decisions of the hearing officer. Such information shall be given to him/her in writing within three working days of the hearing unless such periods are extended by the superintendent.

(4) The offender shall be informed of his/her right to appeal the decisions of the hearing officer to the superintendent.

NEW SECTION

**WAC 137-96-160 Lesser included and related infractions.** (1) The hearing officer is authorized to find an offender guilty of a lesser included offense without issuing a new infraction report or conducting a new hearing.

(2) Where the evidence suggests an offender 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 offender may waive the right to a separate hearing on the new charges and may allow the hearing officer to enter a finding of guilty or not guilty and impose sanctions.

NEW SECTION

**WAC 137-96-165 Finding of no infraction.** If the hearing officer determines that no infraction occurred, the offender shall be reinstated to his/her previous status and all records pertaining to the charge shall be removed from the offender's central file but may be retained for statistical and recordkeeping purposes.

NEW SECTION

**WAC 137-96-170 Staff advisors.** (1) An offender may have a staff advisor appointed by the hearing officer to prepare for a hearing. The hearing officer shall consider such factors as the literacy, the complexity of the issue, and the offender's overall ability to speak for himself/herself and adequately present his/her case, prior to assigning a staff advisor. The assignment of a staff advisor will only be necessary when considering such factors, and should not be construed to mean that a staff advisor must be assigned. The staff advisor will be a staff member and not involved in the observation of the infraction. The staff advisor may attend the hearing, but shall not be responsible for presentation of the offender's case, questioning witnesses, or making other oral presentation unless requested to do so by the hearing officer.

(2) A list of approved staff advisors will be maintained by the superintendent.

(3) Staff advisors shall be provided with:

(a) Copies of the written decisions of the hearing officer and the superintendent in cases in which the staff advisors are involved;

(b) An opportunity to have private conversation with offenders they are representing;

(c) Access to written information to be used by the hearing officer in the fact-finding stage as far in advance of the hearing as is reasonably possible; and

(d) Reasonable access to all witnesses.

NEW SECTION

**WAC 137-96-175 Sanctions--Authority to impose.** (1) If the hearing officer determines that an offender is guilty of a serious infraction as enumerated in WAC 137-96-110, he/she may impose one or more of the sanctions provided in WAC 137-96-180.

(2) If the hearing officer determines that more than one infraction occurred, he/she shall not impose consecutive sanctions for the separate infractions but shall consider them together and impose penalties for the group of infractions.

(3) The hearing officer may suspend the execution of a proposed disciplinary sanction for a fixed period of time, not to exceed six months, subject to the good behavior of the offender and/or meeting other conditions as specified by the hearing officer. If the subsequent behavior of the offender is appropriate, the hearing officer shall, at or prior to the end of the fixed period, cancel execution of the penalty. A suspended sentence may be revoked upon the offender's being found guilty of either a general or serious infraction and/or violating the conditions attached to the original suspension. A suspended sentence may be revoked only by the facility hearing officer following notice to the offender of possible revocation and an in-person meeting with the offender.

(4) Sanctions shall not be imposed while an appeal from the hearing officer's decision is under consideration by the superintendent.

(5) In all cases, regardless of whether an appeal is taken, the superintendent may review a sanction imposed and may reduce its severity.

#### NEW SECTION

**WAC 137-96-180 Sanctions--Types.** For general infractions enumerated in WAC 137-96-080 or classified as general infractions by supplementary local rules, one or more of the following sanctions may be imposed:

- (1) Reprimand and/or warning;
- (2) Loss of specified privileges for not more than ten days on a first offense, twenty days on a second offense, and thirty days on a third offense within a six-month period;
- (3) Confinement to room or cell except for attendance at work or school assignment, religious service, or meals, not to exceed ten days;
- (4) Interruption or termination of correspondence or visiting with specified individuals for a maximum of ninety days, when there has been an infraction of rules on visits or correspondence as stated in chapters 137-48 and 275-80 WAC or in local rules regarding correspondence and/or visitors; and
- (5) Up to one hundred twenty hours of extra work duty.

#### NEW SECTION

**WAC 137-96-185 Sanctions--Limitations.** (1) No offender shall be subject to disciplinary action for violation of offender conduct rules unless there has been reasonable advance notice to the offender of the specific prohibited behavior unless such rule has been adopted on an emergency basis.

(2) Lowering the quantity or quality of food and deprivation of clothing, bedding, bed, or normal hygienic implements shall not be used as sanctions.

(3) Corporal punishment and physical restraint shall not be used as sanctions.

(4) An offender placed in detention shall:

(a) Be confined to an environment with healthful temperatures in cells substantially similar to those used for the general population;

(b) Be provided the same opportunities for personal hygiene as are available to the general population;

(c) Be afforded his/her rights to correspondence, reading, and legal representation;

(d) Be provided daily opportunity for at least one hour of exercise unless staffing, space, facility security, order and/or

safety, or other similar circumstances make this unfeasible, in which cases such offender shall be allowed as much exercise as is feasible in the judgment of staff; *provided, however,* any limitations of exercise shall be approved in advance by a staff member with the rank of lieutenant or higher; and

(e) Be visited by a physician or designated health care personnel at least once per week.

#### NEW SECTION

**WAC 137-96-190 Appeal to superintendent.** (1) An offender may appeal the decision of the hearing officer to the superintendent by filing a written request for review and his/her reasons therefor with the hearing officer within five days after receiving written notice of the decision of the hearing officer. The superintendent may, in his/her discretion, consider appeals filed beyond the five-day period.

(2) The superintendent shall act on the request within five working days after receiving the written hearing officer's report by affirming the decision of the hearing officer, stating his/her reasons therefor; reducing the severity of the sanctions imposed; vacating the judgment of the hearing officer, or remanding the matter for a new hearing. Any new hearing may not result in an increase of the severity of the sanctions originally imposed.

(3) Pending the decision of the superintendent, the sanctions shall be imposed on the offender and his/her custody may be subject to change if there are grounds for detention as provided in WAC 137-96-120 or if the superintendent has reason to believe that he/she is a substantial security risk.

(4) The offender shall promptly be notified of the decision of the superintendent.

#### NEW SECTION

**WAC 137-96-195 Time limits.** The time limits contained in these rules shall not be deemed to be jurisdictional and failure to adhere to a particular time limit shall not be a bar to any procedure or action covered by these rules.



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**

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January 9, 1998

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

Dear Mr. Reid:

We are withdrawing the filing of WAC 137-96, filed by the Department of Corrections under RCW 43.05.030c. We will re-file this WAC as soon as possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph D. Lehman".

Joseph D. Lehman  
Secretary

JDL:kkv  
Enclosures