

WSR 23-23-021

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed November 2, 2023, 4:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-131.

Title of Rule and Other Identifying Information: Chapter 137-56 WAC, Community residential programs, work/training release.

Hearing Location(s): On December 28, 2023, at 2:00 p.m., via Microsoft Teams meeting. Please contact the rules coordinator at vvchebotar@docl.wa.gov to register.

Date of Intended Adoption: January 25, 2024.

Submit Written Comments to: Vadim V. Chebotar, Senior Contracts Attorney, Department of Corrections, Contracts and Legal Affairs, P.O. Box 41114, Tumwater, WA 98504-1114, email vvchebotar@docl.wa.gov, by December 21, 2023.

Assistance for Persons with Disabilities: Contact Vadim V. Chebotar, email vvchebotar@docl.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establish current and relevant rule violations with progressive discipline for partial confinement settings under the jurisdiction of the department. This process includes adding Graduated reentry—Electronic home monitoring, work/training release facilities and the community parenting alternative—FOSA.

Reasons Supporting Proposal: WAC should accurately comply with department policy.

Statutory Authority for Adoption: RCW 72.01.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of corrections, governmental.

Name of Agency Personnel Responsible for Drafting: Carrie Trogdon-Oster, Department of Corrections Headquarters, 253-377-7636; Implementation and Enforcement: Carrie Stanley, Department of Corrections Headquarters, 360-480-3921.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal: [No information supplied by agency].

October 17, 2023
Cheryl Strange
Secretary

OTS-4922.3

Chapter 137-56 WAC

~~((COMMUNITY RESIDENTIAL PROGRAMS, WORK/TRAINING RELEASE))~~ PARTIAL CONFINEMENT

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-010 Definitions. (1) "Secretary" is the secretary of the department of corrections or ~~((his/her))~~ their designee.

(2) "Department" is the department of corrections.

(3) ~~(("Work/training release facility"))~~ "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention, electronic monitoring, or work crew has been ordered by the court or home detention has been ordered by the department as part of the community parenting program or the graduated reentry program for no more than 18 months, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes reentry center, home detention, work crew, electronic monitoring, and a combination of work crew, electronic monitoring, and home detention.

(4) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to individuals wherein the individual is confined in a private residence 24 hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the individual is subject to electronic monitoring.

(5) "Administrative termination" is the nondisciplinary reclassification of an individual from partial confinement to total confinement by the administrator/designee if they determine placement is no longer viable and/or if the circumstances of placement create a risk to the community, participant, child, or family, or the individual self-terminates, is no longer suitable, or fails to maintain placement requirements (e.g., no longer has viable housing options, medical condition, financial hardship, failing to maintain an operable telephone line).

(6) "Supervisor" is a staff member assigned by the ~~((community corrections regional))~~ administrators to administer and supervise a specific ~~((work/training release facility))~~ partial confinement program and includes ~~((his/her))~~ their designee.

~~((4))~~ "Work/training release community corrections officer" (7) "Community corrections officer" or "specialist" is a staff member also known as a "case manager" assigned by the ~~((work/training release facility))~~ community corrections supervisor/reentry center manager to supervise and counsel a caseload of ~~((work/training release residents at a specific work/training release facility))~~ individuals assigned to a reentry center or partial confinement program.

~~((5))~~ (8) "Contract staff" is the staff member(s) of an agency under contract to the department of corrections to provide housing and/or monitoring for ~~((work/training release residents))~~ reentry center individuals.

~~((6))~~ "Work/training release offender" (9) "Partial confinement individual" is any ~~((offender))~~ individual committed to or transferred

to the department's custody pursuant to a valid criminal conviction who has been approved by the department for placement in a designated ~~((work/training release facility))~~ reentry center or partial confinement program.

~~((7))~~ (10) "Sponsor-escort" is a responsible citizen ~~((as-signed))~~ screened and approved to escort and monitor ~~((a-resident))~~ an individual during official and social activities outside of the ~~((work/training release facility))~~ reentry center.

~~((8) "Work/training release facility"))~~ (11) "Reentry center" is an establishment approved for housing and monitoring of ~~((work/train-ing release residents))~~ reentry center individuals during the ~~((resi-dent's))~~ individual's stay in a ~~((work/training release program.~~

~~(9) "One working day"))~~ reentry center. It also includes individ-uals who have been screened and approved for placement on partial con-finement programs.

(12) "Business" is a nine-hour day, 8:00 a.m. to 5:00 p.m. ex-cluding weekends and holidays.

~~((10))~~ (13) "Hearing officer" means an employee of the depart-ment authorized to conduct disciplinary/department hearings.

~~((11))~~ (14) "Hearings program administrator" means the adminis-trator of the hearings unit of the department, or the hearing program administrator's designee.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-015 Disposition of earnings. Reasonable payment, as determined by the department ~~((of)),~~ for board and room charges will be deducted from the ~~((work/training release residents'))~~ reentry cen-ter individual's earnings. For purposes of this section, earnings shall constitute all income and money received or possessed by the ~~((work/training release offender))~~ reentry center individual while un-der ~~((a work release))~~ an approved partial confinement plan. Nothing in this section shall prohibit the department's authority to obtain reimbursement for moneys advanced to a ~~((work/training release offend-er))~~ reentry center individual by the department.

AMENDATORY SECTION (Amending WSR 82-08-055, filed 4/5/82)

WAC 137-56-020 Secretary's authority to grant or deny. The sec-retary or ~~((his or her))~~ their designee may grant or deny ~~((work/training release))~~ placement in partial confinement as authorized by chapters 72.65 and 9.94A RCW subject to the rules of this chapter.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-030 Reasons for placement in a ~~((work release pro-gram))~~ reentry center. ~~((Work/training release))~~ Reentry centers may be authorized for one or more of the following:

- (1) To participate in full-time employment or part-time employment at specialized programs;
- (2) To participate in a vocational training program, including attendance at an accredited college.
- (3) To secure services to support transition back to the community.
- (4) As a sanction for violating community (~~(supervision)~~) custody conditions.
- (5) Transfer to a reentry center as a result of violation of conditions of partial confinement programs.
- (6) Incarcerated individuals depending on the program, must apply and go through an investigative process, with a committee determination regarding suitability.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-040 Eligibility criteria. (1) An (~~(offender)~~) individual is eligible for (~~(work/training release)~~) reentry center placement and/or graduated reentry programming provided that:

- (a) (~~(He or she)~~) Individual has a minimum security status for the purpose of reentry center placement;
- (b) (~~(He or she is within the last one hundred eighty days of their confinement.)~~) Individuals who are found eligible for the graduated reentry program must meet program criteria and either:
 - (i) Served at least six months total confinement and may serve no more than the last five months of the individual's term of confinement in a department approved release residence on electronic home monitoring; or
 - (ii) Able to complete the last 12 months of sentence in a reentry center with no more than the last five months of the individual's term of confinement in a department approved release residence on electronic home monitoring; or
 - (iii) Able to serve at least four months total confinement and may serve no more than the last 18 months of the individual's term of confinement in a department approved release residence on electronic home monitoring.

Partial confinement programs.

- (2) (~~(Offenders)~~) Individuals convicted of rape in the first degree shall not be eligible for work/training release reentry centers or graduated reentry program at any time during the first three years of confinement.
- (3) (~~(Offenders)~~) Individuals convicted of murder first degree are not eligible for work/training release reentry centers or graduated reentry program, without the written approval of the secretary or their designee.
- (4) (~~(Offender)~~) Individual who violates condition(s) of community (~~(supervision and is)~~) custody may be sanctioned to a reentry center for a term (~~(less than one hundred eighty days)~~) of 90 days or less.
- (5) Individual who violates condition(s) for partial confinement programs may be sanctioned to a reentry center for a term of 90 days or less, to more restrictive status, or returned to total confinement.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-050 Application—Consideration. (1) Based on the ~~((offender's))~~ individual's request to participate in ~~((a work release))~~ partial confinement programs and/or the ~~((offender's))~~ individual's need to transition through ~~((a work release))~~ partial confinement programs, the ~~((facility classification review team will refer the offender to the appropriate program))~~ department will ensure a process for screening.

(2) The ~~((community corrections officer can))~~ case manager may make recommendation for placement in a ~~((work release program))~~ reentry center as a result of violation of conditions of ~~((supervision in the))~~ community custody or partial confinement programs.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-070 Screening ((referrals)). (1) The ~~((work/training release facility supervisor or his or her designee))~~ supervisor/manager or designee shall screen the ~~((offenders))~~ individuals referred to the programs.

(2) The ~~((work/training release))~~ partial confinement programs participation is subject to a screening process ((will be)) based on established criteria for each program.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-080 Plan—Approval or denial. (1) The ~~((work release))~~ supervisor/manager or designee's or program established committee screening decision will be documented by the ~~((work/training release facility supervisor/designee on the offender tracking system))~~ supervisor/manager or designee in the individual's electronic file indicating the action taken.

(2) Approved ~~((offenders))~~ individuals will be placed in the program based on ~~((priority with high risk offenders being placed first))~~ individual needs. Disapproved ~~((offenders))~~ individuals can obtain the reasons for the denial, as documented ~~((on the offender tracking system))~~ in the individual's electronic file.

(3) An individual who is denied placement in a reentry center or graduated reentry program will be reviewed by a headquarters committee who will uphold, modify, or overturn the denial.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-090 Plan—Restrictions. The work or training site shall be within reasonable commuting distance (in most circumstances not more than ~~((fifty))~~ 50 miles) of the ~~((work/training release fa-~~

ility)) partial confinement program in which the ((offender)) individual is confined.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-095 Orientation. (1) At the time of admission, each ((work/training release offender)) partial confinement individual shall be advised in writing of:

- (a) Program goals and services available.
- (b) Rules governing conduct and program rules.
- (c) ((Disciplinary action which may be taken in the event of a serious infraction or violation of rules or special conditions.)) Incentives earned, as defined in policy, for positive behavior and program completions.
- (d) Conditions for their specified program that is applicable to them and to their success.
- (e) Disciplinary action which may be taken in the event of a serious violation of rules or special conditions. To include, but not be limited to:
 - (i) Remain confined to the ((work/training release)) partial confinement premises at all times other than the time necessary to implement the plan or when authorized under WAC 137-56-140. Any ((work/training release resident)) partial confinement individual approved for placement under a ((work/training release)) partial confinement plan who willfully fails to report to ((his or her)) their designated assignment or return to the designated place of confinement at the time specified may be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced in accordance with state law.
 - (ii) Have employment or other approved resources in order to maintain ((himself or herself)) themselves financially.
 - (iii) Not consume, ingest, inject, or possess nonprescription narcotic or "dangerous" drugs or controlled substances, or any mood altering drug or alcoholic beverages.
 - (iv) Report all income to the ((work/training facility supervisor)) reentry center manager or ((his or her)) their designee. All income, for individuals in a reentry center from any source shall be immediately placed in the ((resident's inmate)) individual's banking account by the ((facility supervisor)) reentry center manager or ((his/her)) their designee. A receipt will be issued.
 - (v) Individuals in a partial confinement program, with case manager approval, may enter into contracts for banking accounts that support their transition to the community. Each individual must provide their account information.

(2) All amendments or additions to disciplinary rules, policies, and procedures shall be posted at a specifically designated place or places in each ((work/training release facility)) reentry center in advance of their effective date if possible and for at least ((thirty)) 30 days after their effective date. ((Work/training release of offenders)) Partial confinement individuals shall be responsible for informing themselves of such postings. Complete and up-to-date copies of these rules and all program rules shall be available at each ((work/training release facility for examination)) reentry center and provided to each individual on partial confinement programs for review.

(3) The ~~((work/training release facility supervisor))~~ reentry center manager shall ensure that each ~~((work/training release resident))~~ individual has the opportunity to understand rules which relate to ~~((his/her))~~ their conduct. If the ~~((resident))~~ individual is unable to read or understand English, the rules shall be read to ~~((him/her))~~ them promptly in ~~((his/her))~~ their accustomed language.

(4) All ~~((offenders))~~ individuals will receive orientation within ~~((forty-eight))~~ 48 hours of ~~((arrival))~~ placement in a reentry center program. Orientation must be completed before the ~~((offender))~~ individual can leave the ~~((facility))~~ reentry center or leave the approved partial confinement programs location. The ~~((offender))~~ individual must sign the appropriate form indicating ~~((he/she))~~ they will comply with all the ~~((work release))~~ partial confinement program policies and program rules.

NEW SECTION

WAC 137-56-101 Application of behavior management chapter. The definitions and serious violations described herein apply to individuals committed to partial confinement programs. Partial confinement programs i.e., reentry center, community parenting alternative and graduated reentry may create their own separate agency policies if it is not viable or feasible to combine, if determined necessary by the respective administrator.

NEW SECTION

WAC 137-56-105 Definitions. For the purposes of serious violations, the following terms have the following meanings:

- (1) 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.
- (2) Attempting - Putting forth an effort to commit any violation.
- (3) Bodily harm - Physical pain or injury, illness, or impairment of physical condition.
- (4) Conspiring - Entering into an agreement with another person(s) to commit a violation.
- (5) Individual - Offender or inmate as defined in RCW 72.09.015.
- (6) Possessing - When an item(s) is found on an individual or in an individual's assigned area of responsibility.
- (7) Sex act - Includes, but is not limited to, any of the following acts: Genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration; genital or anal contact/penetration with an inanimate object; masturbation; sadistic/masochistic abuse; bondage; bestiality; and/or bodily excretory behavior which appears to be sexual in nature.
- (8) Sexual assault against a staff member - An incident in which one or more of the following actions is taken or threatened against a staff member without his/her consent or when he/she is unable to consent or refuse:
 - (a) Contact between genitalia (i.e., penis, vagina) or between genitalia and the anus involving penetration, however slight. This

does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

(b) Contact between the mouth and the penis, vagina, or anus.

(c) Penetration of the anal or genital opening of the staff member by hand, finger, or other object.

(9) Sexual contact against a staff member - Contact against a staff member without his/her consent or when the staff member is unable to consent or refuse which includes intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttock of the staff member. This does not include kicking, grabbing, or punching when the intent is to harm or debilitate rather than to sexually exploit.

(10) Sexual harassment against a staff member, visitor, or community member - Any word, action, gesture, or other behavior taken against a staff member, visitor, or community member that is sexual in nature and that would be offensive to a reasonable person.

(11) Staff member - A department of corrections employee, contract staff, or volunteer.

(12) Violation - The act of failing to comply with a rule enumerated in this chapter.

NEW SECTION

WAC 137-56-107 Adoption or revision of serious violations. (1)

The secretary may adopt and/or revise serious violations.

(2) Before adopting or revising a serious violation, the secretary shall, when applicable, follow the rule-making procedures of chapter 34.05 RCW, Administrative Procedure Act.

(3) Nothing herein shall be construed as limiting the department of corrections' exclusion from the Administrative Procedure Act under RCW 34.05.030 (1)(c).

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-110 Serious ((infractions)) violations. ((Refer to chapter 137-25 WAC, serious infractions.))

(1) Any of the following types of behavior may constitute a serious violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation.

(2) If contraband or another violation is discovered in an individual's assigned area of responsibility, such as within the confines or contents of an assigned room, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all individuals assigned responsibility for that area.

<p>Seriousness Level: Category A: Egregious Acts/Inflicting Harm/Violence</p>

<u>402</u>	<u>Committing an act that would constitute a felony or misdemeanor and that is not otherwise included in these rules.</u>
<u>403</u>	<u>Taking or holding any person hostage.</u>
<u>405</u>	<u>Possessing, manufacturing, or introducing an explosive device, any firearm, ammunition, weapon, sharpened instrument, knife, poison, or any components thereof.</u>
<u>611</u>	<u>Committing sexual assault against a staff member.</u>
<u>613</u>	<u>Committing any act of sexual contact against a staff member.</u>
<u>635</u>	<u>Committing sexual assault against another individual, as defined in department policy (i.e., aggravated sexual assault or individual-on-individual sexual assault).</u>
<u>637</u>	<u>Committing sexual abuse against another individual, as defined in department policy.</u>
<u>Seriousness Level: Category B: High Profile/Harmful/Violence Against Persons/Safety</u>	
<u>401</u>	<u>Assaulting another person.</u>
<u>404</u>	<u>Escaping from partial confinement.</u>
<u>406</u>	<u>Rioting, or inciting others to riot.</u>
<u>407</u>	<u>Setting fire.</u>
<u>408</u>	<u>Engaging in or inciting a group demonstration.</u>
<u>409</u>	<u>Fighting with another person.</u>
<u>415</u>	<u>Possessing, transferring, or soliciting any person's identification information, including current employees/contract staff or their immediate family members when not voluntarily given. Identification information includes Social Security numbers, home addresses, telephone numbers, driver's license numbers, medical, personnel, financial, or real estate information, bank or credit card numbers, or other like information not authorized by the community corrections supervisor.</u>
<u>416</u>	<u>Counterfeiting/forgery of official documents.</u>
<u>419</u>	<u>Possessing clothing or assigned equipment of an employee/contract staff.</u>
<u>437</u>	<u>Engaging in a sex act within facility boundaries.</u>
<u>438</u>	<u>Indecent exposure.</u>
<u>549</u>	<u>Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in department policy.</u>

463	<u>Making any drug, alcohol, or intoxicating substance, or possessing ingredients, equipment, items, formulas, or instructions that are used in making any drug, alcohol, or intoxicating substance.</u>
700	<u>Failing to complete or administrative termination from a DOSA treatment program. Note: This violation must be initiated by authorized employees/contract staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC. A guilty finding will result in reclassification.</u>
701	<u>Failure to comply with the DOSA program. Note: This violation must be initiated by authorized employees/contract staff and heard by a community corrections hearings officer in accordance with chapter 137-24 WAC. A guilty finding may result in reclassification or lesser sanctions.</u>
<u>Seriousness Level: Category C: Noncompliance/Attitudes and Behaviors/Court and DOC Conditions Related</u>	
410	<u>Threatening another with bodily harm or with any offense against any person or property.</u>
411	<u>Extorting or blackmailing another person.</u>
412	<u>Refusing a direct order from an employee/contract staff member to proceed to or disperse from a particular area.</u>
413	<u>Interfering with an employee/contract staff or other personnel, in the performance of their duties.</u>
414	<u>Tampering with a locking device.</u>
417	<u>Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense.</u>
418	<u>Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices.</u>
420	<u>Stealing property, possessing stolen property, or possessing another individual's property.</u>
423	<u>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.</u>

<u>425</u>	<u>Causing an innocent person to be penalized or proceeded against by providing false information.</u>
<u>659</u>	<u>Committing sexual harassment against another incarcerated individual, as defined in department policy.</u>
<u>896</u>	<u>Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, marital status or status as a state registered domestic partner, disability, veteran's status, or genetic information.</u>
<u>661</u>	<u>Committing sexual harassment against a staff member, visitor, or community member.</u>
<u>461</u>	<u>Introducing or transferring any unauthorized drug or drug paraphernalia.</u>
<u>462</u>	<u>Refusing to submit to or cooperate in a search, urinalysis, oral swab, breath alcohol test, or any testing required by policy, statute, or court order, not otherwise included in these rules, when ordered to do so by an employee/contract staff member.</u>
<u>464</u>	<u>Possessing or using an unauthorized drug, intoxicating substance or alcohol; receiving a positive test for an unauthorized drug, alcohol or intoxicating substance; possession of paraphernalia.</u>
<u>465</u>	<u>Providing a diluted, altered, or substituted urine sample.</u>
<u>472</u>	<u>Unauthorized contact with prohibited persons as defined in case plan.</u>
<u>899</u>	<u>Failing to obtain prior written authorization from the sentencing court, contrary to RCW 9.94A.645, prior to commencing or engaging in any civil action against any victim or family of the victim of any serious violent crime the individual committed.</u>
<u>477</u>	<u>Being in the community without authorization, being in an unauthorized location in the community, unaccounted time, or having unauthorized contact with prohibited persons in the community.</u>
<u>810</u> <u>*Mandatory programming</u> <u>72.09</u>	<u>Refusing to seek/maintain employment, training, or programming, or being terminated from work, training, education, or other programming for negative or substandard performance.</u>

<u>557</u> <u>*Mandatory programming 72.09</u>	<u>Refusing to participate in an available work, training, education, or other mandatory programming assignment.</u>
<u>481</u>	<u>Violating conditions of furlough.</u>
<u>485</u>	<u>Using the mail, telephone, or electronic communications in violation of any law, court order, or previous written warning, direction, and/or documented disciplinary action, or initiating communication with a minor without the approval of that minor's parent or guardian.</u>
<u>494</u>	<u>Receiving or possessing contraband.</u>
<u>Seriousness Level: Category D: Self-Destructive Behavior/Risky Behavior/Case Plan Related</u>	
<u>421</u>	<u>Using facility phones, information technology resources/systems, or related equipment intended for employee/contract staff use without authorization.</u>
<u>422</u>	<u>Possessing, manufacturing, or introducing an unauthorized tool.</u>
<u>424</u>	<u>Damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband.</u>
<u>435</u>	<u>Intentional destruction, damage, or altering any item that is not the individuals personal property, the value of which is \$10 or more.</u>
<u>436</u>	<u>Possessing any sexually explicit material(s), as defined in WAC 137-48-020.</u>
<u>439</u>	<u>Urinating, defecating, or placing feces or urine in any location other than a toilet or authorized receptacle.</u>
<u>474</u>	<u>Unauthorized modification or noncompliance of an approved case plan.</u>
<u>482</u>	<u>Violating an imposed special condition.</u>
<u>483</u>	<u>Failing to comply with any administrative or post-hearing sanction imposed for committing any violation.</u>
<u>484</u>	<u>Operating motor vehicle or being in a motor vehicle without permission.</u>
<u>486</u>	<u>Telephoning, or sending written or electronic communication to any individual in a correctional facility, directly or indirectly, without prior written approval of the superintendent/community corrections supervisor/designee.</u>
<u>Seriousness Level: Category E: General Noncompliance</u>	
<u>471</u>	<u>Failing to comply with written rules, handbook, or case plan.</u>

<u>475</u>	<u>Entering into an unauthorized contract.</u>
<u>476</u>	<u>Failing to report/turn in all earnings.</u>
<u>487</u>	<u>Possession of unauthorized items, to include money or other negotiable instruments without proper authorization.</u>
<u>491</u>	<u>Introducing, possessing, or using a cell phone, electronic/wireless device, or related equipment, without proper authorization.</u>
<u>492</u>	<u>Misusing or wasting issued supplies, goods, services, or property.</u>
<u>493</u>	<u>Out-of-bounds: Being in the room/dorm assigned to another individual under department jurisdiction or an area of the facility without authorization.</u>
<u>495</u>	<u>Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels.</u>

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-120 Provisions of supervision. (1) In meeting its responsibilities for providing supervision of ((offenders)) individuals in the ((program)) reentry center(s), the following will be provided ((at the work release facility)):

((+1)) (a) Staff on duty ((twenty-four)) 24 hours a day, seven days a week;

((+2)) (b) A check-in and check-out system to ensure that the stated whereabouts of the ((offender)) individual is known at all times, including telephonic and on-site checks at school, work, furlough, sponsored outing, pass, etc.;

((+3)) (c) Bed checks or head counts to account for the ((resident's)) individual's whereabouts; a minimum of three counts daily shall be required;

((+4)) (d) Provide adequately for the ((resident)) individual with respect to sleeping quarters, bathroom facilities, and accommodations for cooking, dining, lounging and leisure time activities;

((+5)) (e) Comply with state and local fire codes and applicable building, safety, and sanitation codes.

(2) In meeting its responsibilities for providing supervision of individuals in partial confinement programs, the following will be provided:

(a) Case managers available during business hours;

(b) A system of approved movement in the community to ensure that the stated whereabouts of the individual is known at all times, including telephonic and on-site checks at school, work, furlough, sponsored outing, pass, detention location, etc.;

(c) Reviews of electronic home monitoring equipment to ensure movement in the community was approved;

(d) Approve residential placement for the individual to ensure adequate sleeping quarters, bathroom facilities, and accommodations for cooking, dining, lounging and leisure time activities.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-140 Limits of confinement. A ~~((work/training release offender))~~ partial confinement individual will follow specified program and/or condition requirements. If an individual is enrolled in partial confinement programs, they shall be confined to the ((facili-ty)) reentry center/approved residence at all times except:

(1) When seeking or arranging for registration at a school or training facility;

(2) When working at paid employment or attending a training facility in a vocational or academic program;

(3) When in a reentry center, authorized a point-to-point pass not to exceed ~~((two))~~ four hours, ~~((excluding))~~ including travel, for the purpose of transacting personal business including a treatment regimen, between the hours of 7:00 a.m. and 10:00 p.m. and/or outside that time frame with written permission of the ~~((facility supervisor))~~ reentry center manager or designee;

(4) When authorized to participate in social and recreational activities ~~((in company with a))~~ accompanied by an authorized sponsor-escort ((between 8:00 a.m. and midnight));

(5) When on furlough;

(6) When on authorized medical/mental health appointments, sub-stance use disorder treatment, or court appearances;

(7) When ordered to perform community service/restitution;

(8) When seeking employment ~~((as approved))~~ on an approved job search pass;

(9) When in partial confinement programs, movement allowed as approved by the case manager/designee;

(10) The administrator for the confinement programs may determine an individual's program status and take nondisciplinary administrative action when an individual is no longer suitable and/or eligible for the partial confinement program;

(11) The administrator for the confinement programs may not modify or adjust decision adjudicated by a hearings officer without secretary approval.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-150 Sponsor-escort. (1) A sponsor-escort shall be a responsible citizen who shall accompany and monitor a ~~((work/training release offender))~~ reentry center individual during a preapproved social or recreational activity. The sponsor-escort must be approved by the ~~((work/training release facility supervisor or designee))~~ reentry center manager/designee; and the sponsor and ~~((resident))~~ individual must sign an agreement with the department which describes ~~((his or her))~~ their responsibilities.

(2) Persons who are on active/inactive felony probation or parole or under an active SRA sentence, shall not be approved as sponsor-escorts. Persons who have a past felony conviction and who have earned a discharge may be approved as sponsor-escorts on an individual basis by the ~~((work release supervisor, or his or her designee))~~ reentry center manager/designee.

(3) Sponsor-escorts must complete a sponsor orientation provided by the ~~((work/training release facility))~~ case manager at the reentry center before eligibility under this section.

(4) Sponsor-escorts may not be party to an active no-contact order with the ~~((offender))~~ individual.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-160 Termination of plan. At any time after approval has been granted to any ~~((work/training release offender))~~ partial confinement program individual to participate in the ~~((work/training release))~~ program, such approval may be revoked, and the ~~((offender))~~ individual may be sent to a state correctional institution or jail. A ~~((work release offender))~~ partial confinement individual may be terminated from the program as a result of a disciplinary or classification decision or the following:

(1) If requested in writing by the ~~((work/training release offender))~~ partial confinement individual;

(2) If the ~~((work/training release offender))~~ partial confinement individual lacks aptitude for the assignment or is improperly placed; or

(3) If the ~~((work/training release offender))~~ partial confinement individual has been unable to adjust or adapt to the conditions of the ~~((work/training release facility))~~ partial confinement program; or

(4) If the ~~((work/training release offender's))~~ partial confinement individual's situation and circumstances have significantly changed; or

(5) If the individual is on partial confinement programs and their circumstances, situation or living arrangements change, they may be returned to a reentry center to develop a new plan; or

(6) If the ~~((work/training release offender))~~ partial confinement individual has failed to comply with federal or state laws or local ordinances.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-170 Service of notice of proposed disciplinary action. (1) If disciplinary action is proposed, the ~~((work/training release facility))~~ supervisor/manager or ~~((community corrections officer))~~ case manager may suspend the ~~((work/training release))~~ partial confinement plan and place the ~~((offender in custody))~~ individual in total confinement pending a formal disciplinary hearing.

(2) The ~~((work/training release facility))~~ supervisor/manager or designee shall advise the ~~((offender))~~ individual in writing of the factual allegations which provide the basis for the proposed discipli-

nary action within one working day after the suspension of the ~~((work/training release))~~ partial confinement plan.

(3) If the ~~((work/training release))~~ partial confinement plan is not suspended pending the disciplinary hearing, then the ~~((facility))~~ program supervisor/manager or designee shall advise the ~~((offender))~~ individual at least ~~((twenty-four))~~ 24 hours prior to the scheduled hearing.

(4) The factual allegations may be amended and/or new allegations added at any time prior to the disciplinary hearing, provided ~~((that))~~ the ~~((work/training release offender))~~ partial confinement individual shall have notice of such new and/or amended allegations at least ~~((twenty-four))~~ 24 hours prior to the disciplinary hearing unless such notice shall be waived in writing by the ~~((offender))~~ individual.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-175 Alternatives to the formal disciplinary hearing.

When addressing serious ~~((infractions))~~ violations, the ~~((work/training release community corrections officer))~~ partial confinement case manager may, with the ~~((facility))~~ supervisor's/manager's permission, choose to address the ~~((infraction))~~ violation behavior through a re-entry team meeting, or using ~~((either))~~ a department authorized stipulated agreement ~~((or the negotiated sanction agreement))~~ process.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-180 Disciplinary hearing. (1) A ~~((work/training release offender))~~ partial confinement individual served with allegations providing the basis for a proposed disciplinary action shall be notified in writing that a hearing has been set before a department hearing officer. An allegation involving the commission by the ~~((offender))~~ individual of a serious ~~((infraction))~~ violation may be amended at anytime by the department, provided that ~~((twenty-four))~~ 24 hours notice be given to the ~~((offender))~~ individual or the ~~((offender))~~ individual agrees in writing to waive notice to respond to the allegations. The hearing will be held within eight working days of the suspension of the ~~((work/training release))~~ partial confinement plan, unless a longer time is approved by the hearings program administrator or ~~((his or her))~~ their designee. The written notice of hearing shall be given to the ~~((offender))~~ individual at least ~~((twenty-four))~~ 24 hours before the hearing unless notice is waived, in writing, and advise the ~~((offender of his or her))~~ individual of their rights, including the following:

(a) The ~~((offender))~~ individual shall be present at all stages of the hearing, except during deliberation in appropriate circumstances.

(b) The ~~((offender))~~ individual shall present ~~((his or her))~~ their own case to the hearing officer. If there is a language or communications barrier, the hearing officer shall appoint an advisor.

(c) The ~~((offender))~~ individual may have an attorney present at ~~((his/her expense, only when a felony has been alleged. Such representation is limited to advising the offender of his or her rights to re-~~

~~main silent, and does not include the right to act as an advocate throughout the hearing)) their hearing upon case-by-case determination by the hearing officer if one is warranted.~~

(d) The ~~((offender))~~ individual may testify during the hearing or remain silent, and ~~((his or her))~~ their silence will not be held against ~~((him or her))~~ them.

(e) The ~~((work/training release offender))~~ partial confinement individual may, in preparation for the hearing, ask the hearing officer that certain department or contract staff members, other ~~((work/training release offenders))~~ partial confinement individuals, and other persons be present as witnesses at the hearing. The hearing officer shall grant such request if it is determined by the hearing officer that to do so would not be unduly hazardous to the ~~((work/training release facility's))~~ partial confinement 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 ~~((work/training release offender's))~~ partial confinement individual's case.

(2) Attendance at the hearing shall be limited to parties directly concerned. The hearing officer may exclude unauthorized persons.

(3) Hearings shall be recorded and a copy of the recording maintained in accordance with the statewide retention schedule.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-200 Disciplinary hearing—Waiver. (1) At any time after having been served with an allegation providing the basis for a proposed disciplinary action, the ~~((offender))~~ individual may choose to waive ~~((his or her))~~ their right to a hearing by signing an admission of the allegation and request that the hearing be dispensed with entirely or limited only to questions of disposition. Also, the ~~((offender))~~ individual may waive, in writing, the ~~((twenty-four))~~ 24 hour notice.

(2) The ~~((offender))~~ individual may admit in writing to part of the allegations and thereby limit the scope of the hearing.

(3) In those cases where the allegation involves misbehavior or other culpability on the part of the ~~((offender, he or she))~~ individual, they shall be advised in writing that in admitting the violation and waiving the hearing, a report will be submitted which may result in the loss of ~~((work/training release))~~ partial confinement status, good time credits and/or the extension of the minimum term.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-210 Disciplinary hearing—Rules of evidence. (1) All relevant and material evidence is admissible which, in the opinion of the hearing officer, is the best evidence reasonably obtainable having due regard for its necessity, availability, and trustworthiness.

(2) All evidence material to the issues raised in the hearing shall be offered into evidence. All evidence forming the basis for the hearing officer's decision in a matter shall be offered into evidence.

(3) The ~~((work/training release offender))~~ partial confinement individual shall be allowed to call witnesses approved by the hearing officer pursuant to WAC 137-56-180 (1)(e) and to present documentary evidence in ~~((his/her))~~ their defense at the hearing when permitting the ~~((work/training release offender))~~ partial confinement individual to do so will not be unduly hazardous to the ~~((work/training release facility's))~~ partial confinement program's safety or correctional goals unless the testimony to be presented by the witness and/or the information desired to be presented is deemed by the hearing officer to be irrelevant, immaterial, unnecessarily duplicative of other information and/or testimony before the hearing officer, or otherwise found to be unnecessary to the adequate presentation of the ~~((work/training release offender's))~~ partial confinement individual's case. The testimony of all witnesses from outside the ~~((work/training release facility))~~ partial confinement program shall be considered in writing. In the event the hearing officer determines that the presence of a witness is appropriate, the hearing officer should call the witness, or in its discretion, may continue the hearing if the witness is unavailable, but will become available within a reasonable period of time: Provided, however, that if the witness is unavailable, the hearing officer may, ~~((in his or her))~~ at their discretion, consider the written testimony previously submitted.

(4) The ~~((work/training release offender))~~ partial confinement individual may question witnesses against ~~((him/her))~~ them at the discretion of the hearing officer. If the hearing officer determines that a source of information would be subject to risk or harm if ~~((his/her))~~ their 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. The hearing officer shall, out of the presence of all ~~((work/training release offenders))~~ partial confinement individuals and off the record, identify the confidential source, and how the testifying staff member received the confidential information. 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 confidential 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:

(a) Evidence from other staff members that the confidential source has previously given reliable information;

(b) Evidence that the confidential source had no apparent motive to fabricate information;

(c) Evidence that the confidential source received no benefit from providing the information;

(d) Whether the confidential source is giving first-hand information;

(e) Whether the confidential information is internally consistent and is consistent with other known facts; and

(f) 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.

(5) Documentary evidence, including written statements submitted by interested parties on behalf of the ((~~offender~~)) individual, may be received. Such evidence may include copies of documents, excerpts from documents and incorporation of written material by reference, including depositions.

(6) The hearing officer should determine if the ((~~offender~~)) individual is competent to understand the charges and proceedings or needs an interpreter to participate therein. If the ((~~offender~~)) individual is not competent or needs an interpreter, the hearing officer should postpone the hearing to secure a report on the competency of the ((~~offender~~)) individual, provide an interpreter, or take such other action as will assure the fairness and orderliness of the hearings.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-220 Disciplinary hearing—Findings and conclusions.

(1) At the conclusion of the hearing, the hearing officer will make a finding of fact as to whether ((~~or not~~)) the allegations made against the ((~~offender~~)) individual have been proven by a preponderance of the evidence presented at the hearing.

(2) If the hearing officer determines that the allegations have not been proven by a preponderance of the evidence presented at the hearing, the ((~~offender~~)) individual shall be restored/continued on ((~~work/training release~~)) partial confinement status.

(3) If the hearing officer determines that one or more of the allegations have been proven by a preponderance of the evidence presented at the hearing, the hearing officer will proceed to a disposition.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-230 Disciplinary hearing—Disposition. (1) The hearing officer shall seek and consider input from the ((~~community corrections officer, the facility contract~~)) case manager, the reentry center contract/custody staff, if applicable, staff and pertinent treatment providers.

(2) The hearing officer will consider the ((~~offender's~~)) individual's total background, any previous interventions, adjustment on ((~~work/training release~~)) partial confinement, attitude, recommendations of interested parties, and any other information relative to the ((~~offender's~~)) individual's ability to continue ((~~in the program~~)) on partial confinement. The hearing officer shall make a determination as to whether or not the ((~~offender~~)) individual has earned good time credits toward release, and whether the matter should be referred to

the indeterminate sentence review board or the court for possible increase in the inmate's or ~~((offender's))~~ individual's minimum term.

(3) The ~~((offender))~~ individual shall be present at all stages of the hearing, except for deliberation and even during deliberation when appropriate, and shall have the opportunity to make argument(s) ~~((in his or her))~~ on their own behalf.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-240 Disciplinary hearing—Decision. (1) The hearing officer may:

(a) Restore the ~~((work/training release offender to his or her work/training release))~~ partial confinement individual to their partial confinement status under the same or modified conditions as the original plan; or

(b) Restrict the ~~((offender))~~ individual to the ~~((work/training release facility))~~ partial confinement program for up to ~~((thirty))~~ 30 days; or

(c) Require restitution be made by the ~~((work/training release offender))~~ partial confinement individual; or

(d) Require extra duty to be performed by the ~~((offender))~~ individual; or

(e) Revoke approval of an approved sponsor; or

(f) Deny good conduct time; or

(g) Terminate the ~~((work/training release))~~ reentry center plan and return the ~~((work/training release offender to an institution/jail, or facility))~~ partial confinement individual from a reentry center to a prison/institution/jail, or an electronic home monitoring individual to a reentry center or a prison/institution/jail.

(2) Nothing in this section shall preclude subsequent reclassification of the ~~((work/training release offender))~~ partial confinement individual or placement into administrative segregation if demonstrable cause exists to support this action and is approved by the administrator.

(3) The hearing officer shall notify the ~~((offender))~~ individual orally within one working day and confirm the decision in writing within five working days. The written decision shall specify the evidence upon which the hearing officer relied and shall include a description of the circumstances surrounding the allegation(s) upon which the termination of the ~~((work/training release))~~ partial confinement is based, the reasons for the decision, a discussion of the ~~((offender's))~~ individual's personal culpability in the actions which have led to the termination, and an evaluation of the ~~((offender's))~~ individual's progress, attitudes, need for further programs including ~~((work training))~~ reentry center alternatives.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-250 Disciplinary hearing—Appeal. The ~~((offender))~~ individual may appeal the decision of the hearing officer to the area

appeals panel. Appeal requests must be in writing, must be specific and based on objection to the procedures used or the information available to the hearing officer in making (~~his or her~~) their decision. Appeals must be submitted within seven calendar days of the hearing officer's written decision. For reasons of community protection, all sanctions ordered by the hearing officer will be imposed following the hearing and will not be stayed. The appeals panel, upon receipt of an appeal, will review the findings and decision of the hearing officer and either:

- (1) Affirm, or affirm and modify to a lesser sanction the decision of the hearing officer; or
- (2) Reverse the decision of the hearing officer; or
- (3) Remand for a rehearing.

AMENDATORY SECTION (Amending WSR 86-06-012, filed 2/21/86)

WAC 137-56-280 Applicability. WAC 137-56-170 through (~~137-56-260~~) 137-56-250 shall not apply to the termination of a (~~work/training release~~) partial confinement plan pursuant to WAC 137-56-160 (2) (~~(a), (b), or (c)~~). WAC 137-56-080 and 137-56-170 through (~~137-56-260~~) 137-56-250 shall not apply to the termination or modification of a (~~work/training release~~) partial confinement plan by the secretary pursuant to WAC 137-56-160(1).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|--------------|
| WAC 137-56-260 | Time limits. |
| WAC 137-56-270 | Exceptions. |