

determination and evaluation methodologies, processes, or systems may be used if they yield pavement condition ratings comparable to the process described in WAC 136-320-030(2). Counties intending to use an alternative process must satisfactorily demonstrate to the CRABoard that the alternative process is based on sound pavement engineering principles and is comparable in quality and scale through research results, documented conversion equations, statistical sampling, or other methods.

[Statutory Authority: RCW 36.78.070 and 46.68.095(4). 93-14-003, § 136-320-040, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 36.78.070 and 1990 c 42. 90-22-082 (Order 81), § 136-320-040, filed 11/6/90, effective 12/7/90.]

WAC 136-320-050 State-wide pavement condition data file. The county road administration board shall maintain a pavement condition data file, organized by county, containing the pavement condition ratings as provided annually by each county.

[Statutory Authority: RCW 36.78.070 and 46.68.095(4). 93-14-003, § 136-320-050, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 36.78.070 and 1990 c 42. 90-22-082 (Order 81), § 136-320-050, filed 11/6/90, effective 12/7/90.]

WAC 136-320-060 Annual review. On an annual basis, beginning in calendar year 1993, the executive director of the county road administration board shall review the implementation of and, beginning in calendar year 1995, the compliance with the requirements of WAC 136-320-030 or 136-320-040 and report the results to the CRABoard.

[Statutory Authority: RCW 36.78.070 and 46.68.095(4). 93-14-003, § 136-320-060, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 36.78.070 and 1990 c 42. 90-22-082 (Order 81), § 136-320-060, filed 11/6/90, effective 12/7/90.]

WAC 136-320-070 CRAB assistance. To enable each county to meet its eligibility requirements, CRAB shall provide a PMS software application and training as part of its agency-supported county road information system. CRAB shall also provide to counties, upon request, administrative and technical assistance related to defining, developing, operating, managing, and utilizing pavement management technology.

[Statutory Authority: RCW 36.78.070 and 46.68.095(4). 93-14-003, § 136-320-070, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 36.78.070 and 1990 c 42. 90-22-082 (Order 81), § 136-320-070, filed 11/6/90, effective 12/7/90.]

WAC 136-320-080 Use of pavement management system data for distribution of county arterial preservation account funds. The results and/or data from the individual or collective county PMS's will not be used to distribute county arterial preservation funds nor to establish priorities for specific projects or otherwise alter the statutory fund distribution. Said results and/or data will be used to evaluate regional or state-wide arterial pavement preservation and rehabilitation needs and to demonstrate compliance with the enabling legislation.

[Statutory Authority: RCW 36.78.070 and 46.68.095(4). 93-14-003, § 136-320-080, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 36.78.070 and 1990 c 42. 90-22-082 (Order 81), § 136-320-080, filed 11/6/90, effective 12/7/90.]

Title 137 WAC CORRECTIONS, DEPARTMENT OF

Chapters

137-95 Community correction prerelease facilities.

Chapter 137-95 WAC

COMMUNITY CORRECTION PRERELEASE FACILITIES

Reviser's note: The following chapter has **not** been adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was filed in the code reviser's office and was published in the Washington State Register. It is published in the Washington Administrative Code exactly as filed by the agency with history notes added by code reviser's office.

WAC

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WAC 137-95-010 Purpose. The purpose of this chapter is to set forth the rules and regulations governing the administration of the department's prerelease programs.

[93-19-029, § 137-95-010, filed 9/7/93, effective 10/1/93.]

WAC 137-95-020 Definitions. (1) "Secretary" is the secretary of the department of corrections.

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

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

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

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

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

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

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

[93-19-029, § 137-95-020, filed 9/7/93, effective 10/1/93.]

WAC 137-95-030 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.

[93-19-029, § 137-95-030, filed 9/7/93, effective 10/1/93.]

WAC 137-95-040 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.

[93-19-029, § 137-95-040, filed 9/7/93, effective 10/1/93.]

WAC 137-95-050 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.

[93-19-029, § 137-95-050, filed 9/7/93, effective 10/1/93.]

WAC 137-95-060 Notification. (1) Each offender of a prerelease facility shall be advised in writing of:

(a) His/her 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 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 institution for offender examination.

(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 his/her accustomed language.

[93-19-029, § 137-95-060, filed 9/7/93, effective 10/1/93.]

WAC 137-95-070 Definition of misconduct. Misconduct shall consist of:

(1) Any act described in WAC 137-95-080 as a general infraction;

(2) Any act described in WAC 137-95-090 as a serious infraction; or

(3) Any act proscribed by a rule adopted by an institution pursuant to WAC 137-95-050.

(4) Failure to abide by any written or oral direction.

[93-19-029, § 137-95-070, filed 9/7/93, effective 10/1/93.]

WAC 137-95-080 General infractions. Any of the following types of behavior shall constitute a general infraction:

051- Unauthorized possession of money or other negotiable instruments totaling less than five dollars;

052- Loaning of property for profit;

053- Possession of anything not authorized for retention or receipt by an offender and/or not issued to him/her by regular facility channels;

055- Intentionally mutilating, altering, defacing, or destroying items issued by the state the value of which is less than five dollars;

103- Refusing to obey a lawful order of any staff member;

104- Unexcused absence from work or any assignment;

110- Theft of food;

202- Abusive language directed to a staff member;

203- Lying or knowingly providing a false statement to a staff member;

205- Participating in a meeting or gathering that has been disapproved in advance, in writing, by the facility administrative staff;

210- Being in an area identified by a facility as an area where the presence of offenders is unauthorized;

211- Intentional failure to follow published safety or sanitary regulations;

212- Using any equipment or machinery which is not specifically authorized;

213- Using any equipment or machinery contrary to instructions or posted safety standards;

214- Intentional failure to stand count;

251- Smoking where prohibited;

301- Failure to keep one's person and one's quarters in accordance with published and posted standards, rules, or regulations;

302- Tattooing or self-mutilation;

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| 303- | Unauthorized use of mail or telephone; | 832- | Escaping/absconding from the facility; |
| 305- | Correspondence or conduct with a visitor in violation of published and posted regulations; | 833- | Using physical force in the act of escape; |
| 351- | Giving, selling, or trading money or anything of value to, or accepting or purchasing money or anything of value from another inmate, a member of his/her family, or his/her friend, except when authorized; or | 834- | Escaping/absconding from the facility and apprehension out-of-state; |
| 360- | Any inappropriate physical contact with a member of the opposite gender that is defined in the field instruction covering fraternization. | 843- | Possessing, introducing, or using alcohol; |
| 400- | Attempting to commit any of the above offenses, or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself. | 844- | Possessing, introducing, or using marijuana or related paraphernalia; |
| | | 845- | Possessing, introducing, transferring, or using any narcotics, controlled substance, or related paraphernalia unless authorized by the supervisor pursuant to a valid prescription or order issued in the course of professional treatment by a licensed medical practitioner; |
| | | 846- | Refusing to submit to a urinalysis, breathalyzer, or other standard sobriety test; |
| | | 851- | Lying to a hearing committee; |
| | | 852- | Lying to a staff member which causes an innocent person to be penalized, disciplined, or proceeded against; |
| | | 853- | Intentionally or recklessly setting a fire; |
| | | 854- | Intentionally or recklessly destroying or damaging state property, or the property of another person, in excess of five dollars; |
| | | 855- | Stealing (theft) or knowingly possessing stolen property; |
| | | 856- | Refusing to and/or failing to submit to a body search when lawfully ordered to do so by staff; |
| | | 857- | Refusing and/or failing to work or attend regularly scheduled assignments; |
| | | 858- | Intentionally interfering with a staff member in the performance of his/her duties; |
| | | 859- | Gambling; |
| | | 860- | Possessing money or other negotiable instruments of five dollars or more without prior authorization; |
| | | 861- | Performing or participating in a marriage ceremony in the facility or on the facility grounds, except when such marriage was approved by the superintendent; |
| | | 870- | Rioting; |
| | | 871- | Inciting others to riot; |
| | | 872- | Engaging in or inciting prohibited group demonstration; |
| | | 873- | Intentionally interfering with the taking of count; |
| | | 874- | Counterfeiting, foregoing, falsification, or unauthorized reproduction of any document, article of identification, money, security, or official paper; |
| | | 875- | Making intoxicants, narcotics, or other controlled substances; |
| | | 876- | Giving or offering any official staff member or volunteer a bribe or anything of value for a favor or unauthorized service; |
| | | 877- | Committing four or more general infractions within a six-month period all of which arise out of separate incidents and have been reported in writing; |
| | | 878- | Intentionally failing to comply with an administrative or post-hearing sanction; or |

[93-19-029, § 137-95-080, filed 9/7/93, effective 10/1/93.]

WAC 137-95-090 Serious infractions. Any of the following types of behavior shall constitute a serious infraction:

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| 800- | Creating a risk to the orderly operation of the facility or the health and safety of its residents, staff, or visitors; |
| 801- | Assaulting any person which results in the hospitalization of the person assaulted; |
| 802- | Assaulting any person; |
| 803- | Extortion, blackmail, demanding, or receiving money or anything of value in return for protection against others, or under threat of informing; |
| 804- | Engaging in sexual acts with others within the facility, with the exception of extended family visits as authorized by the superintendent; |
| 805- | Fighting with any person, provided, however, that self-defense may be a defense to a serious infraction for fighting; |
| 806- | Threatening another with bodily harm or with any offense against his/her person; |
| 810- | Intentionally failing to seek or maintain employment or training or to maintain oneself financially; |
| 811- | Entering into an unauthorized contract; |
| 812- | Failing to report or turn in all earnings or income; |
| 815- | Failing to comply with all federal, state, and local laws, or court orders; |
| 816- | Tampering with or blocking any locking device; |
| 817- | Possessing or introducing into the facility an explosive or any ammunition or components of explosives or ammunitions; |
| 818- | Possessing or introducing into the facility any unauthorized tool; |
| 819- | Possessing or introducing into the facility any gun, firearm, weapon, sharpened instrument, knife, or components thereof; |
| 821- | Holding a person hostage or restraining a person against his/her will; |
| 825- | Violating conditions of furlough; |
| 831- | Failing to return to the facility from an authorized sign out; |

- 900- Attempting to commit or aiding another person to commit a serious infraction as enumerated in this section. Such action shall be considered the same as commission of the offense itself.

[93-19-029, § 137-95-090, filed 9/7/93, effective 10/1/93.]

WAC 137-95-100 Cell tag. Each offender of a multiple-offender cell will be held accountable for an infraction that occurs within the confines of such cell unless he/she can establish a lack of involvement in the infraction.

[93-19-029, § 137-95-100, filed 9/7/93, effective 10/1/93.]

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

[93-19-029, § 137-95-110, filed 9/7/93, effective 10/1/93.]

WAC 137-95-120 Reporting to law enforcement authorities. (1) It shall be the duty of the superintendent to report any violation of a federal, state, or local law to law enforcement authorities.

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

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

[93-19-029, § 137-95-120, filed 9/7/93, effective 10/1/93.]

WAC 137-95-130 Infractions—On-site adjustment. (1) In the event of a general infraction, a staff member may make an on-site adjustment which may consist of:

- (a) Counseling, warning, or reprimanding the offender; and/or

(b) Causing the offender to remove himself/herself from the situation immediately involved in the violation.

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

[93-19-029, § 137-95-130, filed 9/7/93, effective 10/1/93.]

WAC 137-95-140 Infractions—Report on. (1) In the event of a general infraction a staff member may prepare and submit an infraction report. In the event of a serious infraction the staff member shall prepare and submit an infraction report.

(2) The infraction report shall include:

- (a) A description of the incident;
 (b) The time and place of the incident;
 (c) The names of witnesses;
 (d) The specific rule alleged to have been violated;
 (e) A description of any action taken; and
 (f) A recommendation of any action to be taken.

(3) The infraction report shall be signed by the staff member and submitted promptly to the supervisory employee or unit team designated by the superintendent to receive such reports.

[93-19-029, § 137-95-140, filed 9/7/93, effective 10/1/93.]

WAC 137-95-150 General infraction report—Action on report. (1) The supervisory employee or unit team receiving a general infraction report shall decide within five working days of receipt of the report, unless an extension is granted by the superintendent, whether to:

- (a) Take no further action, in which case the report shall be destroyed promptly; or
 (b) Take administrative action as provided for in WAC 137-95-210.

(2) General infractions handled under this rule may be accumulated for purposes of invoking the provisions of WAC 137-95-090 with respect to serious infraction 877.

[93-19-029, § 137-95-150, filed 9/7/93, effective 10/1/93.]

WAC 137-95-160 Appeal to hearing officer. (1) The decision of the supervisory employee or the unit team to take administrative action pursuant to WAC 137-95-210 may be appealed by the offender to the hearing officer. Such appeal must be in writing and include the reason why the offender believes the administrative action taken was improper or inappropriate. The appeal must be delivered to the hearing officer within forty-eight hours after the offender receives notice of the administrative action taken by the supervisory employee or the unit team.

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

- (a) Schedule a hearing on the appeal in accordance with the rules contained in this chapter; or
 (b) Affirm, modify downward, or reverse the administrative action without a hearing; provided, however, if the administrative action imposes a sanction described in WAC 137-95-260, the hearing officer may not so affirm or modify without conducting a hearing.

(3) The offender shall be notified orally of the decision of the hearing officer on the offender's appeal within twenty-four hours after such decision, and in writing within seventy-two hours after such decision, unless such time periods are extended by the superintendent.

(4) All sanctions imposed by the administrative action of the supervisory employee or the unit team pursuant to WAC 137-95-260 shall be stayed pending the appeal under this section and any hearing scheduled by the hearing officer to consider such appeal.

[93-19-029, § 137-95-160, filed 9/7/93, effective 10/1/93.]

WAC 137-95-170 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 inmate so that he/she cannot render a fair judgment in the hearing, regardless of the manner by which such bias was acquired.

[93-19-029, § 137-95-170, filed 9/7/93, effective 10/1/93.]

WAC 137-95-180 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 137-95-190.

[93-19-029, § 137-95-180, filed 9/7/93, effective 10/1/93.]

WAC 137-95-190 Prehearing procedures—Restriction of offender. (1) Prior to and during a hearing on a serious infraction:

(a) An offender may be restricted to a specific area without loss of his/her classification status when there is a reasonable belief that he/she is a substantial security risk; or

(b) An offender who is reasonably believed to be of danger to himself/herself or to others, in serious danger from others, or a danger to the order and security of the facility may, upon written verification by the shift supervisor, that such danger is reasonably believed to exist, be restricted to his/her own room or cell or placed in detention. Such restriction must be approved by the superintendent within twenty-four hours after the confinement;

(c) An offender shall not be confined or segregated for more than five working days unless there is an intervening hearing on the incident involved or the offender or the facility, for good cause, require additional time not to exceed seventy-two hours to prepare its or his/her case for the hearing.

(2) Confinement or restriction as authorized in this rule shall not limit the right of an offender to prepare an adequate defense to the charge(s) against him/her.

(3) An offender confined or restricted as authorized in this section shall be entitled to the same rights as those committed to segregation by the hearing officer following the hearing, as set forth in WAC 137-28-110.

(4) An offender confined or restricted as authorized in this section shall receive credit for time served in such manner if he/she is subsequently found guilty of the offense by the hearing officer.

[93-19-029, § 137-95-190, filed 9/7/93, effective 10/1/93.]

WAC 137-95-200 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 137-95-240; 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 provided in accordance with WAC 137-28-085(2);

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

(5) Schedule the hearing within five 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.

[93-19-029, § 137-95-200, filed 9/7/93, effective 10/1/93.]

WAC 137-95-210 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, every effort shall be made to have such witnesses present to testify at the hearing: *Provided, however,* the written statements of such staff members may be considered in their absence upon a showing of good cause.

(7) The hearing officer shall have the authority to cross-examine the staff member reporting the infraction.

(8) The offender shall be allowed to call witnesses and 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 unless the witness and/or information desired to be presented is deemed to be 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. The testimony of all witnesses from outside the facility shall be considered in writing. In the event the hearing officer determines that the presence of a witness is appropriate, the hearing officer will call the witness or continue the hearing until such time as the witness is available. If the witness is unavailable, the hearing officer may, in his/her discretion, consider the written testimony previously submitted.

(9) The offender may question witnesses against him/her at the discretion of the hearing officer. If the hearing officer determines that an offender witness would be subject to risk of harm if his/her identity were disclosed, testimony of the offender witness may be introduced by the testimony of a staff member to whom the information was provided by the offender witness and/or the affidavit of the offender witness.

If the staff member to whom the offender witness provided information is, for good cause, unavailable, the written statement of such uninvolved staff member may be used.

(10) The hearing officer shall, out of the presence of all offenders, inquire as to the identification of any anonymous offender witness, and as to how the testifying staff member received such information. The refusal of the staff member presenting the testimony of the unidentified offender witness to identify such offender shall make the testimony inadmissible unless the refusal to identify the witness is approved by a staff member with the rank of captain or above based on that staff member's determination of good cause for nondisclosure and that the informant is reliable. The hearing officer must make an independent determination as to the reliability of the informant and credibility of the information offered, except that the hearing officer may accept an assurance of credibility from a staff member who approves the nondisclosure of identity of the offender witness.

[93-19-029, § 137-95-210, filed 9/7/93, effective 10/1/93.]

WAC 137-95-220 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 orally within twenty-four hours of the hearing and 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.

[93-19-029, § 137-95-220, filed 9/7/93, effective 10/1/93.]

WAC 137-95-230 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.

[93-19-029, § 137-95-230, filed 9/7/93, effective 10/1/93.]

WAC 137-95-240 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 inmate'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.

[93-19-029, § 137-95-240, filed 9/7/93, effective 10/1/93.]

WAC 137-95-250 Sanctions—Authority to impose.

(1) If the hearing officer determines that an offender is guilty of a serious infraction as enumerated in WAC 137-95-090, he/she may impose one or more of the sanctions provided in WAC 137-95-260.

(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) The hearing officer may review any decision he/she has previously made and may modify downward any sanction previously imposed.

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

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

[93-19-029, § 137-95-250, filed 9/7/93, effective 10/1/93.]

WAC 137-95-260 Sanctions—Types. (1) For general infractions enumerated in WAC 137-95-080 or classified as general infractions by supplementary local rules, one or more of the following sanctions may be imposed:

(a) Reprimand and/or warning;

(b) 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;

(c) Confinement to room or cell except for attendance at work or school assignment, religious service, or meals, not to exceed ten days;

(d) 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

(e) Up to one hundred twenty hours of extra work duty.

(2) For serious infractions enumerated in WAC 137-95-090, one or more of the following sanctions may be imposed:

(a) Any of the sanctions enumerated in this section;

(b) Loss of specified privileges for a period of time not to exceed twenty days except that an offender shall not be deprived of an opportunity for daily exercise;

(c) Evening lockup or confinement to quarters for ten days;

(d) Weekend and/or holiday lockup or confinement to quarters for a thirty-day period. For purposes of this rule, a "weekend" shall be deemed to begin at the end of the Friday workday;

(e) Confinement to cell except for meals, or with meals in cell, with or without curtailment of job assignment for a period not to exceed ten days;

(f) Custody level will be determined by the department's classification process—DOC Policy #300.380;

(g) Recommendations to the classification committee/classification officer for transfer to another facility only when, as result of the infraction committed, the offender is unable to function in the facility of present confinement, or if other disciplinary methods have been attempted and failed;

(h) Transfer to the detention facility for a period not to exceed ten consecutive days;

(i) Restitution for damage done to any property or loss of any property assigned to the offender. Funds may be withdrawn from the offender's account to make restitution under this rule: *Provided, That* an offender's account shall not be reduced to less than five dollars under this subsection.

[93-19-029, § 137-95-260, filed 9/7/93, effective 10/1/93.]

WAC 137-95-270 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.

[93-19-029, § 137-95-270, filed 9/7/93, effective 10/1/93.]

WAC 137-95-280 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 of its receipt 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 not be imposed on the offender nor shall his/her custody be subject to change unless there are grounds for detention as provided in WAC 137-95-190 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.

[93-19-029, § 137-95-280, filed 9/7/93, effective 10/1/93.]

WAC 137-95-290 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.

[93-19-029, § 137-95-290, filed 9/7/93, effective 10/1/93.]

**Title 139 WAC
CRIMINAL JUSTICE TRAINING
COMMISSION**

Chapters

139-05 Law enforcement.

139-10 Corrections.

Chapter 139-05 WAC

LAW ENFORCEMENT

WAC

139-05-240

Requirements of basic law enforcement academy.

139-05-242

Readmission to basic law enforcement academy.

139-05-250

Basic law enforcement curriculum.

139-05-910

Repealed.

139-05-912

Requirement of training for fire marshals.

**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

139-05-910

Requirement of training for fire marshals. [Statutory Authority: RCW 43.101.080(2). 86-19-021 (Order 1-B), § 139-05-910, filed 9/10/86.] Repealed by 93-13-100, filed 6/21/93, effective 7/22/93. Statutory Authority: RCW 43.101.080(2).

WAC 139-05-240 Requirements of basic law enforcement academy. (1) Each trainee in a basic law enforcement academy shall receive certification only upon full and successful completion of the academy process as prescribed by the Washington state criminal justice training commission. The performance of each trainee shall be evaluated as follows:

(a) **Scholarship.** A standardized examination process shall be utilized by all basic law enforcement academies sponsored or conducted by the [Washington state criminal justice training] commission, in evaluating the level of scholastic achievement of each trainee. Such process shall include the application of a designated minimum passing score to each subject area and the availability of a retesting procedure. Failure to achieve the required minimum passing score will result in termination of academy assignment[;.] provided that any unsuccessful trainee whose beginning date of continuous law enforcement employment precedes January 1, 1978, may be allowed to audit the remainder of the academy upon a determination by the coordinator of law enforcement training that such audit would be beneficial to the trainee and have no adverse effect upon the other attendees.

(b) **Physical performance.** A standardized evaluation process shall be utilized by all basic law enforcement academies sponsored or conducted by the commission in evaluating the level of physical performance of each trainee. Such process shall include the application of pass/fail grading to designated instructional objectives for physical performance and the availability of a retesting procedure. Failure to achieve a final grade of pass in physical training, including defensive tactics, shall preclude certification.

(c) **Department and conduct.** Failure to maintain an exemplary standard of department and conduct or to adhere to all rules, regulations and policies of a basic law enforcement academy sponsored or conducted by the commission may result in termination of academy assignment.

(2) Upon the written request of a trainee, or the head of a trainee's employing agency, any action affecting such trainee's status or eligibility for certification shall be re-