

[Statutory Authority: Chapter 36.79 RCW. 01-05-008, § 136-170-030, filed 2/8/01, effective 3/11/01; 99-01-021, § 136-170-030, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 36.79.060. 96-17-013, § 136-170-030, filed 8/12/96, effective 9/12/96. Statutory Authority: RCW 36.79.060. 94-16-112, § 136-170-030, filed 8/2/94, effective 9/2/94. Statutory Authority: Chapter 36.78 RCW. 84-16-065 (Order 56), § 136-170-030, filed 7/30/84.]

Chapter 136-210 WAC

DESIGN STANDARDS FOR RURAL ARTERIAL PROGRAM PROJECTS

WAC

136-210-020	Applicable design standards.
136-210-030	Deviations from design standards.
136-210-040	Report of assistant secretary for highways and local programs.
136-210-050	Project approval with deviation.

WAC 136-210-020 Applicable design standards.

Geometric design of all RAP projects including all bridges shall, unless otherwise approved by the CRABoard, be in accordance with the city and county design standards for the construction of urban and rural arterials and collectors as adopted November 30, 1994, or as they may be revised from time to time thereafter in accordance with RCW 35.78.030 and 43.32.020.

[Statutory Authority: Chapter 36.79 RCW. 01-17-104, § 136-210-020, filed 8/21/01, effective 9/21/01. Statutory Authority: RCW 36.78.070 and 36.79.060. 96-17-013, § 136-210-020, filed 8/12/96, effective 9/12/96. Statutory Authority: Chapter 36.78 RCW. 84-16-065 (Order 56), § 136-210-020, filed 7/30/84.]

WAC 136-210-030 Deviations from design standards.

Deviation from the specified design standards may be requested by the county engineer in responsible charge of the project when circumstances exist which would make application of adopted standards exceedingly difficult. Whenever a deviation request is to be made on a project, it shall be so noted on the project application submitted in accordance with WAC 136-161-050. Request for deviation shall be made to the WSDOT assistant secretary for highways and local programs.

[Statutory Authority: Chapter 36.79 RCW. 01-05-009, § 136-210-030, filed 2/8/01, effective 3/11/01; 98-09-070, § 136-210-030, filed 4/20/98, effective 5/21/98. Statutory Authority: RCW 36.78.070 and 36.79.060. 96-17-013, § 136-210-030, filed 8/12/96, effective 9/12/96. Statutory Authority: Chapter 36.78 RCW. 84-16-065 (Order 56), § 136-210-030, filed 7/30/84.]

WAC 136-210-040 Report of assistant secretary for highways and local programs.

Whenever the CRABoard meets to approve RAP projects the assistant secretary for highways and local programs shall provide a written report on his action in response to deviation requests, if any, made on individual projects. Failure of the assistant secretary for highways and local programs to report in response to a deviation request within thirty days of receipt of such request shall be considered as approval.

[Statutory Authority: Chapter 36.79 RCW. 01-05-009, § 136-210-040, filed 2/8/01, effective 3/11/01. Statutory Authority: RCW 36.78.070 and 36.79.060. 96-17-013, § 136-210-040, filed 8/12/96, effective 9/12/96. Statutory Authority: Chapter 36.78 RCW. 84-16-065 (Order 56), § 136-210-040, filed 7/30/84.]

WAC 136-210-050 Project approval with deviation.

After having received the report of the assistant secretary for highways and local programs in response to deviation requests, the CRABoard shall proceed with RAP project approval in accordance with WAC 136-161-050. Proposed projects for which the deviation request has been denied shall not be approved.

[Statutory Authority: Chapter 36.79 RCW. 01-05-009, § 136-210-050, filed 2/8/01, effective 3/11/01. Statutory Authority: RCW 36.78.070 and 36.79.060. 96-17-013, § 136-210-050, filed 8/12/96, effective 9/12/96. Statutory Authority: Chapter 36.78 RCW. 84-16-065 (Order 56), § 136-210-050, filed 7/30/84.]

Title 137 WAC CORRECTIONS, DEPARTMENT OF

Chapters

137-04
137-28
137-52

137-104
137-150

Introductory.

Prisons—Discipline.

Resident of adult correctional institution escorted leave of absence.

Community custody violation hearings.

Access to mental health records.

Chapter 137-04 WAC

INTRODUCTORY

WAC

137-04-010	Definitions.
137-04-020	Structure of the department.

WAC 137-04-010 Definitions. As used in this title:

(1) "Secretary" means the secretary of the department of corrections.

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

(3) "Inmate" or "offender" means any person committed to the custody or under the jurisdiction of the department.

[Statutory Authority: RCW 42.17.250. 01-03-079, § 137-04-010, filed 1/16/01, effective 2/16/01; 82-04-023 (Order 82-3), § 137-04-010, filed 1/26/82.]

WAC 137-04-020 Structure of the department. (1)

The executive head of the department is the secretary who is appointed by the governor with the consent of the senate, and serves at the pleasure of the governor. The secretary manages the department and is responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons.

(2) The department is organized into three offices: The office of the secretary; the office of correctional operations; and the office of administrative services. The office of correctional operations and the office of administrative services are headed by deputy secretaries who report to the secretary. The responsibilities of these offices are:

(a) The office of the secretary is responsible for providing a variety of services for the department, including, gov-

ernment relations and constituent affairs, public information, planning and research, quality programs, workplace diversity, and victim witness and community protection.

(b) The office of correctional operations is responsible for the supervision of adult felony offenders placed under the department's jurisdiction by the superior courts or the indeterminate sentencing review board and the operation of all adult correctional facilities, including the Washington State Penitentiary; the Washington Corrections Center; the Monroe Correctional Complex; the McNeil Island Corrections Center; the Airway Heights Corrections Center; the Clallam Bay Corrections Center; the Stafford Creek Corrections Center; the Washington Corrections Center for Women; the Cedar Creek Corrections Center; the Coyote Ridge Corrections Center; the Larch Corrections Center; the Olympic Corrections Center; the Ahtanum View assisted living facility; the Pine Lodge prerelease facility; the Tacoma prerelease facility; and such other state correctional institutions, camps or facilities as may hereafter be established. The office of correctional operations is also responsible for the supervision of adult felony offenders within the community, including offenders in the work release program and other community residential programs. The office also administers correctional industries, all offender programs, and policy.

(c) The office of administrative services is responsible for providing a variety of services to the other offices of the department including financial and management services; information technology; capital planning and development; siting; rules, contracts, and public disclosure; human resources; and risk management and safety.

[Statutory Authority: RCW 42.17.250. 01-03-079, § 137-04-020, filed 1/16/01, effective 2/16/01; 82-04-023 (Order 82-3), § 137-04-020, filed 1/26/82.]

Chapter 137-28 WAC PRISONS—DISCIPLINE

WAC

137-28-220	General infractions.
137-28-240	General infractions—Sanctions.
137-28-260	Serious infractions.

WAC 137-28-220 General infractions. (1) Any of the following types of behavior may constitute a general infraction:

Unauthorized possession/theft

- 051 - Unauthorized possession of money, stamps or negotiable instruments the total value of which is less than five dollars.
- 053 - Possession of anything not authorized for retention or receipt by an inmate and/or not issued to an inmate by regular institutional channels.
- 255 - Misuse or waste of issued supplies, goods, services or property, the replacement value of which is less than ten dollars.
- 310 - Pretending or failing to take prescribed medication that the inmate has accepted by concealing or retaining a single or daily dose.
- 354 - Theft of food, the value of which is five dollars or less.

- 356 - Possession of unauthorized amount of otherwise authorized clothing, bedding, or issued supplies.

Loaning/trading

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

Altering/destroying property

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

Disruptive behavior/lying

- 202 - Abusive language, harassment or other offensive behavior directed to or in the presence of staff, visitors, inmates, or other persons or groups.
- 203 - Lying to a staff member.
- 244 - Unauthorized displays of sexual affection with another inmate.
- 353 - Disruptive behavior.
- 355 - Horseplay, roughhousing or any other unauthorized physical contact between inmates.
- [520 - Unauthorized demonstration, practice or use of martial arts.]

Failure to follow rules and orders

- 102 - Failure to follow any written rules or policies adopted by the institution and not specified within this chapter or in local disciplinary rules.
- 103 - Refusing or failing to obey an order, oral or written, of any staff member.
- 210 - Out of bounds; being in an area where the presence of the inmate is unauthorized.
- 214 - Interfering or failing to comply with count procedures.
- 251 - Smoking and possession of tobacco products where prohibited.
- 301 - Failure to keep your person or your quarters in accordance with institution rules or policies.
- [661 - Performing or taking part in an unauthorized marriage.]

Unauthorized communication/visitor contact

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

Inappropriate use of equipment

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

Unexcused absence/feigning illness

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

Inappropriate sexual behavior

- 728(a) - Possession of any written, photographic or hand-drawn material that depicts a sexually explicit act as defined in WAC 137-28-160.

(2) In determining whether a #728(a) infraction or a #728(b) infraction pursuant to WAC 137-28-260 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-28-160.

[01-22-094, § 137-28-220, filed 11/6/01, effective 12/6/01. Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-220, filed 5/2/00, effective 6/2/00; 97-03-041, § 137-28-220, filed 1/10/97, effective 2/4/97. 95-15-044, § 137-28-220, filed 7/13/95, effective 8/15/95.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

Reviser's note: The bracketed material above reflects the amendments that were indicated in WSR 01-22-094, filed on November 6, 2001. These amendments were suspended until further notice by WSR 02-01-001, filed on December 5, 2001. Further information will be published in the Washington State Register when filed by the department of corrections.

WAC 137-28-240 General infractions[—Sanctions].
[Sanctions.]

For being found guilty of any general infraction, one or more of the following sanctions may be imposed:

- (1) Reprimand or warning;
- (2) Issuance of a written order to cease a problematic behavior. The order will include a warning that if the behavior is repeated within a specified period (not to exceed one hundred eighty days) the inmate will be charged with violation of serious violation (WAC 137-28-260) #658.
- (3) Loss of a privilege or privileges as specified by the supervisor or unit team 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;
- (4) Confinement to room or cell except for attendance at work or school assignment, religious service, or meals, or law library if a documented court deadline has been imposed, not to exceed ten days;
- (5) Up to one hundred twenty hours of extra work duty.

[01-22-094, § 137-28-240, filed 11/6/01, effective 12/6/01; 95-15-044, § 137-28-240, filed 7/13/95, effective 8/15/95.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

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WAC 137-28-260 Serious infractions.**(1) Assault/threatening actions/causing injury to another person**

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

Unauthorized possession

- 559 - Gambling; possession of gambling paraphernalia.
- 601 - Possession, manufacture or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.
- 602 - Possession, manufacture or introduction of any gun, firearm, weapon, sharpened instrument, knife, or poison or any components thereof.
- 620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.
- 660 - Unauthorized possession of money, stamps, or negotiable instruments, the value of which is five dollars or more.
- 702 - Possession, manufacture or introduction of an unauthorized tool.
- 736 - Possession, manufacture or introduction of unauthorized keys.
- 738 - Possession of the clothing of a staff member.

- [739 - Possession of personal information about currently employed staff, contractors or volunteers, or their immediate family members, including, but not limited to: Social Security numbers, home addresses or telephone numbers, drivers license numbers, medical, personnel, financial or real estate records; bank or credit card numbers, or other like information not authorized by the court or the superintendent.]

Tattooing

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

Theft/possession of stolen property

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

Forgery

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

Setting fire, damaging or destroying property

- 553 - Setting a fire.
554 - Mutilating, altering, defacing or destroying any item, the value of which is ten dollars or more and that is not the personal property of the inmate.
563 - Making a false fire alarm or tampering with, damaging, blocking or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other fire fighting equipment or devices.
600 - Tampering with, damaging, blocking, or interfering with any locking or security device.
720 - Flooding a cell or other area of the institution.

Inciting others/participation in unacceptable group behavior

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

Inappropriate sexual behavior

- 504 - Engaging in sexual acts with others with the exception of spouses during approved extended family visits.
659 - Sexual harassment; any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

- 728(b)- Possession of any written, photographic or hand-drawn material that depicts a sexually explicit act as defined in WAC 137-28-160.

- 750 - Indecent exposure.

Providing false statements

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

Interfering with staff/impersonating

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

Failure to follow orders and rules

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

Counts/unauthorized absence

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

Escape/attempted escape

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

Committing crimes/excess infractions

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

Unacceptable communication

- 718 - Use of mail or telephone in violation of court order or local, state or federal law.

- 726 - Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.
- 727 - Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary actions.

Misuse of controlled substances, drugs, alcohol and related programs

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

Soliciting/fraud

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

Creating an emergency situation

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

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

[01-22-094, § 137-28-260, filed 11/6/01, effective 12/6/01. Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-260, filed 5/2/00, effective 6/2/00; 97-03-041, § 137-28-260, filed 1/10/97, effective 2/4/97. 95-15-044, § 137-28-260, filed 7/13/95, effective 8/15/95.]

tive 6/2/00; 97-03-041, § 137-28-260, filed 1/10/97, effective 2/4/97. 95-15-044, § 137-28-260, filed 7/13/95, effective 8/15/95.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

Reviser's note: The bracketed material above reflects the amendments that were indicated in WSR 01-22-094, filed on November 6, 2001. These amendments were suspended until further notice by WSR 02-01-001, filed on December 5, 2001. Further information will be published in the Washington State Register when filed by the department of corrections.

Chapter 137-52 WAC

RESIDENT OF ADULT CORRECTIONAL INSTITUTION ESCORTED LEAVE OF ABSENCE

WAC

137-52-010

Definitions.

WAC 137-52-010 Definitions. (1) "Escorted leave" is an approved leave of absence by an inmate from a correctional facility under the continuous supervision of trained correctional staff.

(2) "Immediate family" includes an inmate's parents, stepparents, parent surrogates, grandparents, legal guardians, spouse, brothers, sisters, half or step-brothers or sisters, children, stepchildren, and dependents whether or not in direct lineal relationship to the inmate.

(3) "Indigent" shall be understood to mean an inmate who has not been credited with five dollars or more total from any source(s) for deposit to the inmate's trust fund account during the thirty days preceding the request for an escorted leave and has less than a five dollar balance in his/her trust fund account on the day the escorted leave is requested, or together with his/her immediate family cannot post a five hundred dollar bond to secure the repayment of the expenses of the escorted leave on the day the escorted leave is requested. A declaration of indigency shall be signed by the inmate and the inmate's family on forms provided by the department.

(4) "Director" means the deputy secretary of the office of correctional operations or his/her designee(s).

(5) "Superintendent" means the superintendent of a state correctional institution, state honor camp, or other penal institutions as now or hereafter established under the jurisdiction of the department of corrections pursuant to law or his/her designee.

(6) "Department" means the department of corrections.

(7) "Secretary" means the secretary of the department of corrections or his/her designee(s).

(8) "Nonviolent offender" means any person convicted of a felony not classified as a violent offense under chapter 9.94A RCW.

[01-04-001, § 137-52-010, filed 1/24/01, effective 2/22/01. Statutory Authority: RCW 72.01.380. 85-07-042 (Order 85-07), § 137-52-010, filed 3/19/85. Formerly WAC 275-85-005.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative

Code exactly as shown by the agency filing with history notes added by the code reviser's office.

Chapter 137-104 WAC

COMMUNITY CUSTODY VIOLATION HEARINGS

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

137-104-010	Purpose.
137-104-020	Definitions.
137-104-030	Hearing officers.
137-104-040	Notice and service.
137-104-050	Hearing procedures.
137-104-060	Rights specified.
137-104-070	Determination of competency.
137-104-080	Appeals.

WAC 137-104-010 Purpose. The purpose of this chapter is to specify policies and procedures pertaining to the Washington state department of corrections' community custody violation hearings. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution. The regulations should be interpreted as having sufficient flexibility to be consistent with law and permit the department to accomplish its statutory purposes.

[01-04-044, § 137-104-010, filed 2/1/01, effective 3/1/01.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 137-104-020 Definitions. For purposes of this chapter, the following words have the following meanings:

(1) "Appeals panel" means three reviewing officers designated by the secretary with the authority to review hearing officers' decisions, and to affirm, reverse, or modify decisions and sanctions in accordance with RCW 9.94A.205.

(2) "Community corrections officer" means an employee of the department responsible for carrying out specific duties concerning the supervision of sentenced offenders and monitoring of sentence conditions.

(3) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time served in the community subject to controls placed on the offender's movement and activities by the department. Offenders supervised on community custody include those subject to community placement (as defined in RCW 9.94A.030), drug offender sentencing alternative (as described in RCW 9.94A.120), community custody for a sex offense (as described in RCW 9.94A.120), community custody max, first-time offender waiver (as described in RCW 9.94A.120), or a work ethic camp program (as defined in RCW 9.94A.030), and those sentenced to community custody by the court for crimes committed on or after July 1, 2000,

whose sentence is less than one year of confinement. For purposes of this subsection, "community custody max" means a term of community custody for certain sex offenders who have completed their maximum sentences of confinement.

(4) "Department" means the Washington state department of corrections.

(5) "Deputy secretary" means the deputy secretary of the office of correctional operations of the department, or the deputy secretary's designee.

(6) "Graduated sanction system" means structured incremental responses designed to reduce risk to the public, effectively intervene in noncompliant behavior, where possible, repair harm to the community, and make efficient use of limited state resources. Sanctions may include, but are not limited to, partial or total confinement; home detention with electronic monitoring; work crew; community service; inpatient treatment; daily reporting; curfew; educational or counseling sessions; supervisions enhanced through electronic monitoring; or any other sanctions available in the community.

(7) "Hearing officer" means an employee of the department authorized to conduct department hearings.

(8) "Hearings program manager" means the manager of the hearings unit of the department, or the hearings program manager's designee.

(9) "Offender" means any person in the custody of or subject to the jurisdiction of the department.

(10) "Partial confinement" means confinement in a facility or institution operated or utilized under contract by the state or by any other unit of government, to include, but not be limited to, work release, treatment center, residential facility, or home detention with electronic monitoring.

(11) "Probable cause" means a determination, made by a hearing officer, that there is cause to believe a violation has occurred.

(12) "Secretary" means the secretary of the department, or the secretary's designee.

(13) "Stipulated agreement" means an agreement between the offender and the department in which the offender admits violations and agrees to comply with intermediate sanctions. For the purposes of this subsection, "intermediate sanction" means department-imposed sanctions that are served in the community rather than total confinement.

(14) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, to include, but not be limited to, adult correctional facilities, camp and prerelease facilities or a county or municipal jail.

(15) "Working day" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

[01-04-044, § 137-104-020, filed 2/1/01, effective 3/1/01.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 137-104-030 Hearing officers. (1) Hearing officers will report to and be supervised by the hearings program manager, within the department's office of correctional operations, through an independent chain of command.

(2) Hearing officers may not hear a case in which they have direct personal involvement in the incident under consideration and must formally disqualify themselves by notifying the hearings program manager. The hearings program manager will select a replacement hearing officer.

(3) Hearing officers shall disqualify themselves if they believe that they cannot render a fair judgment in the hearing. The hearings program manager may change the hearing officer assigned to hear a case upon a written request from an offender and a showing of good cause.

[01-04-044, § 137-104-030, filed 2/1/01, effective 3/1/01.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 137-104-040 Notice and service. (1) When placed on community custody, offenders shall be provided with written notice of all court and department-imposed conditions and/or requirements.

(2) If an offender is being held in total confinement prior to the hearing for allegedly violating conditions and/or requirements of community custody, the department shall, within three working days of a probable cause determination by the hearings unit, serve the notice of allegations, hearing and rights, and waiver form.

(a) Within three working days of the service of the notice of allegations, hearing and rights, and waiver form, the community corrections officer shall submit to the hearing officer and the offender, a report of alleged violations which shall contain the following: Alleged violations, a summary of facts supporting the allegations, and all other supporting documentary evidence relating to the violations to be introduced at the hearing. The report shall also contain a preliminary recommendation for disposition.

(b) Reports of alleged violations may be submitted electronically.

(3) The factual allegations may be amended and/or new allegations added at any time prior to the hearing, provided, the offender receives written notice of such new and/or amended allegations and all other supporting documentary evidence at least twenty-four hours prior to the hearing. The offender may waive the right to such notice at the hearing.

(4) Offenders who have allegedly violated conditions and/or requirements of community custody, but are not detained, shall be served with the notice of allegations, hearing and rights, and waiver form within thirty days of the community corrections officer becoming aware of the alleged violation behavior.

(a) A report of alleged violations and all other supporting documentary evidence shall be provided to the offender at least seven working days prior to the hearing.

(b) The report of alleged violations shall contain the following: Alleged violations, a summary of facts supporting

the allegations, and the evidence relating to the violations to be introduced at the hearing. The report shall also contain a preliminary recommendation for disposition.

(c) Reports may be submitted electronically.

(5) Community corrections officers shall obtain interpretive services for offenders with known language or communication barriers when serving documents, and, if required, for the hearing.

[01-04-044, § 137-104-040, filed 2/1/01, effective 3/1/01.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 137-104-050 Hearing procedures. (1) Offenders accused of violating any of the conditions or requirements of community custody will be entitled to a hearing, prior to the imposition of sanctions by the department.

(2) The hearing shall be conducted by a hearing officer in the department's hearing unit, and shall be considered as an offender disciplinary proceeding and shall not be subject to chapter 34.05 RCW, the Administrative Procedure Act.

(3) Hearings for community custody offenders, who are being held in total confinement prior to a hearing, shall be conducted within five working days, but not less than twenty-four hours, after service of the notice of allegations, hearing and rights, and waiver form.

(4) Hearings for community custody offenders who are not being held in total confinement shall be conducted within fifteen calendar days, but not less than twenty-four hours, after service of the notice of allegations, hearing and rights, and waiver form.

(5) If an offender is arrested and detained, without a warrant, for violation of conditions of supervision, a probable cause determination will be made by a hearing officer within three working days of the initial detention.

(6) Prior to the commencement of a hearing, the hearing officer shall verify that proper notice of the hearing has been given and that the offender was properly served with the notice of allegations, hearing and rights, and waiver form, given a copy of the report of alleged violations, and provided with all supporting documentary evidence.

(7) The hearing officer, if requested by the offender or the community corrections officer, shall conduct an administrative review of the violation report and any additional information submitted to determine whether there is reason to allow the offender to be conditionally released pending the violation hearing. Such administrative review will be conducted within twenty-four hours of the request for conditional release. Such release must be recommended by the reviewing hearing officer and authorized by the hearings program manager or his or her designee.

(8) A hearing shall be held in all instances when an offender is served with a notice of allegations, hearing and rights, and waiver form.

(9) Community custody hearings shall be electronically recorded on audio cassette tape and the hearing tape shall be retained by the department for twelve months. An offender,

who is the subject of the hearing, may request a copy of the tape recording of that hearing by submitting a request in writing along with a blank tape.

(10) The offender may call witnesses to testify on his/her behalf at the hearing. The hearing officer may limit the number of witnesses and the scope of the testimony to matters relevant to the allegations and/or disposition.

(11) Witnesses may testify outside the presence of the offender when there is substantial likelihood that the witness will suffer significant psychological or emotional trauma if the witness testifies in the presence of the offender, or when there is substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender. The hearing officer shall enter findings in the record, as to the necessity of such testimony, and provide the offender an opportunity to submit questions to be asked of the witness.

(12) Community custody violation hearings shall be open to the public unless the hearing officer, for a specifically stated reason, closes the hearing in whole or in part.

(13) At the hearing, the community corrections officer has the obligation of setting forth evidence supporting the allegations of violations and of offering recommendations for disposition.

(14) The department has the obligation of proving each of the allegations of violations by a preponderance of the evidence.

(15) The hearing officer shall:

- (a) Administer oaths and affirmation;
- (b) Issue warrants, as necessary;
- (c) Weigh the credibility of the witnesses;
- (d) Rule on all procedural matters, objections and motions;
- (e) Rule on offers of proof, and receive relevant evidence including hearsay evidence;
- (f) Question witnesses called by the parties in an impartial manner to elicit any facts deemed necessary to fairly and adequately decide the matter;
- (g) Render or defer a decision; and
- (h) Take any other actions necessary and authorized by these rules and law.

(16) The hearing officers may grant a request for a continuance of the hearing as long as such continuation is granted for good cause and does not unduly delay the hearing.

[01-04-044, § 137-104-050, filed 2/1/01, effective 3/1/01.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 137-104-060 Rights specified. The offender has the right to:

(1) Receive written notice of the alleged violations of the conditions/requirements of supervision.

(2) Have an electronically recorded, community custody hearing conducted within five working days of service of the notice of allegations, hearing and rights, and waiver form;

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however, if the offender has not been placed in confinement, the hearing will be conducted within fifteen calendar days of service of the notice.

(3) Have a neutral and detached hearing officer conduct the hearing.

(4) Examine, no later than twenty-four hours before the hearing, all supporting documentary evidence which the department intends to present during the hearing.

(5) Admit to any or all of the allegations, which may result in limiting the scope of the hearing.

(6) Be present during the fact-finding and disposition phases of the hearing. If the offender waives his/her right to be present at the hearing, the department may conduct the hearing in the absence of the offender and may impose sanctions that could include loss of liberty of the offender.

(7) Present the case to the hearing officer. If there is a language or communication barrier, the hearing officer may appoint someone to interpret or otherwise assist. However, no other person may provide representation in presenting the case. There is no right to an attorney or counsel.

(8) Cross-examine witnesses appearing and testifying at the hearing.

(9) Testify during the hearing or to remain silent. Silence will not be held against the offender.

(10) Have witnesses provide testimony on his/her behalf, either in person or in a witnessed statement/affidavit; provided, however:

(a) In an in-custody hearing, outside witnesses may be excluded due to institutional concerns; or

(b) The hearing officer may exclude persons from the hearing upon a finding of good cause; or

(c) The hearing officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of the offender's presence when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender during the hearing. In either event, the offender may submit a list of questions to ask a witness. Testimony may be limited to evidence relevant to the issues under consideration.

(11) Receive a written hearing and decision summary including the evidence presented, a finding of guilty or not guilty, and the reasons to support the findings of guilt and the sanction imposed immediately following the hearing or, in the event of a deferred decision, within two working days.

(12) Receive a copy of the full department hearing report.

(13) Obtain a copy of the audio recording of the hearing, provided, the offender provides a blank audio cassette tape to be used for this purpose.

(14) Appeal to the regional appeals panel, in writing, within seven calendar days of receipt of the hearing and decision summary form. The offender may also file a personal restraint petition to appeal the department's final decision through the Washington state court of appeals.

(15) Waive any or all of the above rights in this section.

[01-04-044, § 137-104-060, filed 2/1/01, effective 3/1/01.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative

Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 137-104-070 Determination of competency. (1) Whenever, as a preliminary matter, the offender or the community corrections officer raises the issue of the offender's competency, or there is reason to doubt his/her competency, the hearing officer shall request a county mental health professional or a qualified expert within the department to examine the offender and report upon the mental condition and competency of the offender to participate in the hearing.

(2) Once the report is delivered to the hearing officer, the hearing shall be reconvened. Based on all evidence, including the competency evaluation, the hearing officer shall determine whether the offender is competent to participate in the hearing and shall determine the appropriate disposition.

[01-04-044, § 137-104-070, filed 2/1/01, effective 3/1/01.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 137-104-080 Appeals. (1) The offender may appeal the decision of the hearing officer within seven calendar days to the appeals panel. The request for review should be submitted in writing and list specific concerns.

(2) The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to the:

- (a) Crime of conviction;
- (b) Violation committed;
- (c) Offender's risk of reoffending; or
- (d) Safety of the community.

(3) The appeals panel will also examine evidence presented at the hearing and reverse any finding of a violation based solely on unconfirmed or unconfirmable allegations.

[01-04-044, § 137-104-080, filed 2/1/01, effective 3/1/01.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

Chapter 137-150 WAC

ACCESS TO MENTAL HEALTH RECORDS

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

137-150-010	Purpose.
137-150-020	Definitions.
137-150-030	Notification.
137-150-040	Confidentiality.

WAC 137-150-010 Purpose. The purpose of these rules is to set forth the department's responsibilities with regard to mental health information released in accordance with WAC

388-865-0610 et. seq. [Statutory Authority RCW 71.34.225 and 71.05.445]

[01-17-004, § 137-150-010, filed 8/1/01, effective 9/1/01.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 137-150-020 Definitions. (1) Agency" means the department of corrections.

(2) "DOC" or "Department" means the department of corrections.

[01-17-004, § 137-150-020, filed 8/1/01, effective 9/1/01.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 137-150-030 Notification. The department shall notify individuals under its jurisdiction of the provisions of RCW 71.34.225 and 71.05.445 in the following manner:

(1) Individuals entering the DOC system on or after the effective date of this rule, will receive written notification of the right of the department to access mental health records upon intake into the DOC system.

(2) Individuals under the jurisdiction of the department in a prison setting on the effective date of this rule will receive notification of the right of the department to access mental health records via a posting on the facility bulletin board consistent with written agency policy and procedures.

(3) All other individuals currently under active supervision of the department on the effective date of this rule will receive written notification of the department's right to access their mental health records in the form of a mailing to their address.

[01-17-004, § 137-150-030, filed 8/1/01, effective 9/1/01.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 137-150-040 Confidentiality. The information received by the department shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW and chapter 71.34 RCW except:

(1) The department may release the information to the indeterminate sentence review board as relevant to carry out its responsibility of planning and ensuring community protection with respect to persons under its jurisdiction.

(2) The department may use the information to meet its statutory duties to provide evidence or report to the court.

(3) The department may release the information to other state and local agencies as relevant to plan for and provide

offenders transition, treatment, and supervision services, or as relevant and necessary to protect the public and counteract the danger created by a particular offender, and in a manner consistent with written agency policy.

(4) The department may release the information to individuals only with respect to offenders who have been determined by the department to have a high risk of reoffending by a risk assessment, as defined in RCW 9.94A.030, only as relevant and necessary for those individuals to take reasonable steps for the purpose of self-protection, or as provided in RCW 72.09.370(2).

[01-17-004, § 137-150-040, filed 8/1/01, effective 9/1/01.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

Title 139 WAC

CRIMINAL JUSTICE TRAINING COMMISSION

Chapters

139-01 **General administration.**
139-05 **Law enforcement.**

Chapter 139-01 WAC

GENERAL ADMINISTRATION

WAC

139-01-400	Facility use.
139-01-405	Licensee's responsibility.
139-01-411	Care and maintenance of facilities and equipment.
139-01-421	Use fees.

WAC 139-01-400 Facility use. (1) The commission will not make its facilities or services available to individuals or organizations which do not assure that they will comply with the terms of the Americans with Disabilities Act, the Rehabilitation Act of 1973, and the Washington law against discrimination. Uses must not impose restrictions or alter facilities in a manner which would violate these laws.

(2) The commission will only make its facilities or services available to individuals or organizations which assure that they do not discriminate against any person because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran, except where such organizations have been exempted from provisions of applicable state or federal laws or regulations.

(3) The buildings and grounds of the commission are primarily for training purposes. No other use shall be permitted to interfere with the primary purpose for which these facilities are intended. Facilities shall not be made available for any use which might result in any undue damage or wear. The commission reserves the right to reject any application for use of its facilities.

(4) Every possible opportunity will be provided for the use of the commission facilities by citizens of the area, provided that the purpose of such use is in compliance with the rules and regulations of the commission and is subject to the laws of the state of Washington.

(5) The commission reserves the right to prohibit the use of its facilities by groups, or activities, which are secret, which are of a private nature, or which restrict membership or attendance in a manner inconsistent with the public and non-discriminatory character of the commission. Subversive organizations as defined and listed by the Attorney General of the United States shall not be eligible to use the commission facilities.

(6) The use or possession of alcohol on the facility premises is prohibited except for approved training purposes.

[Statutory Authority: RCW 43.101.080. 02-02-004, § 139-01-400, filed 12/20/01, effective 1/20/02.]

WAC 139-01-405 Licensee's responsibility. Individuals or organizations wishing to use commission facilities must complete a facility use agreement and submit it to the facilities maintenance office, or facility manager for approval. The licensee shall accept responsibility for any damage done to the commission property. Completion of the use agreement shall constitute acceptance by the licensee of the responsibilities stated therein and willingness to comply with all rules and regulations regarding the use of the facilities as prescribed by the commission. If the use of the facility does not comply with the terms in the agreement form, an additional charge may be assessed. In the event of property damage, the licensee shall accept and pay the commission's estimate of the amount of damage. The commission may require posting of a bond.

[Statutory Authority: RCW 43.101.080. 02-02-004, § 139-01-405, filed 12/20/01, effective 1/20/02.]

WAC 139-01-411 Care and maintenance of facilities and equipment. (1) Appropriate equipment is expected to be used when the absence of such equipment may be detrimental to that facility (e.g., tennis shoes must be worn on gymnasium floors).

(2) Individuals or organizations using the facilities are required to leave the premises in the same condition as when the individual or organization was admitted to its use. After facility use, individuals or organizations are required to arrange for proper disposal of decorations and other refuse when restoring the facility to its original condition for resumption of facility use.

(3) Custodial and other services beyond those regularly scheduled to support normal activities may be required for specific activities by outside groups, based on the size of group, the complexities of the event, or the facilities being used. Custodial services needed beyond those normally scheduled will result in that organization being charged at the established rate. All extra custodial time required as a result of the organization's or individual's use of the facility will be charged to the lessee, including those receiving complimentary usage.

[Statutory Authority: RCW 43.101.080. 02-02-004, § 139-01-411, filed 12/20/01, effective 1/20/02.]