

Title 137 WAC

CORRECTIONS, DEPARTMENT OF

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**Chapter 137-12
FUNDING FOR LOCATING SPECIFIED CORRECTIONAL FACILITIES**

- 137-12-010 Definitions. [Statutory Authority: RCW 72.01.090, 81-19-001 (Order 2), § 137-12-010, filed 9/3/81.] Repealed by 84-06-009 (Order 84-03), filed 2/27/84. Statutory Authority: RCW 72.02.040 and 72.72.040. Later promulgation, see chapter 137-12A WAC.
- 137-12-020 Purpose. [Statutory Authority: RCW 72.01.090, 81-19-001 (Order 2), § 137-12-020, filed 9/3/81.] Repealed by 84-06-009 (Order 84-03), filed 2/27/84. Statutory Authority: RCW 72.02.040 and 72.72.040.
- 137-12-030 Eligible political subdivisions. [Statutory Authority: RCW 72.01.090, 81-19-001 (Order 2), § 137-12-030, filed 9/3/81.] Repealed by 84-06-009 (Order 84-03), filed 2/27/84. Statutory Authority: RCW 72.02.040 and 72.72.040.
- 137-12-040 Period of funding. [Statutory Authority: RCW 72.01.-090, 81-19-001 (Order 2), § 137-12-040, filed 9/3/81.] Repealed by 84-06-009 (Order 84-03), filed 2/27/84. Statutory Authority: RCW 72.02.040 and 72.72.040.
- 137-12-050 Funding priority. [Statutory Authority: RCW 72.01.-090, 81-19-001 (Order 2), § 137-12-050, filed 9/3/81.] Repealed by 84-06-009 (Order 84-03), filed 2/27/84. Statutory Authority: RCW 72.02.040 and 72.72.040.
- 137-12-060 Billing procedure. [Statutory Authority: RCW 72.01.-090, 81-19-001 (Order 2), § 137-12-060, filed 9/3/81.] Repealed by 84-06-009 (Order 84-03), filed 2/27/84. Statutory Authority: RCW 72.02.040 and 72.72.040.
- 137-12-070 Cutoff date. [Statutory Authority: RCW 72.01.090, 81-19-001 (Order 2), § 137-12-070, filed 9/3/81.] Repealed by 84-06-009 (Order 84-03), filed 2/27/84. Statutory Authority: RCW 72.02.040 and 72.72.040.
- 137-12-080 Review committee. [Statutory Authority: RCW 72.01.-090, 81-19-001 (Order 2), § 137-12-080, filed 9/3/81.] Repealed by 84-06-009 (Order 84-03), filed 2/27/84. Statutory Authority: RCW 72.02.040 and 72.72.040.
- 137-12-090 Special authorizations. [Statutory Authority: RCW 72.01.090, 81-19-001 (Order 2), § 137-12-090, filed 9/3/81.] Repealed by 84-06-009 (Order 84-03), filed 2/27/84. Statutory Authority: RCW 72.02.040 and 72.72.040.

**Chapter 137-66
OUT-OF-STATE TRANSFER OF INMATES—PROCEDURE**

- 137-66-010 Purpose. [Statutory Authority: RCW 72.09.050, chapters 72.68 and 72.70 RCW, 83-01-138 (Order 82-17), § 137-66-010, filed 12/22/82.] Repealed by 85-01-059 (Order 84-15), filed 12/17/84. Statutory Authority: RCW 72.01.090. Later promulgation, see WAC 137-32-060
- 137-66-015 Definitions. [Statutory Authority: RCW 72.09.050, chapters 72.68 and 72.70 RCW, 83-01-138 (Order 82-17), § 137-66-015, filed 12/22/82.] Repealed by 85-01-059 (Order 84-15), filed 12/17/84. Statutory Authority: RCW 72.01.090.
- 137-66-020 Scope of this chapter. [Statutory Authority: RCW 72.09.050, chapters 72.68 and 72.70 RCW, 83-01-138 (Order 82-17), § 137-66-020, filed 12/22/82.] Repealed by 85-01-059 (Order 84-15), filed 12/17/84. Statutory Authority: RCW 72.01.090.
- 137-66-030 Referral for transfer. [Statutory Authority: RCW 72.09.050, chapters 72.68 and 72.70 RCW, 83-01-138 (Order 82-17), § 137-66-030, filed 12/22/82.] Repealed by 85-01-059 (Order 84-15), filed 12/17/84. Statutory Authority: RCW 72.01.090.
- 137-66-040 Transfer committee—Composition. [Statutory Authority: RCW 72.09.050, chapters 72.68 and 72.70 RCW, 83-01-138 (Order 82-17), § 137-66-040, filed

WAC 137-04-015 Establishment of department. The department of corrections was established effective July 1, 1981, by chapter 136, Laws of 1981, 47th legislature. Previously, functions delegated to the department of corrections were assigned to the adult corrections division, department of social and health services.

[Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-04-015, 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 divisions and three subdepartments: The prisons division, the community corrections division, the administrative services division, the communications department, the health services department and the risk management department. Each division is headed by a deputy secretary who reports to the secretary. The responsibilities of each division are:

(a) The prisons division is responsible for 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 Corrections Center for Women; the Mission Creek Corrections Center for Women; and such other state correctional institutions, camps or facilities as may hereafter be established. The division includes the correctional industries program.

(b) The community corrections division is responsible for the supervision of adult felony offenders within the community, including offenders in the work release program and other community residential programs.

(c) The administrative services division is responsible for providing a variety of services to the other divisions of the department including financial and management services; information technology; capital planning and development; rules, contracts, budget development and planning and research; and human resources.

[Statutory Authority: RCW 72.01.090. 07-12-073, § 137-04-020, filed 6/5/07, effective 7/6/07. 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.]

WAC 137-04-030 Use of gender and number. As used in this title, words importing the singular number may extend and be applied to several persons or things and vice versa. Words importing the masculine gender may be applied to females or organizations.

[Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-04-030, filed 1/26/82.]

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Chapter 137-08 WAC PUBLIC RECORDS—DISCLOSURE

WAC

137-08-010	Purpose.
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137-08-080	Public disclosure coordinator.
137-08-090	Request for public records.
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137-08-140	Review of denial of disclosure.
137-08-150	Exemptions to public records disclosure.
137-08-160	Qualifications on nondisclosure.
137-08-170	Interagency disclosure.
137-08-180	Records index.

WAC 137-08-010 Purpose. The purpose of this chapter shall be to ensure compliance by the department of corrections with the provisions of the Public Records Act, chapter 42.56 RCW.

[Statutory Authority: RCW 72.01.090. 07-12-073, § 137-08-010, filed 6/5/07, effective 7/6/07. Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-010, filed 1/26/82.]

WAC 137-08-020 Definitions. (1) "Public records" include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by the department regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

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

(4) "Client" means any person or organization about whom the department has a record.

(5) "Disclosure" means inspection and/or copying.

(6) "Denial of disclosure" denotes any exempting from disclosure of any public record.

[Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-020, filed 1/26/82.]

WAC 137-08-060 Public records available. The department shall at all times take the most timely possible action on requests for disclosure, and shall be required to respond in writing within five working days of receipt of the request for disclosure. The department's failure to so respond shall entitle the person seeking disclosure to petition the public disclosure officer pursuant to WAC 137-08-140.

[Statutory Authority: RCW 72.01.090. 08-04-045, § 137-08-060, filed 1/31/08, effective 3/2/08; 07-12-073, § 137-08-060, filed 6/5/07, effective 7/6/07. Statutory Authority: RCW 10.97.080 and 42.17.320. 86-10-010 (Order 86-05), § 137-08-060, filed 4/29/86. Statutory Authority: RCW 10.97.080, 42.17.250 and 72.01.090. 85-13-020 (Order 85-06), § 137-08-060, filed 6/10/85. Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-060, filed 1/26/82.]

WAC 137-08-070 Public disclosure officer. The department shall designate a public disclosure officer, located in the state administrative office, who shall be responsible for implementing the department's rules regarding disclosure of public records, coordination of staff in this regard, and generally insuring compliance by the staff with public records disclosure requirements.

[Statutory Authority: RCW 10.97.080 and 42.17.320. 86-10-010 (Order 86-05), § 137-08-070, filed 4/29/86. Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-070, filed 1/26/82.]

WAC 137-08-080 Public disclosure coordinator. Each departmental administrative unit, for example, each institution, shall designate from among its employees at least one public disclosure coordinator, who shall:

- (1) Have responsibility to respond to written requests for disclosure of the department's nonexempt public records located in that office; and
- (2) Refer the person requesting disclosure to any other office where the record is located, and assist further in the disclosure process; and
- (3) Verify, if necessary, the identity of any person requesting information.

[Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-080, filed 1/26/82.]

WAC 137-08-090 Request for public records. (1) All requests for the disclosure of a public record, other than requests by incarcerated offenders for inspection of their health record or central file must be submitted in writing directly to the Department of Corrections Public Records Officer at P.O. Box 41118, Olympia, WA 98504 or via e-mail at publicdisclosureunit@doc1.wa.gov identifying the record sought with reasonable certainty. The written request should include:

- (a) The name of the person requesting the record and their contact information;
- (b) The calendar date on which the request is made; and
- (c) The records requested.

Incarcerated offenders under the authority of the department of corrections shall submit requests to inspect their own health record or central file to the records manager at the facility in which, they are currently incarcerated.

(2) A request for disclosure shall be made during customary business hours.

(3) If the public record contains material exempt from disclosure pursuant to law, including those laws cited in WAC 137-08-150, the department must provide the person requesting disclosure with a written explanation for the non-disclosure, pursuant to WAC 137-08-130.

(4) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure pursuant to WAC 137-08-130, may request a review under the provisions of WAC 137-08-140.

(5) When a person's identity is relevant to an exemption, that person may be required to provide personal identification.

(6) Nothing in this section or elsewhere in this chapter shall be construed to require the department to compile statistics or other information from material contained in public records, where doing so would unduly interfere with other

essential functions of the department and is not required for litigation by rules of pretrial discovery.

[Statutory Authority: RCW 72.01.090. 08-04-045, § 137-08-090, filed 1/31/08, effective 3/2/08. Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-090, filed 1/26/82.]

WAC 137-08-100 Disclosure to client's representative. (1) If a client requests disclosure to a representative, that request must be accompanied by a written release signed by the client, except that, as an accommodation to the client and if the legislator or attorney representing the client can provide assurance that the client has authorized disclosure, the client's record may be briefly discussed with that legislator or attorney so long as there is neither physical inspection nor copying of client records by that representative. A written release must include:

- (a) The identity of the person(s) or organization(s) to whom disclosure is to be made;
 - (b) An identification of the record, or portion thereof, to be disclosed;
 - (c) A statement of when the authorization for disclosure expires.
- (2) Disclosures of information to a representative shall be made to the same extent as to the client.
- (3) The legal guardian of a client has any and all rights accorded to a client by this section.

[Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-100, filed 1/26/82.]

WAC 137-08-105 Correction of erroneous information. (1) A client may challenge the accuracy or completeness of criminal history record information, as defined in chapter 10.97 RCW, pertaining to the client and maintained in the department's files. Such challenge shall be effected in accordance with chapter 446-20 WAC.

(2) A client may challenge the accuracy and completeness of information in the department's files pertaining to the client other than criminal history record information. Such challenge shall be effected in accordance with department policies and procedures.

[Statutory Authority: RCW 10.97.080, 42.17.250 and 72.01.090. 85-13-020 (Order 85-06), § 137-08-105, filed 6/10/85.]

WAC 137-08-110 Fees—Inspection and copying. (1) No fee shall be charged for the inspection of public records.

(2) The department shall collect a fee of twenty cents per page plus postage to reimburse itself for the cost of providing copies of public records.

(3) Nothing contained in this section shall preclude the department from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies, whenever doing so is in the best interest of the department.

(4) The secretary of the department or his designee is authorized to waive any of the foregoing copying costs.

[Statutory Authority: RCW 10.97.080, 42.17.250 and 72.01.090. 85-13-020 (Order 85-06), § 137-08-110, filed 6/10/85. Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-110, filed 1/26/82.]

WAC 137-08-120 Protection of public records. Public records shall be disclosed only in the presence of a public dis-

closure coordinator or his or her designee, who shall withdraw the records if the person requesting disclosure acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the department. This section shall not be construed to prevent the department from accommodating a client by use of the mails in the disclosure process.

[Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-120, filed 1/26/82.]

WAC 137-08-130 Disclosure procedure. (1) The public disclosure coordinator shall review file materials prior to disclosure.

(2) If the file does not contain materials exempt from disclosure, the public disclosure coordinator shall ensure full disclosure.

(3) If the file does contain materials exempt from disclosure, the public disclosure coordinator shall deny disclosure of those exempt portions of the file, and shall, at the time of the denial, in writing, clearly specify the reasons for the denial of disclosure, including a statement of the specific exemptions or reasons authorizing the withholding of the record and a brief explanation of how the exemption or reason applies. The remaining, nonexempt materials shall be fully disclosed.

[Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-130, filed 1/26/82.]

WAC 137-08-140 Review of denial of disclosure. (1) If the person requesting disclosure disagrees with the decision of a public disclosure coordinator denying disclosure of a public record, such person may petition the department's public disclosure officer for review of the decision denying disclosure. The form used by the public disclosure coordinator to deny disclosure of a public record shall clearly indicate this right of review.

(2) Within ten working days after receipt of a petition for review of a decision denying disclosure, the public disclosure officer shall review the decision denying disclosure, and advise the petitioner, in writing, of the public disclosure officer's decision on the petition. Such review shall be deemed completed at the end of the second business day following denial of disclosure, and shall constitute final agency action for the purposes of judicial review.

[Statutory Authority: RCW 10.97.080 and 42.17.320. 86-10-010 (Order 86-05), § 137-08-140, filed 4/29/86. Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-140, filed 1/26/82.]

WAC 137-08-150 Exemptions to public records disclosure. The department reserves the right to determine if a public record requested in accordance with the procedures outlined in WAC 137-08-090 is exempt or nondisclosable under RCW 42.56.210 through 42.56.480.

Nondisclosable records include, but are not limited to:

(1) Personal information in any files concerning a prisoner, probationer, or parolee to the extent required by RCW 42.56.230(1); however, disclosure may be made to that person or that person's representative, except as otherwise prohibited by these rules;

(2) Data (including information revealing the identity of persons who file complaints, except as the complainant may

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authorize) contained in intelligence, investigative, and other related files compiled by investigative, law enforcement or penology agencies, and state agencies vested with the responsibility to discipline members of any profession. This data is nondisclosable to the extent required by RCW 42.56.240, 10.97.080 and chapter 446-20 WAC;

(3) Certain juvenile justice or juvenile care records to the extent required by chapter 13.50 RCW;

(4) Personal information in files maintained for an employee of the department to the extent required by RCW 42.56.230;

(5) Deliberative material, as opposed to facts upon which a decision is based, contained in preliminary drafts, notes, recommendations, and intraagency memoranda in which opinions are expressed or policies formulated or recommended; except that a specific record shall be disclosable when publicly cited by the department in connection with any action to the extent required by RCW 42.56.290;

(6) Records which are relevant to a controversy to which the department is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the department and the office of the attorney general privileged under RCW 5.60.060(2).

(7) Criminal history records information the disclosure of which is prohibited by chapter 10.97 RCW.

[Statutory Authority: RCW 72.01.090. 07-12-073, § 137-08-150, filed 6/5/07, effective 7/6/07. Statutory Authority: RCW 10.97.080, 42.17.250 and 72.01.090. 85-13-020 (Order 85-06), § 137-08-150, filed 6/10/85. Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-150, filed 1/26/82.]

WAC 137-08-160 Qualifications on nondisclosure.

(1) To the extent that nondisclosable information can be deleted from the specific records sought, the remainder of the records shall be disclosable.

(2) No exemptions shall be construed to require nondisclosure of statistical information not descriptive of identifiable persons, as required by RCW 42.56.210(1).

(3) Inspection and copying of any specific records otherwise nondisclosable is permissible pursuant to an order of the superior court enforcing a subpoena in accordance with the provisions of RCW 42.56.210(2), or an order of the office of hearings enforcing a subpoena.

[Statutory Authority: RCW 72.01.090. 07-12-073, § 137-08-160, filed 6/5/07, effective 7/6/07. Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-160, filed 1/26/82.]

WAC 137-08-170 Interagency disclosure. (1) Unless prohibited by law, information may be disclosed by the department to outside agencies, including other state of Washington agencies, or agencies of other states.

(2) Outside agencies receiving information pursuant to subsection (1) of this section shall be thereby subject to the same standards of disclosure as are required of the department.

[Statutory Authority: RCW 42.17.250. 82-04-023 (Order 82-3), § 137-08-170, filed 1/26/82.]

WAC 137-08-180 Records index. The record index may be accessed on the department's web site in the public disclosure section at:

http://www.doc.wa.gov/aboutdoc/publicdisclosure.asp.

[Statutory Authority: RCW 72.01.090, 08-01-026, § 137-08-180, filed 12/10/07, effective 1/10/08; 06-19-058, § 137-08-180, filed 9/18/06, effective 10/19/06. Statutory Authority: RCW 42.17.250, 82-04-023 (Order 82-3), § 137-08-180, filed 1/26/82.]

Chapter 137-10 WAC

PETITION FOR PROMULGATION, AMENDMENT, OR REPEAL OF RULE OR FOR DECLARATORY RULING

WAC

137-10-005	Purpose.
137-10-010	Definitions.
137-10-015	Qualifications and filing.
137-10-020	Form of petition.
137-10-025	Consideration and disposition.

WAC 137-10-005 Purpose. The purpose of this rule is to establish the procedures by which an interested party may petition the department of corrections for the promulgation, amendment, or repeal of a rule pursuant to RCW 34.05.330, or for a declaratory ruling pursuant to RCW 34.05.240.

[Statutory Authority: RCW 72.01.090, 07-12-073, § 137-10-005, filed 6/5/07, effective 7/6/07. Statutory Authority: RCW 34.04.060 and 34.04.080, 86-02-051 (Order 85-11), § 137-10-005, filed 12/31/85.]

WAC 137-10-010 Definitions. (1) "Department" means the department of corrections.

(2) "Secretary" means the secretary of the department of corrections or the secretary's designee.

[Statutory Authority: RCW 34.04.060 and 34.04.080, 86-02-051 (Order 85-11), § 137-10-010, filed 12/31/85.]

WAC 137-10-015 Qualifications and filing. (1) Any interested person may petition the department for the promulgation of a new department rule, the amendment or repeal of an existing department rule, or for a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforced by the department.

(2) All such petitions shall be delivered or mailed to the Office of the Secretary, Department of Corrections, P.O. Box 41101, Olympia, Washington 98504-1101.

[Statutory Authority: RCW 72.01.090, 03-21-088, § 137-10-015, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 34.04.060 and 34.04.080, 86-02-051 (Order 85-11), § 137-10-015, filed 12/31/85.]

WAC 137-10-020 Form of petition. (1) A petition filed under this chapter shall be typewritten or prepared in other legible form on 8 1/2" by 11" white paper.

(2) If such petition is for the promulgation, amendment, or repeal of a department rule, it shall be captioned as follows:

In the matter of the petition of (name of the petitioning party).	} Petition for (state whether for promulgation, amendment, or repeal) of rule(s).
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(3) If such petition is for a declaratory ruling it shall be captioned as follows:

In the matter of the petition of (name of petitioning party)	} Petition for Declaratory Ruling
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(4) The text of such petitions shall be set out in consecutively numbered paragraphs, the first of which shall contain the name and mailing address of the petitioning party. All petitions shall be dated and signed by the petitioning party.

(5) A petition for the promulgation, amendment, or repeal of a department rule shall set forth:

(a) A statement of whether the petition is for the promulgation of a new rule, or the amendment or repeal of an existing rule;

(b) The full text of any desired new rule, or the citation and full text of any existing rule and the full text of the amendment sought, or the citation and full text of any rule sought to be repealed;

(c) The reason for the requested promulgation, amendment, or repeal;

(d) The facts, allegations, and arguments on which the petitioning party relies in support of the requested promulgation, amendment, or repeal; and

(e) The nature of the interest of the petitioning party in the subject matter of the rule.

(6) A petition for a declaratory ruling of the department shall set forth:

(a) The full text and citation of the rule or statute upon which the declaratory ruling is sought;

(b) The nature of the declaratory ruling sought;

(c) The reasons why the declaratory ruling is sought;

(d) The facts, allegations, and arguments on which the petitioning party relies in support of the issuance of the declaratory ruling; and

(e) The nature of the interest of the petitioning party in the subject matter of the petition.

[Statutory Authority: RCW 34.04.060 and 34.04.080, 86-02-051 (Order 85-11), § 137-10-020, filed 12/31/85.]

WAC 137-10-025 Consideration and disposition. (1) Within thirty days after its receipt, a petition filed pursuant to this chapter will be considered by a member(s) of the department's staff appointed by the secretary for that purpose. Such staff member(s) may conduct a hearing on the petition, in which event the petitioning party will be given twenty days notice of the date, time, and place for such hearing. Upon completion of its consideration, the department staff will submit its recommendation with respect to the petition to the secretary.

(2) Within thirty days after receipt of the staff's recommendations the secretary will consider the petition and the recommendations and decide either to deny the petition or, as the case may be, to direct rule-making proceedings consistent with the petition be commenced; or decide that a declaratory ruling be issued.

(3) The petitioning party will be notified of the secretary's decision in writing. If the petition is denied, the reason for such denial will be set forth in the notice. If a declaratory ruling is issued, a copy will be mailed to the petitioning party.

[Statutory Authority: RCW 34.04.060 and 34.04.080, 86-02-051 (Order 85-11), § 137-10-025, filed 12/31/85.]

Chapter 137-12A WAC
ONE-TIME IMPACT FUNDS AVAILABLE TO
QUALIFYING POLITICAL SUBDIVISIONS

WAC

137-12A-010	Purpose.
137-12A-020	Definitions.
137-12A-030	Eligibility.
137-12A-040	Funding priority.
137-12A-050	Application procedure.
137-12A-060	Department review committee.
137-12A-070	Contracts.
137-12A-080	Implied consent to audit.
137-12A-090	Limitation of funding.

WAC 137-12A-010 Purpose. The purpose of this chapter is to implement the distribution of funds appropriated by the legislature to mitigate the one-time cost impact associated with locating additional state correctional facilities within their boundaries; with the cost of criminal justice and social/human services associated with inmate families within their boundaries; or the costs associated with the one-time impact of adding beds or increasing population capacity at correctional facilities.

[Statutory Authority: RCW 72.01.090. 91-10-018, § 137-12A-010, filed 4/23/91, effective 5/24/91. Statutory Authority: RCW 72.01.090 and 1984 c 246 § 2. 84-14-077 (Order 84-10), § 137-12A-010, filed 7/2/84. Statutory Authority: RCW 72.02.040 and 72.72.040. 84-06-009 (Order 84-03), § 137-12A-010, filed 2/27/84. Formerly chapter 137-12 WAC.]

WAC 137-12A-020 Definitions. As used in this chapter, the following items shall have the following meanings:

(1) "Secretary" shall mean the secretary of the department of corrections.

(2) "Department" shall mean the department of corrections.

(3) "Inmate" shall mean an individual sentenced to the custody of the department under state law and an individual transferred from another state or the federal government.

(4) "Institution" shall mean a facility described in RCW 72.01.050(2), such other similar facility hereafter established and a community residence operated pursuant to chapter 72.65 RCW.

(5) "Political subdivision" shall mean any city, town, county or other unit of local government.

(6) "Additional correctional facility" shall mean (a) a new building constructed at a new location for use in housing or servicing inmates; (b) a new building constructed on the grounds of an existing institution for use in housing or servicing inmates; and/or (c) a preexisting building heretofore not used by the department as a correctional facility which is reopened for use in housing or servicing inmates.

(7) "One-time cost impact" shall mean an economic impact experienced by a political subdivision associated with locating an additional correctional facility within its boundaries or associated with such other event specifically designated by the legislature.

(8) "Inmate family" shall mean the inmate's dependent children, the inmate's spouse or parent and their dependents, or the legal guardian of the inmate's dependent children who were not residents of the local county where the inmate was incarcerated prior to the incarceration of the inmate.

(9) All references to the singular shall include the plural unless noted otherwise.

(2009 Ed.)

[Statutory Authority: RCW 72.01.090. 91-10-018, § 137-12A-020, filed 4/23/91, effective 5/24/91. Statutory Authority: RCW 72.01.090 and 1984 c 246 § 2. 84-14-077 (Order 84-10), § 137-12A-020, filed 7/2/84. Statutory Authority: RCW 72.02.040 and 72.72.040. 84-06-009 (Order 84-03), § 137-12A-020, filed 2/27/84.]

WAC 137-12A-030 Eligibility. (1) A political subdivision is eligible to apply for mitigating funds under this chapter if it experiences a demonstrable one-time cost impact; or demonstrable costs for criminal justice and social/human services related to inmate families. Provided, however, application must be made prior to the last day of the state fiscal biennium in which the one-time cost impact occurred. Applications made after that date will be considered only if funds appropriated by the legislature are available.

(2) A political subdivision which has been reimbursed for a one-time cost impact is thereafter not eligible to apply for additional funding under this chapter based on the same event which gave rise to the one-time impact for which reimbursement has been received.

[Statutory Authority: RCW 72.01.090. 91-10-018, § 137-12A-030, filed 4/23/91, effective 5/24/91. Statutory Authority: RCW 72.01.090 and 1984 c 246 § 2. 84-14-077 (Order 84-10), § 137-12A-030, filed 7/2/84. Statutory Authority: RCW 72.02.040 and 72.72.040. 84-06-009 (Order 84-03), § 137-12A-030, filed 2/27/84.]

WAC 137-12A-040 Funding priority. The impact committee established herein shall establish a priority of funding under this chapter.

[Statutory Authority: RCW 72.01.090 and 1984 c 246 § 2. 84-14-077 (Order 84-10), § 137-12A-040, filed 7/2/84. Statutory Authority: RCW 72.02.040 and 72.72.040. 84-06-009 (Order 84-03), § 137-12A-040, filed 2/27/84.]

WAC 137-12A-050 Application procedure. (1) A political subdivision must request funding under this chapter by submitting a written request to:

Department of Corrections
 Contracts and Legal Affairs
 P.O. Box 41114
 Olympia, WA 98504-1114

(2) Requests must document the one-time cost impact for which reimbursement is requested. Such documentation may include reference to:

- (a) Criminal justice costs.
- (b) Social service or human service costs.
- (c) Transportation, roads and utility costs.
- (d) Other similar costs.

(3) Requests for reimbursement of costs related to inmate families shall be documented by the political subdivision and take into account offsetting revenues from federal, state, or charitable sources. Such documentation shall include, but not be limited to:

- (a) Social service or human service costs within the community related to inmate families.
- (b) Criminal justice costs.
- (c) The relationship of those costs to the offender population.

(d) An affidavit that such costs are not funded or offset from other sources or subject to reimbursement by the recipient of such services.

(4) The burden of demonstrating the impact shall be on the requesting political subdivision. The department may provide technical assistance to the political subdivision and verification of impact requests.

[Statutory Authority: RCW 72.01.090, 03-21-088, § 137-12A-050, filed 10/17/03, effective 11/17/03; 91-10-018, § 137-12A-050, filed 4/23/91, effective 5/24/91. Statutory Authority: RCW 72.01.090 and 1984 c 246 § 2, 84-14-077 (Order 84-10), § 137-12A-050, filed 7/2/84. Statutory Authority: RCW 72.02.040 and 72.72.040, 84-06-009 (Order 84-03), § 137-12A-050, filed 2/27/84.]

WAC 137-12A-060 Department review committee.

(1) All requests shall be reviewed by a department committee composed of the following individuals or their designees:

- (a) Deputy secretary, office of administrative services;
- (b) Deputy secretary, office of correctional operations;
- (c) Contracts and regulations administrator;
- (d) Administrator, capital planning and development; and the
- (e) Senior assistant attorney general assigned to the department.

(2) The review committee shall approve or disapprove the requests. If a request is disapproved in total or in part, the committee shall send a letter to the requesting political subdivision with the reasons for disapproval.

(3) The committee decision shall be final unless appealed to the secretary within twenty days after a political subdivision receives notice of disapproval.

[Statutory Authority: RCW 72.01.090, 03-21-088, § 137-12A-060, filed 10/17/03, effective 11/17/03; 91-10-018, § 137-12A-060, filed 4/23/91, effective 5/24/91; 87-06-045 (Order 87-01), § 137-12A-060, filed 3/4/87. Statutory Authority: RCW 72.02.040 and 72.72.040, 84-06-009 (Order 84-03), § 137-12A-060, filed 2/27/84.]

WAC 137-12A-070 Contracts. Requests approved for funding under this chapter shall be evidenced in a written contract document processed through the contracts and legal affairs section and approved by the secretary and submitting jurisdiction. Funding shall be limited to actual costs incurred during the term of the contract.

[Statutory Authority: RCW 72.01.090, 03-21-088, § 137-12A-070, filed 10/17/03, effective 11/17/03; 91-10-018, § 137-12A-070, filed 4/23/91, effective 5/24/91. Statutory Authority: RCW 72.02.040 and 72.72.040, 84-06-009 (Order 84-03), § 137-12A-070, filed 2/27/84.]

WAC 137-12A-080 Implied consent to audit. (1) By submitting requests the requesting political subdivision agrees to maintain records which would support the request made for a period five years after the date of such request.

(2) If requested by the secretary, or his/her designee, the political subdivision shall make these records available for review and/or audit by the department.

[Statutory Authority: RCW 72.02.040 and 72.72.040, 84-06-009 (Order 84-03), § 137-12A-080, filed 2/27/84.]

WAC 137-12A-090 Limitation of funding. Funding under this chapter shall be available only to the maximum appropriated by the legislature for that purpose.

[Statutory Authority: RCW 72.01.090, 91-10-018, § 137-12A-090, filed 4/23/91, effective 5/24/91. Statutory Authority: RCW 72.02.040 and 72.72.-040, 84-06-009 (Order 84-03), § 137-12A-090, filed 2/27/84.]

Chapter 137-20 WAC

SALE OF PRODUCTS AND SERVICES OF VOCATIONAL EDUCATION STUDENTS

WAC

137-20-005	Definitions.
137-20-010	Sale of products and services.
137-20-015	Proceeds of sales.

WAC 137-20-005 Definitions. As used in this chapter the following words shall have the following meanings:

(1) "Vocational education" shall have the same meaning as set forth in RCW 72.62.020.

(2) "Students" means inmates of adult correctional institutions or facilities enrolled in a vocational education program.

(3) "Products" means goods, wares, articles, or merchandise produced by students as part of a vocational education program.

(4) "Services" means work performed for others by students as part of a vocational education program not related to the production of products.

[Statutory Authority: RCW 72.01.090, 86-02-052 (Order 85-12), § 137-20-005, filed 12/31/85. Formerly chapter 275-53 WAC.]

WAC 137-20-010 Sale of products and services.

Superintendents and administrators of adult correctional institutions and facilities, or their designees, may adopt procedures for the sale of products and services on the open market. The prices for products sold on the open market may be established at levels sufficient to recover the cost of production, including the cost of materials used and the value of depreciation of equipment used to produce the products. The prices for services sold on the open market may be established at levels sufficient to recover the cost of performing the service.

[Statutory Authority: RCW 72.01.090, 86-02-052 (Order 85-12), § 137-20-010, filed 12/31/85. Formerly chapter 275-53 WAC.]

WAC 137-20-015 Proceeds of sales. The proceeds from the sale of products shall be credited to the institution or facility where the products were produced, deposited in a revolving fund, and expended for the purchase of supplies, materials, and equipment for use in vocational education programs. The proceeds from the sale of services shall be credited to the institution or facility where the services were performed, and may be expended for the purchase of supplies, materials, and equipment for use in vocational education programs, and for the payment of wages earned by students in performing services.

[Statutory Authority: RCW 72.01.090, 86-02-052 (Order 85-12), § 137-20-015, filed 12/31/85. Formerly WAC 275-53-065.]

Chapter 137-24 WAC

SPECIAL DRUG SENTENCING ALTERNATIVE REVOCATION HEARINGS

WAC

137-24-010	Purpose.
137-24-020	Definitions.
137-24-030	Hearing procedures.
137-24-040	Rights specified.
137-24-050	Determination of competency.
137-24-060	Appeals.

WAC 137-24-010 Purpose. The purpose of this chapter is to specify policies and procedures pertaining to revocation of offenders, while in total/partial confinement, sentenced under the special drug offender sentencing alternative. Offenders sentenced under the special drug offender sentencing alternative, are mandated by statute to undergo a comprehensive substance abuse assessment and receive, within available resources, substance abuse treatment services. Offenders who fail to complete or are administratively terminated from the special drug offender sentencing alternative substance abuse treatment program are subject to reclassification and service of the unexpired term of his/her sentence as ordered by the sentencing court. 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.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 06-21-054, § 137-24-010, filed 10/13/06, effective 11/13/06.]

WAC 137-24-020 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 officer's decision, and to affirm, reverse, or modify decisions and sanctions in accordance with RCW 9.94A.205.

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

(3) "Deputy secretary" means the deputy secretary of the prisons division of the department, or the deputy secretary's designee.

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

(5) "Hearing program manager" means the manager/administrator of the hearings unit of the department, or the hearings program manager's designee.

(6) "Infraction" means commission of, attempt to commit, or conspiracy with another to commit any violation of prison rules as enumerated in chapter 137-28 WAC.

(7) "Lesser included" means an infraction that must necessarily have been committed in order to commit another infraction.

(8) "Negotiated sanction" means an agreement between the offender and the department, reviewed and signed off on by a hearings officer, in which the offender admits violations and agrees to comply with the imposed sanction(s).

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

(12) "Staff member" means any employee of the department of corrections, contract employee or volunteer.

(13) "Stipulated agreement" means an agreement between the offender and the department in which the offender admits violations and agrees to comply with the imposed sanction(s).

(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 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.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 06-21-054, § 137-24-020, filed 10/13/06, effective 11/13/06.]

WAC 137-24-030 Hearing procedures. (1) Offenders accused of failing to complete or having been administratively terminated from an in-custody substance abuse program are entitled to a hearing prior to the revocation or to the imposition of sanctions by the department.

(2) The hearing shall be conducted by a hearing officer in the department's community corrections 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 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) 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 to be presented by the department.

(5) The hearing officer is authorized to find an inmate guilty of the lesser included offense, failure to program, WAC 137-25-030 #557, without issuing a new infraction report or conducting a new hearing.

(6) Hearings shall be electronically recorded and shall be retained in accordance with the department's retention schedule. An offender, who is the subject of the hearing, may request a copy of the recording of that hearing by submitting a request in writing.

(7) 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.

(8) Confidential information will be considered in accordance with procedures of WAC 137-28-300(7).

(9) At the hearing, a treatment staff or facility member has the obligation of setting forth evidence supporting the allegations of violations and of offering recommendations of disposition.

(10) The department has the obligation of proving each of the allegations of violation by preponderance of the evidence.

(11) The hearing officer shall:

(a) Administer oaths and affirmation;

(b) Weigh the credibility of the witnesses;

(c) Rule on all procedural matters, objections and motions;

(d) Rule on offers of proof, and receive relevant evidence including hearsay evidence;

(e) Question witnesses called by the parties in an impartial manner to elicit any facts deemed necessary to fairly and adequately decide the matter;

(f) Render or defer a decision; and

(g) Take any other actions necessary and authorized by these rules and law.

(12) The hearing officer 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.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 06-21-054, § 137-24-030, filed 10/13/06, effective 11/13/06.]

WAC 137-24-040 Rights specified. (1) To receive written notice of the alleged violation of the DOSA sentence.

(2) To have an electronically recorded hearing conducted within five working days of service of the notice.

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

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

(5) To admit to the allegation. This may limit the scope of the hearing.

(6) To be present during the fact-finding and disposition phases of the hearing.

(7) To present his/her case to the hearing officer. If there is a language or communication barrier, the hearing officer may appoint someone to interpret or otherwise assist the offender. However, no other person may represent the offender in presenting his/her case. There is no right to an attorney or counsel.

(8) To confront and cross-examine witnesses appearing and testifying at the hearing.

(9) To testify during the hearing or to remain silent. An offender's silence will not be held against him/her.

(10) To have witnesses provide testimony on his/her behalf, either in person or in a witnessed statement/affidavit. However, outside witnesses may be excluded due to institutional concerns. The hearing officer may also exclude persons from the hearing upon a finding of good cause, or if the information to be presented by the witnesses is deemed irrelevant, duplicative, or unnecessary to the adequate presentation of the inmate's case. In addition, 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 with the offender present. In either event, the offender may submit a list of questions to ask the witness(es).

(11) To 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. In the event of a deferred decision to receive a copy of the hearing and decision summary from facility staff within a reasonable amount of time.

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(12) To receive a copy of the department of corrections hearing report.

(13) To obtain a copy of the audio recording of the hearing. The offender must send a written request to the hearings unit.

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

(15) If the offender waives their right to be present at the hearing, the department of corrections may conduct the hearing in their absence and may impose sanctions that could include loss of liberty and/or reclassification/revocation of the DOSA sentence.

(16) To waive any or all of the above rights.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 06-21-054, § 137-24-040, filed 10/13/06, effective 11/13/06.]

WAC 137-24-050 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 a 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.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 06-21-054, § 137-24-050, filed 10/13/06, effective 11/13/06.]

WAC 137-24-060 Appeals. (1) Within seven calendar days of the hearing, the offender may appeal the decision of the hearing officer to the appeal panel. The request for review shall be submitted in writing and shall identify the specific issues on appeal.

(2) The sanction may be reversed or modified if a majority of the panel determines that the sanction is not reasonably related to the infraction behavior.

(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.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 06-21-054, § 137-24-060, filed 10/13/06, effective 11/13/06.]

Chapter 137-25 WAC

SERIOUS INFRACTIONS—TOTAL AND PARTIAL CONFINEMENT FACILITIES

WAC

137-25-010	Application of chapter.
137-25-020	Definitions.
137-25-030	Serious infractions.

WAC 137-25-010 Application of chapter. The definitions and serious infractions described herein apply to

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offenders committed to both full and partial confinement facilities.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070, 05-24-009 and 06-02-038, § 137-25-010, filed 11/28/05 and 12/28/05, effective 5/1/06.]

WAC 137-25-020 Definitions.

• For the purposes of this chapter, the following words have the following meanings:

Abusive sexual contact - an incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:

- Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

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

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

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

Attempted suicide - an unsuccessful attempt to kill oneself as determined by a medical or mental health professional.

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

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

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

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

Deputy secretary - the deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.

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

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

Earned release time - means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.

Good conduct time credits - that portion of an inmate's potential reduction to minimum term which is authorized by

RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

Hearing officer - staff member(s) designated by the superintendent or hearings program administrator to conduct disciplinary hearings.

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

Infraction review officer - staff member(s) designated by the superintendent to review a serious infraction.

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

Medical care - any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.

Mental health professional - an individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at affecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.

Mitigating factors - factors to be considered by the infracting officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

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

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

Secretary - the secretary of the Washington state department of corrections, or the secretary's designee.

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

Sexual assault - an incident in which the act occurs against the will of the victim (without his/her consent and/or he/she is unable to consent or refuse) as the result of the threat of the force or force used to obtain compliance. A sexual assault includes one or more of the following behaviors:

- Contact between the penis and the vagina or the penis and the anus involving penetration. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit;
- Contact between the mouth and the penis, vagina and/or anus;

- Penetration of the anal or genital opening of another person by hand, finger or other object.

Sexually explicit - means any pictorial representation that is intended for sexual gratification and shows male or female genitalia, full frontal nudity, or depicts one or more of the following sexual behaviors:

- One or more of the participants appears to be nonconsenting;
- One or more of the participants appears to be acting in a forceful, threatening, or violent manner;
- One or more of the participants appears to be dominating one or more of the other participants or one or more of the participants appears to be in a submissive role or one or more of the participants appears to be degraded, humiliated, or appears to willingly engage in behavior that is degrading or humiliating;
- One of the participants appears to be a minor, or a minor alone is depicted in a sexually suggestive way;
- Bodily excretory behavior which appears to be sexual in nature;
- Bestiality, sadomasochistic behavior, and/or bondage; or
- Depicts sexual behaviors including, but not limited to, intercourse/penetration, sodomy, fellatio, cunnilingus, anilingus, or masturbation.

The term sexually explicit also refers to those written materials that are intended for sexual gratification and describe one or more of the above sexual behaviors as the predominant theme of the publication or letter.

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

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

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

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 09-01-195, § 137-25-020, filed 12/24/08, effective 1/24/09; 06-21-054, § 137-25-020, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-25-020, filed 11/28/05 and 12/28/05, effective 5/1/06.]

WAC 137-25-030 Serious infractions.

Category A

501 - Committing homicide.
502 - Aggravated assault on another offender.
507 - Committing an act that would constitute a felony and that is not otherwise included in these rules.
511 - Aggravated assault on a visitor or community member.
521 - Taking or holding any person hostage.
550 - Escape.
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 component thereof.

Category A

603 - Possession, introduction, use or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug, mind altering substance, or drug paraphernalia.
604 - Aggravated assault on a staff member.
611 - Sexual assault on a staff member.
612 - Attempted sexual assault of staff.
613 - Abusive sexual contact with staff.
635 - Sexual assault on another offender.
636 - Attempted sexual assault of another offender.
637 - Abusive sexual contact with another offender.
650 - Rioting.
651 - Inciting others to riot.
882 - Possession or unauthorized use of a cell phone.

Category B - Level 1

504 - Engaging in sexual acts with others within the facility with the exception of approved conjugal visits.
553 - Setting a fire.
560 - Unauthorized possession of items or materials likely to be used in an escape attempt.
633 - Assault on another offender.
704 - Assault on a staff member.
711 - Assault on a visitor or community member.
744 - Making a bomb threat.
884 - Urinating, defecating or placing feces or urine, in any location other than a toilet or authorized receptacle.
886 - Adulteration of any food or drinks.
892 - Giving, selling or trading any prescribed medication with another offender.

Category B - Level 2

505 - Fighting with any person.
556 - Refusing to submit or cooperate in a search when ordered to do so by a staff member.
607 - Refusing to submit to a urinalysis and/or failure to provide a urine sample when ordered to do so by a staff member within the allotted time frame.
608 - Refusing or failing to submit to a breathalyzer or other standard sobriety test when ordered to do so by a staff member.
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.
652 - Engaging in or inciting a group demonstration.
655 - Making intoxicants, alcohol, controlled substances, narcotics, or possession of ingredients, equipment, items, formulas, or instructions that are used in making intoxicants, alcohol, controlled substances, or narcotics.
682 - Engaging in or inciting an organized work stoppage.
707 - Possession, introduction, or transfer of any alcoholic or intoxicating beverage or substance.
716 - Unauthorized use of an over the counter medication or failure to take prescribed medication as required when administered under supervision.
736 - Possession, manufacture or introduction of unauthorized keys.
750 - Indecent exposure.
752 - Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.

Category B - Level 2

830 - Any escape from work release with voluntary return within 24 hours.

Category B - Level 3

503 - Extortion, blackmail, demanding or receiving money or anything of value in return for protection against others, or under threat of informing.

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

509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area.

525 - Violating conditions of a furlough.

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

600 - Tampering with, damaging, blocking, or interfering with any locking or security device.

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

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

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

660 - Unauthorized possession of money or other negotiable instruments the value of which is five dollars or more.

709 - Out-of-bounds: Being in another offender's cell or being in an area in the facility with one or more offenders without authorization.

738 - Possession of clothing or assigned equipment of a staff member.

739 - Possession of personal information about currently employed staff, contractors, or volunteers, or their immediate family members, not voluntarily given to the offender by the individual involved; including, but not limited to: Social Security numbers, unpublished home addresses or telephone numbers, driver's 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.

745 - Refusing a transfer to another institution.

746 - Engaging in or inciting an organized hunger strike.

762 - Failing to complete, or administrative termination from, DOSA substance abuse treatment program. Note: *This infraction must be initiated by authorized staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC.*

777 - Causing injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.

813 - Unauthorized/unaccounted time in the community or being in an unauthorized location in the community.

814 - While in work release, violation of an imposed special condition.

831 - While in work release, failure to return from an authorized sign out.

879 - Operating a motor vehicle without permission or in an unauthorized manner or location.

Category B - Level 3

889 - Unauthorized use of facility phones/related equipment or use of computer to conduct unauthorized or illegal business.

Category C - Level 1

508 - Throwing objects, materials, substances, or spitting in the direction of another person(s).

517 - Committing any act that would constitute a misdemeanor and that is not otherwise included in these rules.

555 - Theft of property or possession of stolen property.

557 - Refusing to participate in an available education or work program or other mandatory programming assignment.

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.

610 - Unauthorized possession of prescribed medication greater than a single or daily dose.

620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.

659 - Sexual harassment.

663 - Using physical force, intimidation or coercion against any person.

702 - Possession, manufacture or introduction of an unauthorized tool.

708 - Organizing or participating in unauthorized group activity or meeting.

714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another offender or that offender's friend(s) or family, the value of which is ten dollars or more.

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

720 - Flooding a cell or other area of the institution/facility.

724 - Refusing a cell or housing assignment.

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.

810 - Failure to seek/maintain employment or training or maintain oneself financially or being terminated from a job for negative or substandard performance.

Category C - Level 2

552 - Causing an innocent person to be penalized or proceeded against by providing false information.

554 - Damaging or destroying state property or any other item the value of which is ten dollars or more and that is not the personal property of the offender.

559 - Gambling; possession of gambling paraphernalia.

656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service.

706 - Giving false information when proposing a release plan.

Category C - Level 2

710 - Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia.
718 - Use of mail or telephone in violation of court order or local, state, or federal law.
725 - Any telephonic or written correspondence with any offender in a correctional facility without prior written approval of the superintendent/community corrections supervisor/designee.
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 or direction and/or documented disciplinary action.
728 - Possession of any sexually explicit material(s), as defined by department policy and/or WAC 137-25-020.
740 - Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.
742 - A pattern of creating a false emergency by feigning illness.
778 - Providing a urine specimen that has been diluted, substituted or altered in any way.

Category C - Level 3

551 - Providing false information to the disciplinary hearings officer or on a disciplinary appeal.
606 - Possession, introduction, or transfer of any tobacco, tobacco products, matches, or tobacco paraphernalia.
657 - Being found guilty of four or more general infractions arising out of separate incidents within a 90-day period.
658 - Failing to comply with any administrative or post-hearing sanction imposed for committing any general or serious infraction.
662 - Soliciting goods or services for which the provider would expect payment when the offender knows or should know that no funds are available to pay for those goods or services.
712 - Attempted suicide as determined by mental health staff.
713 - Self-mutilation or self-harm.
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.
811 - Entering into an unauthorized contract.
812 - Failure to report/turn in all earnings income.
861 - Performing or taking part in an unauthorized marriage.
890 - Failure to follow a medical directive and/or documented medical recommendations resulting in injury.

(1) In determining whether a #728 infraction or a #328 infraction pursuant to WAC 137-25-030 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-25-020.

(2) Attempts to commit infraction #611 or #635 are now separate infractions #612 and #636 for the Prison Rape Elimination Act (PREA) reporting purposes only and do not

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impact the definition in WAC 137-25-020 which includes "attempts."

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 09-01-195, § 137-25-030, filed 12/24/08, effective 1/24/09; 06-21-054, § 137-25-030, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01-090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-25-030, filed 11/28/05 and 12/28/05, effective 5/1/06.]

Chapter 137-28 WAC PRISONS—DISCIPLINE

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

137-28-005	Purpose. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-005, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-005.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-006	Definitions. [Statutory Authority: RCW 72.01.010 and 72.09.010. 89-04-032 (Order 88-02), § 137-28-006, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-006, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-006.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-010	Supplementary rules. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-010, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-010.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-015	Notification. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-015, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-015.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-020	Definition of misconduct. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-020, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-020.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-025	General infractions. [Statutory Authority: RCW 72.01-010 and 72.09.010. 89-04-032 (Order 88-02), § 137-28-025, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-025, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-025.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
137-28-030	Serious infractions. [Statutory Authority: RCW 72.01-010 and 72.09.010. 89-04-032 (Order 88-02), § 137-28-

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- 030, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. 85-08-026 (Order 85-06), § 137-28-030, filed 4/1/85; 84-17-058 (Order 84-13), § 137-28-030, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-030.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-031 Cell tag. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-031, filed 8/14/84, effective 10/10/84.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-032 Earned time, granting and denial. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-032, filed 8/14/84, effective 10/10/84.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-035 Reporting to law enforcement authorities. [Statutory Authority: RCW 72.01.010 and 72.09.010. 89-04-032 (Order 88-02), § 137-28-035, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-035, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-035.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-040 Infractions—On-site adjustment. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-040, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-040.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-045 Infractions—Report on. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-045, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-045.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-050 General infraction report—Action on report. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-050, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-050.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-055 Appeal to hearing officer. [Statutory Authority: RCW 72.01.090. 85-01-060 (Order 84-16), § 137-28-055, filed 12/17/84.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-065 Appointment and disqualification of hearing officer. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-065, filed 8/14/84, effective 10/10/84.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-072 Out-of-state inmates. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-072, filed 8/14/84, effective 10/10/84.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-075 Prehearing procedures—Rights of inmates. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-075, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-075.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-080 Temporary prehearing confinement. [Statutory Authority: RCW 72.01.010 and 72.09.010. 89-04-032 (Order 88-02), § 137-28-080, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-080, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-080.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-085 Hearing officer—Preparation for hearing. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-085, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-085.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-090 Conduct of hearing. [Statutory Authority: RCW 72.01.010 and 72.09.010. 89-04-032 (Order 88-02), § 137-28-090, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-090, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-090.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-093 Decision of hearing officer. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-093, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-093.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-094 Lesser included and related infractions. [Statutory Authority: RCW 72.01.010 and 72.09.010. 89-04-032 (Order 88-02), § 137-28-094, filed 1/27/89, effective 3/1/89.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-095 Finding of no infraction. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-095, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-095.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-097 Staff advisors. [Statutory Authority: RCW 72.01.010 and 72.09.010. 89-04-032 (Order 88-02), § 137-28-097, filed 1/27/89, effective 3/1/89. Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-097, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-097.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-100 Sanctions—Authority to impose. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-100, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-100.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-105 Sanctions—Types. [Statutory Authority: RCW 72.01.090. 85-01-060 (Order 84-16), § 137-28-105, filed 12/17/84; 84-17-058 (Order 84-13), § 137-28-105, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-105.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-107 Sanctions and mental status. [Statutory Authority: RCW 72.01.010 and 72.09.010. 89-04-032 (Order 88-02), § 137-28-107, filed 1/27/89, effective 3/1/89.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-110 Sanctions—Limitations. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-110, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-110.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-115 Appeal to superintendent. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-115, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-115.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-120 Reports to the board of prison terms and paroles. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-120, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-120.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-130 Time limitations. [Statutory Authority: RCW 72.01.090. 84-17-058 (Order 84-13), § 137-28-130, filed 8/14/84, effective 10/10/84. Formerly WAC 275-88-130.] Repealed by 95-15-044, filed 7/13/95, effective 8/15/95.
- 137-28-320 Lesser included and related infractions. [95-15-044, § 137-28-320, filed 7/13/95, effective 8/15/95.] Repealed by 00-10-079, filed 5/2/00, effective 6/2/00. Statutory Authority: RCW 72.01.090.

WAC 137-28-140 Purpose. The rules in this chapter provide a standardized system to determine whether misconduct by an inmate of an adult correctional institution has occurred, and to provide a system that clearly links an offender's behavior and participation in available education and work programs as determined through classification with the receipt or denial of earned early release time and other privileges.

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

The following rules set forth procedural guidelines. They do not create any procedural or substantive rights in any person, including any liberty interests in time credits, levels of custody, classification status, or other privileges. In accordance with Washington statutes, such matters are governed solely by the discretion of the department of corrections.

[Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-140, filed 5/2/00, effective 6/2/00; 97-03-041, § 137-28-140, filed 1/10/97, effective 2/4/97. 95-15-044, § 137-28-140, filed 7/13/95, effective 8/15/95.]

WAC 137-28-150 Authority. The authority for this chapter is RCW 72.01.090, 72.09.130, and 9.94.070.

[Statutory Authority: RCW 72.09.130, 72.01.090 and 9.94.070. 98-04-086, § 137-28-150, filed 2/4/98, effective 3/7/98. 95-15-044, § 137-28-150, filed 7/13/95, effective 8/15/95.]

WAC 137-28-160 Definitions.

• For the purposes of this chapter, the following words have the following meanings:

Abusive sexual contact - an incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:

- Intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

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

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

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

Attempted suicide - an unsuccessful attempt to kill oneself as determined by a medical or mental health professional.

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

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

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

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

Deputy secretary - the deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.

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

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

Earned release time - means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.

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

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

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

Infraction review officer - staff member(s) designated by the superintendent to review a serious infraction.

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

Medical care - any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.

Mental health professional - an individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at effecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.

Mitigating factors - factors to be considered by the infracting officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

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

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

Secretary - the secretary of the Washington state department of corrections, or the secretary's designee.

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

Sexually explicit - means any pictorial representation that is intended for sexual gratification and shows male or female genitalia, full frontal nudity, or depicts one or more of the following sexual behaviors:

- One or more of the participants appears to be nonconsenting;
- One or more of the participants appears to be acting in a forceful, threatening, or violent manner;
- One or more of the participants appears to be dominating one or more of the other participants or one or more of the participants appears to be in a submissive role or one or more of the participants appears to be degraded, humiliated, or appears to willingly engage in behavior that is degrading or humiliating;

- One of the participants appears to be a minor, or a minor alone is depicted in a sexually suggestive way;
- Bodily excretory behavior which appears to be sexual in nature;
- Bestiality, sadomasochistic behavior, and/or bondage; or
- Depicts sexual behaviors including, but not limited to, intercourse/penetration, sodomy, fellatio, cunnilingus, anilingus, or masturbation.

The term sexually explicit also refers to those written materials that are intended for sexual gratification and describe one or more of the above sexual behaviors as the predominant theme of the publication or letter.

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

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

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

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 09-01-195, § 137-28-160, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090. 05-16-033, § 137-28-160, filed 7/26/05, effective 8/26/05. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 02-12-023, § 137-28-160, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-160, filed 5/2/00, effective 6/2/00; 97-03-041, § 137-28-160, filed 1/10/97, effective 2/4/97. 95-15-044, § 137-28-160, filed 7/13/95, effective 8/15/95.]

WAC 137-28-170 Supplementary rules. (1) The superintendent may promulgate local supplementary rules, policies, and procedures including the creation of new sanctions.

(2) All new or supplemental sanctions shall be approved in writing by the deputy secretary before being put into effect.

[Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-170, filed 5/2/00, effective 6/2/00. 95-15-044, § 137-28-170, filed 7/13/95, effective 8/15/95.]

WAC 137-28-180 Notification. (1) All inmates of an adult correctional institution shall have access to policies and rules regarding:

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

(2) All inmates shall have access to a copy of the local disciplinary policies of the institution to which they are assigned.

(3) Inmates unable to read or understand English shall be provided access to a written or tape recorded translation of these rules in their accustomed language.

(4) Inmates should be provided access to changes to disciplinary policies or rules in advance of their effective date.

(a) Under normal circumstances, announcements of these changes should be posted at designated places for at least thirty days prior to their effective date or sent to the affected inmates.

(2009 Ed.)

(b) Complete and up-to-date copies of these rules and all local policies shall be available at each institution for inmate examination.

(c) Inmates shall be responsible to take steps necessary to inform themselves of changes and posted updates.

(5) All infraction(s) should be heard at the facility where the infraction(s) occurred. If it is necessary to transfer an inmate to another facility prior to resolution of unheard infractions, his/her infraction(s) will be forwarded to the new facility for hearing.

[95-15-044, § 137-28-180, 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.

WAC 137-28-185 Creation or amendment of serious infractions. (1) The secretary or designee may create and/or amend serious infractions.

(2) Prior to the creation or amendment of a serious infraction, the secretary or designee shall follow the rule-making procedures of chapter 34.05 RCW, the Administrative Procedure Act.

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

[Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-185, filed 5/2/00, effective 6/2/00.]

WAC 137-28-190 Reporting to law enforcement authorities. (1) The superintendent shall report any felony under state or federal law to law enforcement authorities.

(2) When an offender knowingly commits an additional serious infraction after losing all potential earned early release time credits, the superintendent will report that offender to local law enforcement authorities for possible felony prosecution under RCW 9.94.070.

(3) If a violation has been reported to law enforcement authorities, inmates who have been charged with an infraction shall not be questioned about the incident outside of a formal disciplinary hearing or an administrative segregation hearing until after it has been determined that no prosecution will occur or until a finding of guilty is made.

(4) No provisions of these rules shall prevent the administrative segregation of any inmate.

[Statutory Authority: RCW 72.09.130, 72.01.090 and 9.94.070. 98-04-086, § 137-28-190, filed 2/4/98, effective 3/7/98. 95-15-044, § 137-28-190, filed 7/13/95, effective 8/15/95.]

WAC 137-28-200 Out-of-state inmates. (1) Inmates committed to the department of corrections who have been transferred to a prison in another state shall be subject to the disciplinary rules and procedures applicable to the prison to which they have been transferred. That prison may, in its discretion, use any presumptive sanction guidelines in current effect in Washington state institutions.

(2) Inmates committed from other jurisdictions to the control of the Washington department of corrections shall be

subjected to the disciplinary rules and procedures applicable to the facility to which they are assigned. In addition:

(a) A summary of all serious infraction reports, including sanctions, shall be forwarded to the originating jurisdiction.

(b) Loss of good time shall be handled in accordance with this policy. A copy of all infraction reports resulting in loss of good time shall be forwarded to the originating jurisdiction by the institution record office with a request for approval. The loss of good time shall be considered pending until confirmed or modified by the originating jurisdiction.

[95-15-044, § 137-28-200, 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.

WAC 137-28-210 Hearing officers. (1) Each hearing shall be conducted by a hearing officer(s) within the rank/classification of lieutenant or above, or corrections specialist, designated by the superintendent.

(2) The hearing officer(s) will receive training in the disciplinary process and in the identification of inmates who may be impaired in their ability to understand the hearing process and participate in their own defense.

(3) Hearing officers may not function in that capacity when they have direct personal involvement in the infraction under consideration. Such officers must disqualify themselves by giving notice to the superintendent, who will select a replacement.

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

(5) Hearing officers may disqualify themselves or may be disqualified by the superintendent if actually biased for or against any inmate so that they cannot render a fair judgment in the hearing.

(6) Hearing officers must notify an infractioned inmate if they are related to the infractioning officer or the victim. The inmate may request another hearing officer or continue with the same hearing officer.

[06-24-087, § 137-28-210, filed 12/4/06, effective 1/4/07. 95-15-044, § 137-28-210, 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.

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.
- 357 - 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.

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 or 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

- 328 - 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 #328 infraction or a #728 infraction pursuant to WAC 137-25-030 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-28-160.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 06-21-054, § 137-28-220, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 02-12-023, § 137-28-220, filed 5/28/02, effective 6/28/02. 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.]

WAC 137-28-230 General infraction procedure.
Infraction report.

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

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

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

(3) The general infraction report shall be submitted promptly to the supervisor or unit team designated by the superintendent to receive such reports. The supervisor or unit team may upgrade the general infraction to a serious infraction. If the infraction is upgraded, the supervisor or unit team

shall forward the serious infraction report to the hearing clerk for preparation for a hearing on the serious infraction.

(4) The supervisor or unit team receiving a general infraction report shall decide whether the inmate is guilty or not guilty within five working days of receipt of the report. An extension to the five days may be granted by the disciplinary hearing officer. This decision of the supervisor or unit team can be reached by scheduling an informal hearing with the inmate present at which the supervising employee or unit team may allow witnesses and documentary evidence. Upon finding that an inmate is guilty, the supervising employee or unit team may impose any appropriate sanction.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 09-01-195, § 137-28-230, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-230, filed 5/2/00, effective 6/2/00. 95-15-044, § 137-28-230, filed 7/13/95, effective 8/15/95.]

WAC 137-28-240 General infractions—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.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 02-12-023, § 137-28-240, filed 5/28/02, effective 6/28/02. 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.]

WAC 137-28-250 Appeals. (1) The sanctions for a finding of guilty of a general infraction may be appealed by the inmate to the major hearing officer of the institution.

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

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

(c) Failure to follow appeal procedures will be deemed a waiver of the appeal.

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

- (a) Schedule a hearing on the appeal; or
- (b) Affirm, modify downward, or reverse the finding of guilty without a hearing.

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

- (4) Sanctions are not stayed upon appeal.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 06-21-054, § 137-28-250, filed 10/13/06, effective 11/13/06. 95-15-044, § 137-28-250, filed 7/13/95, effective 8/15/95.]

WAC 137-28-260 Serious infractions. See WAC 137-25-030 for the list of serious infractions.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-28-260, filed 11/28/05 and 12/28/05, effective 5/1/06. Statutory Authority: RCW 72.01.090. 05-16-033, § 137-28-260, filed 7/26/05, effective 8/26/05. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 04-07-163, § 137-28-260, filed 3/23/04, effective 4/23/04; 02-12-023, § 137-28-260, filed 5/28/02, effective 6/28/02. 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.]

WAC 137-28-270 Serious infraction procedure. Infraction report.

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

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

(2) The infracting staff member may recommend action to be taken on the infraction to the hearing officer. This may include a recommendation that the inmate be referred for a mental health consultation.

(3) Serious infraction reports may be reviewed by the infraction review officer who may:

- (a) Approve the report and forward it to the hearing clerk;
- (b) Require the report be revised, rewritten or reinvestigated by the reporting staff member to ensure that the alleged facts support the charges;
- (c) Add, dismiss, delete or reduce the indicated WAC violations as appropriate, based upon the information and/or evidence provided by the reporting staff member and any mitigating factors;
- (d) Recommend referral to a mental health professional for consultation if there is a question whether:
 - (i) Mental illness contributed to the behavior that led to the infraction; or
 - (ii) The inmate's mental health status may need to be monitored.

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

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 09-01-195, § 137-28-270, filed 12/24/08, effective 1/24/09. Statutory Authority:

RCW 72.01.090. 00-10-079, § 137-28-270, filed 5/2/00, effective 6/2/00. 95-15-044, § 137-28-270, filed 7/13/95, effective 8/15/95.]

WAC 137-28-280 Temporary prehearing confinement.

(1) Before a hearing, an inmate may be temporarily confined to his/her cell or demoted to a higher custody level or housing assignment, such as segregation, when it is reasonably believed that the inmate presents a risk to the security of the institution, a risk of escape, danger to themselves or to others, or is in danger from others.

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

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

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

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

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

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

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 09-01-195, § 137-28-280, filed 12/24/08, effective 1/24/09. 95-15-044, § 137-28-280, filed 7/13/95, effective 8/15/95.]

WAC 137-28-290 Preparations for hearing. In preparation for the hearing, the hearing clerk or designee shall, at least twenty-four hours in advance of the hearing:

- (1) Provide copies of the infraction report to the inmate;
- (2) Advise the inmate in writing:
 - (a) Of his/her right to have a hearing;
 - (b) That if he/she chooses not to testify at or attend the hearing, his/her silence may be used against him/her;
 - (c) To present written statements from other inmates, staff, or other persons only if those statements would be relevant to the infraction and have a tendency to demonstrate his/her innocence;
 - (d) To request that staff members, other inmates, and other persons be present as witnesses in his/her defense for the hearing if it is determined by the hearing officer that to do so would not be unduly hazardous to institutional safety or correctional goals. 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 inmate's case;
 - (e) To have a staff advisor assist in preparation of the inmate's case when it is determined by appropriate staff that

the inmate is unable to adequately represent him/herself on the basis of literacy, competence, or other disability;

(f) To have access to nonconfidential reports and records used by the hearing officer during the fact-finding stage. However, where reports and records contain information that might reasonably compromise the security or safety of the institution or its inmates, these reports and records shall be identified as confidential and withheld. A summary of the confidential information shall be provided to the inmate. This summary may be included in the infraction report.

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

(3) Advise the inmate that he/she does not have a right:

(a) To cross-examine witnesses;

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

(c) To a polygraph or other supplemental tests;

(4) Obtain written acknowledgement of the inmate's receipt of the information;

(5) Determine from the inmate whether the inmate wishes to contest the allegation;

(6) Schedule the hearing within seven working days after discovery of the incident. If an inmate is placed in prehearing confinement, a hearing shall be held within three working days after the day of placement, unless the time is extended by the superintendent. If the hearing is continued, a determination shall be made whether the inmate should remain on prehearing confinement and the reasons for that confinement.

[Statutory Authority: RCW 72.01.090, 00-10-079, § 137-28-290, filed 5/2/00, effective 6/2/00. 95-15-044, § 137-28-290, filed 7/13/95, effective 8/15/95.]

WAC 137-28-300 Conduct of hearing. (1) The hearing officer shall ensure that the inmate is capable of understanding the charge against him/her, the nature of the proceedings, and is able to adequately take part in the hearing. If there is reason to doubt the inmate's understanding or ability, the hearing officer may order a continuance of the hearing in order to obtain additional information, refer the inmate to a mental health staff member for assessment, appoint a mental health staff member to represent the inmate at the hearing, or request a staff advisor.

(2) The inmate shall be present at all stages of the hearing except during deliberations and any inquiry the hearing officer may make concerning the source of confidential information.

(3) The hearing officer may consider relevant evidence presented outside the hearing when not feasible to present that evidence within the hearing. The inmate shall be apprised of the content of that evidence and shall be allowed to rebut that evidence during the hearing. An inmate may waive his/her presence at a hearing. Failure without good cause to attend a scheduled hearing may be deemed a waiver of personal attendance. An inmate may be removed from his/her disciplinary hearing and the hearing may be continued in the inmate's absence if the inmate's behavior disrupts the disciplinary hearing.

(2009 Ed.)

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

(5) The hearing officer has the authority to question all witnesses. The inmate may submit proposed questions to be asked of witnesses, but the hearing officer has discretion over the questions asked.

(6) The inmate shall be allowed to present witnesses in his/her defense and to present documentary evidence in his/her defense when permitting him/her to do so will not be unduly hazardous to institutional safety or correctional goals. Testimony of witnesses from outside the facility will be submitted in writing.

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

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

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

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

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

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

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

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

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

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

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

(vi) The existence of corroborating evidence.

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

[Statutory Authority: RCW 72.01.090, 00-10-079, § 137-28-300, filed 5/2/00, effective 6/2/00. 95-15-044, § 137-28-300, filed 7/13/95, effective 8/15/95.]

WAC 137-28-310 Decision of hearing officer. (1) A report of the hearing shall be made.

- (a) The report shall include:
 - (i) The charge;
 - (ii) Names of witnesses;
 - (iii) Inmate plea(s);
 - (iv) Summary of the testimony and cross-examination;
 - (v) A description of the physical evidence used;
 - (vi) Reasons for denying witnesses or the fact that written witness statements were not returned to the hearing officer; and
 - (vii) The decisions and reasons.

(b) The written report shall be placed in the inmate's institutional file if he/she is found guilty.

(c) All reports and attachments shall be maintained by the clerk as part of the hearing officer's permanent records. A complete taped record of the hearing shall be taken but the tape shall not become a part of the inmate's file, and may be destroyed in accordance with the department's archive retention schedule unless the hearing officer becomes aware that an appeal or court proceeding is pending.

(2) In reaching a decision on the guilt or innocence of the inmate, the hearing officer must rely solely on evidence considered at the hearing. However, during the dispositional stage of the hearing, other factors, such as the inmate's institutional file, prior conduct, mental status, and overall institutional adjustment, may be considered.

(3) The hearing officer may not find an inmate guilty of committing a #328 or #728 infraction if the inmate possesses sexually explicit materials depicting **only** actual penetration and such sexually explicit material was screened and approved by a mail room staff member prior to delivery to the inmate. Nothing herein shall be construed to limit the ability to remove such material from the inmate's possession and cell.

(4) The hearing officer shall consider mitigating factors in determining whether to reduce a #728 serious infraction to a #328 general infraction.

(5) The hearing officer is authorized to find an inmate guilty of a lesser included offense without issuing a new infraction report or conducting a new hearing.

(6) Where the evidence suggests an inmate is guilty of an offense not charged and which is not a lesser included offense to a charged offense, the hearing officer may recommend that new charges be filed to address such offenses. The inmate may waive the right to a separate hearing on the new charges and may allow the hearing officer to enter a finding of guilty or not guilty and impose sanctions.

(7) The inmate shall be informed of the decision of the hearing officer in writing within three working days of the hearing, unless extended by the superintendent.

(8) The inmate shall be informed of his/her right to appeal the decision of the hearing officer to the superintendent.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 06-21-054, § 137-28-310, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 02-12-023, § 137-28-310, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090, 00-10-079, § 137-28-310, filed 5/2/00, effective 6/2/00. 95-15-044, § 137-28-310, filed 7/13/95, effective 8/15/95.]

WAC 137-28-330 Finding of not guilty. If the hearing officer determines that the inmate is not guilty of all charged infractions, disciplinary sanctions shall not be imposed on the inmate and all records pertaining to the charge(s) shall not be placed in the inmate's central file but may be retained for statistical, litigation, and recordkeeping purposes.

[95-15-044, § 137-28-330, 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.

WAC 137-28-340 Staff advisors. (1) An inmate may have a staff advisor appointed by the hearing officer to prepare for a hearing. The hearing officer shall consider the following factors prior to assigning a staff advisor:

- (a) The inmate's literacy;
- (b) The complexity of the issue;
- (c) The inmate's overall ability to speak for himself/herself and adequately present his/her case;
- (d) The mental status of the inmate, in which case the staff advisor should be a mental health professional or other staff member with mental health training or experience;
- (e) The inmate's ability to communicate in English;
- (f) Any disability that might impair the inmate's ability to adequately defend him/herself.

(2) The assignment of a staff advisor will only be necessary after considering these factors. This section should not be construed to mean that a staff advisor must be assigned.

(3) The staff advisor will be a staff member who is not involved in the observation or investigation of the infraction.

(4) The staff advisor shall attend the hearing, in person or telephonically, but shall not be responsible for presenting the inmate's case, questioning witnesses, or making other oral presentation, unless requested to do so by the hearing officer.

(5) Where a hearing is continued under this section, an advisor shall be appointed immediately and instructed to help the inmate in preparing his case to the extent necessary to present a valid defense.

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

(7) Staff advisors shall be provided with:

- (a) An opportunity to meet and confer with inmates they are representing;
- (b) 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;
- (c) Reasonable access to all witnesses; and

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

(8) Conversations between staff advisors and inmates are neither confidential nor privileged.

[95-15-044, § 137-28-340, 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.

WAC 137-28-350 Sanctions—Authority to impose.

(1) If the hearing officer determines that an inmate is guilty of a serious infraction, he/she may impose one or more of the following sanctions:

- (a) Any of the sanctions available for general infractions;
- (b) Any of the sanctions available under DOC 320.150;
- (c) Loss of a privilege or privileges as specified by the hearing officer not to exceed: Thirty days on a first offense, ninety days on a second offense, and one hundred eighty days on a third offense, within a one-year period;
- (d) Evening lockup or confinement to quarters for ten days;
- (e) Weekend and/or holiday lockup or confinement to quarters for a period of one or more weekends but not to exceed twelve consecutive weekends per incident. For purposes of this rule, a "weekend" shall begin at the end of the Friday workday and terminate at the beginning of the Monday workday;
- (f) Confinement to quarters except for meals, or with meals in cell, with or without curtailment of job assignment for a period not to exceed thirty days;
- (g) Recommendation to the unit team/classification committee/assignment officer for reconsideration of custody classification or program change;
- (h) Recommendations to the classification committee/classification officer for transfer to another institution when, as a result of the infraction committed, the inmate is unable to function in the institution of present confinement, or if other disciplinary methods have been attempted and failed;
- (i) Confinement on segregation status for a period not to exceed thirty consecutive days;
- (j) Confinement on isolation status for a period not to exceed ten consecutive days; however, where a serious infraction occurs during a period of isolation imposed under this rule, additional periods of isolation not to exceed ten days may be imposed. In situations where an inmate is in isolation for more than ten consecutive days, the director's prior approval is required unless the inmate is released from isolation for at least seventy-two consecutive hours between the end of one isolation sanction and the beginning of another;
- (k) Restitution;
- (l) Recommendation to the superintendent that he/she not certify good conduct time credit for an inmate subject to the jurisdiction of the indeterminate sentence review board, pursuant to RCW 9.95.070 or that he/she approve the denial of good conduct time credit for those inmates not under the jurisdiction of the board.

(2009 Ed.)

(i) The recommendation will be consistent with guidelines established by the secretary of the department of corrections.

(ii) Any sanctions for loss of good conduct credits in excess of the guidelines established by the secretary of the department of corrections must have final approval by the deputy secretary.

(iii) For inmates not under the board's jurisdiction, all awards of good conduct time shall be considered tentative and therefore all good conduct time credits earned or to be earned may be addressed under this rule;

(m) Recommendation to the indeterminate sentence review board for a disciplinary hearing or reconsideration of minimum term should occur only with infractions providing for actual time loss of twelve months or more and consistent with guidelines established by the department;

(n) Interruption of visitation between the offender and a specified individual(s) for a period of up to one hundred eighty consecutive days when there has been an infraction for visit related behavior or behavior that presents a security or safety threat. In cases of multiple or very serious offenses, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s);

(o) Restrictions, interruption or termination of correspondence, and/or telephone privileges with specified individuals. Sanctions for offense(s) within any one-year period may not exceed: Up to ninety consecutive days for the first offense, one hundred eighty consecutive days for the second offense and permanent loss for the third offense. Termination of correspondence and/or telephone privileges may be permanent for the first offense if:

- (i) The recipient so requests; or
 - (ii) A parent or guardian of the recipient, if a minor or an incompetent person, so requests; or
 - (iii) A felony was involved in the incident; or
 - (iv) If the contact violates a court order;
- (p) The sanction for infraction #557 and #810 shall be the loss of available earned release credits and other privileges as outlined in department policy. Progressively more severe sanctions will be utilized for subsequent infractions #557 and #810.

(q) The sanction for infraction #882 shall include a mandatory loss of telephone privileges, with the exception of legal calls, for sixty consecutive days for the first offense, ninety consecutive days for the second offense and one hundred eighty consecutive days for a third or subsequent offense within any one-year period.

(2) If the hearing officer determines that more than one infraction occurred as a result of the same incident, 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 disciplinary sanction for a fixed period of time, not to exceed three hundred sixty-five consecutive days, subject to the good behavior of the inmate or to meeting other conditions as specified by the hearing officer. If the subsequent behavior of the inmate is appropriate, the hearing officer may, at or before the end of the fixed period, cancel the sanction. A suspended sanction may be imposed if the inmate has been found guilty

of a general or serious infraction or of violating the conditions attached to the original suspension. A suspended sanction may be imposed by the hearing officer following notice to, and an in-person meeting with, the inmate.

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

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

(6) Nothing in this section limits the superintendent's discretion to grant, deny, suspend, or revoke any privilege.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 09-01-195, § 137-28-350, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 02-12-023, § 137-28-350, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-350, filed 5/2/00, effective 6/2/00; 97-03-041, § 137-28-350, filed 1/10/97, effective 2/4/97. 95-15-044, § 137-28-350, filed 7/13/95, effective 8/15/95.]

WAC 137-28-360 Sanctions and mental status. In determining an appropriate sanction, the hearing officer should consider the inmate's mental health and his/her intellectual, emotional, and maturity levels and what effect a particular sanction might have on the inmate in light of such factors. The hearing officer may request the assistance of other department staff, including mental health staff, in determining appropriate sanctions.

[95-15-044, § 137-28-360, 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.

WAC 137-28-370 Sanctions—Limitations. (1) No inmate shall be subject to discipline for violation of inmate conduct rules unless there has been reasonable advance notice to the inmate of the prohibited behavior unless the rule was adopted on an emergency basis.

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

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

(4) An inmate placed in disciplinary segregation shall be:

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

(b) Provided reasonable opportunities for personal hygiene;

(c) Afforded correspondence, reading, and access to the courts in accordance with written policy and procedure;

(d) Provided daily opportunity for at least one hour of exercise unless staffing, space, institutional security, order and/or safety, or other similar circumstances make this unfeasible, in which cases the inmate shall be allowed as much exercise as is feasible in the judgment of staff. Any limitations of exercise shall be approved in advance by a staff member with the rank of lieutenant or higher; and

(e) Provided adequate medical treatment.

(5) An inmate placed in isolation shall be:

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

(b) Provided reasonable opportunities for personal hygiene;

(c) Afforded correspondence, reading, and access to courts in accordance with written policy and procedure. Reading literature may be limited to educational, religious, legal, or program involvement material;

(d) Provided adequate medical treatment;

(e) Upon approval by the superintendent, released immediately to an appropriate setting when medical personnel recommend such release on medical or psychological grounds; and

(f) Have reasonable access to a counselor and religious staff member.

[95-15-044, § 137-28-370, 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.

WAC 137-28-380 Appeal to superintendent. (1) An inmate or the inmate's staff advisor may appeal the decision of the hearing officer to the superintendent by filing a written request for review with his/her reasons with the clerk within fifteen days, exclusive of weekends and holidays, after receiving notice of the decision of the hearing officer. The superintendent may consider appeals filed beyond the fifteen-day period.

(2) The clerk shall promptly transmit the appeal and the hearing record to the superintendent.

(3) The superintendent shall act on the appeal within ten working days of its receipt. The superintendent may affirm the decision of the hearing officer; reduce the charge to a lesser included offense; reduce a #728 serious infraction to a #328 general infraction based upon mitigating factors; reduce the severity of the sanctions imposed; vacate the judgment of the hearing officer; or remand the matter for a new hearing. Any new hearing may not result in an increase in the severity of the sanctions originally imposed unless the inmate is charged with related or additional offenses.

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

(5) Sanctions are not stayed upon appeal.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 06-21-054, § 137-28-380, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 02-12-023, § 137-28-380, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-380, filed 5/2/00, effective 6/2/00. 95-15-044, § 137-28-380, filed 7/13/95, effective 8/15/95.]

WAC 137-28-390 Reports to the indeterminate sentence review board. (1) Whenever the hearing officer finds an inmate guilty of a serious infraction and recommends either loss of good conduct time credits or an increase in the inmate's minimum term, the records office must inform the indeterminate sentence review board of that decision within ten days or, if an appeal is taken, within ten days of the super-

intendent's decision. This report shall include a copy of the summary of the hearing prepared by the hearing officer.

(2) In all other cases where a finding of guilty is made for a serious infraction, the records office must inform the indeterminate sentence review board of that decision within thirty days, or if an appeal is taken, within thirty days of the superintendent's decision. This report shall include a copy of the summary of the hearing prepared by the hearing officer reporter.

(3) Where an inmate is found guilty of a serious infraction within forty-five days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.

(4) This section shall apply only to inmates who are under the jurisdiction of the indeterminate sentence review board.

[95-15-044, § 137-28-390, 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.

WAC 137-28-400 Time limitations. The time limitations expressed in these regulations are not jurisdictional and failure to adhere to any particular time limit shall not be grounds for reversal or dismissal of a disciplinary proceeding.

[95-15-044, § 137-28-400, 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.

WAC 137-28-410 Restitution. (1) If restitution has been imposed as a sanction, a hearing officer shall determine the amount of restitution owed. A determination of the amount of restitution owed shall be made at the infraction hearing. However, the hearing officer may continue the hearing in order to secure additional evidence. If continued, the inmate shall be present at the continued/reconvened hearing.

(2) The amount of restitution normally shall be the replacement value of the item, the cost of repair, or the cost of any unnecessary expense caused by the inmate's misconduct.

(3) The inmate shall be given an opportunity to appeal the amount of restitution within the time limits of this policy. If under appeal, the amount of restitution will be held in the inmate's account but funds will not be withdrawn from the inmate's account until the superintendent has decided the appeal.

(4) Funds may be:

(a) Withdrawn from the inmate's account to make restitution provided the inmate's account shall not be reduced to less than ten dollars; or

(b) Twenty percent of all funds being placed into the inmate's account may be taken until the restitution is paid in full.

[95-15-044, § 137-28-410, filed 7/13/95, effective 8/15/95.]

(2009 Ed.)

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 137-28-420 Continuances. (1) At any time during the disciplinary process, the hearing officer may continue the hearing for any reasons, including the following:

(a) To determine the inmate's mental status or competency.

(b) To appoint a staff advisor.

(c) To obtain an interpreter.

(d) To obtain witnesses or witness statements.

(e) To correct errors.

(f) To obtain a replacement hearing officer.

(g) To obtain crime lab reports or other documentation.

(h) Due to the inmate's and/or witness' unavailability.

(i) Because the inmate is on escape, court-ordered custody, at a non-DOC facility, in transit, etc.

(j) A reasonable request by the inmate.

(k) To determine restitution costs.

(2) Continuances shall be for no longer than necessary, but shall not exceed twenty working days, unless approved by the superintendent.

(3) Hearings for inmates on escape status, court-ordered custody, in transit at a nondepartment of corrections' facility or otherwise unavailable may be continued up to a period not to exceed twenty working days after their return to the facility where the infraction originated.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 06-21-054, § 137-28-420, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-420, filed 5/2/00, effective 6/2/00. 95-15-044, § 137-28-420, filed 7/13/95, effective 8/15/95.]

WAC 137-28-430 Evidence. (1) Physical evidence of infractions shall be secured and protected from contamination, loss, or damage, when possible.

(2) A documented record of the chain of custody of physical evidence shall be maintained by the evidence custodian. The evidence custodian shall be supervised by the hearing officer.

(3) When physical evidence is no longer needed for appeal or litigation, it may be disposed of according to policy.

[95-15-044, § 137-28-430, 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.

Chapter 137-32 WAC

PRISONS—ADMINISTRATIVE SEGREGATION AND INTENSIVE MANAGEMENT

WAC

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Purpose.

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

137-32-020	Intermediate informal review. [00-09-063, § 137-32-020, filed 4/17/00, effective 5/19/00. Statutory Authority: RCW 72.01.090. 85-01-059 (Order 84-15), § 137-32-020, filed 12/17/84.] Repealed by 07-08-063, filed 3/29/07, effective 4/29/07.
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WAC 137-32-001 Purpose. The rules in this chapter define the reasons and establish the process for classifying inmates of adult correctional institutions to administrative segregation status, assigning such inmates to a segregation or intensive management facility or unit and continuing such classification status.

[Statutory Authority: RCW 72.01.090. 85-01-059 (Order 84-15), § 137-32-001, filed 12/17/84. Formerly chapter 275-82 WAC.]

WAC 137-32-002 Definitions. For the purpose of this chapter the following words shall have the following meanings:

- (1) "Department" means the department of corrections.
- (2) "Adult correctional institution" and "institution" mean a facility identified in RCW 72.01.050(2) and any similar facility hereafter established.
- (3) "Secretary" means the secretary of the department of corrections.
- (4) "Deputy secretary" means the deputy secretary of the prisons division of the department, or the deputy secretary's designee.
- (5) "Superintendent" means the superintendent of an institution, or the superintendent's designees.
- (6) "Hearing officer" means the person named by a superintendent to act for the superintendent in reviewing the cases of inmates assigned to administrative segregation status.
- (7) "Inmate" means any person assigned to the custody of the department, including any person transferred to an institution from another state or the federal government.
- (8) "Administrative segregation status" means segregation of an inmate of an institution for nondisciplinary reasons.
- (9) "Intensive management status" means an assignment to administrative segregation for an extended period after other alternatives have been explored.
- (10) "Classification meeting" means a meeting with an inmate held to:
 - (a) Determine whether the inmate should be placed on administrative segregation status, continued on administrative segregation status, placed on intensive management status, continued on intensive management status, released to the general inmate population, recommended for either an in-state or out-of-state transfer; and/or
 - (b) Develop an action plan, expectations and goals relative to the rehabilitation of the inmate.
- (11) "Working days" means Monday through Friday excluding holidays.

[07-08-063, § 137-32-002, filed 3/29/07, effective 4/29/07. 00-09-063, § 137-32-002, filed 4/17/00, effective 5/19/00. Statutory Authority: RCW 72.01.090. 85-01-059 (Order 84-15), § 137-32-002, filed 12/17/84.]

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 137-32-005 Initial placement. (1) The superintendent/designee may segregate an inmate from the general inmate population and assign such inmate to a segregation or intensive management unit if, in the judgment of the superintendent, the inmate:

- (a) Poses a threat to himself/herself, others, or the security of the institution;
- (b) Requests protection or is deemed by staff to require protection;
- (c) Is pending or in transit to a more secure institution; or
- (d) Poses a serious escape risk.

(2) The authorizing department staff member must determine that placement in administrative segregation status is appropriate and document the facts supporting such reason.

[07-08-063, § 137-32-005, filed 3/29/07, effective 4/29/07. 00-09-063, § 137-32-005, filed 4/17/00, effective 5/19/00. Statutory Authority: RCW 72.01.090. 85-01-059 (Order 84-15), § 137-32-005, filed 12/17/84.]

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 137-32-010 Initial review. (1) Immediately after an inmate's initial placement in segregation, a department staff member will inform the inmate in writing of the reason for the inmate's segregation and the date, time and place of the initial review meeting.

(2) The hearing officer will meet with such inmate within two working days after initial placement for the initial review of the basis for the assignment of such inmate to administrative segregation status. During this initial review the inmate will be provided an opportunity to respond to the reasons for such inmate's placement in a segregation or intensive management unit.

(3) The hearing officer will prepare a written report of the initial review meeting with the inmate and deliver such report to the superintendent. This report will include the information provided to the inmate, the reason for initial placement in a segregation or intensive management unit, the inmate's response to the allegation resulting in the initial placement in a segregation or intensive management unit, the reasons supporting protective custody, special restrictions, including monitoring of special medications and/or diets, and the hearing officer's recommendation whether to continue the administrative segregation or to release the inmate to the general inmate population, together with the facts supporting such recommendation.

(4) The superintendent should review the hearing officer's report, and within one working day after receipt, will prepare a written decision accepting or rejecting the hearing officer's recommendations.

[07-08-063, § 137-32-010, filed 3/29/07, effective 4/29/07. 00-09-063, § 137-32-010, filed 4/17/00, effective 5/19/00. Statutory Authority: RCW 72.01.090. 85-01-059 (Order 84-15), § 137-32-010, filed 12/17/84.]

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 137-32-015 Segregation meeting procedures.

(1) The hearing officer will preside over segregation meetings of inmates assigned to administrative segregation status.

(2) Subsequent to the initial review a segregation review will occur every seven days for the first two months and at least every thirty days thereafter.

(3) Offenders will be provided advanced notice, of at least forty-eight hours, for any segregation review, to include:

(a) The date, time, purpose, and place of the classification meeting;

(b) Related criminal charges, if known, evolving from the incident for which the inmate is placed on administrative segregation status;

(c) That the inmate has the opportunity to provide the hearing officer with names of inmates or institution staff from whom witness statements should be obtained; and

(d) That only written statements will be considered during the course of the hearing unless the hearing officer requires oral testimony for clarification.

(4) The hearing officer will ensure that all witnesses named by the inmate are provided with witness statement forms as soon as practical, but not less than twenty-four hours prior to the classification meeting.

(5) The following procedures will be adhered to during all classification meetings:

(a) The inmate may be present at all stages of the meeting except during discussions involving information from confidential sources.

(b) The hearing officer will document the meeting setting forth the information presented, including all witness statements.

(c) The superintendent may designate an institution staff member, other than the hearing officer, to present evidence either supporting continued administrative segregation or release therefrom.

(d) The hearing officer shall have the authority to schedule inmates, institution staff members, or other persons to appear and present or clarify information which may be relevant to the hearing officer's decision. To the extent possible, confidential information presented to the hearing officer shall be presented by the individual receiving the information. The source shall be identified to the hearing officer, except when the superintendent directs that the source is to remain confidential.

(e) The hearing officer will provide the inmate with an opportunity to present the inmate's views to the hearing officer to clarify information from the witness statements. The inmate may present a written statement in lieu of, or in addition to oral testimony. The written statement will be included in the record.

(f) If the inmate refuses to attend the hearing, this fact will be documented by the hearing officer.

(g) An inmate may select an institution staff member, approved by the superintendent, to assist and advise the inmate at the hearing. The advisor may be a staff member not ordinarily assigned responsibility for the inmate. The advisor shall not be an inmate. The advisor will be approved by the superintendent only if, in the superintendent's judgment, the inmate is unable to present his/her own case.

(6) The hearing officer should make a written report to the superintendent and the inmate within one working day after the classification meeting, which will include:

(a) A recommendation that the inmate be continued in administrative segregation, released back to the general population, or transferred to a more appropriate facility, in or out of state;

(b) An individual behavioral management plan which includes expectations for changes necessary in the inmate's behavior and appropriate program participation for the inmate's return to the general inmate population; provided, however, accomplishment of any such identified behavioral changes and/or program completions/referrals shall not necessarily require discharge from administrative segregation, but shall be considered along with all other circumstances; and

(c) A summary of the inmate's adjustment while in administrative segregation status.

(7) The inmate may appeal the report by submitting written objections and whatever other written information the inmate feels is relevant to the superintendent/designee. Such material shall be filed within twenty-four hours of the inmate's receipt of the report.

(8) The hearing officer should notify the inmate in writing within one working day after receiving the superintendent's decision regarding retention of the inmate in administrative segregation or the inmate's release therefrom, other action directed by the superintendent, and the date of the next classification meeting, if any.

(9) Inmates reviewed at the segregation review meeting will be considered for one or more of the following:

(a) Referral to the deputy secretary/designee with a recommendation that the inmate be placed on intensive management status;

(b) Return to the general inmate population with clear behavioral expectations for remaining there; or

(c) Transfer to a more appropriate facility or unit, within or outside the state.

[07-08-063, § 137-32-015, filed 3/29/07, effective 4/29/07. 00-09-063, § 137-32-015, filed 4/17/00, effective 5/19/00. Statutory Authority: RCW 72.01.090. 85-01-059 (Order 84-15), § 137-32-015, filed 12/17/84.]

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 137-32-025 Intensive management status. An inmate will be placed on intensive management status in accordance with the following procedures:

(1) The hearing officer may, after conducting a formal hearing, recommend to the superintendent that the inmate be

placed on intensive management status stating the reasons therefore.

(2) The superintendent/designee will review the hearing officer's recommendation, and if approved will forward a copy thereof to the deputy secretary/designee for final approval.

(3) The cases of all inmates assigned to intensive management status will have an assessment completed within the first thirty days. Reviews by the hearing officer will be held at intervals not to exceed thirty days.

Formal classification meetings will be held at intervals not to exceed one hundred eighty days.

[07-08-063, § 137-32-025, filed 3/29/07, effective 4/29/07. 00-09-063, § 137-32-025, filed 4/17/00, effective 5/19/00. Statutory Authority: RCW 72.01.090. 85-01-059 (Order 84-15), § 137-32-025, filed 12/17/84.]

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 137-32-030 Conditions of confinement. (1) An inmate placed in an intensive management or administrative segregation unit shall, unless safety or security considerations dictate otherwise, be:

(a) Confined in an adequately lighted and ventilated environment at a reasonably comfortable temperature for the season, unless mechanical or other problems prevent such conditions on a temporary basis;

(b) Provided meals of the similar quality and quantity as provided to the general inmate population; however, methods of preparation and/or delivery may be modified for security reasons;

(c) Provided access to personal hygiene items;

(d) Provided the opportunities to shower (for a least ten minutes) and shave at least three times per week;

(e) Afforded rights to telephone, mail, and approved correspondence, supplies, visiting, reading material(s), and legal representation consistent with reasonable custody and security precautions;

(f) Provided an opportunity for daily exercise for no less than one hour per day, five days per week, outside of the inmate's cell; however, when the inmate is on isolation or program modification status, daily in-cell fitness activities will be encouraged in lieu of out-of-cell opportunities;

(g) Afforded access to health care services and controlled access to prescribed and/or over-the-counter medications;

(h) Afforded access to unit sergeant, unit supervisor, and counselor;

(i) Provided exchange of clothing which may include T-shirts, underwear, socks, and towels, at least three times per week, and exchange of linens and coveralls weekly;

(j) Provided barbering services on a monthly basis, except for those inmates assigned to isolation and/or program modification status; and

(k) Provided access to the following, consistent with reasonable custody and security requirements: Religious guidance; education; self-help programs; library and law library; and grievance program.

(2) The rights of an inmate in administrative segregation confinement with respect to meals, personal hygiene, correspondence, reading, legal representation and recreation may be limited when the provision of such rights will result in danger to the inmate, or to institution staff, or present a threat to the maintenance of reasonable order and security within the institution. Decisions to limit the rights of an inmate in administrative segregation confinement must be approved in advance by the unit supervisor. Limitations of rights imposed shall be reviewed within one working day by the superintendent.

[00-09-063, § 137-32-030, filed 4/17/00, effective 5/19/00. Statutory Authority: RCW 72.01.090. 85-01-059 (Order 84-15), § 137-32-030, filed 12/17/84.]

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 137-32-035 Administrative release. (1) The superintendent may release an inmate from administrative segregation status at any time after determining that, in the superintendent's judgment, the conditions or reasons which required the inmate's administrative segregation no longer exist. Recommendations for release may be submitted to the superintendent at any time by segregation unit staff or other staff familiar with the inmate's situation. An inmate who voluntarily requests segregation or protective custody in writing, on the security designation review form, may request to be returned to his or her housing unit at any time.

(2) Only the deputy secretary/designee has the authority to release an inmate from intensive management status.

[07-08-063, § 137-32-035, filed 3/29/07, effective 4/29/07. 00-09-063, § 137-32-035, filed 4/17/00, effective 5/19/00. Statutory Authority: RCW 72.01.090. 85-01-059 (Order 84-15), § 137-32-035, filed 12/17/84.]

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 137-32-040 Interpreters. An interpreter will be provided at the initial review meeting or any classification meeting for those inmates who do not speak or understand English or who are hearing impaired.

[Statutory Authority: RCW 72.01.090. 85-01-059 (Order 84-15), § 137-32-040, filed 12/17/84.]

WAC 137-32-045 Other procedures. The department shall develop and implement specific procedures governing the administrative segregation of inmates, which procedures shall be consistent with the provisions of this chapter.

[00-09-063, § 137-32-045, filed 4/17/00, effective 5/19/00. Statutory Authority: RCW 72.01.090. 85-01-059 (Order 84-15), § 137-32-045, filed 12/17/84.]

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 137-32-050 Time limitations. The time limitations expressed in this chapter shall not be deemed to be jurisdictional, and failure to adhere to any particular time limitation shall not be grounds for automatic reversal or dismissal of an administrative segregation or intensive management proceeding.

[Statutory Authority: RCW 72.01.090, 85-01-059 (Order 84-15), § 137-32-050, filed 12/17/84.]

WAC 137-32-060 Out-of-state transfers. Recommendations for out-of-state transfer may be made by the superintendent to the secretary as specified in these rules, as well as anytime the superintendent believes the transfer to be in the best interests of the state or the welfare of the inmate. Transfer recommendations shall be in writing and shall specify reasons for the recommendations.

[Statutory Authority: RCW 72.01.090, 85-01-059 (Order 84-15), § 137-32-060, filed 12/17/84. Formerly chapter 137-66 WAC.]

Chapter 137-36 WAC

ADULT CORRECTIONAL INSTITUTIONS— INMATE PERSONAL PROPERTY

WAC

137-36-010	Purpose.
137-36-020	Definitions.
137-36-030	Authorized items.
137-36-040	Disposition of personal property.
137-36-050	Inventory of personal property.
137-36-060	Return of personal property.
137-36-070	Implementation.

WAC 137-36-010 Purpose. The purpose of these rules is to maintain the safety, security, and discipline of adult correctional facilities operated under the jurisdiction of the department of corrections in accordance with Title 72 RCW et al., by establishing guidelines for the development of department and institution level policies and rules governing the retention of personal property by inmates to prevent the possession of illegal items and contraband within the institution.

[Statutory Authority: RCW 72.08.103, 72.09.050, 72.13.080 and 72.15.040, 83-20-035 (Order 83-08), § 137-36-010, filed 9/27/83.]

WAC 137-36-020 Definitions. (1) "Contraband" consists of all illegal items, alcoholic beverages, and other items which a resident of a correctional institution may not have in his possession, as defined in regulations adopted by the superintendent of an institution and approved by the secretary.

(2) "Illegal items" are controlled substances as defined and listed in chapter 69.50 RCW or any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to the person of another.

(3) "Inmate" shall refer to those persons committed to the custody of the department of corrections and inmates transferred from other states or the federal government.

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

(5) "Superintendent" means the superintendent of a correctional facility or his/her designee(s).

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(6) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

[Statutory Authority: RCW 72.08.103, 72.09.050, 72.13.080 and 72.15.040, 83-20-035 (Order 83-08), § 137-36-020, filed 9/27/83. Formerly WAC 275-87-005.]

WAC 137-36-030 Authorized items. (1) Only authorized items may be retained by an inmate in the custody of the department. All authorized items shall be retained at the owner's risk. The state of Washington shall not be liable for any loss or damage.

(2) Authorized items may be limited in quantity and value when necessary to provide accountability, contraband control, safety or sanitary conditions, storage space, inmate morale or to meet the unique needs of each institution.

(3) Each superintendent shall establish regulations setting forth specific authorized items and levels of personal property for those inmates confined to that institution. Specific personal property authorizations may be suspended to ensure the safety, medical or mental health treatment objectives of any inmate or the general population and to ensure proper maintenance of order and security of the institution.

(4) All authorized items in excess or in noncompliance with the levels established by the superintendent of each institution shall be considered contraband and shall be disposed of as provided in WAC 137-36-040.

[Statutory Authority: RCW 72.08.103, 72.09.050, 72.13.080 and 72.15.040, 83-20-035 (Order 83-08), § 137-36-030, filed 9/27/83.]

WAC 137-36-040 Disposition of personal property.

(1) Contraband items will be confiscated by the superintendent and disposed of in the following manner:

(a) Items which are determined to be owned by an inmate will be mailed or transferred to a person designated by the inmate at the inmate's expense. If the inmate is without funds, refuses to pay the required postage or refuses to designate an individual to receive the property, such items shall be donated to a charitable organization.

(b) Items for which ownership cannot be determined shall be held by the superintendent for six months and then donated to a charitable organization or destroyed.

(c) Money such as currency, personal checks, and money orders, is contraband within adult correctional institutions. If money or other negotiable instrument is found in the unauthorized possession of an inmate and he/she claims or disclaims ownership or, if ownership is unknown, the money or negotiable instrument shall be confiscated immediately and shall be deposited in the inmate welfare fund at the expiration of any appeal or hearing.

The inmate shall be advised in writing of his/her right to seek review of the decision to place the money in the inmate welfare fund. The review shall be sought by writing directly to the director of the division of prisons or his/her designee(s) within ten calendar days.

(2) All illegal items owned by and/or found in the possession of an inmate shall be confiscated. Such items shall be held for evidence for law enforcement authorities. Such ille-

gal items that do not need to be retained as evidence shall be destroyed.

(3) Abandoned personal property shall be disposed of in the following manner:

(a) All personal property, and any income or increment which is accrued thereon, held for the owner by an institution that has remained unclaimed for more than six months from the date the owner was terminated from work release, transferred to a different institution, or when the owner is unknown or deceased, from the date the property was placed in the custody of the institution, is presumed abandoned. When an inmate who has no recorded next of kin or person to whom unclaimed property can be sent, is transferred to another institution, the property shall not be presumed abandoned for a period of twelve months.

(b) All personal property, and any income or increment which has accrued thereon, shall be presumed abandoned whenever the inmate owner has been placed on escape status. Such property shall be held for three months from the date of the escape. If during that period the inmate remains on escape status and/or no other person claims ownership of the property, the property shall be deemed abandoned and may be donated to charity or destroyed in accordance with the provisions of this regulation.

(c) All personal property, other than money, which is unclaimed for the time periods set out in this regulation, shall be presumed abandoned and may be destroyed. Where a superintendent feels the property may be used or has value to a charitable nonprofit organization, the property may be donated to such an organization.

(d) Any money unclaimed for the time limits set out in this regulation shall be presumed abandoned and paid into the revolving fund established pursuant to RCW 9.95.360.

(e) At least thirty days prior to personal property being donated or destroyed, written notice shall be given to the owner at the owner's residence or place of business or to some person of suitable age or discretion residing or employed therein. Such notice may be hand delivered or sent by certified mail. If the owner is deceased, such notice shall be sent to at least one of the owner's heirs, if known. In all other circumstances, notice shall be sent to the person previously designated by the owner as authorized to receive property.

(f) If none of the above alternatives is available, notice of the proposed donation or destruction of the property shall be published at least once in an official newspaper in the county in which the institution is located at least thirty days prior to the date fixed for the action. The notice shall be signed by the secretary and shall contain a general description of the unclaimed personal property, specifying the institution at which the property is held.

[Statutory Authority: RCW 72.08.103, 72.09.050, 72.13.080 and 72.15.040. 83-20-035 (Order 83-08), § 137-36-040, filed 9/27/83. Formerly WAC 275-87-020.]

WAC 137-36-050 Inventory of personal property. All personal property, whether confiscated, in the possession of the inmates or maintained by the institution shall be inventoried on forms established and approved by the secretary.

A continuous log will be maintained at each holding area designated for inmate personal property. The log shall iden-

tify the property contained therein as well as the custodial personnel who have access to the personal property area.

[Statutory Authority: RCW 72.08.103, 72.09.050, 72.13.080 and 72.15.040. 83-20-035 (Order 83-08), § 137-36-050, filed 9/27/83.]

WAC 137-36-060 Return of personal property. Upon formal release from the institution, all personal property in the custody of the superintendent shall be returned to the inmate. If the inmate believes that property of value belonging to him/her has been lost or damaged due to staff negligence, he/she may file a claim pursuant to RCW 4.92.100.

[Statutory Authority: RCW 72.08.103, 72.09.050, 72.13.080 and 72.15.040. 83-20-035 (Order 83-08), § 137-36-060, filed 9/27/83.]

WAC 137-36-070 Implementation. The secretary may adopt rules and regulations implementing this chapter.

[Statutory Authority: RCW 72.08.103, 72.09.050, 72.13.080 and 72.15.040. 83-20-035 (Order 83-08), § 137-36-070, filed 9/27/83.]

Chapter 137-48 WAC

INMATE MAIL AND COMMUNICATIONS

WAC

137-48-010	Purpose.
137-48-020	Definitions.
137-48-030	Inspection of mail.
137-48-040	Restriction of incoming and/or outgoing mail.
137-48-050	Procedures for restrictions of incoming and/or outgoing mail.
137-48-060	Mail costs.
137-48-070	Mail records.
137-48-080	Telephone usage.
137-48-090	Implementation.

WAC 137-48-010 Purpose. The purpose of these rules is to maintain the safety, security, and discipline of adult prison facilities operated under the jurisdiction of the department of corrections in accordance with Title 72 RCW et al., by establishing guidelines for the development of departmental and institution level policies and rules governing the receipt and sending of mail by inmates to prevent the transmission of illegal items or contraband into or out of an institution. These rules shall not apply to work release facilities under the jurisdiction of the department.

[05-13-004, § 137-48-010, filed 6/2/05, effective 7/2/05. 91-23-103, § 137-48-010, filed 11/20/91, effective 1/1/92. Statutory Authority: RCW 72.08.-380, 72.09.050 and 72.12.140. 83-20-036 (Order 83-09), § 137-48-010, filed 9/27/83.]

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 137-48-020 Definitions. (1) "Contraband" includes illegal items, explosives, deadly weapons, alcoholic beverages, drugs, tobacco products, controlled substances and any item that is controlled, limited, or prohibited on the grounds or within the secure perimeter of a correctional facility as defined by department or institution policy.

(2) "Emergency situations" are critical illnesses, deaths, or similar situations experienced by members of the inmate's family or the inmate.

(3) "Illegal items" are items which are unlawful for any person to possess within the community as defined by the laws of the state of Washington, controlled substances as defined and listed in chapter 69.50 RCW or any weapon, fire-arm, or any instrument which, if used, could produce serious bodily injury to another.

(4) "Indigent inmate" an inmate who has less than a ten-dollar balance of disposable income in his/her trust fund account on the day a request is made to utilize funds and during the thirty days previous to the request.

(5) "Inspection of mail" the physical act of opening, touching, and/or reading of mail, the use of mechanical or chemical systems and/or the use of animals to determine the presence of contraband or illegal items.

(6) "Legal mail" is correspondence to or from courts and court staff (judges, clerks of the court, judicial law clerks, etc.), attorneys, established groups of attorneys involved in the representation of inmates in judicial proceedings (ACLU, legal services groups, etc.), the President or Vice-President of the United States, members of the United States Congress, embassies and consulates, the United States Department of Justice, state attorney general, governors, members of the state legislature, and law enforcement officers in their official capacity.

To be considered and therefore handled as "legal mail" the correspondence must be clearly marked "legal mail" on the outside front of the envelope, and must have a return address which clearly indicates that the mail is from one of the above listed sources.

(7) "Letters" consist of handwritten/typed communications and/or written/pictorial enclosures to and from inmates. A standard first class, one ounce letter shall be consistent with the dimensions, weight, and thickness as prescribed by the United States Postal Service. A properly addressed and stamped post card or greeting card shall be processed with the same standards as described above for a first class one ounce letter. Nonstandard first class mail requires a surcharge as established by the United States Postal Service.

(8) "Mail" consists of letters, publications, or packages delivered by the United States Post Office or by other established and authorized carriers.

(9) "Packages" a wrapped or boxed object; a parcel or bundle containing one or more objects, a container in which something is packed for storage or transport or mailing.

(10) "Publications" consists of reproduced handwritten or typed/printed or pictorial materials including books, periodicals, newspapers, magazines, and pamphlets.

(11) "Return address" for an inmate this includes the full committed name, and may include any other legal name, DOC number, housing assignment, and the full name of the correctional facility from which the correspondence is mailed. For a free citizen this includes a reasonable return address as recognized by the United States Postal Service.

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

(13) "Sexually explicit" means any pictorial representation that is intended for sexual gratification and shows male or female genitalia, full frontal nudity, or depicts one or more of the following sexual behaviors:

(a) One or more of the participants appears to be nonconsenting;

(b) One or more of the participants appears to be acting in a forceful, threatening, or violent manner;

(c) One or more of the participants appears to be dominating one or more of the other participants or one or more of the participants appears to be in a submissive role or one or more of the participants appears to be degraded, humiliated, or appears to willingly engage in behavior that is degrading or humiliating;

(d) One of the participants appears to be a minor, or a minor alone is depicted in a sexually suggestive way;

(e) Bodily excretory behavior which appears to be sexual in nature;

(f) Bestiality, sadomasochistic behavior, and/or bondage; or

(g) Depicts sexual behaviors including, but not limited to, intercourse/penetration, sodomy, fellatio, cunnilingus, anilingus, or masturbation.

The term sexually explicit also refers to those written materials that are intended for sexual gratification and describe one or more of the above sexual behaviors as the predominant theme of the publication or letter.

(14) "Superintendent" means the superintendent of a correctional facility or his/her designee(s).

[05-13-004, § 137-48-020, filed 6/2/05, effective 7/2/05. 91-23-103, § 137-48-020, filed 11/20/91, effective 1/1/92. Statutory Authority: RCW 72.09.-050, 72.08.103, 72.13.080 and 72.15.040. 84-08-011 (Order 84-04), § 137-48-020, filed 3/26/84. Statutory Authority: RCW 72.08.380, 72.09.050 and 72.12.140. 83-20-036 (Order 83-09), § 137-48-020, filed 9/27/83. Formerly WAC 275-96-005.]

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.

WAC 137-48-030 Inspection of mail. (1) All mail intended for or to be sent by an inmate, excluding legal mail discussed in subsection (3) of this section, may be inspected at any time by the staff designated by the superintendent or his/her designee(s). Mail may be disapproved for receipt or transmittal in accordance with WAC 137-48-040.

(2) No person who inspects, or participates in the inspection, of an inmate's mail, shall disclose the contents except in the cause of his/her official duties.

(3) Mail (incoming or outgoing) which is clearly identified on the outside of the envelope as legal mail, as defined in WAC 137-48-020, shall be inspected only in the presence of the inmate. Legal mail shall not be read without a search warrant but may be inspected in the presence of the inmate to verify legal mail status and that the mail is free of contraband.

(4) Mail containing illegal items or contraband shall be held and disposed of in accordance with the procedures set forth in chapter 137-36 WAC or as otherwise stated in this chapter.

[05-13-004, § 137-48-030, filed 6/2/05, effective 7/2/05. 91-23-103, § 137-48-030, filed 11/20/91, effective 1/1/92. Statutory Authority: RCW 72.08.-380, 72.09.050 and 72.12.140. 83-20-036 (Order 83-09), § 137-48-030, filed 9/27/83.]

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 137-48-040 Restriction of incoming and/or outgoing mail. (1) Incoming mail to inmates may be disapproved for receipt for any one of the following reasons:

(a) The mail threatens illegal activity, including but not limited to, threats of physical harm, blackmail or extortion.

(b) The mail threatens the safety and security of the institution, including but not limited to, mail concerning sending contraband escape plans, security devices, or mail that is in a code, a foreign language that cannot be interpreted, does not contain a return address, contains gang symbols, plans for activities in violation of institutional rules or contains information which, if communicated, would create a risk of violence and/or physical harm.

(c) The mail is susceptible to the introduction of contraband, including but not limited to, altered publications, mail with unknown substances on or in it, mail purported to be legal mail that is general correspondence, cash or checks, postage stamps, stickers, photos wherein the nonphoto side is or can be separated, publications not mailed directly from vendor, items not ordered and approved through institution channels, greeting cards that are padded, laminated/layered or musical.

(d) Any mail or publication that is deemed to be a threat to legitimate penological objectives, including but not limited to, sexually explicit materials.

(e) The mail contains inmate to inmate correspondence that has not been approved by the superintendent in compliance with department policy.

(f) The mail contains items identified by the department secretary or designee as not authorized, including but not limited to, multiple copies of documents, mailings soliciting or offering games of chance, clippings from books or magazines.

(g) The mail is from an individual with whom contact is restricted in compliance with the judgment and sentence, a no contact order, department policy.

(2) Outgoing mail from inmates of institutions may be disapproved for mailing for any one of the following reasons:

(a) For any one of the reasons set forth in WAC 137-48-040(1).

(b) The mail is addressed to a minor whose parents or guardian have objected in writing to such correspondence.

(c) An individual or their guardian who previously has been sent obscene or threatening mail by the inmate has complained or has asked that such mail not be received.

(d) The mail solicits money or goods from a person or organization other than the immediate family of the inmate without the permission of the superintendent. The above provisions may not be construed to preclude the purchase of non-contraband goods or payment for such goods which have been approved by the superintendent or his/her designee.

(e) The outside of the mail (envelope or package) does not contain a return address as defined in WAC 137-48-020.

(3) No mail is to be restricted for the reason that it appeals to a particular ethnic, racial, or religious group, or that it contains critical opinions of departmental policy or departmental employees, unless the mail is also judged to be a threat to legitimate penological objectives.

(4) In addition to those reasons cited in this section, packages sent either to or from an inmate are subject to the following restrictions:

(a) An inmate may receive one gift package not to exceed fifteen pounds in weight on a quarterly basis. Quarterly periods shall consist of December through February, March through May, June through August, and September through November. Rules governing the contents of quarterly packages shall be developed specifically by each institutional superintendent and approved by staff designated by the secretary. The superintendent may allow exceptions from the one gift package limitation and weight limitation provided that appropriate contraband controls are maintained.

(b) The contents of the quarterly package shall be restricted to those items that are otherwise not available to the inmate through the institutional store or other purchasing outlet provided by the institution. A replacement package may be sent during the same quarter for damaged packages that are returned to the sender by the inmate.

(c) Prepaid merchandise approved by the superintendent or designee and ordered by the inmate from any wholesaler or retailer shall not be considered one of the quarterly packages.

(d) Inmates may mail packages containing materials which have been sent to him or her in the institution or gifts consisting of his or her own hobby craft or curio work. Packages must be made and mailed at the inmate's expense.

(e) Newly admitted inmates at any department of corrections operated reception center will not receive packages while assigned to the reception center.

[05-13-004, § 137-48-040, filed 6/2/05, effective 7/2/05. 91-23-103, § 137-48-040, filed 11/20/91, effective 1/1/92. Statutory Authority: RCW 72.01.090. 86-21-058 (Order 86-06), § 137-48-040, filed 10/14/86. Statutory Authority: RCW 72.08.380, 72.09.050 and 72.12.140. 83-20-036 (Order 83-09), § 137-48-040, filed 9/27/83. Formerly WAC 275-96-021 and 275-96-022.]

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 137-48-050 Procedures for restrictions of incoming and/or outgoing mail. (1) If an inmate's incoming or outgoing mail is restricted, written notification will be provided to the inmate by the mailroom staff. This notification shall be provided to the inmate and the sender of the specific publication, letter, or package which has been restricted and the reason for this action. The notice shall contain notification to the inmate that the restriction becomes final within ten days of the initial notice. The superintendent or his/her designee shall review the restriction within the ten-day period of time and shall either uphold the restriction, or allow for the delivery of the mail.

(2) The inmate and sender shall be advised in writing of his/her right to seek review of the decision to restrict his/her mail. The review shall be sought by writing directly to the superintendent/designee within ten calendar days of the initial restriction decision.

(3) Upon receipt of an inmate's and/or sender's appeal, the superintendent or his/her designee shall affirm or reverse the action taken at the institution and shall send a notice of the

decision in writing within ten working days from the receipt of the inmate's or sender's written request.

(4) The inmate and the sender may seek a review of the superintendent's/designee's decision by writing directly to the staff designated by the secretary within ten calendar days of the decision.

(5) Upon receipt of the offender's or sender's appeal, the staff designated by the secretary will affirm or reverse the action taken at the facility and will advise the offender or sender in writing of this action within ten calendar days from the receipt of the offender's or sender's written request.

(6) Incarcerated offenders are financially responsible for disposing of their own unauthorized personal property by shipping it to a nonincarcerated person designated by the offender at the offender's expense. The sender should not send stamps or money to the facility or headquarters for this purpose.

(7) When a decision is rendered regarding a particular issue of a publication, that decision shall be binding for all prison facilities. A statewide notification shall be promptly issued from the final reviewer when the decision is rendered.

(8) If a package contains contraband and is subject to criminal prosecution, the entire package will be turned over to the appropriate law enforcement agency. Items of contraband not subject to criminal prosecution will be disposed of in accordance with procedures set forth in departmental and facility regulations as authorized by chapter 137-36 WAC.

[05-13-004, § 137-48-050, filed 6/2/05, effective 7/2/05. 91-23-103, § 137-48-050, filed 11/20/91, effective 1/1/92. Statutory Authority: RCW 72.08.380, 72.09.050 and 72.12.140. 83-20-036 (Order 83-09), § 137-48-050, filed 9/27/83. Formerly WAC 275-96-070.]

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 137-48-060 Mail costs. (1) Except as otherwise stated in this section, mail costs shall be the responsibility of the inmate.

(2) Mail which arrives at the institution with postage due may, at the option of the superintendent, be delivered to the inmate. The institution may pay the postage due in accordance with subsection (3) of this section, or hold the mail for a reasonable period of time so as to allow the inmate to arrange for payment of the postage due. If such arrangements are not made within the time provided, the package/mail may be donated to charity or discarded.

(3) Indigent inmates shall be authorized to receive postage up to the equivalent to the mailing cost of ten standard first class letters per week. This indigent postage provision shall cover both legal and/or regular letters.

(4) The department shall recoup any expenditures made by the institution for postage due on incoming mail and/or indigent postage for letters, (as identified in subsection (3) of this section) may be recouped by the institution whenever such indigent inmate has ten dollars or more of disposable income in his/her trust fund account.

[05-13-004, § 137-48-060, filed 6/2/05, effective 7/2/05. 91-23-103, § 137-48-060, filed 11/20/91, effective 1/1/92. Statutory Authority: RCW 72.09.050, 72.08.103, 72.13.080 and 72.15.040. 84-08-011 (Order 84-04), § 137-

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48-060, filed 3/26/84. Statutory Authority: RCW 72.08.380, 72.09.050 and 72.12.140. 83-20-036 (Order 83-09), § 137-48-060, filed 9/27/83. Formerly WAC 275-96-060.]

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 137-48-070 Mail records. The institution superintendent or his/her designee(s) shall be responsible for the maintenance of a continuous record showing the source and destination of legal mail, packages and items of monetary value mailed by or mailed to an inmate. The secretary shall establish procedures for each institution governing the written mail record.

[91-23-103, § 137-48-070, filed 11/20/91, effective 1/1/92. Statutory Authority: RCW 72.08.380, 72.09.050 and 72.12.140. 83-20-036 (Order 83-09), § 137-48-070, filed 9/27/83.]

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 137-48-080 Telephone usage. (1) Telephone facilities shall be provided in appropriate numbers and locations to permit reasonable and equitable access to all inmates, except inmates of the reception center and those inmates in disciplinary segregation.

(2) The superintendent shall promulgate written regulations providing for access of inmates to additional telephone facilities in emergency situations.

(3) The superintendent shall promulgate written regulations outlining the hours of telephone availability, maximum length of calls (not less than five minutes), limitations on telephone use, and provisions for monitoring, recording, and operator-announced calls as provided for in RCW 9.73.095.

[05-13-004, § 137-48-080, filed 6/2/05, effective 7/2/05. 91-23-103, § 137-48-080, filed 11/20/91, effective 1/1/92. Statutory Authority: RCW 72.08.380, 72.09.050 and 72.12.140. 83-20-036 (Order 83-09), § 137-48-080, filed 9/27/83. Formerly WAC 275-96-065.]

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 137-48-090 Implementation. The secretary may adopt rules and regulations implementing this chapter.

[Statutory Authority: RCW 72.08.380, 72.09.050 and 72.12.140. 83-20-036 (Order 83-09), § 137-48-090, filed 9/27/83.]

Chapter 137-52 WAC

RESIDENT OF ADULT CORRECTIONAL INSTITUTION ESCORTED LEAVE OF ABSENCE

WAC

137-52-005	Purpose.
137-52-010	Definitions.
137-52-015	Reasons allowed.
137-52-020	Conditions.

137-52-025	Application requests for escorted leave.
137-52-030	Approval.
137-52-035	Escort procedures.
137-52-040	Expenses.
137-52-045	Expenses—Paid by inmate.
137-52-050	Expenses—Paid by department.

WAC 137-52-005 Purpose. The purpose of this chapter is to set forth the reasons for and conditions under which a superintendent may extend the limits of confinement under the authority of RCW 72.01.370.

[Statutory Authority: RCW 72.01.380. 85-07-042 (Order 85-07), § 137-52-005, filed 3/19/85. Formerly WAC 275-85-010.]

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 prisons division 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.

[07-08-082, § 137-52-010, filed 4/2/07, effective 5/3/07. 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.

WAC 137-52-015 Reasons allowed. An escorted leave may be granted by the superintendent to extend limits of confinement into the community to permit an inmate to:

(1) Receive necessary medical or dental care which is not available in the institution;

(2) Visit a seriously ill member of the inmate's immediate family or attend the funeral of a member of the inmate's immediate family upon verification, by the superintendent, of such illness or death;

(3) Participate in athletic contests as a member of a group or team only if the inmate is in minimum custody; or

(4) Participate in supervised work of the department to include industrial, educational, and agricultural programs;

(5) Participate as a volunteer in community service work projects, which are approved by the superintendent for selected minimum custody nonviolent offenders, if such work project is requested by the local community.

[Statutory Authority: RCW 72.01.380. 85-07-042 (Order 85-07), § 137-52-015, filed 3/19/85. Formerly WAC 275-85-015.]

WAC 137-52-020 Conditions. (1) An escorted leave shall be authorized only for trips within the boundaries of the state of Washington.

(2) The duration of an escorted leave to the bedside of a seriously ill member of the inmate's immediate family or attendance at a funeral shall not exceed forty-eight hours unless otherwise approved by the superintendent.

(3) The duration of escorted leaves granted for reasons other than those mentioned in WAC 137-52-015(2) shall not exceed the normal work day (eight hours) with the exception of extended medical treatment requiring placement at a local hospital.

(4) The inmate shall be in the visual or auditory contact of an approved correctional staff member at all times and shall be considered under the custody of the superintendent.

(5) The inmate shall be housed in a city or county jail or state institution at all times when not in transit or actually engaged in the activity for which the escorted leave was granted.

(6) An agreement for reimbursement for expenses not to be paid by the state and escort arrangements must be established in advance of the requested date of escorted leave.

(7) County and city law enforcement agencies with jurisdiction in the area of the inmate's destination shall be notified by the superintendent before allowing any escorted leave of absence under RCW 72.01.375.

[Statutory Authority: RCW 72.01.380. 85-07-042 (Order 85-07), § 137-52-020, filed 3/19/85. Formerly WAC 275-85-020.]

WAC 137-52-025 Application requests for escorted leave. The superintendent of each institution shall establish procedures governing the method of handling requests by individual inmates or the institution for an escorted leave of absence. Each leave request will be evaluated within forty-eight hours. If the leave request is initiated by the institution, the superintendent will advise the inmate of the reason for the escorted leave, including leaves for family emergency or medical requirement.

[Statutory Authority: RCW 72.01.380. 85-07-042 (Order 85-07), § 137-52-025, filed 3/19/85. Formerly WAC 275-85-025.]

WAC 137-52-030 Approval. Escorted leaves for medium and minimum custody inmates shall be approved or

denied by the superintendent. Escorted leaves for close and maximum custody inmates for the purpose of medical or dental treatment shall be approved or denied by the superintendent. Escorted leaves for close and maximum custody inmates, with the exception of medical or dental treatment, shall be approved or denied by the secretary. In approving a request for escorted leave, the following factors will be considered:

- (1) The nature of the request for escorted leave;
- (2) The community risk associated with granting the request for an escorted leave based on the security or escape risk;
- (3) The inmate's overall history of stability and any tendencies toward violent disruptive behavior;
- (4) Any history of unusual disciplinary problems;
- (5) The inmate's degree of trustworthiness as demonstrated by his/her performance in work assignments and maintenance of a clear disciplinary record;
- (6) Any significant health problems that might be aggravated as a result of the leave; and
- (7) Such other information as may be deemed relevant.

[Statutory Authority: RCW 72.01.380. 85-20-081 (Order 85-10), § 137-52-030, filed 9/30/85; 85-07-042 (Order 85-07), § 137-52-030, filed 3/19/85. Formerly WAC 275-85-030.]

WAC 137-52-035 Escort procedures. (1) Only correctional staff approved by the superintendent will be authorized to serve as escorts. Single escorts must have attained permanent employee status. At least one experienced, permanent status employee will accompany all inmates on escorted leave.

(2) Medium and close custody inmates shall be escorted by at least two correctional staff. No more than five medium/close inmates may be escorted with two correctional staff. Maximum custody inmates will be escorted in ratio of two staff to one inmate. Medium, close, and maximum custody inmates shall be escorted in hand and leg restraints. Inmates in these custody levels shall be escorted with at least one staff member carrying a sidearm and safely separated from a second officer who will be the immediate escort for the inmate. The unarmed officer may be the immediate supervisor, counselor, or other state correctional staff approved by the superintendent. Only with the approval of the superintendent will escorts remove waist and leg restraints from inmates.

(3) Minimum custody inmates shall be escorted under circumstances deemed appropriate by the superintendent. Correctional staff may be instructed to wear their uniforms and sidearms in appropriate circumstances.

(4) A correctional officer serving as escort may wear civilian clothing when escorting an inmate to a bedside visit or a funeral unless otherwise directed by the superintendent.

[Statutory Authority: RCW 72.01.380. 85-07-042 (Order 85-07), § 137-52-035, filed 3/19/85. Formerly WAC 275-85-035.]

WAC 137-52-040 Expenses. (1) Correctional staff assigned escort duties shall be authorized per diem reimbursement for meals, lodging, and transportation at the rate established by the departmental travel policy.

(2) Correctional staff assigned escort responsibility shall receive appropriate compensation at regular salary or overtime for all hours spent in actual escort of the inmate, but not

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including hours sleeping or not engaged in direct supervision of the inmate. The salary shall be paid at the appropriate straight time and overtime rates as provided in the merit system rules.

(3) Cost of housing the inmate in a city or county jail when not in transition or actually engaged in the activity for which the escorted leave was granted shall be charged the inmate in accordance with WAC 137-52-045.

[Statutory Authority: RCW 72.01.380. 85-07-042 (Order 85-07), § 137-52-040, filed 3/19/85. Formerly WAC 275-85-040.]

WAC 137-52-045 Expenses—Paid by inmate. (1) The expenses of the escorted leave as enumerated in WAC 137-52-040 shall be reimbursed by the inmate or his/her immediate family unless the superintendent has authorized payment at state expense in accordance with WAC 137-52-050.

(2) Payments by the inmate, inmate's immediate family, or bonding company shall be made to the institution's business office and applied to the appropriate fund as defined by law, applicable provisions of the Washington Administrative Code, or department policy.

[Statutory Authority: RCW 72.01.380. 85-07-042 (Order 85-07), § 137-52-045, filed 3/19/85. Formerly WAC 275-85-045.]

WAC 137-52-050 Expenses—Paid by department. The expenses of the escorted leave shall be absorbed by the state if:

(1) The inmate and his/her immediate family are indigent in accordance with WAC 137-52-010(3); or

(2) The expenses were incurred for the purpose of the inmate's participation in a program activity, academic or vocational activity, work activity, or to secure medical care; or

(3) The expenses were incurred as a result of a reclassification of an inmate and the return of such inmate from a minimum custody facility to a more secure facility.

[Statutory Authority: RCW 72.01.380. 85-07-042 (Order 85-07), § 137-52-050, filed 3/19/85. Formerly WAC 275-85-050.]

Chapter 137-54 WAC

INMATE MARRIAGES—ADULT CORRECTIONAL FACILITIES

WAC

137-54-010	Definitions.
137-54-020	Eligibility and notice.
137-54-030	Superintendent's procedures.
137-54-040	Marriage ceremony.

WAC 137-54-010 Definitions. As used in this chapter, the following words have the following meanings:

(1) "Institution" means an adult correctional facility identified in RCW 72.01.050(2) or any similar facility hereafter established, or a work/training release facility established pursuant to chapter 72.65 RCW;

(2) "Superintendent" means the superintendent of an adult correctional facility identified in RCW 72.01.050(2) or any similar facility hereafter established or the supervisor of a work/training release facility established pursuant to chapter 72.65 RCW;

(3) "Inmate" means a person under the custody of the state department of corrections but does not include a parolee or a probationer.

[Statutory Authority: RCW 72.01.090 and 72.09.050. 85-05-019 (Order 85-03), § 137-54-010, filed 2/13/85.]

WAC 137-54-020 Eligibility and notice. An inmate may marry while confined to or on furlough from an institution if such marriage is legally permissible under the laws of the state of Washington. An inmate must give written notice of his or her intention to marry. Such notice shall be given to the superintendent of the institution in which the inmate resides.

[Statutory Authority: RCW 72.01.090 and 72.09.050. 85-05-019 (Order 85-03), § 137-54-020, filed 2/13/85.]

WAC 137-54-030 Superintendent's procedures. (1) Superintendents shall develop written procedures for inmate marriages. Said procedures shall address, but not be limited to:

- (a) The inmate's notice of intent to marry;
- (b) Premarriage counseling for the inmate and the intended spouse;
- (c) The visitation privileges between the inmate and intended spouse; and
- (d) The conduct of the marriage and related matters, giving due consideration to the requirements of security, safety, health, and orderliness.

(2) Inmates will be advised of such procedures developed by the superintendent.

[Statutory Authority: RCW 72.01.090 and 72.09.050. 86-07-034 (Order 86-05), § 137-54-030, filed 3/14/86; 85-05-019 (Order 85-03), § 137-54-030, filed 2/13/85.]

WAC 137-54-040 Marriage ceremony. All marriage arrangements will be planned in conjunction with and supervised by the chaplain assigned to the institution in which the inmate resides. When the marriage ceremony takes place within an institution the superintendent may permit outside clergy or other lawfully authorized persons to perform the marriage ceremony.

[Statutory Authority: RCW 72.01.090 and 72.09.050. 85-05-019 (Order 85-03), § 137-54-040, filed 2/13/85.]

Chapter 137-55 WAC

**ADULT CORRECTIONAL INSTITUTIONS—
ACQUISITION
OF PERSONAL HYGIENE ITEMS**

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

137-55-010	Purpose.
137-55-020	Definitions.
137-55-030	Acquisition of items.
137-55-040	Replenishment.
137-55-050	Indigent offender.
137-55-060	Nonindigent offenders.

WAC 137-55-010 Purpose. The purpose of these rules is to establish a uniform procedure for the acquisition and replenishment of personal hygiene items within all department of corrections facilities.

[97-03-041, § 137-55-010, filed 1/10/97, effective 2/4/97.]

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 137-55-020 Definitions. (1) "Personal hygiene items" shall consist of items directed towards a particular individual, which are used to promote or preserve that individual's health and to contribute to the prevention of disease or infection.

(2) "Indigent" for purposes of this rule shall be defined as an offender who has less than a ten-dollar balance of disposable income in his or her institutional account on the day the request is made to use funds or during the thirty days previous to the request.

(3) "Acquisition" for the purpose of this rule shall refer to the act of acquiring or locating personal hygiene items.

(4) "Replenishment" for the purposes of this rule shall refer to the act of adding to or obtaining a new supply of new personal hygiene items.

[97-03-041, § 137-55-020, filed 1/10/97, effective 2/4/97.]

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 137-55-030 Acquisition of items. (1) All offenders incarcerated within department of corrections facilities shall be responsible for the acquisition and replenishment of personal hygiene items after the initial issuance of those items at the reception center.

(2) Initial issuance of personal hygiene items shall include the department's issuance of the following items to individual offenders:

- (a) Bath soap;
- (b) Toothbrush;
- (c) Toothpaste;
- (d) Razor - one each;
- (e) Comb or hair pick - one each;
- (f) Shampoo - thirty-day supply (optional issuance for offenders in the reception center only);
- (g) Deodorant - thirty-day supply (optional issuance for offenders in the reception center only); and
- (h) State issued sanitary napkins will be made available to female offenders on an as needed basis without charge.

[97-03-041, § 137-55-030, filed 1/10/97, effective 2/4/97.]

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 137-55-040 Replenishment. (1) "Replenishment" of offender personal hygiene items shall be in accordance with the department's established usage factors for personal hygiene items.

(2) The guideline usage for each personal hygiene item shall be as follows:

- (a) Bath soap - seven days per bar;
- (b) Toothbrush - sixty days;
- (c) Toothpaste - thirty days;
- (d) Razor - five days;
- (e) Comb - sixty days; and
- (f) Hair pick - one hundred eighty days.

(3) Department replenishment of personal hygiene items shall be issued to those offenders meeting the definition of indigent and those offenders that do not have sufficient money available.

(4) If a nonindigent offender does not have sufficient money for a single item issue, any money available will be deducted and a debt established for the balance and collected in accordance with the offender financial debt collection procedure.

(5) State issued sanitary napkins will be made available to female offenders on an as needed basis without charge.

[97-03-041, § 137-55-040, filed 1/10/97, effective 2/4/97.]

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 137-55-050 Indigent offender. (1) Those offenders meeting the definition of indigent offenders, shall not be denied access to personal hygiene items in terms of both initial acquisition and later replenishment.

(2) The department of corrections shall establish uniform issue by quantity per item.

(3) The state shall be reimbursed for the cost of the personal hygiene supplies in accordance with established department of corrections procedures as stated in the offender financial debt collection procedure.

[97-03-041, § 137-55-050, filed 1/10/97, effective 2/4/97.]

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 137-55-060 Nonindigent offenders. Nonindigent offenders who have sufficient money shall purchase personal hygiene items through their facility commissary program.

[97-03-041, § 137-55-060, filed 1/10/97, effective 2/4/97.]

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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Chapter 137-56 WAC COMMUNITY RESIDENTIAL PROGRAMS, WORK/TRAINING RELEASE

WAC

137-56-005	Purpose.
137-56-010	Definitions.
137-56-015	Disposition of earnings.
137-56-020	Secretary's authority to grant or deny.
137-56-030	Reasons for placement in a work release program.
137-56-040	Eligibility criteria.
137-56-050	Application—Consideration.
137-56-070	Screening referrals.
137-56-080	Plan—Approval or denial.
137-56-090	Plan—Restrictions.
137-56-095	Orientation.
137-56-110	Serious infractions.
137-56-120	Provisions of supervision.
137-56-140	Limits of confinement.
137-56-150	Sponsor-escort.
137-56-160	Termination of plan.
137-56-170	Service of notice of proposed disciplinary action.
137-56-175	Alternatives to the formal disciplinary hearing.
137-56-180	Disciplinary hearing.
137-56-200	Disciplinary hearing—Waiver.
137-56-210	Disciplinary hearing—Rules of evidence.
137-56-220	Disciplinary hearing—Findings and conclusions.
137-56-230	Disciplinary hearing—Disposition.
137-56-240	Disciplinary hearing—Decision.
137-56-250	Disciplinary hearing—Appeal.
137-56-260	Time limits.
137-56-270	Exceptions.
137-56-280	Applicability.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

137-56-060	Application—Decision. [94-07-065, § 137-56-060, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-060, filed 4/5/82. Formerly WAC 275-92-335.] Repealed by 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070.
137-56-100	Standard rules. [94-07-065, § 137-56-100, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-100, filed 2/21/86; 82-08-055 (Order 82-06), § 137-56-100, filed 4/5/82. Formerly WAC 275-92-355.] Repealed by 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070.
137-56-190	Facility review committee. [Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-190, filed 2/21/86; 83-05-009 (Order 83-02), § 137-56-190, filed 2/4/83; 82-08-055 (Order 82-06), § 137-56-190, filed 4/5/82. Formerly WAC 275-92-525.] 94-07-065, § 137-56-190, filed 3/14/94, effective 5/1/94. Note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not repealed 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 137-56-005 Purpose. The purpose of this chapter is to set forth the rules and regulations governing the administration of the department's work/training release programs.

[Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-005, filed 4/5/82. Formerly Title 275 WAC.]

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

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

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(3) "Work/training release facility supervisor" is a staff member assigned by the community corrections regional administrator to administer and supervise a specific work/training release facility and includes his/her designee.

(4) "Work/training release community corrections officer" is a staff member assigned by the work/training release facility supervisor to supervise and counsel a caseload of work/training release residents at a specific work/training release facility.

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

(6) "Work/training release offender" is any offender committed to or transferred to the department's custody pursuant to a valid criminal conviction who has been approved by the department for placement in a designated work/training release facility.

(7) "Sponsor-escort" is a responsible citizen assigned to escort and monitor a resident during official and social activities outside of the work/training release facility.

(8) "Work/training release facility" is an establishment approved for housing and monitoring of work/training release residents during the resident's stay in a work/training release program.

(9) "One working day" is a nine-hour day, 8:00 a.m. to 5:00 p.m. excluding weekends and holidays.

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

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-010, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-010, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-010, filed 2/21/86; 82-08-055 (Order 82-06), § 137-56-010, filed 4/5/82. Formerly chapter 275-92 WAC.]

WAC 137-56-015 Disposition of earnings. Reasonable payment as determined by the department of board and room charges will be deducted from the work/training release residents' earnings. For purposes of this section, earnings shall constitute all income and money received or possessed by the work/training release offender while under a work release plan. Nothing in this section shall prohibit the department's authority to obtain reimbursement for moneys advanced to a work/training release offender by the department.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-015, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-015, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-039 (Order 86-04), § 137-56-015, filed 3/3/86.]

WAC 137-56-020 Secretary's authority to grant or deny. The secretary or his or her designee may grant or deny work/training release as authorized by chapter 72.65 RCW subject to the rules of this chapter.

[Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-020, filed 4/5/82. Formerly WAC 275-92-315.]

WAC 137-56-030 Reasons for placement in a work release program. Work/training release may be authorized for one or more of the following:

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(1) To participate in full-time employment or part-time employment at specialized programs;

(2) To participate in a vocational training program, including attendance at an accredited college.

(3) To secure services to support transition back to the community.

(4) As a sanction for violating community supervision conditions.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-030, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-030, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-030, filed 4/5/82. Formerly WAC 275-92-320.]

WAC 137-56-040 Eligibility criteria. (1) An offender is eligible for work/training release provided that:

(a) He or she has a minimum security status;

(b) He or she is within the last one hundred eighty days of their confinement.

(2) Offenders convicted of rape in the first degree shall not be eligible for work/training release at any time during the first three years of confinement.

(3) Offenders convicted of murder first degree are not eligible for work/training release, without the written approval of the secretary.

(4) Offender who violates condition(s) of community supervision and is sanctioned to a term less than one hundred eighty days.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-040, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-040, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-040, filed 4/5/82. Formerly WAC 275-92-325.]

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

(2) The community corrections officer can make recommendation for placement in a work release program as a result of violation of conditions of supervision in the community.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-050, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-050, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-050, filed 4/5/82. Formerly WAC 275-92-330.]

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

(2) The work/training release screening process will be based on established criteria.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-070, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-070, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-070, filed 4/5/82. Formerly WAC 275-92-340.]

WAC 137-56-080 Plan—Approval or denial. (1) The work release supervisor or designee's screening decision will

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be documented by the work/training release facility supervisor/designee on the offender tracking system indicating the action taken.

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-080, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-080, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-080, filed 4/5/82. Formerly WAC 275-92-345.]

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-090, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-090, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-090, filed 4/5/82. Formerly WAC 275-92-350.]

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

- (a) Program goals and services available.
- (b) Rules governing conduct and program rules.
- (c) Disciplinary action which may be taken in the event of a serious infraction or violation of rules or special conditions. To include, but not be limited to:

(i) Remain confined to the work/training release premises at all times other than the time necessary to implement the plan or when authorized under WAC 137-56-140. Any work/training release resident approved for placement under a work/training release plan who willfully fails to report to his or her designated assignment or return to the designated place of confinement at the time specified may be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced in accordance with state law.

(ii) Have employment or other approved resources in order to maintain himself or herself financially.

(iii) Not consume, ingest, inject, or possess nonprescription narcotic or "dangerous" drugs or controlled substances or alcoholic beverages.

(iv) Report all income to the work/training facility supervisor or his or her designee. All income from any source shall be immediately placed in the resident's inmate banking account by the facility supervisor or his/her designee. A receipt will be issued.

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

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

(4) All offenders will receive orientation within forty-eight hours of arrival. Orientation must be completed before the offender can leave the facility. The offender must sign the appropriate form indicating he/she will comply with all the work release policies and program rules.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-095, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-095, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-095, filed 2/21/86.]

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-110, filed 11/28/05 and 12/28/05, effective 5/1/06. 99-16-078, § 137-56-110, filed 8/3/99, effective 8/18/99; 94-07-065, § 137-56-110, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-110, filed 2/21/86.]

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

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

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

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

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

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-120, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-120, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-120, filed 4/5/82. Formerly WAC 275-92-405.]

WAC 137-56-140 Limits of confinement. A work/training release offender shall be confined to the facility at all times except:

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

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

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

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

(5) When on furlough;

(6) When on authorized medical appointments or court appearances;

(7) When ordered to perform community service;

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-140, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-140, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-140, filed 4/5/82. Formerly WAC 275-92-410.]

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

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

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

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-150, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-150, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-150, filed 4/5/82. Formerly WAC 275-92-415.]

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

(1) If requested in writing by the work/training release offender;

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

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

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

(5) If the work/training release offender has failed to comply with federal or state laws or local ordinances.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-160, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-160, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-160, filed 2/21/86; 82-08-055 (Order 82-06), § 137-56-160, filed 4/5/82. Formerly WAC 275-92-510.]

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

(2) The work/training release facility supervisor or designee shall advise the offender in writing of the factual allegations which provide the basis for the proposed disciplinary action within one working day after the suspension of the work/training release plan.

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

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-170, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-170, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-170, filed 2/21/86; 82-08-055 (Order 82-06), § 137-56-170, filed 4/5/82. Formerly WAC 275-92-515.]

WAC 137-56-175 Alternatives to the formal disciplinary hearing. When addressing serious infractions, the work/training release community corrections officer may, with the facility supervisor's permission, choose to address the infraction behavior using either a department authorized stipulated agreement or the negotiated sanction agreement process.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-175, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-175, filed 3/14/94, effective 5/1/94.]

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

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

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

(c) The offender may have an attorney present at his/her expense, only when a felony has been alleged. Such represen-

tation is limited to advising the offender of his or her rights to remain silent, and does not include the right to act as an advocate throughout the hearing.

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

(e) The work/training release offender may, in preparation for the hearing, ask the hearing officer that certain department or contract staff members, other work/training release offenders, and other persons be present as witnesses at the hearing. The hearing officer shall grant such request if it is determined by the hearing officer that to do so would not be unduly hazardous to the work/training release facility's safety or correctional goals: Provided, however, Limitations may be made by the hearing officer if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the work/training release offender's case.

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

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-180, filed 11/28/05 and 12/28/05, effective 5/1/06. 95-22-060, § 137-56-180, filed 10/30/95, effective 12/1/95. 94-07-065, § 137-56-180, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-180, filed 2/21/86; 82-08-055 (Order 82-06), § 137-56-180, filed 4/5/82. Formerly WAC 275-92-520.]

WAC 137-56-200 Disciplinary hearing—Waiver. (1)

At any time after having been served with an allegation providing the basis for a proposed disciplinary action, the offender may choose to waive his or her right to a hearing by signing an admission of the allegation and request that the hearing be dispensed with entirely or limited only to questions of disposition. Also, the offender may waive, in writing, the twenty-four hour notice.

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

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-200, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-200, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-200, filed 2/21/86; 82-08-055 (Order 82-06), § 137-56-200, filed 4/5/82. Formerly WAC 275-92-530.]

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

(2) All evidence material to the issues raised in the hearing shall be offered into evidence. All evidence forming the

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basis for the hearing officer's decision in a matter shall be offered into evidence.

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

(4) The work/training release offender may question witnesses against him/her at the discretion of the hearing officer. If the hearing officer determines that a source of information would be subject to risk or harm if his/her identity were disclosed, testimony of the confidential source may be introduced by the testimony of a staff member. The confidential testimony may be provided by the source or by the written and signed statement of the source. If the staff member to whom the source provided information is unavailable, the written statement of this staff member may be used. The hearing officer shall, out of the presence of all work/training release offenders and off the record, identify the confidential source, and how the testifying staff member received the confidential information. The staff member presenting the information from a confidential source shall identify the source and the circumstances surrounding the receipt of the confidential information to the hearing officer, off the record. The hearing officer shall make an independent determination regarding the reliability of the confidential source, the credibility of the confidential information, and the necessity of not revealing the source of the confidential information. In determining whether the confidential source is reliable and the confidential information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

- (a) Evidence from other staff members that the confidential source has previously given reliable information;
- (b) Evidence that the confidential source had no apparent motive to fabricate information;
- (c) Evidence that the confidential source received no benefit from providing the information;
- (d) Whether the confidential source is giving first-hand information;
- (e) Whether the confidential information is internally consistent and is consistent with other known facts; and
- (f) The existence of corroborating evidence.

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

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

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-210, filed 11/28/05 and 12/28/05, effective 5/1/06. 95-22-060, § 137-56-210, filed 10/30/95, effective 12/1/95. 94-07-065, § 137-56-210, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-210, filed 2/21/86; 82-08-055 (Order 82-06), § 137-56-210, filed 4/5/82. Formerly WAC 275-92-535.]

WAC 137-56-220 Disciplinary hearing—Findings and conclusions. (1) At the conclusion of the hearing, the hearing officer will make a finding of fact as to whether or not the allegations made against the offender have been proven by a preponderance of the evidence presented at the hearing.

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

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-220, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-220, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-220, filed 2/21/86; 82-08-055 (Order 82-06), § 137-56-220, filed 4/5/82. Formerly WAC 275-92-540.]

WAC 137-56-230 Disciplinary hearing—Disposition.

(1) The hearing officer shall seek and consider input from the community corrections officer, the facility contract staff and pertinent treatment providers.

(2) The hearing officer will consider the offender's total background, adjustment on work/training release, attitude, recommendations of interested parties, and any other information relative to the offender's ability to continue in the program. The hearing officer shall make a determination as to whether or not the offender has earned good time credits toward release, and whether the matter should be referred to the indeterminate sentence review board or the court for possible increase in the inmate's or offender's minimum term.

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-230, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-230, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-230, filed 2/21/86; 82-08-055 (Order 82-06), § 137-56-230, filed 4/5/82. Formerly WAC 275-92-545.]

WAC 137-56-240 Disciplinary hearing—Decision.

(1) The hearing officer may:

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

(b) Restrict the offender to the work/training release facility for up to thirty days; or

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

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

(e) Revoke approval of an approved sponsor; or

(f) Deny good conduct time; or

(g) Terminate the work/training release plan and return the work/training release offender to an institution/jail, or facility.

(2) Nothing in this section shall preclude subsequent reclassification of the work/training release offender or placement into administrative segregation if demonstrable cause exists to support this action.

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

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-240, filed 11/28/05 and 12/28/05, effective 5/1/06. 94-07-065, § 137-56-240, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-240, filed 2/21/86; 82-08-055 (Order 82-06), § 137-56-240, filed 4/5/82. Formerly WAC 275-92-550.]

WAC 137-56-250 Disciplinary hearing—Appeal.

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

(1) Affirm, or affirm and modify to a lesser sanction the decision of the hearing officer; or

(2) Reverse the decision of the hearing officer; or

(3) Remand for a rehearing.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. 05-24-009 and 06-02-038, § 137-56-250, filed 11/28/05 and 12/28/05, effective 5/1/06.]

95-22-060, § 137-56-250, filed 10/30/95, effective 12/1/95. 94-07-065, § 137-56-250, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-250, filed 2/21/86; 83-10-042 (Order 83-05), § 137-56-250, filed 5/2/83; 82-08-055 (Order 82-06), § 137-56-250, filed 4/5/82. Formerly WAC 275-92-555.]

WAC 137-56-260 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.

[Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-260, filed 4/5/82. Formerly WAC 275-92-560.]

WAC 137-56-270 Exceptions. The secretary may authorize exceptions to the criteria listed in WAC 137-56-040, 137-56-080, and 137-56-110 through 137-56-150.

[Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-56-270, filed 4/5/82. Formerly WAC 275-92-565.]

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

[Statutory Authority: RCW 72.65.100. 86-06-012 (Order 86-02), § 137-56-280, filed 2/21/86.]

Chapter 137-57 WAC

SELECTING CONTRACTORS FOR AND SITING OF COMMUNITY RESIDENTIAL PROGRAMS (WORK/TRAINING RELEASE FACILITIES)

WAC

137-57-005	Purpose.
137-57-010	Definitions.
137-57-020	Secretary's authority.
137-57-030	Advisory committee.
137-57-040	Contractor selection.
137-57-050	Site selection.
137-57-060	Public notice, hearing requirements.
137-57-070	Contract/lease.
137-57-080	Waiver.

WAC 137-57-005 Purpose. The purpose of this chapter is to establish procedures for the selection of contractors providing work/training release programs, ensure department cooperation with local jurisdictions in the siting of work/training release facilities, and encourage public comment and advice in the siting decisions.

[Statutory Authority: RCW 72.65.100. 84-11-032 (Order 84-05), § 137-57-005, filed 5/14/84; 82-08-055 (Order 82-06), § 137-57-005, filed 4/5/82. Formerly Title 275 WAC.]

WAC 137-57-010 Definitions. (1) "Secretary" is the secretary of the department of corrections or his/her designee.

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

(3) "Work/training release facility" is an institution, community residential program or other establishment approved for housing and supervision of work/training release inmates or residents as defined in WAC 137-56-010.

(2009 Ed.)

(4) "Search committee" is a committee appointed by the secretary to locate potential work/training release contractors or work/training release sites.

[Statutory Authority: RCW 72.65.100. 84-11-032 (Order 84-05), § 137-57-010, filed 5/14/84; 82-08-055 (Order 82-06), § 137-57-010, filed 4/5/82.]

WAC 137-57-020 Secretary's authority. Pursuant to RCW 72.65.080 the secretary may enter into contracts with the appropriate authority for the payment of the cost of feeding and lodging and other expenses of having work release participants. Such contracts may include any other terms and conditions as may be appropriate for the implementation of the work release program as defined in chapter 137-56 WAC. In addition, the secretary is authorized to acquire by lease or contract, appropriate facilities for the housing of work release participants and providing for their subsistence and supervision.

[Statutory Authority: RCW 72.65.100. 84-11-032 (Order 84-05), § 137-57-020, filed 5/14/84; 82-08-055 (Order 82-06), § 137-57-020, filed 4/5/82.]

WAC 137-57-030 Advisory committee. When the department intends to locate or relocate a work/training release facility, the assistant director shall be responsible for assembling a department advisory committee composed of local elected and/or public officials, local law enforcement heads, interested citizens and department staff. The advisory committee shall be apprised of the department's need for the site and the geographical location desired.

The committee shall then be given the opportunity to make recommendations to the assistant director regarding said site and the selection thereof. These recommendations shall be recorded in writing.

[Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-57-030, filed 4/5/82.]

WAC 137-57-040 Contractor selection. (1) When the department is seeking a contractor to provide a work/training release program, the secretary will appoint a search committee which shall conduct a search in the manner it deems appropriate to identify potential contractors who would be qualified to develop and provide a work/training release program conforming with applicable regulations, standards, and procedures adopted by the department. The search committee shall also obtain such information as is necessary to evaluate the qualifications and reliability of the potential contractors, the scope of the proposed programs and the cost of such programs.

(2) The names of the potential contractors determined by the search committee, information gathered during the search, the search committee's ranking of the potential contractors, and the search committee's recommendations shall be submitted to the secretary.

(3) The secretary, based on the information, rankings, and recommendations so submitted by the search committee, may approve one of the potential contractors as the provider of the work/training release program.

[Statutory Authority: RCW 72.65.100. 84-11-032 (Order 84-05), § 137-57-040, filed 5/14/84; 82-08-055 (Order 82-06), § 137-57-040, filed 4/5/82.]

WAC 137-57-050 Site selection. (1) When the department is seeking a work/training release site, the secretary will appoint:

(a) A search committee which shall conduct a search for possible locations in the manner it deems appropriate; and

(b) An advisory committee composed of local elected or public officials, local law enforcement personnel, interested citizens, and department staff.

(2) After the sites have been identified, the search committee shall submit a description of them to the advisory committee for review. The advisory committee's review shall evaluate the following factors:

(a) The cost of acquiring the use of the site, and the cost of improvements that would be required to renovate, repair, remodel, or alter the site to make it suitable for a work release program;

(b) The desirability of the site for program activities;

(c) The access to public transportation available at the site;

(d) The community impacts associated with the site; and

(e) The zoning restrictions applicable to the geographical area in which the site is located.

(3) After it completes its review, the advisory committee shall submit its recommendations to the secretary, and the secretary may give preliminary approval to one of the recommended sites.

[Statutory Authority: RCW 72.65.100. 84-11-032 (Order 84-05), § 137-57-050, filed 5/14/84; 82-08-055 (Order 82-06), § 137-57-050, filed 4/5/82.]

WAC 137-57-060 Public notice, hearing requirements. (1) After the secretary gives preliminary approval to a site, the department shall either apply for or assist others in applying for any permits which may be required by local zoning laws with respect to the operation of a work/training release facility.

(2) In the event there are no local zoning requirements, or hearing requirements with respect to the operation of a work/training release program on the site which has received the secretary's preliminary approval, the department shall hold a public hearing to encourage citizen input. Notice of such a hearing shall be provided in a manner best designed to notify residents within the immediate area and within the budget limitations of the department.

(3) After the required zoning permits, if any, have been obtained, and after the secretary has considered the comments expressed by members of the public during any zoning process or during the public hearing conducted by the department, the secretary may grant or withhold final approval of the proposed site.

[Statutory Authority: RCW 72.65.100. 84-11-032 (Order 84-05), § 137-57-060, filed 5/14/84; 82-08-055 (Order 82-06), § 137-57-060, filed 4/5/82.]

WAC 137-57-070 Contract/lease. Upon final approval by the secretary of a proposed contractor pursuant to WAC 137-57-040 or the proposed site pursuant to WAC 137-57-060 the department shall, by appropriate instruments, obtain the services of the approved contractor or acquire the use of the approved site.

[Statutory Authority: RCW 72.65.100. 84-11-032 (Order 84-05), § 137-57-070, filed 5/14/84; 82-08-055 (Order 82-06), § 137-57-070, filed 4/5/82.]

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WAC 137-57-080 Waiver. The secretary may waive any provisions of this chapter if he/she deems such waiver to be in the best interest of the department.

[Statutory Authority: RCW 72.65.100. 82-08-055 (Order 82-06), § 137-57-080, filed 4/5/82.]

Chapter 137-58 WAC

GUIDELINE FOR IMPLEMENTING THE STATE ENVIRONMENTAL POLICY ACT

WAC

137-58-010	Purpose.
137-58-020	Definitions.
137-58-030	Agency responsibilities.
137-58-040	Responsibilities, capital planning and development.

WAC 137-58-010 Purpose. (1) The purpose of this chapter is to ensure department compliance with the State Environmental Policy Act, (SEPA), chapter 43.21C RCW, and the regulations promulgated thereto, chapter 197-11 WAC and to set forth department procedures in regards to SEPA requirements.

(2) These rules are supplemental to chapter 43.21C RCW and chapter 197-11 WAC and are not intended to provide a comprehensive description of the SEPA requirements therein listed.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-58-010, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.66.080. 82-07-067 (Order 82-005), § 137-58-010, filed 3/22/82.]

WAC 137-58-020 Definitions. The definitions set forth in chapter 197-11 WAC are hereby incorporated by reference into this chapter and should be referred to if necessary.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-58-020, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.66.080. 82-07-067 (Order 82-005), § 137-58-020, filed 3/22/82.]

WAC 137-58-030 Agency responsibilities. (1) The secretary or his/her designee shall be responsible for making final decisions regarding threshold determinations, adequacy of draft EISs and adequacy of final EISs where the department is the lead agency.

(2) The department's capital planning and development section shall be responsible for submitting the necessary data set forth in WAC 137-58-040 to the secretary for his/her decision.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-58-030, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.66.080. 82-07-067 (Order 82-005), § 137-58-030, filed 3/22/82.]

WAC 137-58-040 Responsibilities, capital planning and development. The department's capital planning and development section shall be responsible for complying with the threshold determination procedures of WAC 197-11-300 through 197-11-390; and shall be responsible for the supervision, or actual preparation of draft EISs pursuant to WAC 197-11-400 through 197-11-495, including the circulation of such statements, and the conduct of any public hearing required by chapter 197-11 WAC. The office of capital programs shall also prepare or supervise the preparation of any required final EIS pursuant to WAC 197-11-550 through 197-11-695.

[Statutory Authority: RCW 72.01.090, 03-21-088, § 137-58-040, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.66.080, 82-07-067 (Order 82-005), § 137-58-040, filed 3/22/82.]

Chapter 137-60 WAC

ADULT CORRECTIONAL INSTITUTIONS— RELEASE PROGRAMS—FURLOUGH

WAC

137-60-010	Furlough of person confined in state correctional institution—Definitions.
137-60-020	Furlough of person confined in state correctional institution—Secretary's authority to grant or deny.
137-60-030	Furlough of person confined in state correctional institution—Purposes.
137-60-040	Furlough of person confined in state correctional institution—Who may apply.
137-60-045	Minimum time served requirement.
137-60-050	Furlough of person confined in state correctional institution—Conditions imposed.
137-60-060	Furlough of person confined in state correctional institution—Duration.
137-60-070	Furlough of person confined in state correctional institution—Sponsor's responsibilities.
137-60-080	Furlough of person confined in state correctional institution—Criteria for evaluating application.
137-60-090	Furlough of person confined in state correctional institution—Application for furlough.
137-60-100	Furlough of person confined in state correctional institution—Notifying inmate of decision on application.
137-60-110	Furlough of person confined in state correctional institution—Escape.
137-60-120	Furlough of person confined in state correctional institution—Revocation or suspension.
137-60-130	Furlough of person confined in state correctional institution—Law enforcement officers to be notified.
137-60-140	Furlough of person confined in state correctional institution—Exceptions to rules.

WAC 137-60-010 Furlough of person confined in state correctional institution—Definitions. (1) "Furlough" is an authorized unaccompanied leave of absence for an eligible inmate.

(2) "Furlough plan" is an inmate's statement in his or her application of the purpose, place, dates of duration, and sponsor of a single furlough or series of furloughs.

(3) "Furlough sponsor" is an approved adult who has agreed to assume the responsibilities set forth in WAC 137-60-070.

(4) "Emergency furlough" is a specially expedited furlough granted to an inmate to enable him or her to meet an emergency situation such as the death or critical illness of a member of his or her family.

(5) "Inmate" is a person convicted of a felony and serving a sentence for a term of confinement in a state correctional institution or facility, or a state approved work or training release facility.

(6) "Secretary" is the secretary of the department of corrections or his or her designee.

(7) "Furlough year" begins with the date of the first furlough and ends twelve months from that date. Subsequent furlough years count backward for the twelve month time period.

(8) "Furlough day" is any combination of two twelve-hour time segments.

[Statutory Authority: RCW 72.66.080, 82-07-006 (Order 82-04), § 137-60-010, filed 3/4/82. Formerly WAC 275-93-005.]

(2009 Ed.)

WAC 137-60-020 Furlough of person confined in state correctional institution—Secretary's authority to grant or deny. (1) The institution superintendent or chief, classification and treatment, may grant or deny a furlough as authorized by chapter 72.66 RCW and subject to the rules in this chapter to an inmate of a state correctional institution, not including inmates of work release facilities.

(2) The supervisor of a work release facility may grant or deny a furlough as authorized by chapter 72.66 RCW and subject to the rules of this chapter to an inmate of a work release facility; provided, however, with respect to such inmates, the granting of a first furlough shall be subject to the prior approval of the community corrections regional administrator if:

(a) There is a dispute between the work release facility supervisor and field staff regarding the granting of the furlough; or

(b) The inmate has two or more convictions for crimes against persons; or

(c) The inmate is confined under a sentence for murder in the first or second degree, manslaughter, negligent homicide, rape in the first or second degree, kidnapping, burglary in the first degree, robbery in the first degree, assault in the first degree, or arson in the first degree.

[Statutory Authority: RCW 72.66.080, 85-04-015 (Order 85-02), § 137-60-020, filed 1/28/85; 82-07-006 (Order 82-04), § 137-60-020, filed 3/4/82. Formerly WAC 275-93-010.]

WAC 137-60-030 Furlough of person confined in state correctional institution—Purposes. A furlough may be authorized to enable the inmate:

(1) To meet an emergency situation, such as critical illness, death, emotional crisis, or similar situation experienced by members of his or her family;

(2) To obtain medical care not available in a facility maintained by the department;

(3) To seek employment or training opportunities;

(a) Provided specific job interviews have been arranged for the inmate, or

(b) When the inmate has been approved for work or training release status but his or her job or training placement has not been developed or concluded, or

(c) When necessary to prepare a parole plan for a parole hearing scheduled within one hundred twenty days of the commencement of the furlough;

(4) To make residential plans for parole which require his or her personal appearance in the community;

(5) To care for business affairs in person when the inability to do so could deplete the assets or resources of the inmate so seriously as to affect his or her family or his or her future economic security;

(6) To visit his or her family for the purpose of strengthening or preserving relationships, exercising parental responsibilities, or preventing family division or disintegration;

(7) To accomplish any other purpose deemed to be consistent with plans for rehabilitation of the inmate.

[Statutory Authority: RCW 72.66.080, 82-07-006 (Order 82-04), § 137-60-030, filed 3/4/82. Formerly WAC 275-93-020.]

[Title 137 WAC—p. 45]

WAC 137-60-040 Furlough of person confined in state correctional institution—Who may apply. (1) Any inmate may apply for a furlough: Provided, That

(a) He or she has minimum custody classification,
 (b) His or her minimum term has been fixed by the board of prison terms and paroles,

(c) If he or she has a detainer pending, approval of the detaining agency must be secured. Other jurisdictions with detainers against a Washington state inmate may provide approval on a class of applicants; for example, all those otherwise approved by this state, in lieu of action on individual applications.

(2) Persons convicted of rape in the first degree shall not be eligible to participate in the furlough program at any time during the first three years of confinement.

(3) Persons convicted after July 1, 1981, of murder in the first degree, may not be granted furloughs.

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-040, filed 3/4/82. Formerly WAC 275-93-040.]

WAC 137-60-045 Minimum time served requirement. A furlough shall not be granted to an inmate if the furlough would commence prior to the time the inmate has served the minimum amounts of time provided under this section and is within two years of his or her minimum term being served;

(1) If his or her minimum term of imprisonment is longer than twelve months, he or she shall have served at least six months of the term;

(2) If his or her minimum term of imprisonment is twelve months or less, he or she shall have served at least ninety days and shall have no longer than six months left to serve on his or her minimum term, or the mandatory term has been waived by the parole board;

(3) If he or she is serving a mandatory minimum term of confinement, he or she shall have served all but the last six months of such term subject to restrictions in WAC 137-60-040 (2) and (3).

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-045, filed 3/4/82.]

WAC 137-60-050 Furlough of person confined in state correctional institution—Conditions imposed. (1) The applicant must agree to abide by all terms and conditions of the approved furlough plan. Any violation may be cause for suspension or revocation of the furlough, and possible disciplinary action.

(2) The furlough plan will specify the residence address at which the applicant will reside during the period of furlough and will designate the names and relationships of the persons with whom he or she will live.

(3) Upon arrival at his or her destination the furloughed person will, when so required, report to a state probation and parole officer in accordance with instructions given prior to release on furlough. He or she shall report as frequently as may be required by the state probation and parole officer.

(4) The furloughed person shall abide by all local, state, and federal laws, ordinances, and statutes.

(5) With approval of either the designated state probation and parole officer, or institution staff, the furloughed person may accept temporary employment during a period of fur-

lough. Earnings may be used to defray the costs of the furlough, including transportation, living expenses, family support, and incidental needs.

(6) Furloughed persons may not leave the state at any time while on furlough.

(7) Other limitations on movement within the state may be imposed as a condition of furlough. Unless it is part of the approved travel plan, travel outside the county to which furlough is granted must be approved in advance by the probation and parole officer in that county.

(8) A furloughed person shall not drink, ingest, possess, or be under the influence of intoxicating beverages or nonprescribed drugs. All public taverns, bars, liquor stores, and cocktail lounges will be considered "off limits" to furloughed persons.

(9) A furloughed person who drives a motor vehicle must:

(a) Have a valid Washington driver's license in his or her possession,

(b) If unaccompanied by the owner, have the owner's written permission in his or her possession to drive any vehicle not his or her own or his or her spouse's,

(c) Have at least minimum personal injury and property damage liability coverage on the vehicle he or she is driving,
 (d) Observe all traffic laws.

(10) Clothing issued for use during the furlough is to be returned to the institution at the completion of the furlough.

(11) Other conditions of furlough specific to the individual may be imposed in writing, prior to the inception of the furlough.

(12) All conditions of furlough, general and specific, shall be listed on the furlough order, and shall be discussed with the inmate by his or her counselor before he or she leaves the institution. The furloughed person shall carry a copy of the furlough order and furlough identification card, with him or her at all times while on furlough. The furlough identification card will be issued to the inmate prior to departure from the institution, and returned at the end of the furlough.

(13) Willful failure to return from a furlough at the time specified in the furlough order constitutes an escape from confinement which is a violation of criminal law.

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-050, filed 3/4/82. Formerly WAC 275-93-050.]

WAC 137-60-060 Furlough of person confined in state correctional institution—Duration. (1) Furloughs may not exceed thirty days at a given time or a total of sixty days in any twelve-month period. The sixty day total is designed to permit a reasonable pattern of short releases over the course of a year, or an extended period of release for special placement on furlough status in preparation for work release, training release, parole planning, medical treatment not available in a state facility, or a combination of these reasons.

(2) First and second furloughs will not exceed five days absent unusual circumstances.

(3) Emergency furloughs will be limited to forty-eight hours plus travel time absent unusual circumstances.

(4) Any furlough may be extended by the institution superintendent or work/training release supervisor within the maximum time limits set by this section.

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-060, filed 3/4/82. Formerly WAC 275-93-060.]

WAC 137-60-070 Furlough of person confined in state correctional institution—Sponsor's responsibilities. A furlough plan must designate a sponsor for the inmate while he or she is on furlough. The sponsor must sign a statement agreeing to:

- (1) Provide the furlougee with appropriate living quarters for the duration of the furlough,
- (2) Notify the institution immediately if the furlougee does not appear as scheduled, departs from the furlough plan at any time, becomes involved in serious difficulty during the furlough, or experiences problems that affect his or her ability to function appropriately,
- (3) Assist the furlougee in other appropriate ways, such as discussing problems, providing transportation to job interviews, etc.,
- (4) Assure that the furlougee returns to the institution on time.

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-070, filed 3/4/82. Formerly WAC 275-93-070.]

WAC 137-60-080 Furlough of person confined in state correctional institution—Criteria for evaluating application. (1) An application for furlough shall be considered with respect to:

- (a) Consistency with the purposes described in WAC 137-60-030 and 137-60-040, and
 - (b) Adequacy of the furlough plan, and
 - (c) Possible risk to the community, and
 - (d) Findings of a field investigation.
- (2) The application shall be evaluated without regard to the race, sex, color, national origin, or creed of the applicant.

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-080, filed 3/4/82. Formerly WAC 275-93-080.]

WAC 137-60-090 Furlough of person confined in state correctional institution—Application for furlough.

(1) An application for furlough must be made on forms prescribed by the secretary, must include a furlough plan, and must be submitted by the inmate to his or her counselor.

(2) An application for furlough, other than an emergency furlough, must be made at least seven weeks prior to the date of the furlough.

(3) Any inmate whose furlough application has been rejected may reapply after such period of time has elapsed as was determined by the superintendent, work/training release supervisor, or chief, classification and treatment, at the time of rejection, such time period being subject to modification by the persons listed in this section.

(4) A furlough plan shall specify in detail the purpose of the furlough and how it is to be achieved, the address at which the applicant would reside, the names of all persons residing at such address and the relationships of such persons to the applicant.

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-090, filed 3/4/82. Formerly WAC 275-93-090.]

(2009 Ed.)

WAC 137-60-100 Furlough of person confined in state correctional institution—Notifying inmate of decision on application. (1) The inmate and his or her sponsor shall both be notified promptly of the disposition of his or her application.

(2) If a furlough is authorized, a copy of the furlough order will be mailed to the sponsor.

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-100, filed 3/4/82. Formerly WAC 275-93-100.]

WAC 137-60-110 Furlough of person confined in state correctional institution—Escape. The department has the duty, as soon as possible, to notify the state patrol of the escape of a furlougee.

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-110, filed 3/4/82. Formerly WAC 275-93-110.]

WAC 137-60-120 Furlough of person confined in state correctional institution—Revocation or suspension.

(1) Any employee of the department having knowledge of a furlough infraction shall report the facts to the superintendent or work/training release facility supervisor as appropriate. Upon verification, the superintendent or work/training release supervisor will cause the custody of the furlougee to be regained and, for this purpose, may cause a furlough suspension warrant to be issued.

(2) The superintendent or work/training release facility supervisor as appropriate will determine whether to suspend or revoke the furlough. If the furlough is suspended, the superintendent or work/training release supervisor will indicate when and under what circumstances the inmate may reapply.

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-120, filed 3/4/82. Formerly WAC 275-93-120.]

WAC 137-60-130 Furlough of person confined in state correctional institution—Law enforcement officers to be notified. (1) Appropriate law enforcement agencies will be notified of a planned furlough via the state patrol communications network at least forty-eight hours prior to the beginning of the furlough.

(2) In the event of an emergency furlough, the state patrol will be notified as early as possible but the forty-eight hour requirement will not apply.

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-130, filed 3/4/82. Formerly WAC 275-93-130.]

WAC 137-60-140 Furlough of person confined in state correctional institution—Exceptions to rules. In emergency situations or as otherwise allowed by statute, the secretary may authorize exceptions to the rules in chapter 137-60 WAC: Provided, That no exception may be made to WAC 137-60-040 (1)(a), (b), (c), (2), and (3), 137-60-045, 137-60-050, 137-60-060, and 137-60-070.

[Statutory Authority: RCW 72.66.080. 82-07-006 (Order 82-04), § 137-60-140, filed 3/4/82. Formerly WAC 275-93-140.]

[Title 137 WAC—p. 47]

Chapter 137-65 WAC

COST OF SUPERVISION—PROBATION AND PAROLE

WAC

137-65-010	Purpose.
137-65-020	Scope.
137-65-030	Fee.
137-65-040	P.P.I. report.
137-65-050	Instructions.
137-65-060	Exception.
137-65-070	Violation.

WAC 137-65-010 Purpose. The purpose of this regulation is to provide administrative rules and standards pursuant to chapter 72.04A RCW, as now or hereafter amended which requires a cost-of-supervision assessment for certain felony parolees.

[Statutory Authority: Chapters 72.04A and 9.94A RCW, as amended by chapter 20, Laws of 1982. 83-01-137 (Order 82-16), § 137-65-010, filed 12/22/82.]

WAC 137-65-020 Scope. This regulation shall apply to every person convicted of a felony in the state of Washington and placed on parole effective July 1, 1982, when such convicted person is required by the board of prison terms and paroles to pay a monthly cost of supervision fee (assessment) to the state.

[Statutory Authority: Chapters 72.04A and 9.94A RCW, as amended by chapter 20, Laws of 1982. 83-01-137 (Order 82-16), § 137-65-020, filed 12/22/82.]

WAC 137-65-030 Fee. The following fees may be assessed by the board of prison terms and parole for parolees on active status: Fifteen dollars per month for regular, routine parole and up to fifty dollars per month for special or intensive parole supervision.

[Statutory Authority: Chapters 72.04A and 9.94A RCW, as amended by chapter 20, Laws of 1982. 83-01-137 (Order 82-16), § 137-65-030, filed 12/22/82.]

WAC 137-65-040 P.P.I. report. The probation and parole officer preparing the preparole investigation report shall recommend that the board of prison terms and paroles make the monthly cost of supervision assessment a condition of parole unless the officer finds one or more of the following:

- (1) The offender has diligently attempted but has been unable to obtain employment which provides the offender sufficient income to make such payments.
- (2) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.
- (3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.
- (4) The offender's age prevents him from obtaining employment.
- (5) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.
- (6) Other extenuating circumstances as approved by the board of prison terms and paroles.

[Title 137 WAC—p. 48]

Reasons for recommending exemptions from the assessment shall be stipulated in the preparole investigation report.

[Statutory Authority: Chapters 72.04A and 9.94A RCW, as amended by chapter 20, Laws of 1982. 83-01-137 (Order 82-16), § 137-65-040, filed 12/22/82.]

WAC 137-65-050 Instructions. When ordered by the board of prison terms and paroles to pay the monthly cost of supervision assessment, the subject offender will receive written instructions specifying terms of payment.

[Statutory Authority: Chapters 72.04A and 9.94A RCW, as amended by chapter 20, Laws of 1982. 83-01-137 (Order 82-16), § 137-65-050, filed 12/22/82.]

WAC 137-65-060 Exception. The cost of supervision assessment shall not apply to cases supervised exclusively under the interstate compact.

[Statutory Authority: Chapters 72.04A and 9.94A RCW, as amended by chapter 20, Laws of 1982. 83-01-137 (Order 82-16), § 137-65-060, filed 12/22/82.]

WAC 137-65-070 Violation. Failure to comply with a cost of supervision assessment order imposed by the board of prison terms and paroles shall be treated as any other violation of parole and brought to the attention of the board in a standard violation report. Limited discretion is authorized in responding to late payments if, in the parole officer's judgment, circumstances warrant, and if the subject offender is earnestly trying to meet his/her financial obligations.

[Statutory Authority: Chapters 72.04A and 9.94A RCW, as amended by chapter 20, Laws of 1982. 83-01-137 (Order 82-16), § 137-65-070, filed 12/22/82.]

Chapter 137-67 WAC

TRANSFER OF CITIZENS OF FOREIGN COUNTRIES

WAC

137-67-010	Purpose.
137-67-015	Definitions.
137-67-020	Request for transfer.
137-67-025	Initial notification.
137-67-030	Process for application.
137-67-035	Referral by the secretary to the Office of Enforcement Operations, International Prisoner Transfer Program, Criminal Division, U.S. Department of Justice.
137-67-040	Verification hearing.
137-67-045	Return to state custody.

WAC 137-67-010 Purpose. The rules in this chapter establish the process for inmates of adult correctional institutions to apply for transfer to their countries of citizenship or origin in accordance with RCW 43.06.350.

[Statutory Authority: RCW 72.68.010. 85-18-061 (Order 85-07), § 137-67-010, filed 9/3/85.]

WAC 137-67-015 Definitions. (1) "Department" is the department of corrections.

(2) "Adult correctional institution" and "institution" is a facility identified in RCW 72.01.050(2) and any similar facility hereafter established.

(3) "Secretary" is the secretary of the department of corrections or the secretary's designee.

(4) "Deputy secretary" is the deputy secretary, prisons division, of the Washington state department of corrections or his/her designee.

(5) "Superintendent" is a superintendent of an adult correctional institution or the superintendent's designee.

(6) "Treaty nation" is a country which has entered into a treaty with the United States on the execution of penal sentences.

(7) "Treaty" is a treaty under which an offender, sentenced in the courts of one country, may be transferred to the country of which the offender is a citizen or national, for the purpose of serving the sentence.

(8) "Country of origin or citizenship" is the country in which the inmate was born or in which the inmate has duly recognized citizenship.

(9) "OIA" is the Office of International Affairs, Criminal Division, United States Department of Justice.

(10) "United States" is the United States of America.

(11) "Detainer" is a hold or request for notification placed by any local, state, or federal law enforcement, penal, or prosecutorial agency based on untried charges, parole or probation violation, escape, unexpired sentence, bond-jumping, or any other fugitive matter.

[Statutory Authority: RCW 72.01.090. 07-12-073, § 137-67-015, filed 6/5/07, effective 7/6/07; 03-21-088, § 137-67-015, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.68.010. 85-18-061 (Order 85-07), § 137-67-015, filed 9/3/85.]

WAC 137-67-020 Request for transfer. An inmate committed to the Washington corrections system who is a citizen of a foreign country may make an application for a voluntary transfer to the inmate's country of origin or citizenship, provided the following conditions exist:

(1) The inmate is able to establish citizenship in a treaty nation;

(2) The inmate voluntarily requests the transfer;

(3) There is no unresolved detainer lodged against the inmate;

(4) There is no pending fine or restitution obligation imposed on the inmate by a court of competent jurisdiction in the United States;

(5) There is no pending or actual sentence for civil contempt against the inmate; and

(6) There is no pending appeal or collateral attack on the underlying sentence or sentences which form the basis of the inmate's custody.

[Statutory Authority: RCW 72.68.010. 85-18-061 (Order 85-07), § 137-67-020, filed 9/3/85.]

WAC 137-67-025 Initial notification. At the time of admission to the Washington corrections center, or the Washington corrections center for women, the orientation information given to all inmates will include information on international offender transfers. An inmate who is a citizen of a treaty nation will be informed of the existing treaty and be provided with the opportunity to indicate an interest or non-interest in a transfer to the inmate's country of origin or citizenship on an application form provided by the department. Whenever possible, the form will be bilingual or translated into the inmate's native language. The application will be pro-

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cessed consistent with the purpose and provisions of the applicable treaty.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-67-025, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.68.010. 85-18-061 (Order 85-07), § 137-67-025, filed 9/3/85.]

WAC 137-67-030 Process for application. After the inmate's foreign country citizenship has been verified and that country has been identified as a treaty nation, the superintendent will forward the inmate's application for transfer and the verification of citizenship to the deputy secretary. All applications for international transfer will be submitted by the deputy secretary to the secretary for final department approval and recommended to the governor or the governor's designee pursuant to RCW 43.06.350.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-67-030, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.68.010. 85-18-061 (Order 85-07), § 137-67-030, filed 9/3/85.]

WAC 137-67-035 Referral by the secretary to the Office of Enforcement Operations, International Prisoner Transfer Program, Criminal Division, U.S. Department of Justice. After approval of an inmate's application for transfer by the governor or the governor's designee, the secretary will refer the inmate's application to the International Prisoner Transfer Program (IPTP).

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-67-035, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.68.010. 85-18-061 (Order 85-07), § 137-67-035, filed 9/3/85.]

WAC 137-67-040 Verification hearing. Following IPTP approval and approval of the treaty country, the inmate will be referred by IPTP to a United States magistrate or a United States district court judge, or other appointed United States official to assure and document the inmate's voluntary request for transfer. Federal authorities will complete the necessary procedures to effect voluntary transfer under the applicable treaty and laws of the United States.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-67-040, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.68.010. 85-18-061 (Order 85-07), § 137-67-040, filed 9/3/85.]

WAC 137-67-045 Return to state custody. If for any reason an inmate's transfer is determined to be invalid, the state of Washington will reaccept the inmate for imprisonment for the remainder of the inmate's original sentence.

[Statutory Authority: RCW 72.68.010. 85-18-061 (Order 85-07), § 137-67-045, filed 9/3/85.]

Chapter 137-68 WAC

ADULT PROBATION AND PAROLE—INTERSTATE COMPACT

WAC

137-68-010	Definitions.
137-68-020	Detained or arrested probationer or parolee—Right to preliminary hearing.
137-68-030	Preliminary hearing—Preparation.
137-68-040	Preliminary hearing—Conduct.
137-68-050	Preliminary hearing—Disposition of decision.

WAC 137-68-010 Definitions. (1) "Compact" is the interstate compact for supervision of probationers and parolees as codified in RCW 9.95.270.

(2) "Compact administrator" is the deputy secretary, prisons division, department of corrections, who is responsible for the administration of the interstate compact for the supervision of adult probationers and parolees.

(3) "Deputy compact administrator" is a person appointed by the compact administrator and delegated responsibility for the administration of the interstate compact.

(4) "Sending state" is the state in which the individual was granted probation or parole and in which the jurisdiction of the case is retained.

(5) "Receiving state" is the state providing supervision of the parolee or probationer under the interstate compact.

(6) "Probationer" is a person under jurisdiction of a state superior or circuit court who is being supervised under the compact.

(7) "Parolee" is a person under jurisdiction of a paroling authority who is being supervised under the interstate compact.

(8) "Parole officer" is a state community corrections officer (CCO) employed by the department of corrections.

(9) "Supervising community corrections officer" is a CCO assigned to supervise a probationer or parolee as required by the interstate compact and to act in regard to all matters connected with hearings conducted pursuant to the interstate compact rules.

(10) "Violations specified" are charges and/or allegations made against probationer or parolee by a parole officer in regard to violation of law or failure to comply with the general conditions of probation or parole or special instructions and conditions as set forth by the court of jurisdiction or the paroling authority.

(11) "Preliminary hearing" is a hearing conducted in accordance with RCW 10.88.290.

(12) "Hearing officer" is a person authorized by the compact administrator to hear cases involving alleged violations of conditions of parole or probation. Neither the person making the allegations of violation or his or her direct supervisor shall act as hearing officer.

[Statutory Authority: RCW 72.01.090. 07-12-073, § 137-68-010, filed 6/5/07, effective 7/6/07; 03-21-088, § 137-68-010, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 9.95.270. 83-01-139 (Order 82-20), § 137-68-010, filed 12/22/82. Formerly WAC 275-102-475.]

WAC 137-68-020 Detained or arrested probationer or parolee—Right to preliminary hearing. (1) A probationer or parolee being supervised for another state under the interstate compact if detained or arrested within the state of Washington shall have the right as provided in RCW 10.88.-290, to a preliminary hearing to determine whether there is probable cause to believe a condition or conditions of probation or parole have been violated and whether there is reason to believe the violations alleged are of such nature that a revocation of probation or parole should be considered by the sending state.

(2) The detained or arrested probationer or parolee may waive his or her right to such hearing in writing.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-68-020, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 9.95.270. 83-01-

139 (Order 82-20), § 137-68-020, filed 12/22/82. Formerly WAC 275-102-480.]

WAC 137-68-030 Preliminary hearing—Preparation. (1) When a probationer or parolee being supervised in the state of Washington under the compact is detained by a parole officer, the parole officer shall immediately give verbal and written notice to such probationer or parolee of his or her right to a preliminary hearing and shall further notify the probationer or parolee of all rights guaranteed him or her by the rules in this chapter.

(2) Immediately following the detention of a probationer or parolee, the parole officer shall notify the deputy compact administrator of the detention. Arrangements shall promptly be made for the date, time, and place for a hearing so that the hearing may be held within ten days from the date the probationer or parolee is detained by the parole officer.

(3) As soon as possible following detention of a probationer or parolee, the parole officer shall prepare charges or the violations specified and provide the probationer or parolee with a copy of said charges and also notify him or her of the date, time, and place set for the hearing. Upon serving the probationer or parolee with the violations specified, the parole officer shall determine whether the probationer or parolee wishes to waive his or her right to a hearing.

(4) Prior to the hearing, the parole officer shall send to the appropriate deputy compact administrator the signed hearing waiver (if appropriate), the notice of arrest and violations specified and the violation report.

(5) A detained or arrested probationer or parolee shall have the right to consult with any person whose assistance he or she reasonably desires prior to the hearing.

[Statutory Authority: RCW 9.95.270. 83-01-139 (Order 82-20), § 137-68-030, filed 12/22/82. Formerly WAC 275-102-485.]

WAC 137-68-040 Preliminary hearing—Conduct. (1) The hearing shall be conducted by a hearing officer as defined in WAC 137-68-010(12).

(2) The hearing shall be closed to the public.

(3) The proceedings at the hearing shall be recorded.

(4) The hearing officer shall explain the purpose of the hearing, have the specified charges read aloud, and verify that the procedures specified in WAC 137-68-030 have been followed.

(5) A supervising parole officer shall be present at the hearing, submit the written report of the alleged violations in evidence, and testify as to the violations.

(6) Any person may give testimony relevant to the alleged violation or violations, introduce evidence including affidavits, and question other persons subject to the limitations in subsection (7) of this section.

(7) The detained or arrested probationer or parolee shall have the right to confront and examine any person who may have made allegations or given evidence against him or her unless the hearing officer determines that such a confrontation would present a substantial present or subsequent danger of harm to such person. In such instance a written general summary or the evidence, without disclosure of the identity of the witness, shall be provided to the probationer or parolee at the hearing. He or she shall have the opportunity to submit

evidence relevant to or controverting any information contained in the summary.

(8) The hearing may be recessed for time sufficient for the hearing officer to consider the evidence and reach a decision on the issue of probable cause.

(9) The hearing officer shall render this decision on the probable cause based solely on the evidence presented at the hearing.

(10) If probable cause is found the hearing officer may receive additional evidence and argument relevant to recommendations.

[Statutory Authority: RCW 9.95.270. 83-01-139 (Order 82-20), § 137-68-040, filed 12/22/82. Formerly WAC 275-102-490.]

WAC 137-68-050 Preliminary hearing—Disposition of decision. (1) The hearing officer shall submit a written summary and digest of the hearing to the deputy compact administrator which may include recommendations and reasons therefore.

(2) The deputy compact administrator shall submit the summary and digest to the sending state which may include his or her recommendations.

(3) If the decision is that there is probable cause to believe that the parolee or probationer has committed a violation or violations of a condition or conditions of parole or probation and it appears that retaking or reincarceration by the sending state is likely to follow, the probationer or parolee may be detained by the deputy compact administrator to allow such time as may be necessary to complete the arrangements for his or her return to the sending state.

(4) Should it be the decision of the sending state to return this probationer or parolee, the deputy compact administrator will assist in arranging for his or her return to the sending state.

(5) The record of the hearing shall be retained for not less than one hundred eighty days.

[Statutory Authority: RCW 9.95.270. 83-01-139 (Order 82-20), § 137-68-050, filed 12/22/82. Formerly WAC 275-102-495.]

Chapter 137-70 WAC

REIMBURSEMENT FOR CRIMINAL JUSTICE COSTS AND CONTINGENCY PLAN EXPENSES

WAC

137-70-010	Purpose.
137-70-020	Definitions.
137-70-030	Eligibility.
137-70-040	Reimbursable impacts/rates—Criminal justice costs.
137-70-050	Limitation of funds—Criminal justice costs.
137-70-055	Reimbursable impacts—Contingency plan expenses.
137-70-057	Funds—Contingency plan expenses.
137-70-060	Billing procedure.
137-70-070	Department review.
137-70-080	Implied consent to audit.

WAC 137-70-010 Purpose. Chapter 72.72 RCW creates an institutional impact account, in the general fund, for the purpose of reimbursing political subdivisions for criminal justice costs they incur directly as a result of crimes committed by adult offenders residing in correctional institutions, and for expenses they incur directly as a result of their providing personnel and material pursuant to a contingency plan. The purpose of these rules is to implement that statute and to

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set forth the procedures under which these funds will be distributed.

[Statutory Authority: RCW 72.72.040. 84-11-033 (Order 84-06), § 137-70-010, filed 5/14/84. Statutory Authority: Chapter 72.72 RCW. 82-17-044 (Order 82-10), § 137-70-010, filed 8/16/82.]

WAC 137-70-020 Definitions. As used in this chapter, the following words shall have the following meanings:

(1) "Secretary" shall mean the secretary of the department of corrections or the secretary's designee.

(2) "Deputy secretary" shall mean the deputy secretary of the department, or the deputy secretary's designee.

(3) "Contingency plan" shall mean a plan developed under RCW 72.02.150 by the secretary with representatives of political subdivisions for dealing with disturbances at a state penal facility.

(4) "Department" shall mean the department of corrections.

(5) "Inmate" shall mean an individual sentenced to the custody of the department under state law and an individual transferred to the custody of the department from another state or the federal government.

(6) "Institution" and "penal facility" shall mean any facility identified in RCW 72.01.050(2) and any community residential program under the department's jurisdiction operated pursuant to chapter 72.65 RCW.

(7) "Political subdivision" shall mean any city, town, or county.

(8) "Administrator" shall mean the administrator of the department's contracts and legal affairs section, or the administrator's designee.

(9) All references to the singular shall include the plural unless noted otherwise.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-70-020, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.72.040. 87-03-029 (Order 86-07), § 137-70-020, filed 1/14/87; 84-11-033 (Order 84-06), § 137-70-020, filed 5/14/84. Statutory Authority: Chapter 72.72 RCW. 82-17-044 (Order 82-10), § 137-70-020, filed 8/16/82.]

WAC 137-70-030 Eligibility. (1) Reimbursement for criminal justice costs shall be available to any political subdivision which incurs an incremental cost, reimbursable under this chapter, which is specifically and exclusively attributable to the criminal behavior of an inmate incarcerated in or who has escaped from an institution. For the purposes of this chapter parolees or probationers are deemed to be inmates only if they are assigned to an institution. Reimbursement shall be made only with respect to new crimes and shall not be made for violations of the conditions of parole or probation and the resulting revocation hearings.

(2) Reimbursement for contingency plan expenses, including costs incurred under chapter 41.26 RCW, if such costs are the direct result of physical injury sustained in the implementation of a contingency plan, shall be available to any political subdivision which incurs such expense in providing personnel and/or material, when requested by the secretary or the secretary's designee, to carry out the provisions of a duly adopted contingency plan. Provided, however, reimbursement for costs incurred under chapter 41.26 RCW will not be made:

(a) Unless the physical injury occurs within the walls or other perimeter of the secured area, if the secretary identifies in the contingency plan the prison walls or other perimeter of the secured area; or

(b) Unless the physical injury results from providing assistance requested by the secretary or the secretary's designee which is beyond the description of the assistance contained in the contingency plan, if the secretary does not identify the prison walls or other perimeter of the secured area; or

(c) If the physical injury results from conduct which either is not requested by the secretary or the secretary's designee, or is in violation of orders by superiors of the local law enforcement agency.

[Statutory Authority: RCW 72.72.040. 84-11-033 (Order 84-06), § 137-70-030, filed 5/14/84. Statutory Authority: Chapter 72.72 RCW. 82-17-044 (Order 82-10), § 137-70-030, filed 8/16/82.]

WAC 137-70-040 Reimbursable impacts/rates—Criminal justice costs. Reimbursement shall be restricted to fully documented law enforcement, prosecutorial, judicial and jail facility costs, as defined herein, at the actual costs of the submitting jurisdiction, not to exceed the following rates:

(1) Law enforcement costs are costs incurred by any political subdivision in apprehending escapees, in investigating crimes committed by state institutional inmates including pretrial investigations within or outside the institution, or in providing security for inmates outside the jail facility. These costs are reimbursable at the following rates: \$23.96 per hour.

(2) If an escape or investigation results in the filing of a criminal complaint, the impacted political subdivision shall be entitled to attorney costs associated with the prosecution and/or defense of the filed action. These costs are reimbursable at the following maximum rates: \$57.32 per hour.

(3) Reimbursement for judicial costs incurred as a result of the filing of a criminal complaint shall be limited to judges, court reporters, transcript typing or preparation, witness fees and jury fees. These costs are reimbursable at the following maximum rates:

(a) Judges - \$57.32 per hour. These costs shall include the services of court clerks and bailiffs.

(b) Court reporters - \$24.71 per hour.

(c) Transcript typing services - \$4.79 per page.

(d) Expert witnesses - \$80.43 per hour.

(e) Witness fees/nonexpert - jury fees - reimbursable at the rate established by the local governmental legislative authority up to a maximum of \$36.11 per day.

(4) Jail facility costs resulting from the escape or criminal complaint shall be reimbursed at the rates established by OFM.

(5) Coroner - Where an inmate dies as a result of criminal activity of another inmate, coroner costs incurred by a local jurisdiction may be reimbursed up to a maximum amount established by the department as reasonable.

(6) Medical costs - Where an inmate is in the custody of a local jurisdiction as a result of a crime committed while incarcerated in a state institution, extraordinary medical costs, beyond the routine medical services of the jail, may be reimbursed at the discretion of the department. Counties, cities, and towns shall notify the department prior to incurring expenses for extraordinary medical expenses, where practica-

ble, to allow the department an opportunity to provide the necessary medical care directly.

[Statutory Authority: RCW 72.01.090, 72.72.040. 06-02-002, § 137-70-040, filed 12/21/05, effective 1/21/06. Statutory Authority: RCW 34.04.025. 89-12-003 (Order 89-04), § 137-70-040, filed 5/25/89. Statutory Authority: RCW 72.72.040. 87-22-064 (Order 87-04), § 137-70-040, filed 11/3/87; 87-14-044 (Order 87-02), § 137-70-040, filed 6/30/87; 87-03-029 (Order 86-07), § 137-70-040, filed 1/14/87; 86-02-053 (Order 85-13), § 137-70-040, filed 12/31/85. Statutory Authority: Chapter 72.72 RCW. 85-12-020 (Order 85-08), § 137-70-040, filed 5/29/85, effective 7/1/85. Statutory Authority: RCW 72.72.040. 84-11-033 (Order 84-06), § 137-70-040, filed 5/14/84. Statutory Authority: Chapter 34.04 RCW. 83-24-058 (Order 83-13), § 137-70-040, filed 12/6/83. Statutory Authority: Chapter 72.72 RCW. 82-17-044 (Order 82-10), § 137-70-040, filed 8/16/82.]

WAC 137-70-050 Limitation of funds—Criminal justice costs. Claims for reimbursement under WAC 137-70-040 shall be paid in the order they are received until the legislative appropriation for the biennium is fully expended. If the impact fund is fully expended before the end of the biennium, political subdivisions should continue to submit claims for the purpose of developing future impact account funding requests.

[Statutory Authority: RCW 72.72.040. 84-11-033 (Order 84-06), § 137-70-050, filed 5/14/84. Statutory Authority: Chapter 72.72 RCW. 82-17-044 (Order 82-10), § 137-70-050, filed 8/16/82.]

WAC 137-70-055 Reimbursable impacts—Contingency plan expenses. Reimbursement shall be restricted to applicants eligible under WAC 137-70-030(2) for fully documented expenses incurred directly as a result of their providing personnel and/or material pursuant to a contingency plan.

[Statutory Authority: RCW 72.72.040. 84-11-033 (Order 84-06), § 137-70-055, filed 5/14/84.]

WAC 137-70-057 Funds—Contingency plan expenses. Reimbursement under WAC 137-70-055 shall be made solely from the institutional impact account from funds available in that account. If full reimbursement would exceed available funds, the secretary will request the legislature to appropriate sufficient funds to enable the secretary to make full reimbursement, and if so appropriated, the secretary will make such reimbursement.

[Statutory Authority: RCW 72.72.040. 84-11-033 (Order 84-06), § 137-70-057, filed 5/14/84.]

WAC 137-70-060 Billing procedure. (1) All requests for reimbursement under this chapter must be submitted on a standard Washington State Invoice Voucher Form, A-19, in triplicate, showing the total reimbursement requested, accompanied by a completed request for reimbursement form issued by the department. The vouchers and form should be mailed or delivered to the Department of Corrections, Contracts and Legal Affairs, P.O. Box 41114, Olympia, Washington 98504-1114.

(2) The department may require the requesting political subdivision to submit such other documentation and information the department deems necessary to further support or explain the request.

[Statutory Authority: RCW 72.01.090. 07-12-073, § 137-70-060, filed 6/5/07, effective 7/6/07; 03-21-088, § 137-70-060, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.72.040. 85-07-017 (Order 85-04), §

137-70-060, filed 3/11/85; 84-11-033 (Order 84-06), § 137-70-060, filed 5/14/84; 82-17-044 (Order 82-10), § 137-70-060, filed 8/16/82.]

WAC 137-70-070 Department review. (1) All requests for reimbursement shall be reviewed by the administrator.

(2) The administrator shall approve or disapprove the requests for payment. If a request is disapproved in total or in part, the administrator shall notify the requesting political subdivision in writing, setting forth the reasons for disapproval.

(3) The administrator's decision shall be final unless appealed to the department's impact appeals panel within twenty days after a political subdivision receives notice of disapproval. The impact appeals panel shall be composed of the deputy secretary, prisons division and the deputy secretary, administrative services division, or his/her designee.

(4) An appeal from the administrator's decision disapproving a political subdivision's request for reimbursement must be in writing and must set forth the reasons why the political subdivision believes its request should be approved. The appeal shall be addressed to the Impact Appeals Panel, Department of Corrections, P.O. Box 41114, Olympia, WA 98504-1114, attention: Contracts and Legal Affairs.

(5) The decision of the impact appeals panel shall be deemed to be the department's final administrative action with respect to the appeal.

[Statutory Authority: RCW 72.01.090, 07-12-073, § 137-70-070, filed 6/5/07, effective 7/6/07; 03-21-088, § 137-70-070, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.72.040, 87-03-029 (Order 86-07), § 137-70-070, filed 1/14/87; 85-07-017 (Order 85-04), § 137-70-070, filed 3/11/85; 84-11-033 (Order 84-06), § 137-70-070, filed 5/14/84; 82-17-044 (Order 82-10), § 137-70-070, filed 8/16/82.]

WAC 137-70-080 Implied consent to audit. By submitting requests for reimbursement, the requesting political subdivision agrees to:

(1) Maintain records which would support the request made for a period five years after the date of such request; and

(2) Make such records available for review and/or audit by the department if requested by the secretary or the secretary's designee.

[Statutory Authority: RCW 72.72.040, 84-11-033 (Order 84-06), § 137-70-080, filed 5/14/84. Statutory Authority: Chapter 72.72 RCW, 82-17-044 (Order 82-10), § 137-70-080, filed 8/16/82.]

Chapter 137-75 WAC

JAIL AND MEDICAL COST REIMBURSEMENT TO CITIES AND COUNTIES

WAC

137-75-010	Purpose.
137-75-020	Definitions.
137-75-030	Department financial responsibility.
137-75-040	Extraordinary emergency medical treatment.
137-75-050	Request for reimbursement.
137-75-060	Implied consent to audit.

WAC 137-75-010 Purpose. Chapter 70.48 RCW as amended by chapter 235, Laws of 1984, imposes certain financial responsibility on the department of corrections for certain persons imprisoned in a city or county jail. The purpose of these rules is to establish procedures by which the

department of corrections will discharge said financial responsibility.

[Statutory Authority: RCW 72.01.090 and 1984 c 235, 84-15-053 (Order 84-09), § 137-75-010, filed 7/17/84, effective 9/2/84.]

WAC 137-75-020 Definitions. As used in this chapter, the following words shall have the following meanings:

(1) "Secretary" shall mean the secretary of the department of corrections or the secretary's designee;

(2) "Department" shall mean the department of corrections;

(3) "Deputy secretary" shall mean the deputy secretary, prisons division or his/her designee.

(4) "Institution" shall mean a facility designated in RCW 72.01.050(2), any similar facility hereafter established, and a work release facility;

(5) "Work release facility" shall mean a community residence operated pursuant to chapter 72.65 RCW;

(6) "Jail" shall mean a city or county holding facility as defined in RCW 70.48.020(1);

(7) "Parole hold" shall mean a detention of a person pursuant to an order of parole suspension or revocation issued in accordance with RCW 9.95.120;

(8) All references to the singular shall include the plural, unless otherwise noted.

[Statutory Authority: RCW 72.01.090, 07-12-073, § 137-75-020, filed 6/5/07, effective 7/6/07; 03-21-088, § 137-75-020, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.01.090 and 1984 c 235, 84-15-053 (Order 84-09), § 137-75-020, filed 7/17/84, effective 9/2/84.]

WAC 137-75-030 Department financial responsibility. (1) The financial responsibility of the department under this chapter shall be limited to reimbursing cities and counties for the costs and at the rates set forth in chapter 235, Laws of 1984 or any amendment thereto hereafter enacted.

(2) The financial responsibility of the department for a person convicted of a felony as defined by RCW 9A.04.040 and committed to the care and custody of the department, but detained in a jail after June 30, 1984, shall begin upon the eighth day, excluding Saturdays, Sundays, and holidays, following the sentencing of such person for the felony and notification to the department by the city or county that such person is available for movement to an institution, and shall terminate at midnight of the day immediately preceding the day of release of such person from detention. Provided, however, if such person is detained in the jail beyond such eight-day period pursuant to an order of a superior court, the financial responsibility of the department shall not begin until the expiration of the period ordered by the court, and shall terminate at midnight of the day immediately preceding the day of release of such person from detention. The notification required hereunder is to be given by telephone or teletype to the supervisor of the reception center at the Washington Corrections Center, Shelton, Washington.

(3) The financial responsibility of the department for a person detained in a jail solely by reason of a parole hold after June 30, 1984, shall begin upon the sixteenth day following the commencement of such detention, and shall terminate at midnight of the day immediately preceding the day of release of such person from detention. Provided, however, the

department shall have no such financial responsibility if a felony charge is filed against a person so detained.

(4) The financial responsibility of the department for an inmate, as defined in RCW 72.09.020, who resides in a work release facility and who is detained in a jail after June 30, 1984, shall begin when such detention commences, and shall terminate at midnight of the day immediately preceding the day of release of such inmate from detention.

[Statutory Authority: RCW 70.48.450. 87-14-045 (Order 87-03), § 137-75-030, filed 6/30/87. Statutory Authority: RCW 72.01.090 and 1984 c 235. 84-15-053 (Order 84-09), § 137-75-030, filed 7/17/84, effective 9/2/84.]

WAC 137-75-040 Extraordinary emergency medical treatment. (1) The department shall reimburse a city or county the actual cost of extraordinary emergency medical treatment provided to a person for whom the department is financially responsible.

(2) If a person for whom the department is financially responsible requires extraordinary and emergency medical treatment, the department is to be notified by a competent medical authority of the nature and course of such treatment as far in advance as practical. The department will then authorize such treatment or advise of alternative means by which such treatment may be provided. If it is not practical to give such notice prior to such treatment, notice will be given to the department as soon as practical after such treatment has been given.

(3) The notice required shall be given to the deputy secretary.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-75-040, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.01.090 and 1984 c 235. 84-15-053 (Order 84-09), § 137-75-040, filed 7/17/84, effective 9/2/84.]

WAC 137-75-050 Request for reimbursement. (1) A city or county requesting reimbursement under this chapter shall complete a form supplied by the department and file it with the Administrator, Contracts and Legal Affairs, P.O. Box 41114, Olympia, WA 98504-1114, who will confirm the accuracy of the information submitted with the request and determine whether the amount requested is properly reimbursable under chapter 70.48 RCW and this chapter.

(2) All such requests must be filed within thirty days after the costs for which reimbursement is requested were incurred. Provided, however, with respect to such costs incurred in the month of June in odd-numbered years, such requests must be filed no later than ten days after the close of the state fiscal biennium (June 30).

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-75-050, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 70.48.450. 87-14-045 (Order 87-03), § 137-75-050, filed 6/30/87. Statutory Authority: RCW 72.01.090 and 1984 c 235. 84-15-053 (Order 84-09), § 137-75-050, filed 7/17/84, effective 9/2/84.]

WAC 137-75-060 Implied consent to audit. By submitting a request for reimbursement under this chapter, the requesting city or county agrees to maintain for a period of five years after the date of the request records which would support such request, and to make such records available for review or audit by the department.

[Statutory Authority: RCW 72.01.090 and 1984 c 235. 84-15-053 (Order 84-09), § 137-75-060, filed 7/17/84, effective 9/2/84.]

[Title 137 WAC—p. 54]

Chapter 137-78 WAC

EMPLOYEE ASSAULT BENEFITS

WAC

137-78-010	Definitions.
137-78-020	Eligibility.
137-78-030	Application process.
137-78-040	Conditions of reimbursement.
137-78-050	Medical reports.
137-78-060	Denial of application for assault benefits.
137-78-070	Appeal from denial of assault benefits/overpayments.

WAC 137-78-010 Definitions. For the purposes of this chapter the following words shall have the following meanings:

(1) "Assault" means an intentional touching, striking, cutting, or shooting of a person or the body of another.

(2) "Assault benefits" means reimbursement to employees of some of their costs attributable to being the victim of an offender assault.

(3) "Administrator, safety and risk management" means the individual who is appointed by the secretary to head the safety and risk management section or his/her designee.

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

(5) "Employee" means any individual who is appointed by the secretary, and who serves under the supervision and authority of the department. The term "employee" shall not include an individual performing personal services under contract or offenders.

(6) "Deputy secretary" is the deputy secretary for the office of correctional operations or his/her designee.

(7) "Doctor" means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic; chiropractic; drugless therapeutics; podiatry; dentistry; optometry.

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

(9) "Secretary" means the secretary of the department of corrections or the secretary's designee.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-78-010, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.13.170. 89-15-059 (Order 89-05), § 137-78-010, filed 7/19/89, effective 8/19/89.]

WAC 137-78-020 Eligibility. Employees who apply to the department may be eligible for assault benefits if the secretary finds that each of the following has occurred:

(1) An offender has assaulted the employee and as a result thereof the employee has sustained injuries which have required the employee to miss one or more days of work;

(2) The assault is not attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment;

(3) The assault occurred while the employee was in the performance of his/her official duties; and

(4) The employee has made application for compensation under Title 51 RCW.

[Statutory Authority: RCW 72.13.170. 89-15-059 (Order 89-05), § 137-78-020, filed 7/19/89, effective 8/19/89.]

WAC 137-78-030 Application process. Employees who meet the requirements of WAC 137-78-020 and elect to apply for assault benefits shall submit a signed application for assault benefits and a properly completed report of per-

sonal injury form (DOC 3-133), together with the certificate of the doctor that attended him or her, to his or her locally designated representative or human resource office within ten working days of the occurrence of the assault or, if the application could not be reasonably submitted within that period, within ten working days of the time when application could reasonably have been made. Applications shall be reviewed through the employee's chain of command. The deputy secretary shall forward the application, with appropriate recommendations, to the safety and risk management section. The administrator, safety and risk management shall grant or deny the request for assault benefits within ten working days after written notification from the employee or the department of labor and industries that the employee's application for compensation under Title 51 RCW has been approved, but may extend that time to gather additional information.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-78-030, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.13.170. 89-15-059 (Order 89-05), § 137-78-030, filed 7/19/89, effective 8/19/89.]

WAC 137-78-040 Conditions of reimbursement. (1)

Assault benefits authorized the employee by the secretary under this chapter shall not continue longer than the date of termination of time-loss benefits by the department of labor and industries or three hundred sixty-five consecutive days from the date of the injury, whichever date is earlier, and shall be limited to the following:

(a) For each workday missed due to assault for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay pursuant to RCW 72.09.240 and this chapter; and

(b) In respect to workdays missed due to assault for which the employee shall be reimbursed compensation under chapter 51.32 RCW, the employee shall receive full pay, less any industrial insurance payments for time loss during the period in which assault benefits are received.

(2) As the intent of this chapter is to reimburse the employee the difference of salary compensation paid by the department of labor and industries and the full pay the employee would have received but for the time loss from the injury sustained as a result of an inmate assault, the employee shall not be entitled to receive greater than one hundred percent of his or her base salary as a result of payments by the department of labor and industries and the department unless such overpayment is the result of the employee's election to use accumulated vacation leave, holiday leave, compensatory time off, or exchange time.

(3) Employees granted assault benefits shall accrue full annual leave, sick leave, and insurance benefits during the time period they are approved to receive assault benefits.

(4)(a) Employees applying to the department for assault benefits may elect to use accrued sick leave until such application is approved or denied, provided that the employee shall return any subsequent overpayment to the department.

(b) The employee's accumulated sick leave hours shall not be reduced for the workdays missed due to the assault, provided that the employee has returned any overpayments to the department.

(c) If the employee fails to return any overpayments to the department, sick leave hours charged to an employee who receives worker's compensation as a result of the time loss

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and assault benefits shall be proportionate to the overpayment by the department during the claim period.

(5) The employee shall not be entitled to assault benefits provided in this section for any workday for which the secretary finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(6) While the employee is receiving assault benefits authorized under this chapter, the employee shall continue to be classified as a state employee and receive full service credit.

(7) The employee shall be entitled to assault benefits only for absences which the chief of the office of employee services believes are justified.

(8) No employee eligible to receive or receiving benefits under this chapter shall be entitled to continue to receive benefits should the legislature revoke the reimbursement authorized under this chapter.

[Statutory Authority: RCW 72.13.170. 89-15-059 (Order 89-05), § 137-78-040, filed 7/19/89, effective 8/19/89.]

WAC 137-78-050 Medical reports. The employee shall, at the request and sole expense of the department, submit to an independent medical examination by a licensed physician or other licensed health care provider designated by the department to determine whether the employee may continue to receive assault benefits.

[Statutory Authority: RCW 72.13.170. 89-15-059 (Order 89-05), § 137-78-050, filed 7/19/89, effective 8/19/89.]

WAC 137-78-060 Denial of application for assault

benefits. If the employee's request for assault benefits is denied by the safety and risk management administrator, the employee may, within ten working days from the date of denial, file a petition with the office of administrative services (OAS) deputy secretary for reconsideration, stating the specific grounds upon which the application should be granted. The OAS deputy secretary shall respond within twenty working days from the date the petition was received; provided that the time may be extended to gather additional information.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-78-060, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.13.170. 89-15-059 (Order 89-05), § 137-78-060, filed 7/19/89, effective 8/19/89.]

WAC 137-78-070 Appeal from denial of assault

benefits/overpayments. (1) If the employee's petition for assault benefits to the office of administrative services deputy secretary is denied, the employee may appeal that decision to the secretary in accordance with chapter 34.05 RCW and this section. The employee shall file a written petition with the Office of the Secretary at 410 W. 5th, P.O. Box 41101, Olympia, Washington 98504-1101, within thirty days after the denial of assault benefits.

(2) If a dispute exists between the employee and department concerning the amount of any overpayment to be repaid the department, the employee may request a hearing in accordance with chapter 34.05 RCW and this section. The employee shall file a written petition with the Office of the Secretary at 410 W. 5th, P.O. Box 41101, Olympia, Washington 98504-1101, within thirty days after the dispute arises.

[Title 137 WAC—p. 55]

[Statutory Authority: RCW 72.01.090, 03-21-088, § 137-78-070, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.13.170, 89-15-059 (Order 89-05), § 137-78-070, filed 7/19/89, effective 8/19/89.]

Chapter 137-79 WAC

SEXUAL MISCONDUCT BY STATE EMPLOYEES, CONTRACTORS

WAC

137-79-010	Purpose.
137-79-020	Definitions.
137-79-030	Sexual contact prohibited.
137-79-040	Sanctions.
137-79-050	Release of records.
137-79-060	Hearing procedure.

WAC 137-79-010 Purpose. The purpose of this chapter is to specify penalties for contractors and employees of the department who engage in sexual intercourse or sexual contact with inmates.

[Statutory Authority: RCW 72.01.090 and 72.09.225, 07-21-142, § 137-79-010, filed 10/24/07, effective 11/24/07.]

WAC 137-79-020 Definitions. As used in this chapter, the following items shall have the following meanings:

(1) "Secretary" shall mean the secretary of the department of corrections.

(2) "Department" shall mean the department of corrections.

(3) "Inmate" shall mean a person committed to the custody or under the supervision of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(4) "Sexual intercourse":

(a) Has its ordinary meaning and occurs upon any penetration, however slight; and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medicinally recognized treatment or diagnostic purposes; and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(5) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

(6) "Contractor" includes all subcontractors of a contractor.

(7) "Suspend" shall mean placing the employee on home assignment with pay.

[Statutory Authority: RCW 72.01.090 and 72.09.225, 07-21-142, § 137-79-020, filed 10/24/07, effective 11/24/07.]

WAC 137-79-030 Sexual contact prohibited. Sexual intercourse or sexual contact between an employee of the department or an employee of a department contractor and an inmate is strictly prohibited, provided that the termination provisions of this chapter shall not be invoked if the sexual

intercourse or sexual contact is against the employed person's will.

[Statutory Authority: RCW 72.01.090 and 72.09.225, 07-21-142, § 137-79-030, filed 10/24/07, effective 11/24/07.]

WAC 137-79-040 Sanctions. (1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an inmate has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an inmate has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to an inmate.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an inmate, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(5) The secretary, when considering the renewal of a contract with a contractor with whom the secretary has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an inmate. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

[Statutory Authority: RCW 72.01.090 and 72.09.225, 07-21-142, § 137-79-040, filed 10/24/07, effective 11/24/07.]

WAC 137-79-050 Release of records. (1) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(2) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information.

mation to other public officials, public employees, or public agencies, and to the public.

(3) Except as provided in chapter 42.56 RCW, or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

[Statutory Authority: RCW 72.01.090 and 72.09.225. 07-21-142, § 137-79-050, filed 10/24/07, effective 11/24/07.]

WAC 137-79-060 Hearing procedure. Hearings under this chapter shall follow the disciplinary hearing processes referenced in the collective bargaining agreement (CBA) applicable to the employee or in Title 357 WAC if the employee is not represented.

[Statutory Authority: RCW 72.01.090 and 72.09.225. 07-21-142, § 137-79-060, filed 10/24/07, effective 11/24/07.]

**Chapter 137-80 WAC
INSTITUTIONAL INDUSTRIES**

WAC

137-80-010	Purpose.
137-80-020	Definitions.
137-80-030	Establishment of inmate programs.
137-80-040	Sale of goods.
137-80-050	Proceeds of sale.
137-80-060	Inmate job opportunities.

WAC 137-80-010 Purpose. These rules and regulations are adopted pursuant to and in accordance with chapter 34.05 RCW. The purpose is to provide standards and procedures for the operation of the division of institutional industries.

[Statutory Authority: RCW 72.01.090. 03-21-088, § 137-80-010, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.09.050 and chapter 34.04 RCW. 82-18-042 (Order 82-11), § 137-80-010, filed 8/27/82.]

WAC 137-80-020 Definitions. (1) "Secretary" means the secretary of the department of corrections or his/her designee.

(2) "Program administrator" means the administrator of the institutional industries program appointed by the secretary.

(3) "Institutional industries board of directors" means the board established by the authority of the Corrections Reform Act of 1981, RCW 72.09.070.

(4) "Free venture industries" means any industry producing goods or services for sale to both the public and private sector which is operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. Inmates shall be paid a wage by the organization of not less than sixty percent of the approximate prevailing wage within the state for the occupation, as determined by the director, or minimum wage, whichever is greater.

(5) "Tax reduction industries" means any state-owned and operated enterprises designed to reduce the cost for services and goods for tax supported agencies and for nonprofit organizations which assist persons who are poor or infirm. Products of these enterprises may be sold to public agencies

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and to nonprofit organizations which assist persons who are poor or infirm. Inmates shall be paid for their work on a gratuity scale, approved by the director, which shall not exceed the federal minimum wage.

(6) "Institutional support industries" means any industry operated by the department of corrections designed and managed to provide basic work training and experience to the inmate. All able and eligible inmates who are assigned work and who are not working in other classes of industries are included in this class. Inmates shall be paid for their work in accordance with an inmate gratuity scale adopted by the secretary.

(7) "Community work industries" means any industry operated by the department of corrections designed and managed to provide services in the inmate's resident community at a reduced cost. Services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations which assist the poor or infirm. Inmates shall receive a gratuity from a unit of local government which shall not exceed the minimum wage.

(8) "Community restitution programs" means any program operated by the state, local unit of government, or a nonprofit agency which assists persons who are poor or infirm which is subject to supervision by the department of corrections which enables an offender, placed on probation, to work off all or part of a community service order as ordered by the sentencing court.

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

(10) "Institutional industries" means the program within the department of corrections charged with developing and managing comprehensive work programs to provide work skills, work experience and exposure to the work ethic for offenders under the jurisdiction of the department.

[Statutory Authority: RCW 72.01.090. 07-12-073, § 137-80-020, filed 6/5/07, effective 7/6/07; 03-21-088, § 137-80-020, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.09.050 and chapter 34.04 RCW. 82-18-042 (Order 82-11), § 137-80-020, filed 8/27/82.]

WAC 137-80-030 Establishment of inmate programs. In order to provide a comprehensive work program the following classes of work programs are adopted:

- (1) Class I: Free venture industries;
- (2) Class II: Tax reduction industries;
- (3) Class III: Institutional support industries;
- (4) Class IV: Community work industries; and
- (5) Class V: Community service programs.

The above listed classes of work programs are adopted as codified in RCW 72.09.100. The secretary shall set forth department policy for the establishment of each class of work program, regulating, among others, inmates participation and wages, space rental and contracts for inmate employment.

[Statutory Authority: RCW 72.09.050 and chapter 34.04 RCW. 82-18-042 (Order 82-11), § 137-80-030, filed 8/27/82.]

WAC 137-80-040 Sale of goods. (1) The program administrator or his/her designee may sell all articles, materials, and supplies authorized by statute to be produced or manufactured in correctional institutions to any state agency, political subdivision of the state or as otherwise authorized by statute.

(2) The secretary shall require those institutions under his direction to give preference to those articles, materials, and supplies produced or manufactured by institutional industries when purchases are made for institution needs.

(3) The program administrator may cause to be prepared annually, at such times he may determine, lists containing the descriptions of all articles and supplies manufactured and produced in state correctional institutions; copies of such list shall be sent to the supervisor of purchasing and to all departments, institutions and agencies of the state of Washington.

[Statutory Authority: RCW 72.01.090, 03-21-088, § 137-80-040, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.09.050 and chapter 34.04 RCW. 82-18-042 (Order 82-11), § 137-80-040, filed 8/27/82.]

WAC 137-80-050 Proceeds of sale. Except for any sum recommended by the institutional industries board of directors to be returned to the state general fund, all net profits from institutional industries shall be placed in a special revolving fund (Class II account) and shall be used exclusively, without appropriation, in the expansion and improvement of Class II industries.

[Statutory Authority: RCW 72.09.050 and chapter 34.04 RCW. 82-18-042 (Order 82-11), § 137-80-050, filed 8/27/82.]

WAC 137-80-060 Inmate job opportunities. The program administrator shall cause to be periodically prepared and distributed to a central location in each institution a list of prison industries' job opportunities. This list shall include, but not limited to, job descriptions and the educational and skill requirements of each job and shall be made available to personnel of the institution, institutional industries and to the inmates.

[Statutory Authority: RCW 72.01.090, 03-21-088, § 137-80-060, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.09.050 and chapter 34.04 RCW. 82-18-042 (Order 82-11), § 137-80-060, filed 8/27/82.]

Chapter 137-91 WAC

ADULT CORRECTIONAL INSTITUTIONS—MEDICAL CARE—HEALTH CARE

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

- 137-91-010 Health care—General policy.
- 137-91-020 Contracts for services.
- 137-91-030 Utilization review.
- 137-91-040 Purchasing health care services.
- 137-91-050 Audits and recovery in purchasing health care services.
- 137-91-075 Other health care coverage.
- 137-91-080 Health care services.
- 137-91-090 Use of allied health professionals.
- 137-91-100 Health record.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 137-91-011 Medical/dental care—General policy. [Statutory Authority: RCW 72.01.050, 72.01.090 and 72.09.050, 84-16-066 (Order 84-11), § 137-91-011, filed 7/30/84, effective 9/4/84. Formerly WAC 275-91-011.] Repealed by 97-22-057, filed 11/3/97, effective 12/4/97.
- 137-91-021 Medical/dental services. [Statutory Authority: RCW 72.01.050, 72.01.090 and 72.09.050, 84-16-066 (Order 84-11), § 137-91-021, filed 7/30/84, effective 9/4/84.

- 137-91-060 Formerly WAC 275-91-021.] Repealed by 97-22-057, filed 11/3/97, effective 12/4/97.
Records. [Statutory Authority: RCW 72.01.050, 72.01.-090 and 72.09.050, 84-16-066 (Order 84-11), § 137-91-060, filed 7/30/84, effective 9/4/84. Formerly WAC 275-91-060.] Repealed by 97-22-057, filed 11/3/97, effective 12/4/97.
- 137-91-070 Supplemental care. [Statutory Authority: RCW 72.01.-050, 72.01.090 and 72.09.050, 84-16-066 (Order 84-11), § 137-91-070, filed 7/30/84, effective 9/4/84. Formerly WAC 275-91-070.] Repealed by 96-21-014, filed 10/4/96, effective 11/5/96.

WAC 137-91-010 Health care—General policy. The policy of the department of corrections (the department) with regard to health care for offenders in adult correctional facilities is to provide that care, consistent with the **Offender Health Plan (OHP)**, which is medically necessary to respond to the offender's medical, dental, and mental health needs. Medically necessary is defined as that care that is determined by the department to:

- Be consistent with applicable department policies and procedures;
- Be ordered by an authorized department health care provider;
- Be required to prevent significant deterioration in the offender's health or permanent functional impairment if not rendered during the period of incarceration;
- Not be considered experimental or be lacking in medically recognized professional documentation of efficacy; and
- Not be administered solely for the convenience of the offender or the health care provider.

[97-22-057, § 137-91-010, filed 11/3/97, effective 10/22/97.]

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 137-91-020 Contracts for services. The department intends to purchase health care in a prudent, cost-effective manner without unduly restricting offenders' access to appropriate and medically necessary care. Therefore, notwithstanding any other provisions of law, the secretary may enter into contracts with health care practitioners, health care facilities, and other entities or agents qualified to provide such services as may be necessary to provide health care to offenders in accordance with the provisions of RCW 72.10.-030.

[97-22-057, § 137-91-020, filed 11/3/97, effective 10/22/97.]

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 137-91-030 Utilization review. When purchasing health care services and establishing medical necessity of services, the secretary is authorized to implement health care utilization management methods to assure the appropriateness of the care rendered to the offender. These methods may include but are not limited to: Prior authorization; hospital

length of stay review; case management; treatment guidelines; and audit of billed charges and services rendered.

[97-22-057, § 137-91-030, filed 11/3/97, effective 10/22/97.]

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 137-91-040 Purchasing health care services.

The secretary is authorized to institute any reasonable reimbursement mechanism for purchasing health care services from health care practitioners or health care facilities. These reimbursement mechanisms shall include, but are not limited to: Capitation; per diems, global fees; diagnosis-related groups (DRG); fee schedules, or any other prudent cost-effective payment method which shall be established by rule adopted in accordance with chapter 34.05 RCW.

[97-22-057, § 137-91-040, filed 11/3/97, effective 10/22/97.]

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 137-91-050 Audits and recovery in purchasing health care services. The secretary may establish rules and procedures for selectively and/or randomly auditing the accuracy of fees and the medical billings submitted to the department. The department, or its agent, may review the offender's community health care record to assure that the offender received the services for which the bill was submitted.

Whenever an audit establishes that the services rendered were not authorized or medically necessary, the department shall not pay the cost for such services nor shall the offender be held accountable for such costs.

The secretary is authorized to seek recovery when the department identifies that a health care practitioner or facility is not entitled to the billed fees. The practitioner or facility is liable for any excess payment received and must repay the excess payment plus accrued interest on the excess payment at the rate of one percent per month for each month for the period from the date which the payment was made to the date upon which payment is made to the department.

[97-22-057, § 137-91-050, filed 11/3/97, effective 12/5/97. Statutory Authority: RCW 72.01.050, 72.01.090 and 72.09.050. 84-16-066 (Order 84-11), § 137-91-050, filed 7/30/84, effective 9/4/84. Formerly WAC 275-91-050.]

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 137-91-075 Other health care coverage. If an offender is eligible for health care benefits through the veterans administration, the department of labor and industries (L&I), automobile insurance claims, or any other third-party payer or insurer determined to be primarily responsible for the offender's health condition, through coordination of ben-

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efits rules, the department of corrections shall be considered a secondary payer.

[97-22-057, § 137-91-075, filed 11/3/97, effective 10/22/97.]

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 137-91-080 Health care services. The health care program operated by the department of corrections shall include the following services:

(1) Initial examination when the offender enters the adult correction system. This examination shall include:

- (a) Health history;
 - (b) An initial physical examination including laboratory, radiology and other diagnostic studies, as indicated;
 - (c) Dental examination;
- (2) Immunizations, as indicated;
- (3) Evaluation of capacity for work, educational programs, special housing assignment, and recreation;

(4) Consultations, examinations and treatment as required for the health maintenance of each offender in accordance with the policy discussed at WAC 137-91-010.

[97-22-057, § 137-91-080, filed 11/3/97, effective 12/5/97. 96-21-014, § 137-91-080, filed 10/4/96, effective 11/5/96.]

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 137-91-090 Use of allied health professionals. Allied health professionals, those licensed certified or registered health care providers other than physicians or dentists, may be used in the health care programs at each correctional facility. Allied health professionals may deliver such care as their licensure, certification, registration or statute governing their profession permits.

[97-22-057, § 137-91-090, filed 11/3/97, effective 10/22/97.]

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 137-91-100 Health record. The health record shall be maintained at the facility where an offender is housed. Health records of offenders housed at work release facilities shall be maintained at a location(s) designated by the regional administrator for the region in which the facility is located. Upon transfer of the offender between state facilities, that offender's record shall be transferred along with the offender. The health record shall be archived ninety days following the offender's release from the department's jurisdiction. The health record shall include:

- (1) Detailed reports of admission, medical, dental and mental health evaluations and recommendations;

(2) All primary encounter and progress notes regarding continuing health status including illnesses, hospitalization, surgery, results of consultations and examinations, reports of tests done, immunizations, and problem lists;

(3) Reports completed by outside consultants.

Information contained in the offender health record is **confidential**. Access to and release of information contained in the offender health record shall be in strict compliance with chapter 70.02 RCW.

[03-16-072, § 137-91-100, filed 8/4/03, effective 9/4/03. 97-22-057, § 137-91-100, filed 11/3/97, effective 10/22/97.]

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 137-96 WAC PRERELEASE PROGRAMS

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

137-96-010	Purpose.
137-96-020	Definitions.
137-96-030	Secretary's authority to grant or deny.
137-96-040	Reasons for placement.
137-96-100	Cell tag.
137-96-110	Earned time, granting, and denial.
137-96-120	Reporting to law enforcement authorities.
137-96-130	Infractions—On-site adjustment.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

137-96-140	Purpose. [95-22-059, § 137-96-140, filed 10/30/95, effective 12/1/95.] Repealed by 03-16-072, filed 8/4/03, effective 9/4/03.
137-96-150	Authority. [95-22-059, § 137-96-150, filed 10/30/95, effective 12/1/95.] Repealed by 03-16-072, filed 8/4/03, effective 9/4/03.
137-96-160	Definitions. [95-22-059, § 137-96-160, filed 10/30/95, effective 12/1/95.] Repealed by 03-16-072, filed 8/4/03, effective 9/4/03.

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

[95-22-059, § 137-96-010, filed 10/30/95, effective 12/1/95.]

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.

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

(2) "Deputy secretary" is the deputy secretary, prisons division, department of corrections.

(3) "Assistant deputy secretary" is the assistant deputy secretary, prisons division.

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(4) "Superintendent" is the individual 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.

[07-08-082, § 137-96-020, filed 4/2/07, effective 5/3/07. 03-16-072, § 137-96-020, filed 8/4/03, effective 9/4/03. 95-22-059, § 137-96-020, filed 10/30/95, effective 12/1/95.]

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.

WAC 137-96-030 Secretary's authority to grant or deny. The secretary or his or her designee may grant or deny prerelease as authorized by Title 72 RCW subject to the rules of this chapter.

[95-22-059, § 137-96-030, filed 10/30/95, effective 12/1/95.]

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.

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

(1) Time remaining to release and behavior is appropriate for placement.

(2) Offender has violated the terms of community placement.

(3) Offender has violated the conditions of work release.

(4) Offender has violated the conditions established by the indeterminate sentence review board.

(5) For any reason deemed appropriate by the department.

[95-22-059, § 137-96-040, filed 10/30/95, effective 12/1/95.]

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.

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

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[95-22-059, § 137-96-100, filed 10/30/95, effective 12/1/95.]

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.

WAC 137-96-110 Earned time, granting, and denial.

An offender may receive earned time sentence reduction for participating or attempting to participate in facility work, education, or training programs in accordance with department policy. Prior to a denial of earned time, the basis for the proposed denial shall be explained to the offender. Should the offender wish to contest the proposed denial, he/she may request a hearing, which shall be held at least twenty-four hours after the offender has received written notice scheduling the hearing and indicating the basis for the proposed denial. The hearing shall be before an impartial official designated by the superintendent, pursuant to WAC 137-56-175. 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 137-56-180. 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.

[03-16-072, § 137-96-110, filed 8/4/03, effective 9/4/03. 95-22-059, § 137-96-110, filed 10/30/95, effective 12/1/95.]

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.

WAC 137-96-120 Reporting to law enforcement authorities. (1) It shall be the duty of the superintendent to report any violation of a federal, state, or local law to law enforcement authorities.

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

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

[95-22-059, § 137-96-120, filed 10/30/95, effective 12/1/95.]

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.

WAC 137-96-130 Infractions—On-site adjustment.

(1) In the event of a general infraction, a staff member may make an on-site adjustment which may consist of:

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

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

(2) An on-site adjustment under this rule cannot be considered a general infraction for the purposes of determining whether an 877 serious infraction under WAC 137-56-110 has occurred.

[03-16-072, § 137-96-130, filed 8/4/03, effective 9/4/03. 95-22-059, § 137-96-130, filed 10/30/95, effective 12/1/95.]

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.

Chapter 137-100 WAC

OCCUPATIONAL EXPOSURE TO HUMAN IMMUNODEFICIENCY VIRUS (HIV)

WAC

137-100-002	Purpose.
137-100-011	Definitions.
137-100-021	Medical records available.
137-100-031	Request for records - by correctional staff members.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

137-100-001	Purpose. [97-24-052, § 137-100-001, filed 11/26/97, effective 10/24/97.] Repealed by 98-20-074, filed 10/5/98, effective 10/7/98.
137-100-010	Definitions. [97-24-052, § 137-100-010, filed 11/26/97, effective 10/24/97.] Repealed by 98-20-074, filed 10/5/98, effective 10/7/98.
137-100-020	Medical records available. [97-24-052, § 137-100-020, filed 11/26/97, effective 10/24/97.] Repealed by 98-20-074, filed 10/5/98, effective 10/7/98.
137-100-030	Request for test results - by correctional staff members. [97-24-052, § 137-100-030, filed 11/26/97, effective 10/24/97.] Repealed by 98-20-074, filed 10/5/98, effective 10/7/98.

WAC 137-100-002 Purpose. The purpose of this chapter shall be to insure coordination of the provisions of SHB 1605, RCW 70.24.105, 70.24.340, 70.24.370 and chapter 72.09 RCW by the department of corrections and the department of health.

[Statutory Authority: RCW 70.24.107. 98-15-084, § 137-100-002, filed 7/16/98, effective 8/16/98.]

WAC 137-100-011 Definitions. The following definitions shall apply in interpreting this chapter:

(1) Correctional staff member means a department of corrections employee, an individual providing services under contract to the department, and volunteers.

(2) Department means the department of corrections.

[Statutory Authority: RCW 70.24.107. 98-15-084, § 137-100-011, filed 7/16/98, effective 8/16/98.]

WAC 137-100-021 Medical records available. The department will make available an offenders sexually transmitted disease status to any correctional staff member who has experienced a substantial exposure by that offender. Should such records be nondiscloseable, the department shall advise the correctional staff member of the process to receive

that information. This process shall be facilitated by the health care manager or infection control coordinator.

[Statutory Authority: RCW 70.24.107. 98-15-084, § 137-100-021, filed 7/16/98, effective 8/16/98.]

WAC 137-100-031 Request for records - by correctional staff members. A request for test results shall be made in writing. At a minimum, the request shall include:

- (1) Name of the person requesting the record;
- (2) Nature of the exposure, including date and time;
- (3) Name of the offender; and
- (4) DOC number of the offender, if known.

The request shall be accompanied by a copy of the report of personal injury (form DOC 3-133) and a post-exposure incident report (DOC form 3-184) outlining the circumstances and results of the exposure incident.

[Statutory Authority: RCW 70.24.107. 98-15-084, § 137-100-031, filed 7/16/98, effective 8/16/98.]

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.737.
- (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.505), community custody for a sex offense (as described in RCW 9.94A.505), community custody max, first-time offender waiver (as described in RCW 9.94A.505), 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 prisons division 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 govern-

ment 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.

[07-08-082, § 137-104-020, filed 4/2/07, effective 5/3/07. 03-16-072, § 137-104-020, filed 8/4/03, effective 9/4/03. 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 prisons division, 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.

[07-08-082, § 137-104-030, filed 4/2/07, effective 5/3/07. 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,

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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 adminis-

trative 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.

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; 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.

(2009 Ed.)

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.