

Title 381 WAC

INDETERMINATE SENTENCE REVIEW BOARD

(Formerly: Prison Terms and Paroles, Board of)

Chapters

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Chapter 381-10 WAC

GENERAL ADMINISTRATIVE POLICIES

WAC

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WAC 381-10-010 Purpose. The purpose of this chapter is to specify general administrative policies of the Washington state indeterminate sentence review board.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-010, filed 6/26/91, effective 7/27/91.]

WAC 381-10-020 Authority. The indeterminate sentence review board is authorized pursuant to chapter 9.95 RCW, as amended.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-020, filed 6/26/91, effective 7/27/91.]

WAC 381-10-030 Scope. The provisions of this chapter shall apply to the members and staff of the indeterminate sentence review board and to the offenders over whom the board has jurisdiction.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-030, filed 6/26/91, effective 7/27/91.]

WAC 381-10-040 Organization chart. There shall be an organization chart published by the board which accurately reflects the structure and authority within the agency. The chart will be reviewed by the board semiannually and revised as required.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-040, filed 6/26/91, effective 7/27/91.]

WAC 381-10-050 Rules and procedures. The board shall publish its rules and procedures in the Washington Administrative Code. Changes to the rules shall be published in the Washington State Register and the Washington Administrative Code. The board shall adopt the general administrative policies and public access rules pursuant to the APA, chapter 34.05 RCW. All rules affecting inmates and parolees are exempt from the APA. The designated rules coordinator for the agency is the executive secretary.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-050, filed 6/26/91, effective 7/27/91.]

WAC 381-10-060 Office manual. There shall be an office manual which contains information for staff on internal agency operations. The manual shall be reviewed annually by management for accuracy and completeness, and revisions will be published within fifteen working days of adoption and distributed to all staff.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-060, filed 6/26/91, effective 7/27/91.]

WAC 381-10-070 Board shall meet monthly. The entire board shall meet monthly with staff to discuss policy issues, to communicate instructions, to act on those cases requiring full board consideration, and to schedule its work calendar for the ensuing period of time. The agency's management shall meet not less than monthly to receive and disseminate information and to enhance communication within the organization.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-070, filed 6/26/91, effective 7/27/91.]

WAC 381-10-080 Information systems. In cooperation with the department of corrections, the board will assist in the maintenance and updating of the offender based tracking system (OBTS) in order to accurately record and retrieve data on every case processed by the agency. Such data shall include, but not be limited to, all information necessary for the board to examine its decision-making activities periodically and to assist it in considering the impact of its policies on the criminal justice system and the community.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-080, filed 6/26/91, effective 7/27/91.]

WAC 381-10-090 Conference and seminars. It is the policy of the indeterminate sentence review board to encourage its members and staff to attend conferences and seminars relating to criminal justice; and to participate actively in planning efforts conducted by local, regional, and national correctional organizations.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-090, filed 6/26/91, effective 7/27/91.]

WAC 381-10-100 Confidentiality of criminal records. It is the policy of the indeterminate sentence review board that all agency personnel shall observe the provisions of chapter 10.97 RCW in disseminating criminal record information or research data pertaining thereto.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-100, filed 6/26/91, effective 7/27/91.]

WAC 381-10-110 Conviction information. Conviction information may be disseminated to the public without restriction. Individual members of the indeterminate sentence review board and designated staff are authorized to disclose conviction information to the public.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-110, filed 6/26/91, effective 7/27/91.]

WAC 381-10-120 Conflict of interest. It is the policy of the board that whenever a member or hearing officer has personal knowledge of a case, or a personal interest, or personal acquaintance of the subject person, any of which factors might reasonably be construed as having an influence on the outcome, the member or hearing officer shall withdraw completely from the decision-making process on that case if requested by any party to the proceeding.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 98-19-054, § 381-10-120, filed 9/15/98, effective 10/16/98; 91-14-028, § 381-10-120, filed 6/26/91, effective 7/27/91.]

WAC 381-10-130 Antidiscrimination policy. The indeterminate sentence review board, in accordance with federal and state antidiscrimination laws, declares that practices of discrimination against individuals because of race, creed, color, national origin, sex, marital status, sexual orientation, age, religion, or the presence of any sensory, mental, or physical disability, threatens not only the rights and proper privileges of such individuals but also menaces the institutions and foundations of a democratic state. All employees and agents of the Washington state indeterminate sentence review board, in the course of their official duties, shall not discriminate against any individual on the basis of such person's race, creed, color, national origin, sex, marital status, sexual orientation, age, religion, or the presence of any sensory, mental, or physical handicap. This policy also applies to disabled and Vietnam era veterans.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-130, filed 6/26/91, effective 7/27/91.]

WAC 381-10-140 Sexual harassment policy. Pursuant to Executive Order 89-01, the indeterminate sentence review board hereby reaffirms and updates its policy regarding sexual harassment as follows:

It is the public policy of the state to provide and maintain a working environment free from sexual harassment for its employees and all citizens participating in state programs. Sexual harassment is a form of sex discrimination and is an unlawful employment practice under state and federal law.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment is absolutely prohibited. Any employee of the agency who engages in such activity will be subject to disciplinary action, up to and including termination.

The agency is committed to responding promptly and effectively to sexual harassment concerns and complaints. Any employee who feels that he or she is being sexually harassed should report the behavior immediately to his or her supervisor. If the supervisor is not responsive or if the employee feels uncomfortable talking to their supervisor for any reason, he or she should contact the chair of the board, the personnel representative, or anyone else in the agency with authority to act.

Employees may file a complaint with the Washington state human rights commission as a violation of chapter 49.60 RCW or with the Federal Equal Employment Opportunity Commission as a violation of Title VII of the Civil Rights Act of 1964.

The agency will continue to sponsor periodic training of employees in order to prevent sexual harassment in the workplace.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-140, filed 6/26/91, effective 7/27/91.]

WAC 381-10-150 Reasonable accommodation/return to work policy. (1) The indeterminate sentence review board shall not discriminate on the basis of any sensory, mental, or physical disability.

(2) Persons of disability have the right to request reasonable accommodation. The board shall make reasonable accommodation to disabled clients, applicants, and members of the general public to insure that the regular services of the agency are available to persons who could not otherwise utilize them. When necessary, the agency shall attempt to provide alternatives such as arranged services. Any client, applicant, or member of the general public requiring reasonable accommodation and/or special services may so request to the board through the executive secretary. The executive secretary, in conjunction with the agency's personnel representative, will review requests for reasonable accommodation. The executive secretary is responsible for compliance. Implementation may include seeking technical assistance from appropriate state and federal resources, including the Washington

state human rights commission or the federal Office of Civil Rights, regarding the agency's obligation to make accommodation and the determination of reasonableness.

(3) The board shall recruit, hire, train, promote, transfer, and retain any employee who can perform the essential job duties with reasonable accommodation without regard to sensory, mental, or physical disability. For employment purposes, reasonable accommodation is defined as reasonable alterations, adjustments, or changes made by the appointing authority in the job, workplace, and/or terms or condition of employment which will enable an otherwise qualified person of disability or disabled veteran to perform a particular job successfully, as determined on a case-by-case basis.

(4) The board shall make every effort to return an employee back to work who is, by reason of a temporary disability, unable to return to his or her previous work, but is capable of carrying out work of a lighter or modified nature. For the purposes of this section, employee is defined as someone who: (a) Is a permanent state employee; (b) is receiving compensation pursuant to RCW 51.32.090; and (c) is suffering from a temporary disability which makes him/her temporarily unable to return to his or her previous work, but who is capable of carrying out work of a lighter or modified nature as evidenced by written statement from a physician or licensed mental health professional. Should lighter or modified work not be available in the agency, the board, in cooperation with the department of personnel and department of labor and industries, will assist the employee in attempting to locate temporary or permanent employment in other agencies.

(5) The executive secretary, working with the employee, his or her supervisor, and the agency personnel representative, is responsible for implementing the requirements of subsection (4) of this section. The employee may appeal any adverse decision to the chair of the board. Nothing in this section is intended to overrule any employee's right to also appeal any adverse decision under the provisions of merit systems rules or state or federal law.

(6) Information regarding the reasonable accommodation/return to work policy will be disseminated by publication in chapter 381-10 of the *Washington Administrative Code* and the *Employee Handbook*. The agency will sponsor periodic training for supervisors and employees.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-150, filed 6/26/91, effective 7/27/91.]

WAC 381-10-160 Full board votes. It shall be the policy of the board that in all decisions that require a vote of the full board, the decisions will not be distributed until all members have voted. Any decision must be by a majority of the full board.

An exception to this policy will be made when a board member is absent from the job and not available for work, i.e., extended illness or on annual leave. In this circumstance, the decision will be distributed when available members have completed their vote. The purpose of this rule is to facilitate timely decision making.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-10-160, filed 6/26/91, effective 7/27/91.]

(2009 Ed.)

WAC 381-10-170 Victim's rights.

Policy statement

The indeterminate sentence review board (ISRB or board) recognizes the rights afforded victims and survivors in the Washington state Constitution (Article I, Section 35). Among these rights is the right to give statements at hearings where an offender's release is considered. The ISRB is committed to protecting this right by providing:

- Accurate information.
- Timely notification.
- A process for receiving input.

Assistance to victims and survivors

The ISRB victim liaison will help victims and survivors of crimes committed by persons under the authority of the board. The victim liaison may provide:

- Notification of upcoming release hearings.
- Assistance preparing statements to the board.
- Assistance scheduling in-person or telephonic statements to the board.
- Notification of the final release decision made by the board.

Statement format

The ISRB will accept statements from victims or survivors before the inmate's hearing. Statements may be given:

- In person to the entire board or a majority of its members at a board meeting. If there are a number of victims or survivors at a meeting and not enough time for each to speak, the board may ask a representative or representatives to speak on behalf of the others.
- In person, made at the inmate's release hearing within the institution.
- Telephonically with board members.
- Written format.
- Electronically (i.e., via e-mail, videotape, CD or other electronic means).
- Via videoconference (if available).

In cases where statements will be given in a language other than English, the board will arrange and bear the cost for interpreter services (including American sign language). The board must know which language will be used well in advance of any in-person meetings. Written statements must identify what language was used.

Statement content

Statements may include, but are not limited to:

- Information regarding the impact of the crime upon the victim, survivor or family.
- The physical, emotional, psychological, financial, employment, relational and social impacts of the crime, as well as long-term prognosis of victims and survivors.
- Opinions regarding release decisions.
- Requests that certain conditions be placed upon offenders when released onto community supervision.
- In life photographs, or videotapes of deceased victims.
- Descriptions of the actual offense, history of the relationship between the victim and offender, and other information.

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tion concerning the offender's personality that will assist the board to make an informed decision.

Limited confidentiality

When the ISRB receives statements or communications from victims, survivors or concerned community members the ISRB shall provide the statements or summaries to inmates and/or their attorneys in accordance with court decisions.

Accommodations

When requested, the ISRB may make reasonable accommodations to help individuals give statements to the ISRB. These accommodations can include, but are not limited to:

- Interpreter services (pursuant to chapters 2.42 and 2.43 RCW).
- TTY or other voice or hearing assistance devices.
- Age-appropriate assistance for child victims or survivors.
- The presence of supportive persons or victim advocates.
- Board member travel to a location of mutual agreement.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 08-24-068, § 381-10-170, filed 12/1/08, effective 1/1/09; 98-19-054, § 381-10-170, filed 9/15/98, effective 10/16/98;91-14-028, § 381-10-170, filed 6/26/91, effective 7/27/91.]

Chapter 381-20 WAC

PUBLIC RECORDS—DISCLOSURE

WAC

381-20-010	Purpose.
381-20-020	Definitions.
381-20-030	Public records available.
381-20-040	Public records officer.
381-20-050	Requests for public records.
381-20-060	Disclosure to client's representative.
381-20-070	Fees—Inspection and copying.
381-20-080	Protection of public records.
381-20-090	Disclosure procedure.
381-20-100	Remedy for review of denial of disclosure.
381-20-110	Exemptions to public records disclosure.
381-20-120	Qualifications on nondisclosure.
381-20-130	Interagency disclosure.
381-20-140	Records index.

WAC 381-20-010 Purpose. The purpose of this chapter shall be to ensure compliance by the indeterminate sentence review board with the provisions of the Public Disclosure Act, RCW 42.17.250, in conjunction with the Criminal Records Privacy Act, chapter 10.97 RCW, as well as RCW 9.95.140.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-20-010, filed 6/26/91, effective 7/27/91.]

WAC 381-20-020 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 board regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photocopies, 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) "Board" means the indeterminate sentence review board.

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

(5) "Disclosure" means inspection or copying.

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

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-20-020, filed 6/26/91, effective 7/27/91.]

WAC 381-20-030 Public records available. Requests for any identifiable public record may be initiated at the central records office of the board during normal business hours.

The board shall, at all times, take the most timely possible action on requests for disclosure and shall be required to respond in writing within ten working days of receipt of the request for disclosure. The board's failure to respond shall entitle the person seeking disclosure to petition the public records officer pursuant to WAC 381-20-100.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-20-030, filed 6/26/91, effective 7/27/91.]

WAC 381-20-040 Public records officer. The chair shall designate a staff member as the public records officer who shall be responsible for implementing the board'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 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-20-040, filed 6/26/91, effective 7/27/91.]

WAC 381-20-050 Requests for public records. (1) All requests for the disclosure of a public record must be in writing identifying the record sought with reasonable certainty. The written request should include:

- (a) The name of the person requesting the record.
- (b) The calendar date the request was made.
- (c) The nature of the request.

(2) A request for disclosure shall be made during the customary business hours or by mail. Persons who appear at the board's office for the purpose of inspection and copying of the board files are requested to make an appointment at least ten working days in advance in order to allow sufficient time for the removal and deletion of exempted record information.

(3) This chapter shall not be construed as giving authority to any agency to give, sell, or provide access to lists of individuals for any purpose, and the board shall not do so unless specifically authorized or directed by law.

(4) If the public record contains material exempt from disclosure pursuant to law, including those laws cited in WAC 381-20-010, the board must provide the person requesting disclosure with a written explanation for the non-disclosure, pursuant to WAC 381-20-090.

(5) Any person continuing to seek disclosure, after having received a written explanation for the nondisclosure, pur-

suant to WAC 381-20-090, may request a review under the provisions of WAC 381-20-100.

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

(7) Nothing in this chapter, shall be construed to require the board to compile statistics or other information from material contained in public records, where doing so would unduly interfere with other essential functions of the board and is not required for litigation by rules of pretrial discovery.

(8) If public records or information contained in a board file are in the field for purposes of a hearing, and are thus not available, board staff shall promptly inform the person requesting disclosure that there will be a delay in responding to the disclosure request due to the unavailability of the public record.

(9) All requests from the press or media shall be referred to the chair or designee for response.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 98-19-054, § 381-20-050, filed 9/15/98, effective 10/16/98; 91-14-028, § 381-20-050, filed 6/26/91, effective 7/27/91.]

WAC 381-20-060 Disclosure to client's representative. (1) If a client requests disclosure to a representative, this 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 also 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 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-20-060, filed 6/26/91, effective 7/27/91.]

WAC 381-20-070 Fees—Inspection and copying. No fee shall be charged for the inspection of public records.

The board shall collect fees, plus postage, to reimburse itself for actual costs incident to providing copies of public records.

Nothing contained in this section shall preclude the board 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 board.

Prepayment of copying costs and postage shall be a prerequisite to copying and mailing of public records.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-20-070, filed 6/26/91, effective 7/27/91.]

(2009 Ed.)

WAC 381-20-080 Protection of public records. Public records shall be disclosed only in the presence of a public disclosure 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 board. The section shall not be construed to prevent the board from accommodating a client by use of the mails in the disclosure process.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-20-080, filed 6/26/91, effective 7/27/91.]

WAC 381-20-090 Disclosure procedure. Board staff shall review file material prior to disclosure.

If the file does not contain materials exempt from disclosure, board staff shall ensure full disclosure.

If the file does contain materials exempt from disclosure, board staff shall exempt those 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 applies. The remaining nonexempt materials shall be fully disclosed pursuant to this chapter.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 98-19-054, § 381-20-090, filed 9/15/98, effective 10/16/98; 91-14-028, § 381-20-090, filed 6/26/91, effective 7/27/91.]

WAC 381-20-100 Remedy for review of denial of disclosure. (1) If the person requesting disclosure disagrees with the decision of board staff denying disclosure of a public record, this person may, at any time, petition the board's executive officer for review of the decision denying disclosure. The form used by board staff to deny disclosure of a public record shall clearly indicate this right of review.

(2) The executive officer shall review decisions denying disclosure in the most prompt fashion possible, and such review shall be deemed completed at the end of the second business day following receipt by the board of the petition for review. This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.17.320.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 98-19-054, § 381-20-100, filed 9/15/98, effective 10/16/98; 91-14-028, § 381-20-100, filed 6/26/91, effective 7/27/91.]

WAC 381-20-110 Exemptions to public records disclosure. The board reserves the right to determine if a public record requested in accordance with the procedures outlined herein is exempt or nondisclosable under RCW 42.17.250 through 42.17.340. 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 42.17.310 (1)(a); however, disclosure may be made to that person or that person's representative, except as otherwise provided by these rules.

(2) Data (including information revealing the identity of persons who file complaints, except as the complainant may authorize) contained in intelligence, investigative, and other related files compiled by investigative, law enforcement, or penology agencies, the state agencies vested with the respon-

sibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or the protection of any person's right to privacy. This data is nondisclosable to the extent required by RCW 42.17.310 (1)(d) and (e), 10.97.080, 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 board to the extent required by RCW 42.17.-310 (1)(b).

(5) Deliberative material, as opposed to facts upon which a decision is based, contained in preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended; except that a specific record shall be disclosable when publicly cited by the board in connection with any action to the extent required by RCW 42.17.310 (1)(i).

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

(7) Nonconviction data, as defined in RCW 10.97.030 (2), may be disclosed to the subject of the record in person in the central office of the board but may not be copied except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. Incarcerated subjects shall be provided with a designation of documents in the board file which contain nonconviction data concerning the subject, per RCW 10.97.-080.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-20-110, filed 6/26/91, effective 7/27/91.]

WAC 381-20-120 Qualifications on nondisclosure.

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

No exemptions shall be construed to require nondisclosure of statistical information not descriptive of identifiable persons, as required by RCW 42.17.310(2).

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-20-120, filed 6/26/91, effective 7/27/91.]

WAC 381-20-130 Interagency disclosure. (1) Unless prohibited by law, information may be disclosed by the board 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 board.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-20-130, filed 6/26/91, effective 7/27/91.]

WAC 381-20-140 Records index. The board finds it would be unduly burdensome and interfere with agency operations to maintain an index of records because of the com-

plexity and diversity of its operations and the resulting volume of manuals, correspondence, reports, surveys, staff studies, and other materials.

The board will make available for public disclosure all indices which may, at a future time, be developed for agency use.

[Statutory Authority: RCW 34.05.220 (1)(b) and 42.17.250. 91-14-028, § 381-20-140, filed 6/26/91, effective 7/27/91.]

Chapter 381-30 WAC

FIXING MINIMUM TERMS/NEW MINIMUM TERMS

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 as 91-14-029 in the Washington State Register. It is published in the Washington Administrative Code exactly as filed by the agency with history notes added by the code reviser's office.

WAC

381-30-010	Purpose.
381-30-020	Authority.
381-30-030	Scope.
381-30-040	Minimum term.
381-30-050	New minimum term.
381-30-060	No minimum term for certain crimes.
381-30-070	Minimum terms for mandatory life sentences.
381-30-080	Pretrial detention applied to minimum terms.
381-30-090	Documents required.
381-30-100	Case preparation.
381-30-110	Panel decisions.
381-30-120	Deferred decisions.
381-30-130	Preminimum term conferences prohibited.
381-30-140	Minimum term decisions.
381-30-150	Minimum term challenges.
381-30-160	Concurrent/consecutive sentences.
381-30-170	Time start.
381-30-180	Order of minimum term.

WAC 381-30-010 Purpose. The purpose of this chapter is to specify board practice pertaining to the fixing of minimum prison terms. 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 to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

[93-23-077, § 381-30-010, filed 11/17/93, effective 8/23/93. 91-14-029, § 381-30-010, filed 6/26/91, effective 7/27/91.]

WAC 381-30-020 Authority. Chapter 9.95 RCW, RCW 9.95.040, 9.95.009(2).

[91-14-029, § 381-30-020, filed 6/26/91, effective 7/27/91.]

WAC 381-30-030 Scope. The provisions of this chapter shall apply to persons convicted of felony offenses in the state of Washington under the indeterminate sentencing system and sentenced to confinement in an adult corrections facility; and those officials charged with processing such convicted persons through the adult corrections system.

[91-14-029, § 381-30-030, filed 6/26/91, effective 7/27/91.]

WAC 381-30-040 Minimum term. After July 1, 1986, the minimum term of each offender sentenced, under the indeterminate sentencing system, to a Washington state corrections facility, shall be fixed by the sentencing court in accordance with RCW 9.95.011.

[91-14-029, § 381-30-040, filed 6/26/91, effective 7/27/91.]

WAC 381-30-050 New minimum term. New minimum terms of parole violators (pursuant to RCW 9.95.125) will be set by the board within thirty days of admission. Factors considered in setting a new minimum term include:

- (1) The length of time previously incarcerated for the commitment offense from which the individual is on parole.
- (2) The SRA ranges of the original offense from which the individual was on parole.
- (3) The original recommendation of the committing judge and prosecuting attorney.
- (4) Whether or not the parole violation behavior also resulted in an SRA conviction.
- (5) Nature of both the original committing offense and the parole violation behavior.
- (6) The requirements of Personal Restraint of Locklear (118 Wn2d 409) and Personal Restraint of Cashaw (123 Wn2d 138).

[98-09-045, § 381-30-050, filed 4/15/98, effective 4/13/98. 92-22-008 § 381-30-050, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-30-050, filed 6/26/91, effective 7/27/91.]

WAC 381-30-060 No minimum term for certain crimes. The board does not fix minimum terms for persons sentenced or committed as follows:

- (1) Sentenced to death;
- (2) Sentenced to a maximum term of life imprisonment for aggravated murder in the first degree;
- (3) Sentenced to treason.

[91-14-029, § 381-30-060, filed 6/26/91, effective 7/27/91.]

WAC 381-30-070 Minimum terms for mandatory life sentences. The board shall fix a minimum term for all persons committed to the custody of the department of corrections under a mandatory life sentence (except those committed under a life sentence without the possibility of parole) for a crime or crimes committed prior to July 1, 1984.

The minimum term for persons covered by this section shall be fixed within six months after the admission or readmission of the convicted person to the custody of the department of corrections, whichever is later. All hearings will be in-person. At least thirty days prior to the hearing, each convicted person will receive a packet of documents, pursuant to *In Re Sinka* (92 Wn.2d 555, 1979), containing information which the board will consider in setting a minimum term. Information contained in the documents may be refuted in writing prior to the hearing or in-person at the hearing.

At the conclusion of each hearing, the board panel will take a deferred decision. All terms will be established by a full board vote.

[92-22-008, § 381-30-070, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-30-070, filed 6/26/91, effective 7/27/91.]

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WAC 381-30-080 Pretrial detention applied to minimum terms. Pursuant to *In Re Phelan*, 97 Wn.2d 590 (1983), and *State v Phelan*, 100 Wn.2d 508 (1983), which direct that time served in a county jail before sentencing should be credited against the discretionary minimum term and the maximum term, the board herein adopts the following policy and procedure.

County jail time certified by the county of commitment, or a court of competent jurisdiction, shall be credited to the appropriate cause against the inmate's discretionary minimum term, mandatory minimum term, and maximum sentence.

Pursuant to *In Re Knapp*, 102 Wn.2d 175 (1984), which holds that time spent in a state mental hospital pursuant to a valid criminal conviction should be credited against the offender's maximum and discretionary minimum sentences, the board herein adopts the following policy and procedure. State mental hospital time, certified by the mental facility in which the offender served or recognized by court of competent jurisdiction, shall be credited to the appropriate cause against the offender's discretionary minimum term, mandatory minimum term, and maximum sentence.

Minimum terms which have not been set will have the sentencing ranges used in the setting of the minimum term adjusted downward to reflect jail time and time spent in a state hospital where properly certified. Adjustments will be made to the cause number for which the time was actually served.

[91-14-029, § 381-30-080, filed 6/26/91, effective 7/27/91.]

WAC 381-30-090 Documents required. The board shall require certain documents pertaining to those offenders sentenced to a Washington state correctional facility under the indeterminate system and whose minimum term was fixed by the sentencing court as follows:

- (1) Original judgment and sentence;
- (2) Warrant of commitment;
- (3) Signed statement of the prosecuting attorney approved by the sentencing judge;
- (4) Institution admission summary;
- (5) Presentence investigation report or other field reports, if extant;
- (6) An accurate certification of credits for presentence and probationary jail time.

The prosecuting attorney of each county and the secretary, department of corrections, are enjoined to provide the applicable aforementioned documents to the board at its offices in Olympia within twenty-one calendar days after the arrival of each convicted person at an adult correctional facility.

[91-14-029, § 381-30-090, filed 6/26/91, effective 7/27/91.]

WAC 381-30-100 Case preparation. The board shall prepare every case thoroughly prior to fixing the new minimum term or establishing the next board action on a case. Preparation includes:

- (1) Establishing case file;
- (2) Reviewing all pertinent documents;
- (3) Scoring all cases to determine the standard range pursuant to RCW 9.94A.040;

(4) Entering data into the offender based tracking system.

The board will take whatever amount of time is necessary for appropriate deliberation and decision on each case.

[91-14-029, § 381-30-100, filed 6/26/91, effective 7/27/91.]

WAC 381-30-110 Panel decisions. All minimum term decisions will be conducted by a panel of at least two members of the indeterminate sentence review board. All such decisions will be fully supported by reasons for the decision.

[91-14-029, § 381-30-110, filed 6/26/91, effective 7/27/91.]

WAC 381-30-120 Deferred decisions. In those cases where the board panel conducting a minimum term review cannot agree as to the term, a deferred decision shall occur and such cases will be referred to the full board for resolution. No decision will be communicated until all board members have voted. In addition, the panel may take a deferred decision in cases where more information is required prior to setting the term.

[91-14-029, § 381-30-120, filed 6/26/91, effective 7/27/91.]

WAC 381-30-130 Preminimum term conferences prohibited. No member or members of the indeterminate sentence review board shall engage in a personal conference with anyone regarding a convicted and committed person prior to the fixing of a minimum or new minimum term. The board will, however, accept written statements from anyone regarding such a convicted committed person.

[91-14-029, § 381-30-130, filed 6/26/91, effective 7/27/91.]

WAC 381-30-140 Minimum term decisions. New minimum term and minimum term decisions within its jurisdiction will be set by a panel of the board after full administrative review. The board reserves the right to schedule an in-person meeting.

In the event of an in-person meeting, the convicted person and such institutional persons as the members conducting the meeting deem appropriate may be present. A limited number of observers may be present by prior approval of the panel members conducting the meeting, provided that the inmate who is the subject of the meeting and the superintendent of the institution where the meeting is to be conducted do not object. However, no family members, friends, relatives, or interested parties shall be present. No attorneys or advocates will be permitted at admissions meetings. The board will accept and consider written statements submitted by individuals expressly excluded from in-person meetings.

[91-14-029, § 381-30-140, filed 6/26/91, effective 7/27/91.]

WAC 381-30-150 Minimum term challenges. The indeterminate sentence review board shall fix and review minimum terms in accordance with RCW 9.95.040 and 9.95.-009(2). Inmates shall be provided in writing the information used in arriving at the minimum term. Inmates wishing to challenge adverse information used by the board for just cause may do so in writing to the board through their institutional counselor. The burden of proof in refuting such adverse information shall lie with the inmate.

[Title 381 WAC—p. 8]

[91-14-029, § 381-30-150, filed 6/26/91, effective 7/27/91.]

WAC 381-30-160 Concurrent/consecutive sentences. The board shall observe RCW 9.92.080, *In Re Chapman*, 105 Wn.2d 211 (1986) and *In Re Irwin*, 110 Wn.2d 175 (1988), in fixing concurrent or consecutive sentences in cases where there are multiple convictions.

[91-14-029, § 381-30-160, filed 6/26/91, effective 7/27/91.]

WAC 381-30-170 Time start. An individual's sentence will begin on the date the judgment and sentence is signed.

If he is at liberty following the signing of the judgment and sentence, credit on his sentence will begin on the date that his parole was suspended or the date of service, whichever was later, if he was not in custody at the time his parole was suspended.

[91-14-029, § 381-30-170, filed 6/26/91, effective 7/27/91.]

WAC 381-30-180 Order of minimum term. Orders fixing the new minimum term will be signed by the members who fixed the term. The original order will be maintained in the board file and a copy of such order will be mailed to the institution of confinement.

[91-14-029, § 381-30-180, filed 6/26/91, effective 7/27/91.]

Chapter 381-40 WAC

PROCEDURES FOR ADMINISTRATIVE PROGRESS AND PAROLE REVIEWS

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 as 91-14-029 in the Washington State Register. It is published in the Washington Administrative Code exactly as filed by the agency with history notes added by the code reviser's office.

WAC

381-40-010	Purpose.
381-40-020	Authority.
381-40-030	Scope.
381-40-040	Progress review.
381-40-050	Required documents—Progress reviews.
381-40-060	Parole reviews.
381-40-070	Required documents—Parole reviews.
381-40-080	Persons present: In-person parole meetings.
381-40-090	Good time credits.
381-40-100	Parole eligibility.
381-40-110	Orders of parole.
381-40-120	Length of parole.
381-40-130	Deferred decisions.
381-40-140	Waiver of mandatory minimum term.
381-40-150	Parole to consecutive sentence.
381-40-160	Parole to detainer or deportation.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

381-40-170	Loss of life policy. [91-14-029, § 381-40-170, filed 6/26/91, effective 7/27/91.] Repealed by 92-22-008, filed 10/21/92, effective 10/19/92.
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WAC 381-40-010 Purpose. The purpose of this chapter is to specify policies and procedures for the administrative review of an inmate's progress while incarcerated, as well as review of parole eligibility. 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

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already guaranteed by the United States Constitution. The regulations should be interpreted to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

[93-23-077, § 381-40-010, filed 11/17/93, effective 8/23/93. 91-14-029, § 381-40-010, filed 6/26/91, effective 7/27/91.]

WAC 381-40-020 Authority. RCW 9.95.150 and 9.95.-009(2).

[91-14-029, § 381-40-020, filed 6/26/91, effective 7/27/91.]

WAC 381-40-030 Scope. The provisions of this chapter shall apply to persons convicted of felony offenses in the state of Washington and sentenced to confinement in an adult correctional facility, whose crimes were committed on or before June 30, 1984, and are therefore subject to the state's jurisdiction under the indeterminate sentencing system, and those officials charged with processing such convicted persons through the adult correctional system.

[98-09-045, § 381-40-030, filed 4/15/98, effective 4/13/98. 91-14-029, § 381-40-030, filed 6/26/91, effective 7/27/91.]

WAC 381-40-040 Progress review. The board may elect to review each prisoner's progress during confinement. This review will normally be done at intervals of twenty-four months.

The department of corrections may request, in writing, the following:

- (1) An advance of the regularly scheduled progress review date;
- (2) That the progress review be conducted at an in-person meeting;
- (3) That a scheduled progress review be changed to either a parole review or a parolability meeting pursuant to RCW 9.95.100.

[98-09-045, § 381-40-040, filed 4/15/98, effective 4/13/98. 92-22-008, § 381-40-040, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-40-040, filed 6/26/91, effective 7/27/91.]

WAC 381-40-050 Required documents—Progress reviews. In order for the board to conduct a progress review on an inmate, the following documents pertaining to that inmate shall be present in the official board file prior to the review.

- (1) The institutional progress report covering his or her adjustment, achievement, infractions, and program participation since the last meeting with the board (Form 530X).
- (2) Complete furlough report, if applicable.
- (3) A current psychological or psychiatric report, if specifically requested by the board in writing to the superintendent.

[91-14-029, § 381-40-050, filed 6/26/91, effective 7/27/91.]

WAC 381-40-060 Parole reviews. At its discretion, the board may elect to meet with selected prisoners prior to parole to consider the parole plan. The board may authorize parole after an administrative review only.

[98-09-045, § 381-40-060, filed 4/15/98, effective 4/13/98. 91-14-029, § 381-40-060, filed 6/26/91, effective 7/27/91.]

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WAC 381-40-070 Required documents—Parole reviews. In order for an inmate to be approved for a parole meeting or an administrative parole decision, the board must first be satisfied that he or she is ready to be considered for release. In addition, the following documents pertaining to the inmate shall be provided by the department of corrections and shall be present in the official board file prior to the meeting or the decision:

(1) The institution progress report covering his or her adjustment, achievement, infractions and program participation since the last meeting with the board.

(2) The institution parole referral report.

(3) A current preparole investigation report prepared by a community corrections officer.

(4) Certification of good time credits, earned or denied.

In the case of administrative parole, the good time shall be certified through the date of the submission of the parole referral. The board will assume that all good time is earned from that date until the date of parole. The department of corrections shall notify the board of all infractions and loss of good time which occurs between the date the preparole referral is sent and the date of parole.

(5) A current psychological or psychiatric report, if requested by the board.

[95-13-083, § 381-40-070, filed 6/20/95, effective 6/19/95. 91-14-029, § 381-40-070, filed 6/26/91, effective 7/27/91.]

WAC 381-40-080 Persons present: In-person parole meetings. The convicted person and such institutional persons as the members conducting the meeting deem appropriate may be present during the parole meeting. A limited number of observers may be present by approval of the panel members conducting the meeting provided that the superintendent of the institution where the meeting is to be conducted does not object. Normally, attorneys or advocates will not be permitted at parole meetings. The board will accept and consider any written statements submitted by individuals expressly excluded from in-person meetings. Exclusion of observers other than those expressly excluded herein shall be had only upon a finding of cause made by the board panel on the hearing record except in cases where the institutional superintendent denies access to the hearing room. The board reserves the right to exclude any person(s) from the room during the conduct of any meeting under this chapter upon its own motion or that of any party to the hearing provided that good cause for such exclusion is articulated on the record. In the event of a language communication problem, an interpreter designated by the board shall be present to interpret and assist. The board will accept information from any interested person in writing.

[98-09-045, § 381-40-080, filed 4/15/98, effective 4/13/98. 91-14-029, § 381-40-080, filed 6/26/91, effective 7/27/91.]

WAC 381-40-090 Good time credits. RCW 9.95.070 provides that every convicted person who has a favorable record of conduct and who performs the work, duties, and tasks assigned to him to the satisfaction of the superintendent and in whose behalf the superintendent files a report certifying that his conduct and work have been meritorious and recommending allowance of time credits to him shall, upon but not until, the adoption of such recommendation by the board,

be allowed time credits from the term of imprisonment fixed by the board. The board will consider granting of good time credits only when certification is received from the superintendent. In every case there shall be a report filed, either certifying good time credits or denying them. This report shall set forth the reasons for the action taken.

[91-14-029, § 381-40-090, filed 6/26/91, effective 7/27/91.]

WAC 381-40-100 Parole eligibility. Upon completion of the minimum term, an inmate is eligible to be considered for parole when he or she presents an acceptable parole plan unless the board determines that the inmate is not parolable pursuant to RCW 9.95.100. The board may waive the requirement for a preparole investigation if appropriate.

An acceptable parole plan must include:

- (1) Legal means of support (family, friends, job, school, grant, etc.);
- (2) Suitable residence;
- (3) Agreement to comply with standard or special conditions of parole, if deemed necessary by the board, to aid reintegration into the community and reduce the potential to reoffend.

[92-22-008, § 381-40-100, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-40-100, filed 6/26/91, effective 7/27/91.]

WAC 381-40-110 Orders of parole. (1) The board's order of parole and conditions shall include five standard conditions of parole as follows:

(a) Upon release from the institution, report as instructed to your community corrections officer (or any other person designated) and thereafter make a correct report as often as directed.

(b) Secure written permission of your community corrections officer before leaving the state of Washington.

(c) Obey all laws and abide by any special conditions imposed by the indeterminate sentence review board or any written instructions issued by a community corrections officer of the department of corrections.

(d) At no time purchase, own, have in your possession, or under your control, any firearm or deadly weapon. (Muzzle loading firearms and antique firearms are classified as deadly weapons and may not be owned, possessed by, or under the control of a parolee.)

(e) Submit to a search of your person, residence, vehicle, and possessions whenever requested to by your community corrections officer.

The board may impose additional conditions of parole on a case-by-case basis.

(2) The board may impose additional restitution if the court establishes the amount and orders payment. The board may impose restitution in lieu of a fine or if the defendant is ordered to contribute to the crime victims compensation fund.

(3) The order of parole in each case will be signed by the members of the board who reviewed and approved the plan or who conducted the meeting which resulted in approval for parole. The order of parole will be served in person on the inmate the day he or she is scheduled for release. The inmate's signature on the order of parole will be witnessed and the witness will also sign the order of parole in the space provided on the document. An inmate will not be released

unless he or she has signed the valid order of parole in the presence of a witness. In cases where the inmate refuses to sign the order of parole, the order of parole will be returned to the board with a written explanation of the refusal to sign and the parole will be cancelled.

As a term and condition of parole, the board may impose a requirement that the parolee take a polygraph examination. Failure to pass the polygraph examination shall not be a basis for parole suspension or revocation. In accepting the polygraph condition, the parolee does not waive any constitutional rights which prohibit self-incrimination for any criminal activity for which the parolee has not been released on parole. However, the parolee is advised that the board may still suspend and revoke parole for failure to comply with any term and condition of parole, including the condition to submit to a polygraph examination.

[91-14-029, § 381-40-110, filed 6/26/91, effective 7/27/91.]

WAC 381-40-120 Length of parole. Unless specified in statute, the length of active parole supervision will not be established at the time of parole or reinstatement of parole. The board may grant a CDFS at the time of parole.

[93-23-077, § 381-40-120, filed 11/17/93, effective 10/18/93. 92-22-008 § 381-40-120, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-40-120, filed 6/26/91, effective 7/27/91.]

WAC 381-40-130 Deferred decisions. Normally, the members conducting a case review will make the decision. However, if the panel members cannot reach an agreement, if they wish further information, if they wish a legal opinion, if they wish to give the case further study and consideration, or if they wish to have the full board consider waiver of a mandatory, the board will designate the decision a "deferred decision." The institution of confinement shall be advised in writing of the board's decision as soon as the decision is final.

[91-14-029, § 381-40-130, filed 6/26/91, effective 7/27/91.]

WAC 381-40-140 Waiver of mandatory minimum term. Except when an inmate of an adult correctional institution has been sentenced under a statutorily nonwaivable mandatory, the board may parole an inmate prior to the expiration of a mandatory minimum term, provided such inmate has demonstrated a meritorious effort in rehabilitation and at least two-thirds of the board members concur in such action; provided further, that any inmate who has a mandatory minimum term and is paroled prior to expiration of such term according to this rule and pursuant to RCW 9.95.040, shall not receive a conditional discharge from supervision while on parole until after the mandatory minimum waivable mandatory term has expired. Statutorily nonwaivable mandatory terms include murder first degree, murder second degree, and rape first degree.

The question of waiver of the mandatory minimum term may be referred to the full board by any member of the panel which has been assigned to review the matter. The board will review and consider any recommendation submitted by the superintendent for waiving of a mandatory minimum term:

The resident shall serve a portion of the mandatory term as follows:

- (1) Two years if mandatory term is five years;
- (2) Three years if mandatory term is seven and one-half years;
- (3) Six years if mandatory term is fifteen years;
- (4) Eight years if mandatory term is twenty years.

[98-09-045, § 381-40-140, filed 4/15/98, effective 4/13/98. 92-22-008, § 381-40-140, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-40-140, filed 6/26/91, effective 7/27/91.]

WAC 381-40-150 Parole to consecutive sentence.

Upon submission of a certification of good time credits by an institution superintendent, the board may parole to the consecutive cause so that the good time release date of the first cause becomes the time start of the second cause.

[91-14-029, § 381-40-150, filed 6/26/91, effective 7/27/91.]

WAC 381-40-160 Parole to detainer or deportation.

A written notice, signed by the superintendent, will be provided to the board as soon as a detainer is lodged and filed against an inmate and copies of all correspondence referring to detainees and all written notices shall be sent immediately to the board. The board's policy regarding detainees is that an individual whose minimum term has been set may be paroled to a detainer on or after his parole eligibility review date (PERD).

If paroled to an immigration detainer, the board may require an alternative board approved parole plan. If released from the immigration detainer, the parolee must report to the nearest division of community corrections office within twenty-four hours.

[91-14-029, § 381-40-160, filed 6/26/91, effective 7/27/91.]

Chapter 381-50 WAC

PROCEDURES FOR CONDUCTING DISCIPLINARY 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 as 91-14-029 in the Washington State Register. It is published in the Washington Administrative Code exactly as filed by the agency with history notes added by the code reviser's office.

WAC

381-50-010	Purpose.
381-50-020	Authority.
381-50-030	Scope.
381-50-040	Petition.
381-50-050	Suspension of parole date.
381-50-060	Inmate to be served notice.
381-50-070	Inmate shall be advised of rights.
381-50-080	Witnesses.
381-50-090	Conducting a hearing.
381-50-100	Continuances.
381-50-110	Prehearing conferences.
381-50-120	Inmate to be present.
381-50-130	Oaths and affirmations.
381-50-140	Opportunity to waive.
381-50-150	Rules of evidence—Admissibility.
381-50-160	Disposition.
381-50-170	Statement of findings and conclusions.
381-50-180	Hearing record preservation.

WAC 381-50-010 Purpose. The purpose of this chapter is to specify policy and procedures relating to disciplinary

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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 to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

[93-23-077, § 381-50-010, filed 11/17/93, effective 8/23/93. 91-14-029, § 381-50-010, filed 6/26/91, effective 7/27/91.]

WAC 381-50-020 Authority. RCW 9.95.080 and 9.95.009(2).

[91-14-029, § 381-50-020, filed 6/26/91, effective 7/27/91.]

WAC 381-50-030 Scope. The provisions of this chapter shall apply to adult offenders sentenced under the indeterminate sentencing law and committed to a period of confinement in a Washington state correctional facility, those state officials charged with their care and supervision, and parties to the hearing.

[91-14-029, § 381-50-030, filed 6/26/91, effective 7/27/91.]

WAC 381-50-040 Petition. Whenever any convicted person sentenced under the indeterminate sentencing law serving sentence in an adult correctional institution commits any infractions of the rules and regulations of the institution, the department of corrections may request, in writing, that the board conduct a disciplinary hearing. The written request shall include:

- (1) Time, place, and a statement of the factual circumstances of the rule infraction and any disciplinary action imposed by the institution.
- (2) Recommendation of the superintendent.
- (3) Evidence of referral to the prosecuting attorney, if such referral is made, in the event of escape or a rule violation of a felonious nature, and current status of referral.
- (4) In the event the rule infraction concerns escape, the following additional information shall be provided:
 - (a) Facts of the escape;
 - (b) Activities during the escape;
 - (c) Causes and motivations for escape;
 - (d) Dates of escape and return to custody;
 - (e) Evaluation.

In the event that the rule infraction occurs within fifteen days of the inmate's parole date, the board will accept and act on telephonic reports from the superintendent pending receipt of the written request.

The indeterminate sentence review board reserves the right to schedule disciplinary hearings on its own motion when a major rule infraction is brought to the attention of the board.

The decision to schedule a disciplinary hearing will be made by the vote of the full board.

Pursuant to the provisions of RCW 9.95.080, a disciplinary hearing may be characterized as an adversary hearing in that the subject of the hearing shall be present and entitled to be heard and may present evidence and witnesses in his behalf.

[92-22-008, § 381-50-040, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-50-040, filed 6/26/91, effective 7/27/91.]

WAC 381-50-050 Suspension of parole date. The board may suspend the parole date of any individual who is scheduled for a disciplinary hearing pending the outcome of the hearing.

[91-14-029, § 381-50-050, filed 6/26/91, effective 7/27/91.]

WAC 381-50-060 Inmate to be served notice. The board will provide to the institution superintendent three copies of a hearing notice for service upon the inmate at least ten working days prior to any hearing scheduled for that inmate pursuant to RCW 9.95.080. The hearing notice shall specify the type, time, and place of the hearing as well as the reason for that hearing. Possible sanctions, including a statement that no sanction shall exceed the maximum term, will also be included in that notice.

(1) Upon receipt of the hearing notice, the superintendent or his designee shall immediately serve the subject inmate with the document.

(2) The original of the hearing notice showing date of service and signed by the inmate shall be returned immediately to the board offices in Olympia. One copy may be retained in the inmate's institutional file and one copy will be provided to the inmate.

(3) In cases where the inmate refuses to sign the notice, the superintendent or his designee shall note the time and place of service and obtain the signature of a witness to such service.

[91-14-029, § 381-50-060, filed 6/26/91, effective 7/27/91.]

WAC 381-50-070 Inmate shall be advised of rights. Each inmate who becomes the subject of a hearing conducted under the provisions of RCW 9.95.080 shall be advised of his rights orally and in writing at the time he is served with a notice of the hearing. The written notice provided by the board will advise the resident that:

(1) He has been accused of a major rule infraction;

(2) The minimum term may be redetermined but not until after a hearing in front of the board where he is present and given the opportunity to be heard under oath and explain the alleged violations to the board;

(3) He will have the right to have an attorney present, but at his own expense.

[91-14-029, § 381-50-070, filed 6/26/91, effective 7/27/91.]

WAC 381-50-080 Witnesses. The subject of any hearing conducted under the provisions of this chapter may call witnesses on his behalf and at his expense. Such witnesses shall appear voluntarily and shall be limited to those persons who have knowledge of, or who have specific testimony about the allegations which caused the hearing to be convened. The superintendent or his designee shall provide assistance to the inmate in notifying witnesses of the time and place of the hearing as requested by the inmate. The presiding officer may, in certain cases, direct the superintendent to make any staff member or prisoner available for testimony.

The board may allow, accept, and consider telephonic testimony. The witness whose testimony is received tele-

phonically shall be telephonically available for cross-examination.

[91-14-029, § 381-50-080, filed 6/26/91, effective 7/27/91.]

WAC 381-50-090 Conducting a hearing. All hearings conducted under the provisions of this chapter shall be conducted by a panel of at least two members of the board. One of the members will serve as the presiding officer.

The panel may question witnesses called to testify at the hearing to develop any facts deemed necessary to render a fair and impartial decision.

Observers may be present at the hearing if prior approval has been granted by the facility superintendent and the inmate who is the subject of the hearing does not object. However, no family members, friends, relatives, or interested parties may be present. The board will accept and consider written statements submitted by individuals expressly excluded from hearings. Exclusion of observers other than those expressly excluded herein shall be by cause articulated on the record by the presiding officer of the board panel conducting the hearing.

[91-14-029, § 381-50-090, filed 6/26/91, effective 7/27/91.]

WAC 381-50-100 Continuances. Continuances may be granted by the board prior to and during hearings conducted under provisions of this chapter, either on its own motion or on petition of the subject of the hearing, provided that such petition is sent to the board in writing immediately upon receipt of the hearing notice and that it specifies the reasons for continuance. Continuances requested during the hearing may be granted by the board panel if it appears in the public interest or in the interest of justice that further testimony or argument should be received.

[91-14-029, § 381-50-100, filed 6/26/91, effective 7/27/91.]

WAC 381-50-110 Prehearing conferences. The presiding officer conducting a hearing under the provisions of this chapter may require the parties to appear at a specified time and place for a conference immediately prior to the hearing to discuss and define procedural matters pertaining to the hearing.

[91-14-029, § 381-50-110, filed 6/26/91, effective 7/27/91.]

WAC 381-50-120 Inmate to be present. The subject of any hearing conducted under the provisions of this chapter shall be present during the conduct of the hearing. However, in the event the subject refuses to appear, the board will continue the hearing until the next scheduled visit by the board to that particular institution. In the event that the subject of the hearing again refuses to appear, then the hearing will be conducted in absentia.

[91-14-029, § 381-50-120, filed 6/26/91, effective 7/27/91.]

WAC 381-50-130 Oaths and affirmations. The presiding officer conducting hearings under the provisions of this chapter shall have the authority to administer oaths and affirmations.

[91-14-029, § 381-50-130, filed 6/26/91, effective 7/27/91.]

WAC 381-50-140 Opportunity to waive. At the time of the disciplinary hearing, it shall be the duty of the presiding officer conducting the hearing to query the inmate and to review the file to determine whether the inmate was given proper notice of the hearing, and was advised of the reason for the hearing, and was properly advised of his or her rights to witnesses. If it is determined that the inmate was not properly served or advised of his or her rights, the inmate shall have the opportunity to:

- (1) Waive such rights, orally or in writing, to the board, at which time the hearing would proceed; or
- (2) Request a continuance of the hearing until proper services of notice and rights can be perfected.

[91-14-029, § 381-50-140, filed 6/26/91, effective 7/27/91.]

WAC 381-50-150 Rules of evidence—Admissibility. All relevant evidence shall be admissible which, in the opinion of the presiding officer, is the best evidence obtainable, having due regard for its necessity, availability, and trustworthiness. "Relevant evidence" means evidence having a tendency to make the existence of any fact that is of more consequence to the determination of the action more or less probable than it would be without evidence. In passing upon admissibility of evidence, the presiding officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in matters not involving trial by jury in the superior courts of the state of Washington.

The presiding officer may, either with or without objection, exclude inadmissible evidence, or order accumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time evidence is offered. If the sole evidence is hearsay that would be inadmissible in a superior court proceeding and is not substantiated or corroborated, or is the result solely of a polygraph examination, a finding of guilty shall not be made.

[92-22-008, § 381-50-150, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-50-150, filed 6/26/91, effective 7/27/91.]

WAC 381-50-160 Disposition. The board panel shall render a decision on each case heard under the provisions of this chapter.

In disciplinary hearings, sanctions may range from no change in the length of sentence to redetermination of the original sentence and imposition of an extension of the term not to exceed the maximum term. Denial of any good time credits, past and future, is optional with the board panel.

[91-14-029, § 381-50-160, filed 6/26/91, effective 7/27/91.]

WAC 381-50-170 Statement of findings and conclusions. The board will make a concise written statement of findings and conclusions in each case heard under the provisions of this chapter.

[91-14-029, § 381-50-170, filed 6/26/91, effective 7/27/91.]

WAC 381-50-180 Hearing record preservation. There will be a recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved at the offices of the board in Olympia for not less

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than six months subsequent to the hearing. Parties requesting partial or total duplication of any hearing must request such recordings pursuant to the Public Disclosure Act and reimburse the board for the costs involved in such a procedure.

[99-07-081, § 381-50-180, filed 3/18/99, effective 3/15/99; 92-22-008 § 381-50-180, filed 10/21/92, effective 10/19/92; 91-14-029, § 381-50-180, filed 6/26/91, effective 7/27/91.]

Chapter 381-60 WAC

PROCEDURES FOR CONDUCTING PAROLABILITY 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 as 91-14-029 in the Washington State Register. It is published in the Washington Administrative Code exactly as filed by the agency with history notes added by the code reviser's office.

WAC

381-60-010	Purpose.
381-60-020	Authority.
381-60-030	Scope.
381-60-040	Petition.
381-60-050	Suspension of parole date.
381-60-060	Inmate to be served notice.
381-60-070	Inmate shall be advised of rights.
381-60-080	Witnesses.
381-60-090	Conducting a hearing.
381-60-100	Continuances.
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381-60-120	Inmate to be present.
381-60-130	Oaths and affirmations.
381-60-140	Opportunity to waive.
381-60-150	Rules of evidence—Admissibility.
381-60-160	Disposition.
381-60-170	Statement of findings and conclusions.
381-60-180	Hearing record preservation.
381-60-190	Loss of life policy.

WAC 381-60-010 Purpose. The purpose of this chapter is to specify policies and procedures relating to hearings conducted to determine the parolability of certain offenders. 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 to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

[93-23-077, § 381-60-010, filed 11/17/93, effective 8/23/93. 91-14-029, § 381-60-010, filed 6/26/91, effective 7/27/91.]

WAC 381-60-020 Authority. RCW 9.95.100 and 9.95.-009(2).

[91-14-029, § 381-60-020, filed 6/26/91, effective 7/27/91.]

WAC 381-60-030 Scope. The provisions of this chapter shall apply to adult offenders sentenced and committed under the indeterminate sentencing laws committed to a period of confinement in a Washington state correctional facility, those state officials charged with their care and supervision, and parties to the hearing.

[91-14-029, § 381-60-030, filed 6/26/91, effective 7/27/91.]

WAC 381-60-040 Petition. RCW 9.95.100 states that any convicted person undergoing sentence in the penitentiary or reformatory not sooner released under the provisions of this chapter shall, in accordance with the provisions of law, be discharged from custody for the offense of which such person was convicted or the maximum term fixed by the court where the law does not provide for a maximum term. The board shall not, however, until the maximum term expires, release a prisoner unless in its opinion, his rehabilitation has been complete and he is a fit subject for release. Therefore, if, in the opinion of an institution superintendent, any convicted person serving a sentence in an adult correctional institution is not a fit subject for release and is considered to be incapable of succeeding on parole because of incomplete rehabilitation, the department of corrections may request in writing that the board conduct a hearing pursuant to RCW 9.95.100. The written request shall include:

- (1) A statement to the board giving reasons why the subject of the request is unable to be paroled;
- (2) The institutional progress report covering his or her adjustment, achievement, infractions, and program participation since the last meeting with the board;
- (3) Supporting data such as psychiatric or psychological reports;
- (4) Other reports and information as necessary.

The board reserves the right to schedule hearings pursuant to RCW 9.95.100 on its own motion.

[95-13-083, § 381-60-040, filed 6/20/95, effective 6/19/95. 91-14-029, § 381-60-040, filed 6/26/91, effective 7/27/91.]

WAC 381-60-050 Suspension of parole date. The board may suspend the parole date of any individual who is scheduled for a parolability hearing pending the outcome of the hearing.

[91-14-029, § 381-60-050, filed 6/26/91, effective 7/27/91.]

WAC 381-60-060 Inmate to be served notice. The board will provide to the institution superintendent the copies of a hearing notice for service upon the inmate at least ten working days prior to any hearing scheduled for that inmate pursuant to RCW 9.95.100. The hearing notice shall specify the type, time, and place of the hearing as well as the reason for the hearing.

- (1) Upon receipt of the hearing notice, the superintendent or his designee shall immediately serve the subject inmate with the document.
- (2) The original of the hearing notice showing date of service and signed by the inmate shall be returned immediately to the board offices in Olympia. One copy may be retained in the inmate's institutional file and one copy will be provided to the inmate.
- (3) In cases where the inmate refuses to sign the notice, the superintendent or his designee shall note the time and place of service and obtain the signature of a witness to such service.

[92-22-008, § 381-60-060, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-60-060, filed 6/26/91, effective 7/27/91.]

WAC 381-60-070 Inmate shall be advised of rights.

Each inmate who becomes the subject of a hearing conducted under the provisions of RCW 9.95.100 shall be advised of his rights, orally and in writing, at the time he is served with a notice of the hearing. The written notice provided by the board will advise the resident that:

- (1) His minimum term may be redetermined but not until after a hearing in front of the board where he is present and given the opportunity to be heard under oath;
- (2) He will have the right to present evidence and witnesses in his behalf;
- (3) He will have the right to have an attorney present, but at his own expense since the board has no funds to pay for attorneys, witness fees, the cost of subpoenas, or any other related costs that may be incurred by the inmate.

[91-14-029, § 381-60-070, filed 6/26/91, effective 7/27/91.]

WAC 381-60-080 Witnesses. The subject of any hearing conducted under the provisions of this chapter may call witnesses on his behalf and at his expense. Such witnesses shall appear voluntarily and shall be limited to those persons who have knowledge of, or have specific testimony about, the factors which may have caused the hearing to be convened. The superintendent or his designee shall provide assistance to the inmate in notifying witnesses of the time and place of the hearing as requested by the inmate. The presiding officer may, in certain cases, direct the superintendent to make any staff member or prisoner available for testimony. For purposes of this section, family members and friends or other interested parties who wish to testify as to disposition may do so in writing. See WAC 381-60-090 for reference.

[92-22-008, § 381-60-080, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-60-080, filed 6/26/91, effective 7/27/91.]

WAC 381-60-090 Conducting a hearing. All hearings conducted under the provisions of this chapter shall be held before a panel of at least two members of the indeterminate sentence review board. One member shall be designated, by decision of the panel, as the presiding officer.

A limited number of observers may be present by prior approval of the panel members conducting the hearing, provided that the superintendent of the institution where the hearing is to be conducted, authorizes observers in the facility. However, no family members, friends, relatives, or interested parties shall be present. The board will accept and consider written statements submitted by individuals expressly excluded from hearings.

Exclusion of observers other than those expressly excluded herein shall be had only upon a finding of cause made by the board panel on the hearing record except in cases where the institutional superintendent denies access to the hearing room. The board reserves the right to exclude any person from the room during the conduct of any hearing under this chapter upon its own motion or the motion of any party to the hearing provided that good cause for such exclusion is articulated on the record. The presiding officer may recess the hearing at any time for consultation with the other panel member(s). The panel may question witnesses called by the parties to the hearing (as well as the subject of the hearing whether called as a witness or not) to develop any facts deemed necessary to render a fair and impartial deci-

sion. The panel conducting the hearing will submit its recommendation to the full board for final determination after the hearing as to any change in minimum term. In the event of a language communication problem, an interpreter designated by the board shall be present to interpret and assist. The board will accept information from any interested person in writing.

[98-09-045, § 381-60-090, filed 4/15/98, effective 4/13/98. 92-22-008, § 381-60-090, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-60-090, filed 6/26/91, effective 7/27/91.]

WAC 381-60-100 Continuances. Continuances may be granted by the board prior to and during hearings conducted under this chapter, either on its own motion or on petition of the subject of the hearing, provided that such petition is sent to the board in writing immediately upon receipt of the hearing notice and that it specifies the reasons for the continuance. Continuances requested during the hearing may be granted by the board panel if it appears in the public interest or in the interest of justice that further testimony or argument should be received.

[91-14-029, § 381-60-100, filed 6/26/91, effective 7/27/91.]

WAC 381-60-110 Prehearing conferences. The presiding officer conducting a hearing under this chapter may require the parties to appear at a specified time and place for a conference immediately prior to the hearing to discuss and define procedural matters pertaining to the hearing.

[91-14-029, § 381-60-110, filed 6/26/91, effective 7/27/91.]

WAC 381-60-120 Inmate to be present. The subject of any hearing conducted under the provisions of this chapter shall be present during the conduct of the hearing. However, in the event the subject refuses to appear, the board will continue the hearing until the next scheduled visit by the board to that particular institution. In the event that the subject of the hearing again refuses to appear, then the hearing will be conducted in absentia.

[91-14-029, § 381-60-120, filed 6/26/91, effective 7/27/91.]

WAC 381-60-130 Oaths and affirmations. The presiding officer conducting hearings under the provisions of this chapter shall have the authority to administer oaths and affirmations.

[91-14-029, § 381-60-130, filed 6/26/91, effective 7/27/91.]

WAC 381-60-140 Opportunity to waive. At the time of the hearing under the provisions of RCW 9.95.100, it shall be the duty of the presiding officer conducting the hearing to query the inmate and to review the file to determine whether the inmate was given proper notice of the hearing, was advised of the reason for the hearing, and was properly advised of his rights to witnesses. If the presiding officer determines that this is not the case, the inmate will be advised that he can:

- (1) Waive such rights, orally or in writing to the board, at which time the hearing would proceed; or
- (2) Request a continuance of the hearing until proper service of notice and rights can be perfected.

[91-14-029, § 381-60-140, filed 6/26/91, effective 7/27/91.]

(2009 Ed.)

WAC 381-60-150 Rules of evidence—Admissibility. All relevant evidence shall be admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness. "Relevant evidence" means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. In passing upon admissibility of evidence, the presiding officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in matters not involving trial by jury in the superior courts of the state of Washington. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The presiding officer may, in his discretion, either with or without objection, exclude inadmissible evidence or order accumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time evidence is offered.

[91-14-029, § 381-60-150, filed 6/26/91, effective 7/27/91.]

WAC 381-60-160 Disposition. The board panel shall render a decision of either parolable or not parolable on each case heard under this chapter. All decisions concerning inmates convicted of murder in the first degree will be made by the full board.

Examples of adequate reasons for a finding of nonparolability include, but are not limited to:

- (1) Active refusal to participate in available program or resources designed to assist an offender to reduce the risk of reoffense (e.g., anger management, substance abuse treatment).
- (2) Serious and repetitive disciplinary infractions during incarceration.
- (3) Evidence of an inmate's continuing intent or propensity to engage in illegal activity (e.g., victim harassment, criminal conduct while incarcerated, continued use of illegal substances).
- (4) Statements or declarations by the inmate that he or she intends to re-offend or does not intend to comply with conditions of parole.
- (5) Evidence that an inmate presents a substantial danger to the community if released.

In parolability hearings, actions may range from no change in the length of sentence to redetermination of the original sentence and imposition of an extension of the term not to exceed the maximum term. Good time credits will not be addressed inasmuch as there are no allegations of rule infractions.

[98-09-045, § 381-60-160, filed 4/15/98, effective 4/13/98. 91-14-029, § 381-60-160, filed 6/26/91, effective 7/27/91.]

WAC 381-60-170 Statement of findings and conclusions. The board will make a concise written statement of findings and conclusions in each case heard under the provisions of this chapter.

[91-14-029, § 381-60-170, filed 6/26/91, effective 7/27/91.]

WAC 381-60-180 Hearing record preservation.

There will be a recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved at the offices of the board in Olympia for not less than six months subsequent to the hearing. Parties requesting partial or total duplication of any hearing must request such recordings pursuant to public disclosure and reimburse the board for the costs involved in such a procedure.

[98-09-045, § 381-60-180, filed 4/15/98, effective 4/13/98. 92-22-008, § 381-60-180, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-60-180, filed 6/26/91, effective 7/27/91.]

WAC 381-60-190 Loss of life policy. It shall be the policy of the board that any individual who has ever been convicted of murder first degree, murder second degree, manslaughter, negligent homicide, vehicular homicide, or any other crime resulting in a loss of life shall be referred to the full board for a determination as to whether or not such individual is parolable. Any affirmative vote must be by the majority of the board. A board panel may schedule a parolability meeting in such cases but will defer any decision until the full board reviews the case and the panel recommendation.

When a loss of life case has a waivable mandatory minimum term, the full board vote on the waiver must be a distinct and separate vote from the full board vote regarding parolability.

[92-22-008, § 381-60-190, filed 10/21/92, effective 10/19/92.]

Chapter 381-70 WAC**PROCEDURES FOR CONDUCTING PAROLE REVOCATION HEARINGS****WAC**

381-70-010	Purpose.
381-70-020	Authority.
381-70-030	Scope.
381-70-040	Notice of arrest.
381-70-050	Notice of suspension.
381-70-060	Notice of suspension and request for arrest.
381-70-070	Notice of closure.
381-70-080	Board to reinstate.
381-70-090	Administrative reinstatements.
381-70-100	Conditional release pending hearing.
381-70-110	Board to notify attorney general.
381-70-120	Service of factual allegations.
381-70-130	Contents of factual allegations.
381-70-140	Parolee to be advised of rights.
381-70-150	Rights and privileges relating to administrative review.
381-70-160	Rights and privileges relating to revocation hearings.
381-70-170	Acknowledgment of rights.
381-70-180	Refusal to acknowledge.
381-70-190	Opportunity to waive.
381-70-200	Violation report to be submitted by community corrections officer.
381-70-210	Violation report to be submitted by community corrections officer in the event of a waiver.
381-70-220	Issuance of subpoenas.
381-70-230	Board to schedule hearings.
381-70-240	Service of papers—By whom served.
381-70-250	Upon whom served.
381-70-260	Methods of service.
381-70-270	When service complete.
381-70-280	Filing with the board.
381-70-290	Subpoenas—Where provided by law—Form.
381-70-300	Issuance to parties.
381-70-310	Quashing subpoenas.
381-70-320	Subpoenas—Enforcement.
381-70-330	Subpoenas—Geographical scope.
381-70-340	Conducting a hearing—Presiding officer.

381-70-350	Appearance and practice before agency—Who may appear.
381-70-360	Standards of ethical conduct.
381-70-370	Continuances.
381-70-380	Prehearing conference.
381-70-390	Hearings—Persons present.
381-70-400	Rules of evidence—Admissibility.
381-70-410	Hearing record presentation.
381-70-420	New minimum term.
381-70-430	Suspended parole cases.
381-70-440	Determination of competency.

WAC 381-70-010 Purpose. The purpose of this chapter is to specify policies and procedures relating to parole revocation 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 to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

[93-23-077, § 381-70-010, filed 11/17/93, effective 8/23/93. 91-14-029, § 381-70-010, filed 6/26/91, effective 7/27/91.]

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 381-70-020 Authority. RCW 9.95.120 through 9.95.130 and 9.95.009(2).

[91-14-029, § 381-70-020, filed 6/26/91, effective 7/27/91.]

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 381-70-030 Scope. (1) The provisions of this chapter shall apply to adult felony offenders granted parole from a Washington prison sentence who are alleged to have violated the terms of their order of parole, those state officials charged with the supervision of such parolees, and parties to parole revocation hearings.

(2) The indeterminate sentence review board will exercise its authority over parolees in a manner that:

(a) Places a high priority on public safety.

(b) Facilitates sentencing system transition consistent with the purposes of the Sentencing Reform Act.

(c) Imposes only those reasonable and enforceable conditions of parole necessary to encourage responsibility, and to assist the offender's lawful reintegration into the community.

(d) Supports the role and responsibility of the community corrections officer to assist offenders to reenter the community in a law abiding manner.

(3) The indeterminate sentence review board, as the successor agency to the board of prison terms and paroles, was directed by the legislature to facilitate the transition to the determinate sentencing system and to implement a gradual phase out of the indeterminate system. Violations of parole, including felony behavior being prosecuted under the Sentencing Reform Act, shall be considered.

(4) In making a parole revocation or reinstatement decision, the indeterminate sentence review board will consider the following factors in addition to factors that are case specific:

- (a) Whether or not the parole violation behavior also resulted in an SRA conviction;
- (b) The relationship of the parole violations behavior to the committing offense and the nature of the violation;
- (c) The length of time the parolee has been on parole as well as time previously served on the conviction;
- (d) The perspective and recommendation of the victim;
- (e) The recommendation and supporting reasons offered by the community corrections officer, the parolee, and the assistant attorney general;
- (f) The level of risk to the community posed by the parolee;
- (g) The previous board action during the period of parole;
- (h) Purposes and ranges of the SRA as well as the original judge and prosecutor's recommendations;
- (i) The sanction range under the administrative sanction grid.

[98-09-045, § 381-70-030, filed 4/15/98, effective 4/13/98. 92-22-008 § 381-70-030, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-70-030, filed 6/26/91, effective 7/27/91.]

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 381-70-040 Notice of arrest. Whenever a community corrections officer is notified of a parolee's arrest, he shall submit a notice of arrest to the board (and the attorney general) within twenty-four hours, excluding weekends and holidays. Such notice shall include a concise but complete statement concerning the circumstances of the arrest, reason for arrest, and the date the community corrections officer found there is probable cause to believe that the parolee violated one or more conditions of parole. The community corrections officer shall state whether or not an order of suspension, arrest, and detention has been:

- (1) Issued, with the approval of a supervisor;
- (2) Issued without the supervisor's approval;
- (3) Requested but not approved; or
- (4) Not requested.

The community corrections officer shall state reasons for subsection (2), (3), or (4) of this section.

[91-14-029, § 381-70-040, filed 6/26/91, effective 7/27/91.]

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 381-70-050 Notice of suspension. The community corrections officer shall notify the board on-site desk of the suspension of parole by telephone within twenty-four hours of service of the suspension order.

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[93-23-077, § 381-70-050, filed 11/17/93, effective 11/15/93. 91-14-029, § 381-70-050, filed 6/26/91, effective 7/27/91.]

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 381-70-060 Notice of suspension and request for arrest. Whenever a community corrections officer requests the arrest and detention of a parolee, he shall issue an order suspending said parolee's parole, and submit a copy of the order to the board and the attorney general within twenty-four hours of service.

[91-14-029, § 381-70-060, filed 6/26/91, effective 7/27/91.]

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 381-70-070 Notice of closure. Whenever a community corrections officer requests the arrest and detention of a parolee and issues an order of parole suspension and the parolee is not apprehended and detained within a reasonable period of time, the community corrections officer may close his interest with a report which will include the disposition of the unserved suspension warrant. Copies of such report will be forwarded to the board and the attorney general.

[91-14-029, § 381-70-070, filed 6/26/91, effective 7/27/91.]

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 381-70-080 Board to reinstate. Whenever a community corrections officer suspends, arrests, or detains a parolee, such parolee shall not be reinstated on parole or released from custody on bail or personal recognizance, except by the board and the issuance by the board of an order of reinstatement on parole to the same or modified conditions of parole.

[91-14-029, § 381-70-080, filed 6/26/91, effective 7/27/91.]

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 381-70-090 Administrative reinstatements. Whenever a community corrections officer has suspended a parole and after investigation determines:

- (1) That the alleged violations are unfounded;
- (2) That the seriousness of the alleged violations is mitigated by new information; or
- (3) Otherwise believes that further custody is deemed unwarranted and a parole revocation hearing is unnecessary;

he shall submit a written request or report with recommendations to the board. The board will accept and act on telephonic reports of the community corrections officer or supervisory personnel pending receipt of the officer's written report within ten working days. The board may exercise the option of administrative reinstatement when not recommended by the supervising community corrections officer, when such reinstatement is consistent with criteria identified within WAC 381-70-030.

[91-14-029, § 381-70-090, filed 6/26/91, effective 7/27/91.]

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 381-70-100 Conditional release pending hearing. An administrative review of the parole violation report and of information submitted by the alleged violator or his attorney shall be conducted by the board after the parolee has been arrested, to determine probable cause for suspension. If probable cause is found then a determination is made whether the violation requires a revocation hearing, and to determine whether there is reason to allow the parolee to be conditionally released on parole pending the revocation hearing. Such administrative review shall take place within fifteen days after the service of the order of parole suspension, arrest, and detention.

[91-14-029, § 381-70-100, filed 6/26/91, effective 7/27/91.]

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 381-70-110 Board to notify attorney general. The board shall promptly provide the attorney general with copies of orders of reinstatement on parole issued prior to a parole revocation hearing which has been previously scheduled.

[91-14-029, § 381-70-110, filed 6/26/91, effective 7/27/91.]

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 381-70-120 Service of factual allegations. Whenever a community corrections officer is notified of the arrest and detention of an alleged parole violator and such alleged parole violator's parole has been suspended, or is suspended by the community corrections officer, the community corrections officer shall personally serve the parolee with a copy of the factual allegations within three working days of the suspension of parole. Such allegations of violation shall be submitted to the board with a copy to the attorney general within twenty-four hours of service.

If, after service of alleged violations as set forth above, additional alleged violations are brought forth by the commu-

nity corrections officer, the CCO shall personally serve the parolee with a copy of those allegations. The parolee will have ten calendar days from the date of service of those allegations before the board will consider those additional allegations at an on-site parole revocation hearing. The parolee may waive the ten calendar days notice and proceed with those allegations at an already scheduled on-site parole revocation hearing. Such allegations of violation shall be submitted to the board with a copy to the attorney general within twenty-four hours of service.

[91-14-029, § 381-70-120, filed 6/26/91, effective 7/27/91.]

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 381-70-130 Contents of factual allegations. The factual allegations of the violations of each condition shall include:

- (1) The circumstances of violation;
- (2) Date of violation or approximation thereof; and
- (3) Location or place where violation occurred.

Whenever a parolee is accused of a violation of his parole which includes the commission of, and conviction for, a felony or misdemeanor, the community corrections officer shall request that verification of such conviction be forwarded from the court of conviction to the board.

[91-14-029, § 381-70-130, filed 6/26/91, effective 7/27/91.]

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 381-70-140 Parolee to be advised of rights. Whenever an alleged parole violator is served with the factual allegation of the violation of the conditions of parole and with an order suspending parole, the community corrections officer shall advise the parolee orally and in writing of his right to an administrative review to determine probable cause and whether there is reason to allow the parolee to be conditionally released pending the revocation hearing. The community corrections officer shall also advise the parolee of his right to an on-site parole revocation hearing, and of his rights and privileges pertaining to each proceeding.

[91-14-029, § 381-70-140, filed 6/26/91, effective 7/27/91.]

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 381-70-150 Rights and privileges relating to administrative review. The parolee's rights and privileges pertaining to an administrative review are as follows:

- (1) An administrative review shall be conducted by a board hearing officer within fifteen days of service of the order of parole suspension, arrest, and detention.

(2) The parolee shall be advised at the time of service of the order of suspension, arrest, and detention that he and his attorney may submit information in writing to the board which shall be considered by the board. Proper forms shall be given the parolee to allow the parolee to submit information concerning family stability, job situation, etc., as well as the opportunity to add whatever additional comments or information that is deemed appropriate.

[91-14-029, § 381-70-150, filed 6/26/91, effective 7/27/91.]

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 381-70-160 Rights and privileges relating to revocation hearings. (1) An alleged parole violator shall be entitled to a fair and impartial hearing of the charges of the parole violation within thirty days of service of suspension in the state of Washington, reasonably near the site of the alleged violation(s).

(2) The alleged parole violator shall be entitled to be represented by an attorney of his own choosing and at his own expense and shall have the right to present evidence and witnesses.

Upon satisfactory evidence of indigency and upon request, the board may cause the appointment of an attorney to represent the parolee at an on-site parole revocation hearing. In such cases, the cost of representation shall be paid by the board at a rate determined by legislative appropriation.

Counsel may ask, in writing, for exception to the established rate. Such requests should be directed to the executive secretary, indeterminate sentence review board.

(3) Discovery. The community corrections officer shall provide, within ten days of suspension of parole, the parolee's defense attorney with a copy of the violations specified, the violation report, and all evidence relating to the violations charged intended for introduction at the hearing, either as factual evidence or in support of a dispositional recommendation.

Such documents, materials, and information may include, but not be limited to, copies of the parole order and addenda, copies of prior violation reports submitted to the board, and copies of all board actions or hearing findings issued during the current parole.

In addition, the CCO must provide to the parolee's attorney any material or information within the CCO's knowledge or possession which tends to negate the parolee's guilt as to the violations charged.

(4) The board shall have the authority to issue subpoenas for compulsory attendance of witnesses and production of evidence, provided that an offer has been made to pay the statutory fees and mileage.

(5) The alleged parole violator may be requested to testify during the on-site hearing and any such testimony shall not be used against him in any criminal prosecution (RCW 9.95.124).

(6) The allegations of violations of the conditions of parole must be proven by a preponderance of evidence. At the conclusion of the hearing, or within ten days thereafter,

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the board shall make written findings and conclusions concerning the allegations.

(7) If the member, having heard the matter, should conclude that the allegations of violations of conditions of parole have not been proven by a preponderance of evidence or those that have been proven by a preponderance of evidence are not sufficient cause for revocation of parole, then the parolee shall be reinstated on parole on the same or modified conditions.

(8) If the member or members, having heard the matter, should conclude that the allegations of violations of conditions of parole have been proven by a preponderance of evidence and constitute sufficient cause for revocation of parole, then such member or members shall enter an order of parole revocation and return to state custody. Within thirty days of the return of such parole violator to a state correctional institution for convicted felons, the board shall enter an order determining a new minimum sentence, not exceeding the maximum penalty provided by law for the crime for which the parole violator was originally convicted or the maximum fixed by the court.

(9) A parolee who has been convicted and sentenced to prison on a new felony charge will have the right to a hearing pertaining to disposition only pursuant to *In Re Akridge*, 90 Wn.2d 350 (1978), and the hearing will be held at the institution of confinement. Chapter 98, Laws of 1969 provides that an alleged parole violator, after service of the allegations of violations of the conditions of parole and the advice of rights, may admit to one or more of the alleged violations and waive the on-site hearing. If the board accepts the waiver, it shall either:

(a) Reinstatement of the parolee on parole under the same or modified conditions; or

(b) Revoke the parole of the parolee and enter an order of parole revocation and return to state custody for determination of a new minimum sentence. Such determination shall be made within thirty days of the return of such parole violator to a state correctional institution for convicted felons, and the board shall enter an order determining the new minimum sentence, not exceeding the maximum penalty provided by law for the crime for which the parole violator was convicted or the maximum fixed by the court.

[91-14-029, § 381-70-160, filed 6/26/91, effective 7/27/91.]

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 381-70-170 Acknowledgment of rights. Signed copies of the receipt and acknowledgment of these rights shall be forwarded with copies of the factual allegations to the board and the attorney general.

[91-14-029, § 381-70-170, filed 6/26/91, effective 7/27/91.]

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 381-70-180 Refusal to acknowledge. Should the parolee refuse to sign either the violations specified or notification of rights, the community corrections officer shall note the time and place of service. The community corrections officer shall certify that he has fully advised the parolee of his rights under this law.

[91-14-029, § 381-70-180, filed 6/26/91, effective 7/27/91.]

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 381-70-190 Opportunity to waive. The community corrections officer shall give the parolee opportunity to complete the violations specified and waiver form immediately after the parolee has been advised of the factual allegations of parole violations and advised of his rights.

(1) If the parolee wishes to sign the violations specified and waiver form, the community corrections officer will witness the signature. The original of the completed waiver will be forwarded with the factual alleged violations and signed copy of receipt and acknowledgment of rights to the board with copies to the attorney general.

(2) If the parolee does not wish to admit to one or more violations or sign the waiver, the community corrections officer will so note in the space provided and forward with the factual alleged violations and signed copy of receipt and acknowledgment of rights.

(3) The parolee may sign the violations specified and waiver form at any time up to and including the date and time of his on-site parole revocation hearing.

[91-14-029, § 381-70-190, filed 6/26/91, effective 7/27/91.]

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 381-70-200 Violation report to be submitted by community corrections officer. The community corrections officer shall submit the report of violation to the board and the attorney general within ten calendar days from the date of service of the factual allegations.

This report will include a list of witnesses whom the parole officer may wish to have called for testimony. It should also include a recommendation whether or not waivers should be accepted by the board.

[91-14-029, § 381-70-200, filed 6/26/91, effective 7/27/91.]

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 381-70-210 Violation report to be submitted by community corrections officer in the event of a waiver. Notwithstanding a waiver of an on-site parole revocation hearing by the alleged parole violator, the supervising com-

munity corrections officer or his designee shall submit a report of violation for consideration by the board.

[91-14-029, § 381-70-210, filed 6/26/91, effective 7/27/91.]

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 381-70-220 Issuance of subpoenas. The board shall provide to the attorney general and the department of corrections upon request, subpoenas to be completed at the discretion of the attorney general and the department of corrections, provided that such subpoenas are executed without expense to the board.

[91-14-029, § 381-70-220, filed 6/26/91, effective 7/27/91.]

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 381-70-230 Board to schedule hearings. The board shall schedule all on-site parole revocation hearings and shall provide notice to the alleged parole violator of the time and place of the hearing. Such notice shall also be provided to the department of corrections, the attorney general, and to counsel for the parolee, if known, at least seven days prior to the hearing. The board reserves the right to select and change the place of the on-site parole revocation hearing.

[91-14-029, § 381-70-230, filed 6/26/91, effective 7/27/91.]

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 381-70-240 Service of papers—By whom served. The board shall cause to be served all notices, orders, and other papers issued by it, personally or by first class mail, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it with the board with proof of service, either personally or by affidavit of service by first class mail upon the parties and all counsel.

[91-14-029, § 381-70-240, filed 6/26/91, effective 7/27/91.]

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 381-70-250 Upon whom served. All papers served and filed by the board, or any party, shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel.

[91-14-029, § 381-70-250, filed 6/26/91, effective 7/27/91.]

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 381-70-260 Methods of service. Except as otherwise provided by these rules and RCW 9.95.120 through 9.95.125, service of papers shall be made personally or by first class mail, or registered, or certified, return receipt requested.

[91-14-029, § 381-70-260, filed 6/26/91, effective 7/27/91.]

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 381-70-270 When service complete. Service upon parties shall be regarded as complete when documents are deposited in the United States mail properly stamped and addressed, or when served personally upon the intended party.

[91-14-029, § 381-70-270, filed 6/26/91, effective 7/27/91.]

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 381-70-280 Filing with the board. Papers required to be filed with the board shall be deemed filed, upon actual receipt by the board at its offices in Olympia, or by a member at any place within the state accompanied by proof that service was made upon the parties required to be served.

[91-14-029, § 381-70-280, filed 6/26/91, effective 7/27/91.]

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 381-70-290 Subpoenas—Where provided by law—Form. Every subpoena, where authorized by law, shall state "indeterminate sentence review board," the title of the proceeding, if any, the number assigned and shall command the person to whom it is directed to attend and give testimony or produce designated documents or things under his control at a specified time and place.

[91-14-029, § 381-70-290, filed 6/26/91, effective 7/27/91.]

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

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WAC 381-70-300 Issuance to parties. Upon application of counsel for any party to a parole revocation case, there shall be issued to such parties subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding.

The board may issue subpoenas to a party not represented by counsel upon request and upon showing of general relevance and reasonable scope of testimony or evidence sought.

[91-14-029, § 381-70-300, filed 6/26/91, effective 7/27/91.]

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 381-70-310 Quashing subpoenas. Upon motion made promptly, and in any event, at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the board or its authorized member may:

- (1) Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter at issue; or
- (2) Condition denial of the motion upon just and reasonable conditions.

[91-14-029, § 381-70-310, filed 6/26/91, effective 7/27/91.]

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 381-70-320 Subpoenas—Enforcement. Upon application and for good cause shown, the board or the member conducting the hearing may seek judicial enforcement of subpoenas in accordance with RCW 9.95.120 through 9.95.125, issued to parties and which have not been quashed.

[91-14-029, § 381-70-320, filed 6/26/91, effective 7/27/91.]

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 381-70-330 Subpoenas—Geographical scope. Attendance of witnesses and the production of evidence by subpoena may be required from any place in the state of Washington, to any designated place of hearing.

[91-14-029, § 381-70-330, filed 6/26/91, effective 7/27/91.]

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 381-70-340 Conducting a hearing—Presiding officer. All hearings conducted under this chapter shall be heard by a member of the indeterminate sentence review

board. It shall be the duty of the member to conduct hearings in cases assigned in an impartial and orderly manner, and he or she shall have the authority, subject to the other provisions of these rules, to:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas on request of any party;
- (3) Rule on all procedural matters, objections, and motions;
- (4) Rule on offers of proof and receive relevant evidence;
- (5) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter; and
- (6) Take any other action necessary and authorized by these rules and the law.

[91-14-029, § 381-70-340, filed 6/26/91, effective 7/27/91.]

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 381-70-350 Appearance and practice before agency—Who may appear. No person may appear in a representative capacity before the board or any member thereof at a parole revocation hearing other than the following:

- (1) Attorneys at law, qualified and entitled to practice before the supreme court of the state of Washington.
- (2) Out-of-state attorneys must comply with Admission to Practice Rule 7 (see Washington Court Rules).

[91-14-029, § 381-70-350, filed 6/26/91, effective 7/27/91.]

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 381-70-360 Standards of ethical conduct. All persons appearing in parole revocation proceedings before the board or any member thereof in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington. If any such person does not conform to such standards, the board may decline to permit such person to appear in a representative capacity in any proceeding before it or any member thereof.

[91-14-029, § 381-70-360, filed 6/26/91, effective 7/27/91.]

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 381-70-370 Continuances. Any party to a parole revocation hearing, or his or her counsel, who desires a continuance shall, immediately upon receipt of notice of hearing, or as soon thereafter as circumstances requiring such continuance come to his knowledge, notify the board by telephone

followed by a written request stating in detail the reasons why such continuance is necessary.

Requests for continuances shall arrive at the board offices in Olympia not less than seventy-two hours prior to the scheduled hearing. The board or member thereof, in passing upon a request for continuance, shall consider whether such request was promptly and timely made for good cause and whether the parolee will be substantially prejudiced in the presentation of his or her defense. The board may continue a hearing on its own motion if local prosecution is pending or if other circumstances require rescheduling. Appropriate board staff will notify all parties when continuances are granted. During a parole revocation hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the member or members conducting the hearing may, in their discretion or upon motion of counsel, continue the hearing and fix a date for the introduction of additional evidence or presentation or argument. Such oral notice shall constitute the final notice of such continued hearing.

[91-14-029, § 381-70-370, filed 6/26/91, effective 7/27/91.]

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 381-70-380 Prehearing conference. In any proceeding, the presiding officer, upon his or her own motion or upon the motion of one of the parties or their representatives, may direct the parties to appear at a specified time and place for a conference, or such conference may be immediately prior to the parole revocation proceeding, to consider:

- (1) The simplification of the issues;
- (2) Necessities of amendments to any of the papers filed with the board;
- (3) Possibility of obtaining stipulations, admissions of fact, and of documents;
- (4) Limitation of the number of witnesses; and
- (5) Such other matters as may aid in the disposition of the proceeding.

[91-14-029, § 381-70-380, filed 6/26/91, effective 7/27/91.]

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 381-70-390 Hearings—Persons present. Parole revocation hearing shall be open to the public unless the board, for a specifically stated reason, closes the hearing in whole or in part.

[91-14-029, § 381-70-390, filed 6/26/91, effective 7/27/91.]

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 381-70-400 Rules of evidence—Admissibility.

All relevant evidence shall be admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness.

"Relevant evidence" means evidence having a tendency to make the determination of the action more or less probable than it would be without the evidence. In passing upon admissibility of evidence, the presiding officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior courts in the state of Washington. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The presiding officer may, in his or her discretion, either with or without objection, exclude inadmissible evidence, or order accumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. If the sole evidence to support the allegation is hearsay that would be inadmissible in a superior court proceeding and is not substantiated or corroborated, the board shall not enter a finding of guilt. If the sole evidence presented to substantiate the allegation is the result of a polygraph examination, a finding of guilty shall not be made.

The results of polygraph examinations shall not be admissible into evidence at parole revocation hearings unless the following circumstances are present:

(1) The parties have stipulated that the polygraph examination be conducted and the results be admissible in a parole revocation hearing. Such stipulation may be evidenced by showing that the parolee has submitted to a condition of parole that he or she submit himself or herself to polygraph examination at the request of the community corrections officer and that the results of said examination(s) shall be admissible at a subsequent parole revocation hearing. Other stipulations shall be in writing, signed by the community corrections officer or his agent and by the parolee; and

(2) The board panel or member specifically finds that the polygraph examiner is qualified and the proper conditions existed during administration of the test; and

(3) The parties have been afforded an opportunity to confrontation of the examiner, unless good cause for nonconfrontation is specifically found or confrontation is waived.

The board will require polygraph examinations in appropriate cases. Polygraphs will be provided to indigent parolees at state expense, through the department of corrections. Parolees who are not indigent will be required to obtain a polygraph at his/her own expense.

[95-06-008, § 381-70-400, filed 2/16/95, effective 2/13/95. 91-14-029, § 381-70-400, filed 6/26/91, effective 7/27/91.]

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 381-70-410 Hearing record presentation.

There will be a recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved for not less than six months subsequent to the hear-

ing at the offices of the board in Olympia. Parties requesting partial or total duplication of any hearing must submit a request in writing along with blank tapes to receive the copy.

[98-09-045, § 381-70-410, filed 4/15/98, effective 4/13/98. 91-14-029, § 381-70-410, filed 6/26/91, effective 7/27/91.]

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 381-70-420 New minimum term. Procedures specified in chapter 381-30 WAC shall be followed in setting new minimum terms for revoked parole violators. Special note should be made of WAC 381-30-050 which requires such terms to be set within thirty days of admission.

[Statutory Authority: RCW 34.05.220 (1)(b), 42.17.250. 06-05-029, § 381-70-420, filed 2/7/06, effective 3/10/06. 91-14-029, § 381-70-420, filed 6/26/91, effective 7/27/91.]

WAC 381-70-430 Suspended parole cases. If a parole violator is returned to a Washington state correctional facility and his or her parole has been suspended but not revoked by the board, the board shall determine if there is sufficient cause for revocation. If not, the violator's parole shall be reinstated and he or she shall be released from confinement under the same or modified conditions of parole.

[91-14-029, § 381-70-430, filed 6/26/91, effective 7/27/91.]

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 381-70-440 Determination of competency. (1) Whenever, as a preliminary matter to a parole revocation hearing, the parolee or his defense counsel raises the issue of the parolee's competency, or there is reason to doubt his competency, the board member conducting the hearing shall designate at least two qualified experts or professional persons, one of whom shall be approved by the assistant attorney general representing the community corrections officer, or the community corrections officer (if no assistant attorney general is present) to examine and report upon the mental condition of the defendant. For purposes of the examination, the board member may order the defendant committed to a hospital or other suitable facility for a period of time necessary to complete the examination, but not to exceed fifteen days.

A competency examination may be performed by one examiner provided that the examiner is mutually agreeable to all relevant parties and mutual agreement is reached in advance of the examination and the agreement is reduced to written form executed by respective counsel.

(2) The board member hearing the parole revocation hearing may direct that a qualified expert or professional person retained by or appointed for the parolee be permitted to the examinations authorized by the above paragraph and he shall have access to all information obtained by the board appointed experts or professional persons. The defendant's expert or professional persons shall have the right to file his

or her own report following the guidelines of subsection (3) of this section. If the parolee is indigent, the board shall, upon request of the defendant, assist him or her in obtaining an expert or professional person.

(3) The report of the examination shall include the following:

- (a) A description of the nature of the examination;
- (b) A diagnosis of the mental condition of the parolee;
- (c) If the parolee suffers from a mental disease or defect, an opinion as to his or her competency;
- (d) If the parolee has indicated his or her intention to rely on the fact of his or her incompetency at the time of the specified violations during the dispositional phase of his parole revocation hearing, an opinion as to the parolee's sanity at the time of the act that constituted the specified violation or violations;
- (e) When directed by the board, an opinion as to the capacity of the parolee to have a particular state of mind which is an element of the specified violation(s) charged;
- (f) An opinion as to whether the parolee is of danger to other persons, or under further control by the board or other persons or institutions.

(4) At the time the competency evaluation is ordered, the fact determination phase of the parole revocation hearing shall be entered and completed. The dispositional phase shall be continued (as requested by the parolee) for a reasonable time until the competency evaluation can be submitted to the board for its consideration and inclusion in the dispositional phase of the parole revocation hearing.

(5) Dispositional phase: The board shall not lose jurisdiction of a parolee at the dispositional phase, regardless of the outcome of the competency evaluation.

Once the dispositional phase has been convened, the board shall consider the results of the evaluation in making its decision on whether or not to revoke or reinstate the parolee. At the dispositional phase of the parole revocation hearing, the board member shall determine, based on the evaluation and evidence presented therein by both parties, whether or not the individual is competent. Should the board determine that the individual is competent, the board may proceed to reinstate the parolee to parole with special or modified conditions or may revoke the parolee's parole and return him to the state correctional authorities.

Should the board member determine that the parolee is incompetent, the board may reinstate the parolee with the special condition that the parolee voluntarily commit himself or herself under chapter 71.05 RCW, or the board may revoke the parolee's parole and recommend that the parolee be transferred to a state mental institution pursuant to RCW 72.68-031.

[91-14-029, § 381-70-440, filed 6/26/91, effective 7/27/91.]

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 381-80 WAC

PROCEDURES FOR CONDITIONAL DISCHARGE— FINAL DISCHARGE—CLEMENCY

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 as 91-14-029 in the Washington State Register. It is published in the Washington Administrative Code exactly as filed by the agency with history notes added by the code reviser's office.

WAC

381-80-010	Purpose.
381-80-020	Authority.
381-80-030	Scope.
381-80-040	Conditional discharge from parole supervision.
381-80-050	Final discharge from parole supervision.
381-80-060	Clemency.

WAC 381-80-010 Purpose. The purpose of this chapter is to specify policies and procedures for granting conditional and final discharges from parole supervision and for matters of clemency (pardons, reprieves, commutations). 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 to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

[93-23-077, § 381-80-010, filed 11/17/93, effective 8/23/93. 91-14-029, § 381-80-010, filed 6/26/91, effective 7/27/91.]

WAC 381-80-020 Authority. RCW 9.95.150, 9.96.050, 10.01.120, and 9.95.009(2).

[91-14-029, § 381-80-020, filed 6/26/91, effective 7/27/91.]

WAC 381-80-030 Scope. The provisions of this chapter shall apply to adult offenders convicted of crimes in the state of Washington and sentenced under the indeterminate sentencing laws and those officials charged with the supervision of such offenders.

[91-14-029, § 381-80-030, filed 6/26/91, effective 7/27/91.]

WAC 381-80-040 Conditional discharge from parole supervision. Conditional discharge from supervision is defined as that state of parole where a parolee is no longer required to report to an officer of the department of corrections but is required to observe all laws and make an annual written report to the board. Civil rights lost at the time of conviction are not restored.

When a paroled offender has adequately performed the obligations of his or her release for such time as shall satisfy the indeterminate sentence review board, and his or her conditional discharge from supervision is compatible with the best interests of society and the welfare of the paroled individual, and upon receipt of a report from the community corrections officer, the board may grant a conditional discharge from supervision.

Offenders may be granted a conditional discharge from supervision after a period of active supervision or at the time of parole. Parolees may be required to sign and acknowledge

the conditional discharge conditions before the CDFS becomes valid.

In any case where there is a parole suspension no conditional discharge decision will be made until resolution of those allegations.

A full board vote is required to grant a CDFS for any individual convicted of an offense that resulted in a loss of life.

[92-22-008, § 381-80-040, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-80-040, filed 6/26/91, effective 7/27/91.]

WAC 381-80-050 Final discharge from parole supervision. When a paroled offender has adequately performed the obligations of his or her release for a period of three years from the date of parole to the community, the board shall grant a final discharge restoring civil rights, pursuant to chapter 140, Laws of 1993. If the board determines that a final discharge is compatible with the best interests of society and the welfare of the paroled individual, the board may grant a final discharge prior to three years from the date of parole.

Final discharge restoring civil rights is governed by statute (RCW 9.96.050). If granted earlier than three years from the date of parole, full board ratification is required on all cases where the individual was convicted of a crime which resulted in a loss of life.

The right to possess or control firearms is not restored.

In cases where the maximum term has expired, the board may grant a final discharge restoring civil rights if it believes such action is in the best interests of society.

[98-09-045, § 381-80-050, filed 4/15/98, effective 4/13/98. 93-23-077, § 381-80-050, filed 11/17/93, effective 10/18/93. 92-22-008, § 381-80-050, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-80-050, filed 6/26/91, effective 7/27/91.]

WAC 381-80-060 Clemency. The governor, at his or her discretion, may refer requests for pardons, commutations, etc., to the board for a report and recommendation. The report and recommendation shall be reviewed by and voted on by all available board members prior to its submission to the governor (see RCW 9.95.260).

[91-14-029, § 381-80-060, filed 6/26/91, effective 7/27/91.]