

Title 381 WAC

INDETERMINATE SENTENCE REVIEW BOARD

(Formerly: Prison Terms and Paroles, Board of)

Chapters

381-90	Procedures for conducting hearings for determination of release to community custody.
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Chapter 381-90 WAC

PROCEDURES FOR CONDUCTING HEARINGS FOR DETERMINATION OF RELEASE TO COMMUNITY CUSTODY

WAC

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WAC 381-90-010 Purpose. The purpose of this chapter is to specify policies and procedures for hearings conducted to determine the release of community custody board inmates sentenced under RCW 9.94A.507. The following regulations set forth procedural guidelines. These guidelines 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 or the Washington state 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.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-010, filed 3/31/09, effective 5/1/09.]

WAC 381-90-020 Authority. RCW 9.95.420 and 9.94A.507.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-020, filed 3/31/09, effective 5/1/09.]

WAC 381-90-030 Scope. The provisions of this chapter shall apply to offenders sentenced under RCW 9.94A.507 and 9.95.420.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-030, filed 3/31/09, effective 5/1/09.]

WAC 381-90-040 Definitions. For purposes of this chapter, the following words have the following meanings:

"Actuarial risk assessment instruments" means the tools used by the department of corrections to assess an inmate's risk of reoffense.

"Board" means the appointed members of the indeterminate sentence review board created under chapter 9.95 RCW.

"Classification counselor" means an employee of the department of corrections responsible for carrying out specific duties concerning the supervision of sentenced offenders in the prison system.

"Community custody" means that portion of an offender's sentence of confinement served in the community subject to the controls placed on the offender's movement and activities by the court, board and department of corrections.

"Department" means the Washington state department of corrections.

"End of sentence review process" means the review and report issued by the end of sentence review committee in compliance with RCW 72.09.340, 72.09.345 and where appropriate RCW 72.09.370.

"In person" means physical presence, or presence via teleconference or videoconference.

"ISRB" means the indeterminate sentence review board.

"Revocation" means a repeal of community custody and a return to prison.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-040, filed 3/31/09, effective 5/1/09.]

WAC 381-90-050 Release determination. (1) RCW 9.95.420 requires that any convicted person sentenced under the provisions of RCW 9.94A.507 shall be subject to a board hearing to determine releasability. The hearing must be held no later than ninety days before the expiration of the minimum term. However the hearing cannot be held unless the board has received:

(a) The results from the end of sentence review process;
(b) Recommendations for conditions of community custody from the department.

(2) The end of sentence review committee report may include, but is not limited to:

(a) A prediction based upon the administration of actuarial risk assessment instruments and the sexual and criminal history of the offender, of the likelihood that the offender will commit new sex offenses if released;

(b) The institutional progress report(s) covering the inmate's adjustment, achievement, infractions and program participation during incarceration;

(c) Psychiatric or psychological reports, such as IQ appraisals, personality inventories, actuarial risk assessments and sexual history polygraphs;

(d) Behavioral details of the crime(s) of conviction, such as law enforcement reports, prosecutor's statements, court records, and presentence investigation reports;

(e) Recommendations for conditions of community custody in addition to those set by the sentencing court;

(f) The department's risk management level and the sex offender notification level;

(g) Written confirmation that the inmate has had an opportunity to review the information the department is submitting to the board and an opportunity to make a written statement.

(3) The board shall determine whether it is more likely than not that the offender will engage in sex offenses if released to the community in spite of board-imposed conditions of community custody. The board decision related to an offender's likelihood of sexual reoffense is based upon a preponderance of the evidence.

(4) In making a release decision the board may also consider:

(a) The length of time necessary for the offender to complete treatment and programming;

(b) The offender's failure to participate in required evaluations;

(c) The offender's proposed release plan; and

(d) Other pertinent information.

(5) If the board finds the offender not releasable, the board may add up to sixty months to the minimum term.

(6) If the offender is found not releasable and time is added to the minimum term:

(a) The offender may petition for an earlier review when the offender completes required treatment or programming.

(b) The board retains the authority to schedule an earlier review at its discretion.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-050, filed 3/31/09, effective 5/1/09.]

WAC 381-90-060 Release determination after community custody revocation. The board may set a new minimum term if the offender is returned to prison on a revocation. The new minimum term shall not exceed the remaining portion of the sentence. Subsequent release determinations will be conducted as set out in WAC 381-90-050.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-060, filed 3/31/09, effective 5/1/09.]

WAC 381-90-070 Conditions of community custody. Conditions of community custody include those ordered by the court and the board. The conditions are monitored by the department of corrections and enforced by the board.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-070, filed 3/31/09, effective 5/1/09.]

WAC 381-90-080 Inmate to be served notice. The board will send the hearing notice to the institution superintendent/designee in advance of any hearing. The hearing notice shall specify the reason for the hearing, time, date, and place.

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

(2) The original hearing notice is to be signed by the inmate with date of service noted and returned to the board headquarters. The department should retain a copy in the inmate's institutional file and provide a copy to the inmate.

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

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(4) The inmate will be allowed to review a copy of the end of sentence review report with supporting documents prior to the hearing. The inmate shall sign an acknowledgment form that the documents have been reviewed, noting the date and amount of time spent in review. If an interpreter assisted the offender, the interpreter shall also sign and date the acknowledgment form.

(5) The inmate shall be given the opportunity to make a written statement to the board.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-080, filed 3/31/09, effective 5/1/09.]

WAC 381-90-090 Inmate shall be advised of rights. Each inmate who becomes the subject of a hearing conducted under the provisions of RCW 9.95.420 shall be advised of their rights at the time(s) he/she is served with a notice of the hearing. The written notice provided by the board will advise the inmate of the following rights:

(1) To participate in a hearing before a panel of the board and to testify under oath. The board may hold the hearing with the inmate in person or via video conferencing;

(2) To submit letters or statements in support of release;

(3) To review the ESRC report and supporting documents prior to the hearing; and

(4) To receive a written decision from the board.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-090, filed 3/31/09, effective 5/1/09.]

WAC 381-90-100 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 member.

At the time of the hearing under the provisions of RCW 9.95.420, the presiding member will determine if the inmate was given proper notice of the hearing, was advised of the reason for the hearing, and was properly advised of their rights.

A limited number of observers may be present by prior approval of the panel members conducting the hearing, provided that the superintendent or designee authorizes such observers in the facility.

The board reserves the right to exclude any person from the room during a hearing 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 member may recess the hearing at any time for consultation with the other panel member(s).

The panel conducting the hearing will submit its recommendation to the full board for final determination.

In the event of a language and/or communication problem, a certified interpreter shall be present to interpret and assist.

The board will accept written information pertaining to the inmate from any interested person.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-100, filed 3/31/09, effective 5/1/09.]

WAC 381-90-110 Continuances. Prior to the hearing, any party may make a written request for continuance. The

board may grant continuances of scheduled hearings prior to and during hearings, either in the interest of justice or for good cause.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-110, filed 3/31/09, effective 5/1/09.]

WAC 381-90-120 Inmate to be present. The subject of any hearing conducted under the provisions of this chapter may participate in the hearing. However, in the event the inmate refuses to appear, the board will continue the hearing until the next available docket. The ISRB will notify the inmate that if they refuse to attend the next scheduled hearing, the hearing will be conducted in absentia and the board's decision will be based on all available evidence.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-120, filed 3/31/09, effective 5/1/09.]

WAC 381-90-130 Oaths and affirmations. The presiding member conducting hearings under the provisions of this chapter shall have the authority to administer oaths and affirmations.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-130, filed 3/31/09, effective 5/1/09.]

WAC 381-90-140 Admissibility of information. All relevant information shall be admissible.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-140, filed 3/31/09, effective 5/1/09.]

WAC 381-90-150 Disposition. The board shall make a finding of whether or not it is more likely than not that the inmate will commit another sex offense if released to the community.

A list of factors that the board may consider includes, but is not limited to:

(1) Refusal to participate in available programs or resources designed to assist an inmate to reduce the risk of reoffense (e.g., stress and anger management, victim awareness, substance abuse treatment, sex offender treatment).

(2) Serious and repetitive disciplinary infractions during incarceration.

(3) Evidence of an inmate's continuing intent or propensity to engage in sex offenses.

(4) Statements or declarations by the inmate of intent not to comply with conditions of community custody.

(5) End of sentence review determination based on actuarial assessments identifying risk to sexually reoffend.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-150, filed 3/31/09, effective 5/1/09.]

WAC 381-90-160 Statement of decision and reasons. The board will make a written statement of the decision and reasons in each case heard under the provisions of this chapter.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-160, filed 3/31/09, effective 5/1/09.]

WAC 381-90-170 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 ISRB in Olympia in compliance with the current record retention schedule. Parties requesting a copy of any hearing must do so in writing. Parties may be required to reimburse the ISRB for the costs involved in duplication.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-90-170, filed 3/31/09, effective 5/1/09.]

Chapter 381-100 WAC

PROCEDURES FOR CONDUCTING COMMUNITY CUSTODY BOARD VIOLATION HEARINGS

WAC

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WAC 381-100-010 Purpose. The purpose of this chapter is to specify policies and procedures relating to community custody board violation hearings. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person, and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution. The regulations should be interpreted to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-010, filed 3/31/09, effective 5/1/09.]

WAC 381-100-020 Authority. RCW 9.95.420, 9.95.430, 9.95.435, 9.95.440, and 9.95.900.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-020, filed 3/31/09, effective 5/1/09.]

WAC 381-100-030 Scope. The provisions of this chapter shall apply to adult felony offenders granted community

custody from a prison sentence under RCW 9.94A.507 who are alleged to have violated the terms of their order of release.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-030, filed 3/31/09, effective 5/1/09.]

WAC 381-100-040 Definitions. For purposes of this chapter, the following words have the following meanings:

"Appeals panel" means three reviewing officers designated by the chair of the board or their designee with the authority to review decisions made by a board member or hearing officer, and to affirm, reverse, or modify decisions and sanctions in accordance with RCW 9.95.435.

"Board" means the members of the indeterminate sentence review board.

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

"Community custody" means that portion of an offender's sentence served in the community subject to controls placed on the offender's movement and activities by the board and supervised by the department of corrections. Offenders supervised on "community custody board" placement are those who have been sentenced under RCW 9.94A.-712.

"Department" means department of corrections.

"Electronically" when used in reference to submission of documents to the board, means via facsimile, electronic mail or other generally accepted electronic means.

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

"Hearing officer" means a member, employee, or designee of the indeterminate sentence review board authorized to preside over community custody board violation hearings.

"Offender" means any person in the custody of or subject to the jurisdiction of the board.

"On-site desk" means the board's designee that receives notice of violations of community custody board conditions and schedules violation hearings.

"Presiding officer" means a member, employee or designee of the board authorized to act as a hearing officer to preside over community custody board violation hearings.

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

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

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

"Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the criminal conduct of the offender. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

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

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-040, filed 3/31/09, effective 5/1/09.]

WAC 381-100-050 Intent. (1) The indeterminate sentence review board will exercise its authority over offenders in a manner that:

(a) Places a high priority on public safety;

(b) Imposes only those reasonable and enforceable conditions of community custody necessary to facilitate the safety of previous victims and potential victims, encourage responsibility, and to assist the offender's lawful reintegration into the community; and

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

(2) In making a decision on sanctions, community custody revocation or reinstatement, the indeterminate sentence review board may consider the following factors in addition to factors that are case specific:

(a) Whether or not the community custody violation behavior also resulted in a criminal conviction;

(b) The relationship of the community custody violation behavior to the committing offense and the nature of the violation;

(c) The length of time the offender has been on community custody as well as time previously served on the conviction;

(d) The perspective and recommendation of victim(s) and/or other concerned citizens;

(e) The recommendation and supporting reasons offered by the community corrections officer, the offender and attorney, and the assistant attorney general;

(f) The level of risk to the community posed by the offender;

(g) The previous board action during the period of community custody;

(h) The number of previous violation hearings and offender compliance with resulting sanctions; and

(i) The sanction range under the administrative sanction grid.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-050, filed 3/31/09, effective 5/1/09.]

WAC 381-100-055 Board notification of alleged violations. Whenever the CCO receives notification of an offender's alleged violation behavior, the CCO must notify

the ISRB hearing officer of alleged violation(s). Notification may be made via telephone or electronic means.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-055, filed 3/31/09, effective 5/1/09.]

WAC 381-100-060 Notice of arrest by law enforcement officer. Whenever a community corrections officer is notified of an offender's arrest the community corrections officer shall notify the board on-site desk of the arrest within one working day. Notice should be submitted electronically.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-060, filed 3/31/09, effective 5/1/09.]

WAC 381-100-070 Notice of suspension of community custody. When a community corrections officer causes the arrest and detention of an offender, the community corrections officer shall cause a suspension of community custody order to be personally served on the offender within twenty-four hours of arrest, excluding weekends and holidays. The community corrections officer shall electronically submit a copy of the suspension of community custody order to the board and the attorney general within one working day of service of the suspension order.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-070, filed 3/31/09, effective 5/1/09.]

WAC 381-100-080 Board to reinstate. When a community corrections officer suspends, arrests, or detains an offender, such offender shall not be reinstated on community custody 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 community custody to the same or modified conditions of community custody.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-080, filed 3/31/09, effective 5/1/09.]

WAC 381-100-090 Administrative reinstatements. (1) When a community corrections officer has caused the arrest and detention of an offender and after investigation determines:

- (a) That the alleged violations are unfounded; or
- (b) That the seriousness of the alleged violations is mitigated by new information; or
- (c) That further custody is unwarranted and a community custody board revocation hearing is unnecessary; the officer shall submit a written request for reinstatement or report with recommendations to the ISRB.

(2) The board may exercise the option of administrative reinstatement absent a recommendation of the community corrections officer, when such reinstatement is consistent with criteria identified within WAC 381-100-050 and RCW 9.95.440.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-090, filed 3/31/09, effective 5/1/09.]

WAC 381-100-100 Notice and allegations. (1) **In custody.** When a community corrections officer is notified of the arrest and detention by law enforcement of an alleged community custody violator and/or the community custody is suspended by the community corrections officer, the commu-

nity corrections officer shall cause the offender to be personally served with a copy of the *Notice of Allegations and Rights and Privileges* form within three working days of the service of suspension of community custody. The CCO shall submit the notice of allegations electronically to the board with a copy to the attorney general within twenty-four hours of service, excluding weekends and holidays.

(2) **Out of custody.** If an out of custody hearing is requested by the community corrections officer and/or ordered by the board, the notice of allegations shall be served on the offender within three working days of written notice of probable cause from the board, but not less than two working days prior to the hearing. The CCO shall submit the notice of allegations electronically to the board with a copy to the attorney general within twenty-four hours of service, excluding weekends and holidays.

(3) **New or amended allegations.** If, after service of alleged violations as set forth above, the CCO brings forth additional alleged violations or changes to existing alleged violations, the CCO shall cause the offender to be personally served with a copy of the new or amended allegations. The offender will have two working days from the date of service of the new or amended allegations before the board will consider the allegations. The offender may waive the two working days notice and proceed with those new or amended allegations at an already scheduled hearing.

The CCO shall submit such new or amended allegations of violation electronically to the board with a copy to the attorney general within one working day of service on the offender.

(4) **Interpreter services.** Community corrections officers shall obtain interpreter services for offenders with known language or communication barriers when serving documents. For a board hearing, court-certified interpreters shall be used when possible. The CCO shall obtain interpreter services for the offender's board hearing.

(5) **Contents of factual allegations.** The factual allegations of the violations of each condition shall include:

- (a) The circumstances of the alleged violation(s);
- (b) Date of violation or approximation thereof; and
- (c) Location or place where violation occurred.

(6) **Allegations of a new crime.** Whenever an offender is accused of a violation of their community custody that includes the commission of a felony or misdemeanor, the community corrections officer shall advise the board of the status of any pending charge(s). In the case of pending criminal allegations, the board may defer any board hearing pending the outcome or may dismiss without prejudice one or more allegations. If the offender is convicted of a new crime, the CCO shall provide the board with a certified copy of the judgment and sentence.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-100, filed 3/31/09, effective 5/1/09.]

WAC 381-100-110 Probable cause review. A probable cause review shall be conducted by the board's designee within forty-eight hours of the board's receipt of the factual allegation(s) to determine whether probable cause exists to believe the violation or violations occurred. A written probable cause finding will be issued. If the hearing officer finds probable cause, the hearing officer will decide if the offender

will be conditionally released or remain in custody pending further action by the board.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-110, filed 3/31/09, effective 5/1/09.]

WAC 381-100-120 Violation report to be submitted by community corrections officer. (1) For community custody board offenders who are being held in total confinement prior to a hearing, the community corrections officer shall cause the offender to be personally served a violation report within five working days after receipt of written notice of probable cause from the board.

(2) For community custody board offenders who are not being held in total confinement prior to the hearing, the community corrections officer shall cause the offender to be personally served a violation report within ten working days after receipt of written notice of probable cause from the board.

(3) The violation report shall be submitted to the board and the attorney general within two business days from the date of service of the notice of violations on the offender.

(4) The violation report may be submitted electronically.

(5) The violation report shall contain the following:

- (a) The specific conditions alleged to have been violated;
- (b) A summary of facts supporting the allegations;
- (c) Any mitigating information;
- (d) The evidence relating to the violations to be introduced at the hearing; and

(e) A preliminary recommendation for disposition.

(6) The violation report should include a list of witnesses whom the community custody officer may wish to have called for testimony.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-120, filed 3/31/09, effective 5/1/09.]

WAC 381-100-130 Administrative review. (1) Following receipt of the violation report, a board hearing officer will conduct an administrative review to determine the next board action.

(2) The offender and/or attorney may submit information in writing that the board shall consider in an administrative review.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-130, filed 3/31/09, effective 5/1/09.]

WAC 381-100-140 Community custody board violation hearings. (1) The board shall schedule all community custody board violation hearings and shall provide notice to the alleged community custody violator of the time and place of the hearing.

(2) Such notice shall also be provided to the department of corrections, the attorney general, and to counsel for the offender, if retained or appointed, no less than two working days prior to the hearing.

(3) The board reserves the right to select and change the place of the community custody board violation hearing.

(4) The CCO will arrange interpreter services for offenders with known language or communication barriers for violation hearings and will provide the information to the board prior to the scheduling of a hearing.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-140, filed 3/31/09, effective 5/1/09.]

WAC 381-100-150 Rights and privileges relating to violation hearings. (1) An alleged community custody violator shall be entitled to a fair and impartial hearing of the charges of the community custody violation within thirty working days, but not less than two working days, after notice of service of violations specified.

(2) The board shall notify the offender of the right to:

(a) Be present during the fact finding and disposition phases of the hearing. If the offender refuses to participate in the hearing, the board may conduct the hearing in the absence of the offender and may impose sanctions that could include loss of liberty of the offender;

(b) Have the assistance of an interpreter if the offender has a language or communications barrier;

(c) Testify or remain silent;

(d) Call witnesses and present documentary evidence, provided, however:

(i) At an in-custody hearing, outside witnesses may be excluded due to institutional or community concerns; or

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

(iii) The presiding officer may allow a witness to testify outside of the offender's presence when there is substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender during the hearing. The offender may submit a list of questions to ask such witness and testimony may be limited to evidence relevant to the issues under consideration;

(iv) The presiding officer may allow telephonic testimony of witnesses.

(e) Question witnesses who testify;

(f) Be represented by counsel if revocation of the release to community custody is a probable sanction for the violation;

(g) Receive a copy of the findings and conclusions. This includes the evidence relied upon, a finding of guilty or not guilty, the reasons to support the findings, and any sanction(s) imposed;

(h) Receive notice of the right to appeal the sanction to the board; and

(i) Receive notice of the right to file a personal restraint petition under court rules after the final decision of the board.

(3) The board may not revoke the release to community custody of any offender who was not represented by counsel at the hearing, unless the offender has:

(a) Waived the right to counsel; and/or

(b) Waived their right to appeal; and/or

(c) Refused to participate in the hearing.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-150, filed 3/31/09, effective 5/1/09.]

WAC 381-100-160 Acknowledgment of rights. The community corrections officer shall forward to the board and attorney general signed copies of the receipt and acknowledgment of these rights along with copies of the factual allegations. Should the offender refuse to sign either the factual allegations or notification of rights, the community correc-

tions officer shall witness the refusal and note the time and place of service.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-160, filed 3/31/09, effective 5/1/09.]

WAC 381-100-170 Discovery. (1) The community corrections officer shall provide the department's AAG, the offender and/or the offender's defense attorney with a copy of the factual allegations, 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 should include, but not be limited to, copies of the community custody 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 community custody.

(2) The offender or defense counsel shall provide to all parties, including the board, such documents, materials, and information that may be introduced at the hearing.

(3) The community corrections officer and defense shall provide to all parties, including the board, a list of witnesses they may wish to call for testimony.

(4) In addition, the CCO must provide to the offender and/or offender's attorney any material or information within the CCO's knowledge or possession which tends to negate and/or mitigate the offender's guilt as to the violations charged.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-170, filed 3/31/09, effective 5/1/09.]

WAC 381-100-180 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 or designee presiding at a hearing at any place within the state.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-180, filed 3/31/09, effective 5/1/09.]

WAC 381-100-190 Subpoenas. (1) The board shall have the authority to issue subpoenas for compulsory attendance of witnesses and production of evidence

(2) Every subpoena, where authorized by law, shall state "indeterminate sentence review board," and the title of the proceeding. The subpoena shall command the person to whom it is directed to attend and/or give testimony or produce designated documents at a specified time and place.

(3) Subpoenas requiring the attendance and/or testimony of witnesses or the production of evidence may be issued upon application of any party, provided that such subpoenas are executed without expense to the board.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-190, filed 3/31/09, effective 5/1/09.]

WAC 381-100-200 Hearing procedures—Presiding officer. All hearings conducted under this chapter will be heard by a minimum of one member of the board or a designee of the board, serving as the presiding officer. It is the duty of the presiding officer to conduct hearings in an impartial and orderly manner. He or she shall have the authority to:

- (1) Administer oaths and affirmations;
- (2) Rule on all procedural matters, objections, and motions;
- (3) Rule on offers of proof and receive relevant evidence;
- (4) Question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;
- (5) Render or defer a decision; and
- (6) Take any other action necessary and authorized by these rules and the law.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-200, filed 3/31/09, effective 5/1/09.]

WAC 381-100-210 Hearing procedures—Prehearing conference. In any proceeding, the presiding officer, on his or her own motion or on the motion of one of the parties or their representatives, may direct the parties to appear in person or through electronic means at a specified time and place for a prehearing conference. Such conference may be immediately prior to the community custody violation proceeding. A prehearing conference is for the purpose of considering:

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

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-210, filed 3/31/09, effective 5/1/09.]

WAC 381-100-220 Hearing procedures—Presentation of state's case. A community corrections officer and/or an assistant attorney general shall present the state's case.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-220, filed 3/31/09, effective 5/1/09.]

WAC 381-100-230 Hearing procedures—Appearance and practice before agency—Who may appear. No person may appear before the board in a representative capacity on behalf of the offender at a community custody board violation hearing other than the following:

- (1) Attorneys at law, qualified and entitled to practice before the supreme court of the state of Washington.
- (2) Law students admitted to practice under admission to practice rule 9 may represent the department of corrections, with the prior permission of the presiding officer.
- (3) Out-of-state attorneys must comply with admission to practice rule 7 (see Washington court rules).

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-230, filed 3/31/09, effective 5/1/09.]

WAC 381-100-240 Hearing procedures—Standards of ethical conduct. (1) All persons appearing in community custody violation proceedings before the board shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(2) The board may decline to permit any person who does not conform to such standards to appear before it or any designee.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-240, filed 3/31/09, effective 5/1/09.]

WAC 381-100-250 Hearing procedures—Witnesses.

(1) Either party may call witnesses to testify in-person or electronically.

(2) The presiding officer may limit the number of witnesses and the scope of the testimony to matters relevant to the allegations and/or disposition.

(3) Witnesses may be excluded from in-person appearance as follows:

(a) Due to facility concerns; or

(b) Upon a finding of good cause by the presiding officer.

(4) In addition, the presiding officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of the presence of the offender when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony in the offender's presence during the hearing.

(a) In this circumstance, if the offender is not represented by counsel, the offender shall be provided the opportunity to submit a list of questions for any witness testifying outside of their presence.

(b) If the offender is represented by counsel, the attorney shall be allowed to question the witness on the record, but outside the presence of the offender.

(5) In all cases, the presiding officer shall take reasonable precautions related to the safety concerns of witnesses.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-250, filed 3/31/09, effective 5/1/09.]

WAC 381-100-260 Hearing procedures—Continuances. (1) Any party to a community custody board violation hearing who desires a continuance shall notify the board in writing and state the reasons why the continuance is necessary. If represented by counsel, all continuance requests must come from the representing counsel.

(2) Requests for continuances must arrive at the board offices in Olympia not less than twenty-four hours prior to the scheduled hearing. The presiding officer shall consider whether the request was timely and made for good cause and whether the offender will be substantially prejudiced in the presentation of their defense.

(3) The board may continue a hearing on its own motion if local prosecution is pending or if other circumstances require rescheduling.

(4) The board will notify all parties when continuances are granted.

(5) During a community custody board violation hearing, the presiding officer may, in their discretion or upon motion of counsel, continue the hearing for the introduction of additional evidence, presentation or argument.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-260, filed 3/31/09, effective 5/1/09.]

WAC 381-100-270 Hearing procedures—Persons present. Community custody board violation hearings are open to the public unless the presiding officer, for a specifically stated reason, closes the hearing in whole or in part.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-270, filed 3/31/09, effective 5/1/09.]

WAC 381-100-280 Rules of evidence—Admissibility.

(1) 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.

(2) In passing upon admissibility of evidence, the presiding officer 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.

(3) When objection is made to the admissibility of evidence, the evidence may be received subject to a later ruling.

(4) The presiding officer may, in his or her discretion, either with or without objection, exclude inadmissible evidence, or order cumulative evidence discontinued.

(5) Parties objecting to the introduction of evidence shall state the precise grounds of objection at the time such evidence is offered.

(6) A certified laboratory report or a copy of such shall be admissible without further authentication.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-280, filed 3/31/09, effective 5/1/09.]

WAC 381-100-290 Hearing procedures—Findings and conclusions. (1) Alleged violations of the conditions of community custody must be proven by a preponderance of evidence.

(2) No finding of a violation of conditions may be based on hearsay evidence alone.

(3) If the presiding officer concludes that the alleged violations of conditions of community custody have not been proven by a preponderance of evidence, the offender shall be reinstated on community custody on the same or modified conditions.

(4) If the presiding officer concludes that the alleged violations of conditions of community custody have been proven by a preponderance of the evidence, the presiding officer may impose sanctions in accordance with an adopted graduated sanction grid. If the sanction is revocation of the offender's community custody, the board shall enter an order of community custody revocation and return the offender to prison.

(5) After issuance of a revocation sanction, the board will set a new minimum term in a timely manner.

(6) An offender convicted and sentenced to incarceration on a new criminal charge will have the right to a dispositional violation hearing by the board. The board may:

(a) Revoke the community custody of the offender and enter an order of community custody revocation.

(b) Reinstatement of the offender on community custody supervision under the same or modified conditions.

(7) The presiding officer shall make written findings and conclusions concerning the allegations in a timely manner following the decision.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-290, filed 3/31/09, effective 5/1/09.]

WAC 381-100-310 Hearing record preservation.

There will be a recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved in accordance with the indeterminate sentence review board's records retention policies. Parties requesting duplication of any hearing must submit a request in writing; response to all such requests shall be governed by the applicable public disclosure statutes.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-310, filed 3/31/09, effective 5/1/09.]

WAC 381-100-320 Appeal of community custody violation sanctions. (1) The offender may appeal the sanction of the community custody board violation hearing. Appeals must be filed with the board within seven days after the offender receives the findings and conclusions.

(2) The chair of the board or the chair's designee shall appoint a panel of three reviewing examiners to consider the appeal.

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

- (a) The crime of conviction;
- (b) The violation committed;
- (c) The offender's risk of reoffending; or
- (d) The safety of the community.

[Statutory Authority: RCW 34.05.220 (1)(b). 09-08-109, § 381-100-320, filed 3/31/09, effective 5/1/09.]