

# Chapter 137-24 WAC

## SPECIAL DRUG SENTENCING ALTERNATIVE REVOCATION HEARINGS

### WAC

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**WAC 137-24-010 Purpose.** The purpose of this chapter is to specify policies and procedures pertaining to revocation of offenders, while in total/partial confinement, sentenced under the special drug offender sentencing alternative. Offenders sentenced under the special drug offender sentencing alternative, are mandated by statute to undergo a comprehensive substance abuse assessment and receive, within available resources, substance abuse treatment services. Offenders who fail to complete or are administratively terminated from the special drug offender sentencing alternative substance abuse treatment program are subject to reclassification and service of the unexpired term of his/her sentence as ordered by the sentencing court. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution. The regulations should be interpreted as having sufficient flexibility to be consistent with law and permit the department to accomplish its statutory purposes.

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

**WAC 137-24-020 Definitions.** For purposes of this chapter, the following words have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Hearings shall be conducted within five working days, but not less than twenty-four hours, after service of the notice of allegations, hearing and rights, and waiver form.

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

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

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

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

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

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

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

(11) The hearing officer shall:

(a) Administer oaths and affirmation;

(b) Weigh the credibility of the witnesses;

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

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

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

(f) Render or defer a decision; and

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

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

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

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

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

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

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

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

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

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

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

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

(10) To have witnesses provide testimony on his/her behalf, either in person or in a witnessed statement/affidavit. However, outside witnesses may be excluded due to institutional concerns. The hearing officer may also exclude persons from the hearing upon a finding of good cause, or if the information to be presented by the witnesses is deemed irrelevant, duplicative, or unnecessary to the adequate presentation of the inmate's case. In addition, the hearing officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of the offender's presence when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony with the offender present. In either event, the offender may submit a list of questions to ask the witness(es).

(11) To receive a written hearing and decision summary including the evidence presented; a finding of guilty or not guilty; and the reasons to support the findings of guilt; and the sanction imposed. In the event of a deferred decision to receive a copy of the hearing and decision summary from facility staff within a reasonable amount of time.

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

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

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

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

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

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

**WAC 137-24-050 Determination of competency.** (1) Whenever, as a preliminary matter, the offender or the community corrections officer raises the issue of the offender's competency, or there is a reason to doubt his/her competency, the hearing officer shall request a county mental health professional or a qualified expert within the department to examine the offender and report upon the mental condition and competency of the offender to participate in the hearing.

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

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

**WAC 137-24-060 Appeals.** (1) Within seven calendar days of the hearing, the offender may appeal the decision of

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the hearing officer to the appeal panel. The request for review shall be submitted in writing and shall identify the specific issues on appeal.

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

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

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