

**WAC 137-28-300 Conduct of hearing.** (1) The hearing officer shall ensure that the offender's rights are protected throughout the hearing. The hearing officer shall ensure that the offender is capable of understanding the charge against him/her and the nature of the proceedings, and is able to adequately participate in the hearing. If there is reason to doubt the offender's understanding or ability, the hearing officer may order a continuance of the hearing in order to obtain additional information.

(2) The offender shall be present at all stages of the hearing, except during deliberations, examination of any physical evidence and/or confidential information, and any inquiry the hearing officer may make concerning the evidence/information presented, including the source(s) of confidential information.

(a) If new evidence/information is introduced outside the hearing, the offender will have an opportunity to rebut the evidence/information during the hearing.

(b) Unless excused, an offender's failure to attend a scheduled hearing will be considered his/her waiver of the right to be present at the hearing.

(3) An audio recording will be made of all hearings. A written record will also be made of all hearings.

(a) The record shall include:

(i) The name and DOC number of the offender;

(ii) The date, location, and time of the hearing;

(iii) The name of the hearing officer;

(iv) The alleged violation(s);

(v) The offender's plea(s) to the alleged violation(s);

(vi) The names of witnesses;

(vii) A summary of the statements of the offender and any witnesses, and information from any additional sources, including confidential sources;

(viii) A summary of any new evidence/information introduced outside the hearing;

(ix) A description of any physical evidence;

(x) The reasons for denying any witnesses;

(xi) Any witness statements requested by the offender or hearing officer that were not provided or were unavailable, if applicable;

(xii) Any witness questions proposed by the offender that the hearing officer did not ask and the reason(s) the questions were excluded (i.e., irrelevant, duplicative, or unnecessary);

(xiii) The hearing officer's decision, the sanction(s) imposed, and reasons.

(b) If the offender is found guilty, the hearing officer will ensure all related reports, recordings, and attachments become part of the offender's file.

(4) The hearing officer will ensure physical evidence is handled per department policy.

(5) If an offender's behavior disrupts the hearing, he/she may be removed and the hearing will continue on the record in the offender's absence.

(6) If the hearing officer determines that a witness's presence is necessary, the witness may participate by telephone or in person, at the hearing officer's discretion. If the hearing officer determines that participation would be unduly hazardous to facility safety or correctional goals, the witness will provide a written statement.

(7) The hearing officer has the authority to question all witnesses. The offender may submit proposed questions to be asked of wit-

nesses, but the hearing officer may exclude questions that are irrelevant, duplicative, or unnecessary to the adequate presentation of the offender's case.

(8) Information from a confidential source will be introduced by the testimony of the staff member who received the information.

(a) The hearing officer shall, out of the presence of the offender and off the record, review the confidential information and make an independent determination regarding the reliability of the source, the credibility of the information, and the necessity of not revealing the source. In determining whether the source is reliable and the information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

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

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

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

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

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

(vi) The existence of corroborating evidence.

(b) The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information.

(c) The reliability and credibility determination and the need for confidentiality must be made on the record.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-300, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-300, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-300, filed 7/13/95, effective 8/15/95.]