

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.

[WSR 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.