



RULE MAKING ORDER

(RCW 34.05.360)

CR-103 (07/10/97)

Agency: Washington State Department of Corrections

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of Adoption:
February 11, 2000

(2) Purpose:
To establish procedures for detainees

(3) Citation of Rules Affected by this order:
Repealed: 0
Amended: 0
Suspended: 0

(4) Statutory authority for adoption: RCW 72.01.090
Other Authority:

PERMANENT RULE ONLY (including EXPEDITED ADOPTION)

Adopted under notice filed as WSR _____ on _____ (date).
Describe any changes other than editing from proposed to adopted version:

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: These rules readopt the substantive provisions of chapter 275-76 WAC, which was repealed by the Department of Social and Health Services (DSHS). Chapter 275-76 WAC was adopted when the Department of Corrections was the Adult Corrections Division of the DSHS. The agency previously adopted emergency rules. While the agency has been actively taking steps to adopt rules on a permanent basis, the steps have not yet been completed. Immediate adoption remains necessary since rules on this subject are essential for the safety and general welfare of the community affected by an offender's detainee. The agency filed its notice of intent to adopt permanent rules governing detainee.

EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date).

(5.3) Any other findings required by other provisions of law as precondition to adoption of effectiveness of rule?

Yes No If Yes, explain:

(6) Effective date of rule:

Permanent Rules

Emergency Rules

or Expedited Repeal

- 31 days after filing
- Other (specify) _____*
- Immediately
- Later (specify) _____

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

NAME (TYPE OR PRINT)

Joseph D. Lehman

SIGNATURE

TITLE: Secretary DATE: 2/11/00

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STATE OF WASHINGTON

FEB 11 2000

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**Note: if any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed
Federal rules or standards:	New	_____	Amended	_____	Repealed
Recently enacted state statutes:	New	_____	Amended	_____	Repealed

*(current calendar year)

The number of sections adopted at the request of a nongovernmental entity:

New _____ Amended _____ Repealed

The number of sections adopted on the agency's own initiative:

New 16 Amended _____ Repealed

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New _____ Amended _____ Repealed

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed
Pilot rule making:	New	_____	Amended	_____	Repealed
Other alternative rule making:	New	_____	Amended	_____	Repealed

New Section 9

WAC 137-130-005 Definitions. For purposes of this chapter: (1) "Detainer" shall mean a formal written request by a requesting authority to the superintendent of a correctional facility subject to the jurisdiction and control of the department asking that the superintendent

(a) Notify the requesting authority when the release of a particular offender is imminent, and/or

(b) Hold the offender pending transfer of the offender to the custody of the requesting authority.

(2) "Superintendent" shall refer to the chief administrator of a correctional facility subject to the jurisdiction and control of the department, or his/her authorized agents.

(3) "Department" shall mean the department of corrections of the state of Washington.

(4) "Requesting authority" shall mean any criminal justice agency which files a detainer with the department or with the superintendent of a correctional facility subject to the jurisdiction and control of the department.

(5) "State administrator" shall refer to the state officer designated, in accordance with the provisions of chapter 9.100 RCW, to administer the interstate agreement on detainers within the state of Washington.

(6) "Offender" shall refer to an inmate of a correctional facility subject to the jurisdiction and control of the department.

NEW SECTION 10

WAC 137-130-010 Purposes of detainers. Detainers may be filed with the department or with the superintendent of a correctional facility subject to the jurisdiction and control of the department in order to accomplish any of the following purposes:

(1) "Trial or pretrial detainers" -- to secure the return of an offender to the jurisdiction and custody of the requesting authority for trial on pending criminal charges or for pretrial proceedings on potential but not yet pending criminal charges;

(2) "Commitment detainers" -- to secure the return of an offender to the jurisdiction and custody of the requesting authority for service of an unexpired portion of the offender's sentence on a previous conviction;

(3) "Probation or parole revocation detainers" -- to secure the return of an offender to the jurisdiction and custody of the requesting authority for a hearing on whether the offender's probation or parole, previously granted in connection with a prior conviction and sentence, should be revoked;

(4) "Miscellaneous detainers" -- to secure the return of an offender to the jurisdiction and custody of the requesting authority for such miscellaneous purposes as are necessary and valid in the context of the criminal justice system.

NEW SECTION 11

WAC 137-130-020 Form of detainers. A detainer filed with the department or with the superintendent of a correctional facility subject to the jurisdiction and control of the department shall contain, and describe in detail, the following information:

(1) The identity of the requesting authority;

(2) The purpose of the detainer;

(3) The legal basis for the detainer, including, in all cases, a description of the factual circumstances which provide the basis for the issuance of the detainer;

(4) The sentence or possible penalties which the offender will face if delivered to the custody of the requesting authority;

(5) A statement as to whether it is the intention of the requesting authority to execute the detainer and subject the offender to trial, hearing, or incarceration.

NEW SECTION Ⓢ

WAC 137-130-030 Evaluation of detainer request. Whenever a superintendent receives a detainer request he/she shall evaluate the request to determine if it complies in form and content with the provisions of this chapter.

(1) If the superintendent determines that a detainer request is valid, he/she shall acknowledge in writing to the requesting authority that the detainer has been received and will be honored by the department in accordance with the provisions of the interstate agreement on detainers.

(2) If the superintendent determines that a detainer fails to comply with the provisions of this chapter and is therefore invalid, he/she shall forward the detainer request to the state administrator who shall then make a final determination as to the validity of the detainer.

(a) If the state administrator determines that the detainer is invalid he/she shall immediately

(i) Notify the requesting authority that the detainer will not be honored by the department;

(ii) Inform the requesting authority in detail of the manner in which the detainer fails to comply in form and/or content with the provisions of this chapter;

(iii) Inform the requesting authority that the detainer will be honored if refiled in compliance with the provisions of this chapter.

(b) If the administrator determines that the detainer is valid, he/she shall

immediately inform the superintendent of his/her decision and ask the superintendent to acknowledge in writing to the requesting authority that the detainer has been received and will be honored by the department.

(3) If the superintendent determines that a detainer is in fact merely a request for notice as to the offender's present status or future release date, and not a request that the offender be held pending transfer to the custody of the requesting authority, he/she shall inform the requesting authority that

(a) The detainer will be honored as a request for notice,

(b) The offender will not be held by the department for

transfer to the custody of the requesting authority, and

(c) The requesting authority may, if it wishes, file a new detainer, requesting that the offender be held by the department for transfer to the custody of the requesting authority.

NEW SECTION Ⓢ

WAC 137-130-040 Trial or pretrial detainers. (1) Who may file. The authority to issue or file trial or pretrial detainers shall generally be limited to the chief prosecuting authority of the jurisdiction making the detainer request.

(a) Nonprosecutorial officials, such as state or county sheriffs or police, shall not have authority to file detainers.

(b) In federal matters a United States marshal may formally file a detainer when acting on behalf of a United States district attorney or attorney general.

(2) Supportive materials necessary. Trial or pretrial detainers shall be accompanied by a certified copy of the complaint, indictment, information, or court order which is the jurisdictional basis for the detainer.

(3) Underlying charge. The underlying charge upon which a trial or pretrial detainer is based shall be either a felony or gross misdemeanor under the laws of the state of Washington.

(4) Notice to offender. Upon receipt of a valid trial or pretrial detainer a superintendent shall immediately notify the offender against whom the detainer has been filed of the existence, nature, and content of the detainer. In addition, the superintendent shall immediately notify the offender of his/her right to demand final disposition of the criminal charges underlying the detainer.

(5) Final disposition. An offender against whom a trial or pretrial detainer has been filed may demand of the requesting authority that a final disposition be made of the criminal charges underlying the detainer.

(a) A requesting authority shall be required to bring an offender to trial on the charges underlying a trial or pretrial detainer within one hundred and eighty days after receiving notice from the offender of the offender's place of incarceration and of his/her desire for final disposition of the underlying charges; provided that, a court having jurisdiction of the underlying charge may grant any necessary or reasonable continuance.

(b) An offender's demand for final disposition of the criminal charge underlying a particular detainer shall operate as a request for final disposition of the charges underlying any and all detainers filed against the offender by requesting authorities within the state to which the request for final disposition is directed.

(c) An offender's demand for final disposition shall be deemed a waiver of extradition with respect to any and all proceedings necessary to said final disposition.

(d) An offender's demand for final disposition shall be deemed a future waiver of extradition to the requesting state for service of any sentence imposed upon the offender in connection with said final disposition.

(e) An offender's demand for final disposition shall constitute consent to be returned to the institution where presently confined upon completion of the trial or pretrial proceedings in the requesting state.

(6) Request for temporary custody. A requesting authority which has filed a valid trial or pretrial detainer may request temporary custody of the offender for the purpose of resolving the criminal charges underlying the detainer.

(a) Upon receipt of a request for temporary custody from a requesting authority which has filed a valid trial or pretrial detainer, the superintendent shall immediately give the following notice to the offender who is the subject of the detainer:

(i) Notice of the source and content of the request for temporary custody,

(ii) Notice of the offender's right to retain counsel at his/her own expense to assist in opposing the request for temporary custody,

(iii) Notice of the offender's right to oppose the request for temporary custody by filing with the governor, within thirty days of receipt of the request for temporary custody, a

- statement setting forth the reasons why the request for temporary custody should not be granted, and
- (iv) Notice of the offender's right to contest, either before or after transfer, the legality of his/her transfer to the requesting authority pursuant to the request for temporary custody.
- (b) In accordance with the provisions of chapter 9.100 RCW a request for temporary custody shall not be honored for a period of thirty days after receipt of the request, during which time the governor of the state of Washington may either approve or disapprove the transfer. If the governor either approves or fails within the thirty day time limit to disapprove the transfer, the request for transfer shall be honored at the end of said thirty day period.
- (7) Offender in custody on appeal. An offender who is in custody pending disposition of his/her appeal from a state criminal conviction, and against whom a valid trial or pretrial detainer has been filed, may be transferred to the custody of a requesting authority pursuant to a request for final disposition or temporary custody.
- (a) Whenever a request for final disposition or temporary custody is made with regard to an offender in custody pending appeal, the superintendent shall
 - (i) Give appropriate notice to the prosecuting attorney of the county in which the conviction was obtained and from which the appeal has been taken,
 - (ii) Notify and acknowledge to the offender and the requesting authority that the request for transfer has been received, and
 - (iii) Make a recommendation to the state administrator regarding the request for transfer.
 - (b) The state administrator shall determine, in the exercise of his/her discretion, whether the offender should be transferred pursuant to the request for final disposition or temporary custody or should be held in the custody of the department pending disposition of the appeal. The state administrator's determination shall be based upon the following factors:
 - (i) The recommendation of the superintendent,
 - (ii) The recommendation, if any, of the prosecuting attorney involved in the pending appeal,
 - (iii) The anticipated time for resolution of the pending appeal,
 - (iv) The desire of the offender, and
 - (v) Such other factors as may be relevant and material in the context of the individual case.
- (8) Procedure for transfer, handling and return of offender. The transfer, handling, and return of an offender pursuant to a request for final disposition or a request for temporary custody shall be governed by the provisions of article V of the interstate agreement on detainees, RCW 9.100.010.
- (9) One year time limitation. A jurisdiction wishing to file a trial or pretrial detainer against an offender held within the institutions of the state shall be required to file said detainer within one year after receiving actual notice that the offender is being held within this state.
- If a requesting authority fails to proceed within the one year time limit, a subsequent trial or pretrial detainer filed by that requesting authority against the offender in question will not be honored unless based upon an underlying charge of homicide or attempted homicide.

NEW SECTION 8

WAC 137-130-050 Commitment detainers. (1) Who may file. The authority to issue or file a commitment detainer shall be limited to the jurisdictional authority responsible for the custody of the offender in question upon his/her return to the requesting state. Such jurisdictional authorities would include parole agencies, probation agencies, or the agencies responsible for the administration of correctional institutions.

(2) Supportive materials. In addition to the information required by WAC 137-130-020, commitment detainers shall be accompanied by certified copies of the official court documents rendering the judgment and imposing the sentence which are the jurisdictional basis for the detainer and by a statement from the requesting agency setting forth the legal basis for its authority to execute the sentence which is the basis for the detainer.

(3) Notice to offender. Upon receipt of a valid commitment detainer, a superintendent shall immediately notify the offender against whom the detainer has been filed of the existence, nature, and content of the detainer.

NEW SECTION 9

WAC 137-130-060 Probation or parole revocation detainers. (1) Who may file. The authority to issue or file parole or probation revocation detainers shall be limited to the parole or probation authority which has initiated the revocation proceedings.

(2) Supportive materials necessary. In addition to the material required by WAC 137-130-020, parole or probation revocation detainers shall be accompanied by certified copies of all documents necessary to establish the requesting agency's jurisdictional authority to undertake the revocation proceedings.

(3) Notice to offenders. Upon receipt of a valid probation or parole revocation detainer, a superintendent shall immediately notify the offender against whom the detainer has been filed of the existence, nature, and content of the detainer.

(4) No right to demand final disposition. An offender against whom a probation or parole revocation detainer has been filed shall not be entitled to demand of the requesting authority that final disposition be made of the charges which are the basis for the pending revocation proceedings and the detainer.

NEW SECTION 9

WAC 137-130-070 Miscellaneous detainers. (1) Who may file. The authority to issue or file detainers other than those specified in WAC 137-130-040, 137-130-050 and 137-130-060 shall be limited to:

(a) The chief prosecuting authority of the jurisdiction making the detainer request, or

(b) Courts of general jurisdiction within the jurisdiction making the detainer request.

(2) Supportive materials necessary. In addition to the material required by WAC 137-130-020, miscellaneous detainers shall be accompanied by certified copies of all documents necessary to establish the requesting agency's jurisdictional authority to file and execute the detainer.

(3) Notice to offender. Upon receipt of a valid miscellaneous detainer the superintendent shall immediately notify the offender against whom the detainer has been filed of the existence, nature, and content of the detainer.

NEW SECTION 4

WAC 137-130-080 Offender to be made available. (1) Whenever a valid detainer is filed against an offender of an institution under the jurisdiction and control of the department, the superintendent of that institution shall take all such precautions as are reasonably necessary to assure that the offender shall be made available to the requesting authority upon his/her release from the custody of the department.

(2) Upon receipt of a valid detainer, the superintendent shall immediately order that the custody status of the offender in question be examined and appropriate action taken to assure the availability of the offender for transfer to the requesting authority.

(3) The superintendent shall give notice to the requesting authority of the date of the requested offender's release to parole or final release as soon as possible after the superintendent receives notice of said release date.

(a) The superintendent shall promptly notify the requesting authority whenever any changes are made in the offender's proposed release date.

NEW SECTION 4

WAC 137-130-090 Reduced custody programs. (1) If at the time a detainer is filed against an offender, the offender is participating in a reduced custody program, such as honor camp, furlough, or work release programs, the superintendent shall immediately notify the person in charge of such program of the detainer and the factual circumstances which provide the basis for its issuance and such person shall then promptly evaluate the appropriateness of the offender's continuing participation in such program.

(2) If an offender against whom a detainer has previously been filed should apply or be considered for placement in a reduced custody program, the superintendent shall consider the factual circumstances which provide the basis for issuance of the detainer along with all other relevant factors normally considered in determining the appropriateness of the offender's participation in the proposed reduced custody program.

NEW SECTION 4

WAC 137-130-100 Requested offender on parole. If, at the time a valid detainer is filed against an offender, the offender has been released on parole, the superintendent shall immediately

(1) Notify the offender that a valid detainer has been filed against him,

(2) Inform the requesting authority that the offender has been released on parole,

(3) Inquire of the requesting authority as to its intended course of action with regard to the detainer, and

(4) Inform the state board of prison terms and paroles that a valid detainer has been filed against the parolee-offender.

NEW SECTION 4

WAC 137-130-110 Transfer of offender to mental hospital. (1) If an offender against whom a valid detainer has been filed is to be transferred from an adult correctional

institution to a state mental hospital, the superintendent of the correctional institution shall, in advance of the transfer:

(a) Notify the requesting authority of the proposed transfer of the offender and the reasons for the transfer; and

(b) Notify the superintendent of the mental hospital of the existence and nature of the detainer which has been filed against the offender.

(2) During the time in which an offender against whom a detainer has been filed is a patient of a state mental hospital, the superintendent of the mental hospital shall assume full responsibility for custody of the patient-offender and shall take all such precautions as are reasonably necessary to assure that the individual shall be made available to the requesting authority upon his/her release from the custody of the department.

NEW SECTION 8

WAC 137-130-120 Recommendation for withdrawal of detainer. (1) Prior to the anticipated release date of an offender against whom a valid detainer has been filed, the superintendent shall:

(a) Prepare an evaluation of the offender, outlining the offender's actions and activities while in custody in the institution and indicating whether a post-release parole plan and program has been developed for the offender,

(b) Make a recommendation to the state administrator as to whether the department should attempt to obtain the withdrawal by the requesting authority of the detainer filed against the offender,

(c) Furnish copies to the offender of said evaluation and recommendation.

(2) When the superintendent has recommended that the department seek the withdrawal of a detainer, the state administrator, after considering the circumstances of the offense for which the detainer was placed and the justification for the superintendent's recommendation, may

(a) Ask the requesting authority to withdraw the detainer, and

(b) Furnish the requesting authority with the evaluation and recommendation prepared by the superintendent.

(3) When a requesting authority indicates in writing that it wishes to withdraw a previously filed detainer, the superintendent shall notify the offender and the indeterminate sentence review board, and acknowledge to the requesting authority, that the detainer has been withdrawn.

(4) The superintendent shall hold and make the offender available for transfer to the requesting authority in accordance with the provisions of this chapter whenever a requesting authority either

(a) Indicates that it intends to exercise its detainer, notwithstanding the recommendation of the state administrator and the superintendent, or

(b) Fails to make a response to the state administrator's recommendation and inquiry.

NEW SECTION 16

WAC 137-130-130 Identification of requesting authority's transferring agency. (1) It shall be the responsibility of a superintendent, prior to delivering an offender to the

custody of an agent of the requesting authority pursuant to a detainer, to verify (a) The identity of the agent, and

(b) The jurisdictional authority of the agent to take custody of the offender pursuant to the detainer.

NEW SECTION

WAC 137-130-140 Failure of requesting authority to take custody. When the department has agreed to the transfer of an offender to the custody of a requesting authority on the date of the offender's release on parole or final release, the requesting authority shall be required to appear and take custody of the offender on said date. If the requesting authority fails to appear as required, the offender shall be released.

NEW SECTION

WAC 137-130-150 Detainer request by nonsignator of interstate agreement on detainers. The provision of this chapter shall be fully applicable to detainers filed with the department by a state which is not a signator to the interstate agreement on detainers, except that the procedure for transfer of an offender under such circumstances shall be governed by the provisions of chapter 10.88 RCW, the Uniform Criminal Extradition Act.