

WSR 22-03-068

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed January 14, 2022, 2:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-08-004.

Title of Rule and Other Identifying Information: Chapter 137-25

WAC.

Hearing Location(s): On February 22, 2022, at 2:00 p.m., Microsoft Teams meeting. Please contact rules coordinator at vvchebotar@doc1.wa.gov to register. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Date of Intended Adoption: March 22, 2022.

Submit Written Comments to: Vadim V. Chebotar, Senior Contracts Attorney, Department of Corrections (DOC), Contracts and Legal Affairs, P.O. Box 41114, Tumwater, WA 98504-1114, email vvchebotar@doc1.wa.gov, by February 17, 2022.

Assistance for Persons with Disabilities: Contact Vadim V. Chebotar, senior contracts attorney, email vvchebotar@doc1.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Make administrative changes, as necessary, to ensure WAC complies with department policy. The purpose of making changes to this section of the WAC is to remove work release from the applicability. This change allows for the update to chapter 137-56 WAC which will separate partial and total confinement, include all partial confinement programs, and identify progressive discipline within partial confinement.

Reasons Supporting Proposal: WAC should accurately comply with department policy.

Statutory Authority for Adoption: RCW 72.01.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Carrie Trogdon-Oster, DOC Headquarters, 253-377-7636; Enforcement: Susan Leavell, DOC Headquarters, 360-970-3650.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

January 5, 2022
Cheryl Strange
Secretary

OTS-3231.2

Chapter 137-25 WAC
SERIOUS VIOLATIONS—TOTAL ((AND PARTIAL)) CONFINEMENT FACILITIES

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

WAC 137-25-010 Application of chapter. The definitions and serious violations described herein apply to offenders committed to ((both)) total ((and partial)) confinement facilities.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-25-010, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-25-010, filed 11/28/05 and 12/28/05, effective 5/1/06.]

AMENDATORY SECTION (Amending WSR 19-24-045, filed 11/26/19, effective 12/13/19)

WAC 137-25-030 Serious violations. (1) Any of the following types of behavior may constitute a serious violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation, with the exception of attempting an aggravated assault. Attempting to commit an aggravated assault will be charged as violation:

- (a) #633 When against another offender;
- (b) #704 When against a staff member; or
- (c) #711 When against a visitor or community member.

Category A

501 - Committing homicide
502 - Committing aggravated assault against another offender
507 - Committing an act that would constitute a felony and that is not otherwise included in these rules
511 - Committing aggravated assault against a visitor or community member
521 - Taking or holding any person hostage
550 - Escaping
601 - Possessing, manufacturing, or introducing an explosive device or any ammunition, or any component thereof
602 - Possessing, manufacturing, or introducing any firearm, weapon, sharpened instrument, knife, or poison, or any component thereof
603 - Introducing or transferring any unauthorized drug or drug paraphernalia

604 - Committing aggravated assault against a staff member
611 - Committing sexual assault against a staff member
613 - Committing an act of sexual contact against a staff member
635 - Committing sexual assault against another offender, as defined in department policy (i.e., aggravated sexual assault or offender-on-offender sexual assault)
637 - Committing sexual abuse against another offender, as defined in department policy
650 - Rioting, as defined in RCW 9.94.010
651 - Inciting others to riot, as defined in RCW 9.94.010
830 - Escaping from work/training release with voluntary return within 24 hours
831 - While in work/training release, failing to return from an authorized sign out
882 - While in prison, introducing, possessing, or using a cell phone, electronic/wireless communication device, or related equipment without authorization

Category B - Level 1

504 - Engaging in a sex act with another person(s) within the facility that is not otherwise included in these rules, except in an approved extended family visit
553 - Setting a fire
560 - Possessing items or materials likely to be used in an escape without authorization
633 - Assaulting another offender
704 - Assaulting a staff member
711 - Assaulting a visitor or community member
744 - Making a bomb threat
884 - Urinating, defecating, or placing feces or urine in any location other than a toilet or authorized receptacle
886 - Adulterating any food or drink
892 - Giving, selling, or trading any prescribed medication, or possessing another offender's prescribed medication

Category B - Level 2

505 - Fighting with another offender
556 - Refusing to submit to or cooperate in a search when ordered to do so by a staff member
607 - Refusing to submit to a urinalysis and/or failing to provide a urine sample within the allotted time frame when ordered to do so by a staff member
608 - Refusing or failing to submit to a breath alcohol test or other standard sobriety test when ordered to do so by a staff member
609 - Refusing or failing to submit to testing required by policy, statute, or court order, not otherwise included in these rules, when ordered to do so by a staff member
652 - Engaging in or inciting a group demonstration

655 - Making any drug, alcohol, or intoxicating substance, or possessing ingredients, equipment, items, formulas, or instructions that are used in making any drug, alcohol, or intoxicating substance
682 - Engaging in or inciting an organized work stoppage
707 - Introducing or transferring alcohol or any intoxicating substance not otherwise included in these rules
716 - Using an over the counter medication without authorization or failing to take prescribed medication as required when administered under supervision
736 - Possessing, manufacturing, or introducing an unauthorized key or electronic security access device
750 - Committing indecent exposure
752 - Possessing, or receiving a positive test for use of, an unauthorized drug, alcohol, or intoxicating substance
778 - Providing a urine specimen that has been diluted, substituted, or altered in any way

Category B - Level 3

503 - Extorting or blackmailing, or demanding or receiving anything of value in return for protection against others or under threat of informing
506 - Threatening another with bodily harm or with any offense against any person or property
509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area
525 - Violating conditions of a furlough
549 - Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in department policy
558 - Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties
600 - Tampering with, damaging, blocking, or interfering with any locking, monitoring, or security device
605 - Impersonating any staff member, other offender, or visitor
653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction
654 - Counterfeiting or forging, or altering, falsifying, or reproducing any document, article of identification, money, or security or other official paper without authorization
660 - Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is five dollars or more
709 - Out-of-bounds: Being in another offender's cell or being in an area in the facility with one or more offenders without authorization
738 - Possessing clothing or assigned equipment of a staff member

739 - Possessing, transferring, or soliciting any person's identification information, including current staff members or their immediate family members, when not voluntarily given. Identification information includes Social Security numbers, home addresses, telephone numbers, driver's license numbers, medical, personnel, financial, or real estate information, bank or credit card numbers, or other like information not authorized by the superintendent
745 - Refusing a transfer to another facility
746 - Engaging in or inciting an organized hunger strike
762 - Noncompliance with the DOSA program. Note: This violation must be initiated by authorized <u>employees/contract</u> staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC
777 - Causing injury to another person by resisting orders, assisted movement, or physical efforts to restrain
813 - Being in the community without authorization, or being in an unauthorized location in the community
814 - While in work/training release, violating an imposed special condition
879 - Operating or being in a motor vehicle without permission or in an unauthorized manner or location
889 - Using facility phones, information technology resources/systems, or related equipment without authorization

Category C - Level 1

508 - Spitting or throwing objects, materials, or substances in the direction of another person(s)
557 - Refusing to participate in an available work, training, education, or other mandatory programming assignment
563 - Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices
610 - While in prison, receiving or possessing prescribed medication without authorization
620 - Receiving or possessing contraband during participation in off-grounds or outer perimeter activity or work detail
659 - Committing sexual harassment against another offender, as defined in department policy
661 - Committing sexual harassment against a staff member, visitor, or community member
663 - Using physical force, intimidation, or coercion against any person
702 - Possessing, manufacturing, or introducing an unauthorized tool
708 - Organizing or participating in an unauthorized group activity or meeting
717 - Causing a threat of injury to another person by resisting orders, assisted movement, or physical efforts to restrain
720 - Flooding a cell or other area of the facility
724 - Refusing a cell or housing assignment

734 - Participating or engaging in the activities of any unauthorized club, organization, gang, or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang, or security threat group
810 - Failing to seek/maintain employment or training or maintain oneself financially, or being terminated from a work, training, education, or other programming assignment for negative or substandard performance
893 - Damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband
896 - Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, marital status or status as a state registered domestic partner, disability, veteran's status, or genetic information
899 - Failing to obtain prior written authorization from the sentencing court, contrary to RCW 9.94A.645, prior to commencing or engaging in any civil action against any victim or family of the victim of any serious violent crime the offender committed

Category C - Level 2

552 - Causing an innocent person to be penalized or proceeded against by providing false information
554 - Damaging, altering, or destroying any item that is not the offender's personal property, the value of which is ten dollars or more
710 - Acquiring an unauthorized tattoo/piercing/scar, tattooing/piercing/scarring another, or possessing tattoo/piercing/scarring paraphernalia
718 - Using the mail, telephone, or electronic communications in violation of any law, court order, or previous written warning, direction, and/or documented disciplinary action
726 - Telephoning, sending written or electronic communication, or otherwise initiating communication with a minor without the approval of that minor's parent or guardian

Category C - Level 3

606 - Possessing, introducing, or transferring any tobacco, tobacco products, matches, or tobacco paraphernalia
657 - Being found guilty of four or more general violations arising out of separate incidents within a 90-day period
658 - Failing to comply with any administrative or posthearing sanction imposed for committing any violation
812 - Failing to report/turn in all earnings

Category D

517 - Committing an act that would constitute a misdemeanor and that is not otherwise included in these rules

551 - Providing false information to the hearing officer or in a disciplinary appeal
555 - Stealing property, possessing stolen property, or possessing another offender's property
559 - Gambling or possessing gambling paraphernalia
656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service
662 - Soliciting goods or services for which the provider would expect payment, when the offender knows or should know that he/she lacks sufficient funds to cover the cost
706 - Giving false information when proposing a release plan
714 - Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is ten dollars or more
725 - Telephoning or sending written or electronic communication to any offender in a correctional facility, directly or indirectly, without prior written approval of the superintendent/community corrections supervisor/designee
728 - Possessing any sexually explicit material(s), as defined in WAC 137-48-020
740 - Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense
741 - Stealing food, the value of which is five dollars or more
742 - Establishing a pattern of creating false emergencies by feigning illness or injury
755 - Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is ten dollars or more
811 - Entering into an unauthorized contract
861 - Performing or taking part in an unauthorized marriage
890 - Failing to follow a medical directive and/or documented medical recommendations, resulting in injury

(2) If contraband or another violation is discovered in an offender's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all offenders assigned responsibility for that area.

[Statutory Authority: RCW 72.01.090 and 72.65.100. WSR 19-24-045, § 137-25-030, filed 11/26/19, effective 12/13/19. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-25-030, filed 9/24/15, effective 1/8/16. WSR 14-12-095, § 137-25-030, filed 6/4/14, effective 7/1/14. Statutory Authority: RCW 72.09.130, 72.01.090, and 72.65.100. WSR 11-17-119, § 137-25-030, filed 8/23/11, effective 9/23/11; WSR 09-01-195, § 137-25-030, filed 12/24/08, effective 1/24/09; WSR 06-21-054, § 137-25-030, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-25-030, filed 11/28/05 and 12/28/05, effective 5/1/06.]

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.