

WSR 23-17-100

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed August 16, 2023, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-10-041.

Title of Rule and Other Identifying Information: Chapter 137-25 WAC, Serious violations—Total and partial confinement facilities; and chapter 138-28 WAC, Discipline—Prisons.

Hearing Location(s): On September 28, 2023, at 2:00 p.m., Microsoft Teams meeting. Please contact rules coordinator at vvchebotar@doc1.wa.gov to register.

Date of Intended Adoption: October 31, 2023.

Submit Written Comments to: Vadim V. Chebotar, Senior Contracts Attorney, Department of Corrections, Contracts and Legal Affairs, P.O. Box 41114, Tumwater, WA 98504-1114, email vvchebotar@doc1.wa.gov, by September 25, 2023.

Assistance for Persons with Disabilities: Contact Vadim V. Chebotar, 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 of corrections (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: The 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: Department of corrections, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael Hathaway, department of corrections headquarters, 425-754-0882.

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.

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.

August 11, 2023
Cheryl Strange
Secretary

OTS-4729.1

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~~) incarcerated individuals committed to both total and partial confinement facilities.

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

WAC 137-25-020 Definitions. For the purposes of this chapter, the following terms have the following meanings:

(1) Aggravated assault - An assault resulting in a documented physical injury requiring treatment in a medical facility/treatment center by medical staff including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered treatment.

(2) Assault - A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

(3) Attempting - Putting forth an effort to commit any violation.

(4) Bodily harm - Physical pain or injury, illness, or impairment of physical condition.

(5) Conspiring - Entering into an agreement with another person(s) to commit a violation.

(6) Facility - A correctional facility as defined in RCW 72.09.015.

(7) Infraction - A term designating the procedures and documents related to (~~offender~~) incarcerated individual misconduct and the facility disciplinary process.

(8) (~~Offender~~) Incarcerated individual - An inmate as defined in RCW 72.09.015.

(9) Possessing - When an item(s) is found on an (~~offender~~) incarcerated individual or in an (~~offender's~~) incarcerated individual's assigned area of responsibility.

(10) Sex act - Includes, but is not limited to, any of the following acts: Genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration; genital or anal contact/penetration with an inanimate object; masturbation; sadistic/masochistic abuse; bondage; bestiality; and/or bodily excretory behavior which appears to be sexual in nature.

(11) Sexual assault against a staff member - An incident in which one or more of the following actions is taken or threatened against a staff member without (~~his/her~~) their consent or when (~~he/she is~~) they are unable to consent or refuse:

(a) Contact between genitalia (i.e., penis, vagina) or between genitalia and the anus involving penetration, however slight. This does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

(b) Contact between the mouth and the penis, vagina, or anus.

(c) Penetration of the anal or genital opening of the staff member by hand, finger, or other object.

(12) Sexual contact against a staff member - Contact against a staff member without ((his/her)) their consent or when the staff member is unable to consent or refuse which includes intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttock of the staff member. This does not include kicking, grabbing, or punching when the intent is to harm or debilitate rather than to sexually exploit.

(13) Sexual harassment against a staff member, visitor, or community member - Any word, action, gesture, or other behavior taken against a staff member, visitor, or community member that is sexual in nature and that would be offensive to a reasonable person.

(14) Staff member - A department of corrections employee, contract staff, or volunteer.

(15) Violation - The act of failing to comply with a rule enumerated in this chapter.

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)) incarcerated individual;
- (b) #704 When against a staff member; or
- (c) #711 When against a visitor or community member.

Category A

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| 501 - Committing homicide |
| 502 - Committing aggravated assault against another ((offender)) <u>incarcerated individual</u> |
| 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 - <u>Possessing</u> , 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 |

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| 635 - Committing sexual assault against another offender, as defined in department policy (i.e., aggravated sexual assault or (offender-on-offender) <u>incarcerated individual on incarcerated individual</u> sexual assault) |
| 637 - Committing sexual abuse against another (offender) <u>incarcerated individual</u> , 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

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| 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) <u>incarcerated individual</u> |
| 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) <u>incarcerated individual's</u> prescribed medication |

Category B - Level 2

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| 505 - Fighting with another (offender) <u>incarcerated individual</u> |
| 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 |

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| 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)) <u>Admitting use</u> , or receiving a positive test for use of, an unauthorized drug, alcohol, or <u>other intoxicating substance</u> |
| 778 - Providing a urine specimen that has been diluted, substituted, or altered in any way |

Category B - Level 3

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| 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)) <u>or assuming the identity of any other person</u> |
| 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)) <u>incarcerated individual's cell</u> or being in ((an)) <u>a restricted or out of bounds area</u> ((in)) <u>of the facility</u> with one or more ((offenders)) <u>incarcerated individuals</u> without authorization |
| 738 - Possessing clothing or assigned equipment of a staff member |

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| 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: <i>This violation must be initiated by authorized staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC</i> |
| 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

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| 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) incarcerated individual, 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 |

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| 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

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| 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)) incarcerated individual'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

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| 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

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| 517 - Committing an act that would constitute a misdemeanor and that is not otherwise included in these rules |
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| 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)) <u>incarcerated individual</u> knows or should know that ((he/she)) <u>they</u> lack ((s)) 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)) <u>incarcerated individual</u> in a correctional facility, or <u>partial confinement</u> 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)) <u>DOC Policy 450.100</u> |
| 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)) <u>ten</u> 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))~~ incarcerated individual'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))~~ incarcerated individuals assigned responsibility for that area.

OTS-4730.1

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

WAC 137-28-140 Purpose. The rules in this chapter provide a standardized system to determine whether misconduct by an ((~~offender~~)) incarcerated individual has occurred, and to provide a system that clearly links an ((~~offender's~~)) incarcerated individual's behavior and participation in available work, training, education, or other programming as determined through classification with the receipt or denial of earned release time and other privileges as outlined in department policy.

The rules in this chapter shall not apply to proceedings of the indeterminate sentence review board.

The following rules set forth procedural guidelines. They do not create any procedural or substantive rights in any person, including any liberty interests in time credits, levels of custody, classification status, or other privileges. In accordance with Washington statutes, such matters are governed solely by the discretion of the department of corrections.

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

WAC 137-28-160 Definitions. For the purposes of this chapter, the following terms have the following meanings:

- (1) Attempting - Putting forth an effort to commit any violation.
- (2) Business days - Monday through Friday, excluding holidays and days the facility is experiencing altered/modified/emergency operational status.
- (3) Conspiring - Entering into an agreement with another person(s) to commit a violation.
- (4) Facility - A correctional facility as defined in RCW 72.09.015.
- (5) Hearing officer - A trained staff member designated by the superintendent to conduct disciplinary hearings processes, as well as review appeals of general violations.
- (6) Infraction - A term designating the procedures and documents related to ((~~offender~~)) incarcerated individual misconduct and the facility disciplinary process as a result of a rule violation.
- (7) Infraction review officer - A trained staff member who assesses and evaluates the accuracy of the infraction packet, to include verification of the incident, appropriateness of the violation(s) charged, thoroughness of the information, and verification that supporting documents are included and that all evidence is collected and handled correctly (when applicable) before submittal to the hearing office.
- (8) Lesser included offense - A less serious violation than the one charged, but one which the ((~~offender~~)) incarcerated individual necessarily committed in carrying out the charged violation.
- (9) ((~~Offender~~)) Incarcerated individual - An inmate as defined in RCW 72.09.015.
- (10) Possessing - When an item(s) is found on an ((~~offender~~)) incarcerated individual or in an ((~~offender's~~)) incarcerated individual's assigned area of responsibility.

(11) Promptly - To act as soon as reasonably possible, consistent with facility goals of safety, security, and rehabilitation.

(12) Staff member - A department of corrections employee, contract staff, or volunteer.

(13) Violation - The act of failing to comply with a rule enumerated in this chapter or chapter 137-25 WAC.

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

WAC 137-28-180 Notification. (1) All (~~offenders~~) incarcerated individuals confined in a facility shall have access to policies and rules regarding:

(a) Their rights and responsibilities in disciplinary matters;

(b) Acts prohibited in the facility; and

(c) Disciplinary action that may be taken in the event of misconduct.

(2) All (~~offenders~~) incarcerated individuals shall have access to a copy of the local disciplinary policies of the facility to which they are assigned.

(3) (~~Offenders~~) Incarcerated individuals unable to read or understand English shall be provided access to a written or recorded translation of these rules in their accustomed language.

(4) (~~Offenders~~) Incarcerated individuals should be provided access to changes to disciplinary policies or rules in advance of their effective date.

(a) Complete and up-to-date copies of these rules and all facility disciplinary policies shall be available for (~~offender~~) incarcerated individual access at each facility.

(b) (~~Offenders~~) Incarcerated individuals are responsible for informing themselves of changes to the rules and policies.

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

WAC 137-28-190 Referral to law enforcement. (1) The superintendent should report any felony under state or federal law committed in a facility to law enforcement. Any time an (~~offender~~) incarcerated individual commits a serious violation after losing all potential earned release time credits, the superintendent should report the (~~offender~~) incarcerated individual to local law enforcement for possible felony prosecution under RCW 9.94.070.

(2) The superintendent may report any misdemeanor under state or federal law committed in a facility to law enforcement.

(3) Nothing in this section shall prevent an (~~offender's~~) incarcerated individual's assignment to administrative segregation.

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

WAC 137-28-200 Out-of-state ((~~offenders~~)) incarcerated individuals. (1) ((~~Offenders~~)) Incarcerated individuals committed to the department of corrections who have been transferred to a prison in another state shall be subject to the disciplinary rules and procedures applicable to that prison. That prison may, in its discretion, use any presumptive sanction guidelines currently in effect in Washington state facilities.

(2) ((~~Offenders~~)) Incarcerated individuals committed to the department of corrections from other states shall be subject to the disciplinary rules and procedures currently in effect in the Washington state facility to which they are assigned.

(3) Each state shall forward all serious infraction reports and appeals to the originating state within seven days of the final action, and may include a recommendation that the ((~~offender~~)) incarcerated individual return to the originating state.

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

WAC 137-28-210 Hearing officers. (1) Each hearing shall be conducted by a hearing officer designated by the superintendent.

(2) Hearing officers may not preside over a hearing when they are related to the ((~~offender~~)) incarcerated individual, witness, victim, or infracting officer, or have direct personal involvement in the infraction under consideration. For purposes of this section, direct personal involvement means knowledge or interest acquired through witnessing, investigating, or directly participating in the incident under consideration. This rule shall not preclude hearing officer participation where the hearing officer has acquired knowledge of the incident as part of regular facility responsibilities.

(3) Hearing officers may disqualify themselves or may be disqualified by the superintendent if biased for or against any ((~~offender~~)) incarcerated individual so that they cannot render a fair and impartial decision in the hearing.

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

WAC 137-28-220 General violations. (1) Any of the following types of behavior may constitute a general 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.

Unauthorized possession/theft

- 051 - Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is less than five dollars

- 053 - Possessing anything not authorized for retention or receipt by an ((offender)) incarcerated individual and/or not issued to an ((offender)) incarcerated individual through approved channels
- 255 - Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is less than ten dollars
- 310 - Pretending or failing to take prescribed medication by concealing or retaining the medication
- 354 - Stealing food, the value of which is less than ((five)) ten dollars
- 356 - Possessing an unauthorized amount of clothing, bedding, or issued supplies

Lending/trading

- 351 - Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is less than ten dollars

Altering/destroying property

- 055 - Damaging, altering, or destroying any item that is not the ((offender's)) incarcerated individual's personal property, the value of which is less than ten dollars

Disruptive behavior/lying

- 202 - Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s)
- 203 - Lying to a staff member
- 353 - Engaging in disruptive behavior
- 355 - Roughhousing, or engaging in horseplay or any other unauthorized physical contact with another ((offender(s))) incarcerated individual(s)
- 357 - Demonstrating, practicing, or using martial arts or other self-defense tactics

Failure to follow rules and orders

- 103 - Failing to follow any oral/written orders, rules, or policies not otherwise included in these rules
- 105 - Failing to perform a work, training, education, or other programming assignment as directed
- 210 - Out of bounds: Being in an area where the presence of the ((offender)) incarcerated individual is unauthorized
- 214 - Interfering or failing to comply with count procedures
- 251 - Smoking or possessing tobacco or related products/paraphernalia where prohibited
- 301 - Failing to maintain one's clothing, personal hygiene, or quarters in accordance with facility rules or policies

Unauthorized communication/visitor contact

- 303 - Using the mail, telephone, or electronic communications without authorization

304 - Conducting/participating in unwanted written, telephone, or electronic communications with any person

305 - Corresponding with or engaging in conduct with a visitor in violation of published or posted rules or policies

Inappropriate use of equipment

212 - Using any equipment or machinery when not specifically authorized or contrary to instructions or safety standards

Unexcused absence/feigning illness

104 - Being absent from work or any assignment, scheduled meeting, appointment, or call out without authorization

352 - Pretending to be ill or injured contrary to medical/mental health screening results

Inappropriate sexual behavior

244 - Displaying sexual affection with another ~~((offender))~~ incarcerated individual(s)

309 - Engaging in an unauthorized display of affection with a visitor

(2) If contraband or another violation is discovered in an ~~((offender's))~~ incarcerated individual'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))~~ incarcerated individuals assigned responsibility for that area.

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

WAC 137-28-230 General infraction procedure. (1) In the event of a general violation, a staff member may make an on-site adjustment. An on-site adjustment may consist of counseling, warning, or reprimanding the ~~((offender))~~ incarcerated individual and/or directing the ~~((offender))~~ incarcerated individual to remove ~~((himself/herself))~~ themselves from the situation immediately. An action addressed through an on-site adjustment cannot be considered a general violation for the purposes of determining whether a #657 serious violation has occurred.

(2) In the event of a general violation where a staff member does not make an on-site adjustment, the staff member will prepare and submit an infraction report per department policy. The staff member will attach copies of any supporting documents.

(3) The general infraction report shall be promptly submitted for review to the supervisor designated by the superintendent. Upon review, if the supervisor determines the action meets the criteria of a serious violation, ~~((he/she))~~ they may return the report to the reporting staff member to upgrade the general violation to a serious violation. If the violation is upgraded, the reporting staff member will forward the serious infraction report to the infraction review officer.

(4) If the action was appropriately charged as a general violation, the supervisor will decide whether the ~~((offender))~~ incarcerated individual is guilty or not guilty within five business days of re-

ceiving the report, unless an extension is approved in writing by the hearing officer. The supervisor will conduct an informal hearing at which ((he/she)) they may allow witnesses and documentary evidence with the ((offender)) incarcerated individual present.

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

WAC 137-28-240 General violations—Sanctions. (1) If the supervisor finds the ((offender)) incarcerated individual not guilty of a general violation, disciplinary sanctions shall not be imposed on the ((offender)) incarcerated individual for that violation. Records pertaining to the violation shall not be placed in the ((offender's)) incarcerated individual's file, but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the supervisor finds the ((offender)) incarcerated individual guilty of any general violation, the supervisor may impose one or more of the following sanctions:

(a) Reprimand or warning;

(b) Issuance of a written order to cease the problematic behavior. The order will include a warning that if the identified behavior is repeated within a specified period (not to exceed ((one hundred eighty)) 180 days), the ((offender)) incarcerated individual will be charged with a serious violation ((~~(+)~~)) (#658 under WAC 137-25-030);

(c) Loss of a privilege or privileges as specified by the supervisor for a period not to exceed ((~~ten~~)) 10 consecutive days on the first offense, ((~~twenty~~)) 20 consecutive days on the second offense, and ((~~thirty~~)) 30 consecutive days on the third offense within a six-month period;

(d) Evening cell/room confinement, except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, not to exceed ((~~ten~~)) 10 consecutive evenings;

(e) Weekend and/or holiday cell/room confinement, except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period of one or more weekends, not to exceed four consecutive weekends per incident. For purposes of this rule, a "weekend" shall begin at the end of the ((offender's)) incarcerated individual's programming or work day Friday and terminate at the beginning of the ((offender's)) incarcerated individual's programming or work day Monday;

(f) Confinement to cell/room except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period not to exceed ((~~ten~~)) 10 consecutive days;

(g) Up to ((~~one hundred twenty~~)) 120 hours of extra work duty.

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

WAC 137-28-250 General infraction appeals. (1) If the supervisor finds the ~~((offender))~~ incarcerated individual guilty of a general violation, only the ~~((offender))~~ incarcerated individual may appeal the decision and/or sanction(s) to a hearing officer.

(a) The appeal must be in writing and must include the reason(s) why the ~~((offender))~~ incarcerated individual believes the action taken was incorrect and specify the desired relief.

(b) The appeal must be delivered to the hearing officer within ~~((two))~~ five business days of receiving the notice.

(c) Failure to follow appeal procedures shall be deemed a waiver of the appeal, however the hearing officer may consider appeals filed beyond the ~~((two))~~ five business day period.

(2) The hearing officer will review and act on the appeal request within ~~((ten))~~ 10 business days of receipt unless an extension is approved in writing by the superintendent. The hearing officer may affirm the decision and sanction(s), affirm the decision and reduce the sanction(s), or dismiss/modify downward the decision and sanction(s).

(3) Once a decision is made on the appeal, the ~~((offender))~~ incarcerated individual shall be notified in writing within three business days, unless an extension is approved in writing by the superintendent.

(4) Sanctions will not be stayed upon appeal.

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

WAC 137-28-270 Serious infraction procedure. (1) When a staff member witnesses a serious violation or determines that a serious violation has occurred, ~~((he/she))~~ they shall prepare and submit an infraction report per department policy. The staff member will attach to the report copies of any supporting documents, including a summary of any confidential information, which shall not identify the confidential source(s).

(2) The infraction review officer will review the serious infraction report and any supporting documents and/or evidence. If the report is incomplete or the charge(s) is inappropriate, the infraction review officer will return the report to the reporting staff member to be revised, rewritten, or reinvestigated. Otherwise, the infraction review officer will forward the report to the hearing clerk or designee to schedule a hearing.

The infraction review officer may recommend referral to a mental health professional as defined in department policy for consultation if there is a question whether:

(a) Mental illness contributed to the behavior that led to the violation; or

(b) The ~~((offender's))~~ incarcerated individual's mental health status may need to be monitored.

(3) A negotiated hearing process will be used for any violation specifically identified in department policy. The serious infraction report will be forwarded to the designated hearing officer per department policy.

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

WAC 137-28-285 ((Offender)) Incarcerated individual rights. (1)

An ((offender)) incarcerated individual charged with a violation(s) has the right to:

- (a) A fair and impartial hearing;
- (b) Written notice of the alleged violation(s) and a summary of the supporting evidence at least ((~~twenty-four~~)) 24 hours before the hearing;
 - (i) The notice shall include a statement of the rights listed in this section.
 - (ii) The ((offender)) incarcerated individual may waive the ((~~twenty-four~~)) 24 hour notice.
- (c) Be present at the hearing or waive presence at the hearing;
- (d) Request a department advisor and/or an interpreter to assist the ((offender)) incarcerated individual in preparing for and participating in the hearing;
- (e) Testify or remain silent;
- (f) Call witnesses and present documentary evidence, though the hearing officer may exclude witnesses/evidence deemed irrelevant, duplicative, or unnecessary;
- (g) Propose questions for the hearing officer to ask witnesses, although the hearing officer may exclude questions deemed irrelevant, duplicative, or unnecessary;
- (h) Appeal the hearing officer's finding(s) and/or sanction(s) imposed to the superintendent within ((~~fifteen~~)) 15 business days of the hearing officer's decision.

(2) ((~~Offenders~~)) Incarcerated individuals do not have the right to:

- (a) Cross-examine witnesses;
- (b) Have the reporting staff member present at the hearing;
- (c) Receive a polygraph or other supplemental tests;
- (d) Examine physical evidence;
- (e) Receive confidential information.

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

WAC 137-28-290 Preparations for hearing. (1) When possible, hearings will be held in the facility where the violation(s) occurred. If the ((offender)) incarcerated individual is transferred to another facility before a hearing is conducted, the sending facility will provide the infraction report, along with any supporting documents, to the receiving facility.

(2) In preparation for the hearing, the hearing clerk or designee shall, at least ((~~twenty-four~~)) 24 hours before the hearing:

- (a) Provide copies of the infraction report and nonconfidential supporting documents, including a summary of the supporting evidence, to the ((offender)) incarcerated individual;
- (b) Advise the ((offender)) incarcerated individual in writing of the date, time, and location of the hearing and of the rights, restrictions, and responsibilities listed in this chapter;

(c) Obtain written acknowledgment of the (~~offender's~~) incarcerated individual's receipt of the infraction report and any supporting documents;

(d) Determine whether the (~~offender~~) incarcerated individual wishes to contest the allegation;

(e) Determine whether the (~~offender~~) incarcerated individual needs a department advisor and/or an interpreter. If assigned, the department advisor and/or interpreter will remain in place throughout the hearing process, unless the (~~offender~~) incarcerated individual declines assistance.

(3) If an (~~offender is placed in prehearing confinement~~) incarcerated individual is in segregation, the hearing will be held within three business days of service of the infraction report and any supporting documents, unless the (~~offender~~) incarcerated individual has waived (~~twenty-four~~) 24 hour notice for the hearing or the hearing is continued in writing by the hearing officer. A staff member may be assigned to assist in obtaining witness statements.

If a hearing is continued, a determination shall be made in writing whether the (~~offender~~) incarcerated individual should remain in segregation.

(4) For (~~offenders not placed~~) incarcerated individuals not in segregation, the hearing will be held within five business days of service of the infraction report and any supporting documents.

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

WAC 137-28-295 Department advisors. (1) A department advisor may be appointed per department policy to help the (~~offender~~) incarcerated individual prepare for and participate in the hearing. Before a department advisor is assigned, the following factors will be considered:

(a) The (~~offender's~~) incarcerated individual's literacy;

(b) The complexity of the issue(s);

(c) The (~~offender's~~) incarcerated individual's overall ability to speak for (~~himself/herself~~) themselves and adequately present (~~his/her~~) their case;

(d) The individual's mental status, as determined by a mental health professional or other employee with mental health training or experience;

(e) The (~~offender's~~) incarcerated individual's ability to communicate in English; and/or

(~~e~~) (f) Any disability that might impair the (~~offender's~~) individual's ability to adequately defend (~~himself/herself~~) themselves.

(2) The department advisor will be a staff member who is not involved in the observation or investigation of the infraction.

(3) The department advisor shall attend the hearing, in whole or in part, based on the (~~offender's~~) incarcerated individual's needs. (~~He/she~~) They may attend in person or by telephone. (~~He/she~~) They shall not present the (~~offender's~~) incarcerated individual's case, question witnesses, or make any other oral presentation, unless requested by the hearing officer.

(4) When a hearing is continued for the purpose of appointing a department advisor, an advisor shall be appointed immediately.

(5) Conversations between department advisors and (~~offenders~~) incarcerated individuals are neither confidential nor privileged.

AMENDATORY SECTION (Amending WSR 20-08-037, filed 3/24/20, effective 4/24/20)

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

(2) The (~~offender~~) incarcerated individual 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~~) incarcerated individual will have an opportunity to rebut the evidence/information during the hearing.

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

(3) An audio recording will be made of all category A, B, and C 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~~) incarcerated individual;

(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~~) incarcerated individual's plea(s) to the alleged violation(s);

(vi) The names of witnesses;

(vii) A summary of the statements of the (~~offender~~) incarcerated individual 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~~) incarcerated individual or hearing officer that were not provided or were unavailable, if applicable;

(xii) Any witness questions proposed by the (~~offender~~) incarcerated individual 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~~) incarcerated individual is found guilty, the hearing officer will ensure all related reports, recordings, and attachments become part of the (~~offender's~~) incarcerated individual's file.

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

(5) If an (~~offender's~~) incarcerated individual's behavior disrupts the hearing, (~~he/she~~) they may be removed and the hearing will continue on the record in the (~~offender's~~) incarcerated individual'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~~) incarcerated individual may submit proposed questions to be asked of witnesses, but the hearing officer may exclude questions that are irrelevant, duplicative, or unnecessary to the adequate presentation of the (~~offender's~~) incarcerated individual'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~~) incarcerated individual 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.

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

WAC 137-28-305 Continuances. (1) At any time during the disciplinary process, the hearing officer may continue the hearing:

(a) To determine the individual's mental status or competency;

(b) To appoint a department advisor;

(~~(b)~~) (c) To obtain an interpreter;

- ~~((e))~~ (d) To obtain a witness(es) or witness statement(s);
- ~~((d))~~ (e) To correct errors;
- (f) To obtain ~~((a-replacement))~~ an alternate hearing officer;
- ~~((e))~~ (g) To obtain crime lab reports or other documentation;
- (h) If the witness(es) is temporarily unavailable;
- ~~((f))~~ (i) To determine restitution costs;
- (j) If the ~~((offender))~~ incarcerated individual is unavailable (e.g., on escape, court-ordered custody, in transit to a nondepartment facility, etc.);
- ~~((g))~~ (k) At the reasonable request of the ~~((offender))~~ incarcerated individual;
- ~~((h))~~ (l) If the facility is experiencing altered/modified/emergency operational status(~~(+~~
~~(i) To determine restitution costs~~)).
- (2) Continuances shall be for no longer than necessary, and shall not exceed ~~((twenty))~~ 20 business days, unless approved by the superintendent.
- (3) Hearings for ~~((offenders))~~ incarcerated individuals on escape status, in court-ordered custody, in transit to a facility in another jurisdiction, or otherwise unavailable may be continued for not more than ~~((twenty))~~ 20 business days after their return to department custody.

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

WAC 137-28-310 Decision of hearing officer. (1) In reaching a decision, the hearing officer will consider ~~((only))~~ the totality of the circumstances, the elements of the charged violation(s), all pertinent and exculpatory evidence presented at the hearing.

(2) The hearing officer is authorized to find an ~~((inmate))~~ incarcerated individual guilty of a lesser ~~((included offense))~~ WAC violation without issuing a new infraction report or conducting a new hearing.

(3) Where the evidence suggests an ~~((inmate))~~ incarcerated individual is guilty of an offense not charged and which is not a lesser ~~((included))~~ offense to a charged offense, the hearing officer may recommend that new charges be filed to address such offenses. The ~~((inmate))~~ incarcerated individual may waive the right to a separate hearing and allow the hearing officer to conduct the hearing on the new charge.

(4) The ~~((offender))~~ incarcerated individual shall be informed of the hearing officer's decision in writing within three business days of the hearing, unless extended by the superintendent.

(5) The ~~((offender))~~ incarcerated individual shall be informed of ~~((his/her))~~ their right to appeal the hearing officer's decision to the superintendent.

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

WAC 137-28-350 Sanctions—Authority to impose. (1) If the hearing officer finds the ~~((offender))~~ incarcerated individual not guilty of a violation, disciplinary sanctions shall not be imposed on the ~~((offender))~~ incarcerated individual for that violation. Records pertaining to the violation shall not be placed in the ~~((offender's))~~ incarcerated individual's file, but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the hearing officer finds the ~~((offender))~~ incarcerated individual guilty of a serious violation, the hearing officer may impose one or more of the sanctions listed in this section.

If the hearing officer determines that more than one violation occurred as a result of the same incident, ~~((he/she))~~ they shall not impose sanctions for the separate violations, but shall consider them together and impose penalties based on the most serious violation in the group.

(3) Allowable sanctions for serious violations are as follows. The hearing officer may consider factors such as prior documented behavior, infraction history, mental status, and overall facility and program adjustment when determining an appropriate sanction(s):

- (a) Any of the sanctions available for general violations;
- (b) Any of the sanctions available under department policy;
- (c) Loss of a privilege or privileges as outlined in department policy for a period not to exceed: Thirty consecutive days on the first offense, ~~((ninety))~~ 90 consecutive days on the second offense, and ~~((one hundred eighty))~~ 180 consecutive days on the third offense within a one-year period;
- (d) Confinement to cell/room except for meals (or with meals in cell), attendance at work or school assignments, or religious services, or law library if approved for emergency/priority access per department policy, for a period not to exceed ~~((thirty))~~ 30 consecutive days;
- (e) Recommendation to the facility risk management team for review of custody classification;
- (f) ~~((Confinement on segregation status for a period not to exceed thirty consecutive days;~~
- ~~((g) With assistant secretary approval, confinement on isolation status for a period not to exceed ten consecutive days. Where a serious violation occurs during a period of isolation, additional periods of isolation not to exceed ten consecutive days may be imposed. In situations where an offender is in isolation for more than ten consecutive days, the assistant secretary's prior approval is required unless the offender is released from isolation for at least seventy-two consecutive hours between the end of one isolation sanction and the beginning of another;~~
- ~~((h))~~ Restitution per WAC 137-28-410;
- ~~((i))~~ (g) Recommendation to the superintendent that ~~((he/she))~~ they deny good conduct time credit.
The recommendation will be consistent with guidelines established by the department secretary. Any sanctions in excess of the guidelines require assistant secretary approval;
- ~~((j))~~ (h) Suspension or termination of visitation, for certain violations as outlined in department policy, for a period not to exceed: Thirty consecutive days for the first offense, ~~((ninety))~~ 90

consecutive days for the second offense, and ~~((one hundred eighty))~~ 180 consecutive days for the third offense within a one-year period. In cases of multiple or very serious violations, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s);

~~((k))~~ (i) Restriction, interruption, or termination of correspondence, telephone, and/or electronic communication for a period not to exceed: Thirty consecutive days for the first offense, ~~((ninety))~~ 90 consecutive days for the second offense, and ~~((one hundred eighty))~~ 180 consecutive days for the third offense in a one-year period. Termination of correspondence, telephone, and/or electronic communication may be permanent:

(i) At the recipient's request;

(ii) At the request of the parent or guardian of the recipient, if the recipient is a minor or an incapacitated person;

(iii) If correspondence perpetuates criminal activity; or

(iv) If the contact violates a court order.

~~((l))~~ (j) Urinalysis or breath alcohol testing for a period not to exceed ~~((ninety))~~ 90 days for drug or alcohol related violations.

(4) The hearing officer may review any decision ~~((he/she))~~ they previously made and may modify downward any sanction previously imposed.

(5) In all cases, regardless of whether an appeal is requested, the superintendent may review and reduce a sanction imposed. Once the superintendent has made a decision on the appeal, no modifications will be made by the hearing officer.

(6) Nothing in this section limits the superintendent's discretion to grant, deny, suspend, or revoke any privilege.

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

WAC 137-28-360 Sanctions and mental status. In determining an appropriate sanction, the hearing officer should consider the ~~((offender's))~~ incarcerated individual's mental health and ~~((his/her))~~ their intellectual, emotional, and maturity levels and what effect a particular sanction might have on the ~~((offender))~~ incarcerated individual in light of such factors. The hearing officer may request the assistance of other department staff members, including mental health staff members, in determining appropriate and/or alternate sanctions.

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

WAC 137-28-370 Sanctions—Limitations. (1) No ~~((offender))~~ incarcerated individual shall be infracted for violation of ~~((offender))~~ incarcerated individual conduct rules unless ~~((he/she has))~~ they have been provided reasonable advance notice of the prohibited behavior, unless the rule was adopted on an emergency basis.

(2) Disciplinary sanctions shall not include:

(a) Lowering the quantity or nutritional value of food;

(b) Corporal punishment or physical restraint;

- (c) Confinement to an environment with unhealthful temperatures;
- (d) Denial of adequate medical treatment.

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

WAC 137-28-380 Serious infraction appeals. (1) If the hearing officer finds the ~~((offender))~~ incarcerated individual guilty of a serious violation, only the ~~((offender))~~ incarcerated individual may appeal the decision and/or sanction(s) to the superintendent.

(a) An appeal request cannot be filed when the ~~((offender))~~ incarcerated individual has pled guilty to the violation.

(b) The appeal request must be in writing and must include the reason(s) why the ~~((offender))~~ incarcerated individual believes the action taken was incorrect and specify the desired relief.

(c) The appeal request must be filed within ~~((fifteen))~~ 15 business days of receiving the notice.

(d) Failure to follow appeal procedures shall be deemed a waiver of the appeal, however the superintendent may consider appeals filed beyond the ~~((fifteen))~~ 15 business day period.

(2) The superintendent will review the hearing record and act on the appeal request within ~~((ten))~~ 10 business days of receipt. The superintendent may affirm the decision and sanction(s), affirm the decision and reduce the sanction(s), or dismiss/modify downward the decision and sanction(s). The superintendent may also reverse the decision and remand the matter for a new hearing, in which case the sanction(s) imposed at the new hearing may not be more severe than the sanction(s) originally imposed.

(3) The ~~((offender))~~ incarcerated individual shall be promptly notified in writing of the superintendent's decision.

(4) Sanctions will not be stayed upon appeal.

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

WAC 137-28-390 Hearing officer reports to the indeterminate sentence review board. (1) When the hearing officer determines that an ~~((offender))~~ incarcerated individual subject to the jurisdiction of the indeterminate sentence review board is guilty of a serious violation, the hearing officer may recommend to the superintendent that ~~((he/she))~~ they not certify good conduct time credit for the ~~((offender))~~ incarcerated individual pursuant to RCW 9.95.070.

The hearing officer's recommendation will be consistent with guidelines established by the department secretary. Any sanctions for loss of good conduct credits in excess of the guidelines require assistant secretary approval.

(2) Recommendation to the indeterminate sentence review board for a disciplinary hearing or reconsideration of minimum term should occur only with violations providing for actual time loss of ~~((twelve))~~ 12 months or more and consistent with guidelines established by the department secretary.

(3) Whenever the hearing officer finds an ~~((offender))~~ incarcerated individual under the jurisdiction of the indeterminate sentence

review board guilty of a serious violation and recommends either loss of good conduct time credits or an increase in the ~~((offender's))~~ incarcerated individual's minimum term, the records office must inform the indeterminate sentence review board of the hearing officer's decision and recommendation within ~~((ten))~~ 10 days, or within ~~((ten))~~ 10 days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer. If the ~~((offender))~~ incarcerated individual is within ~~((forty-five))~~ 45 days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.

(4) In all other cases where an ~~((offender))~~ incarcerated individual under the jurisdiction of the indeterminate sentence review board is found guilty of a serious violation, the records office must inform the indeterminate sentence review board of the hearing officer's decision within ~~((thirty))~~ 30 days, or within ~~((thirty))~~ 30 days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer. If the ~~((offender))~~ incarcerated individual is within ~~((forty-five))~~ 45 days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.

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

WAC 137-28-410 Restitution. (1) If the hearing officer imposes restitution as a sanction, the amount of restitution owed shall be determined at the infraction hearing. However, the hearing officer may continue the hearing in order to secure additional evidence regarding restitution. If continued, the ~~((offender))~~ incarcerated individual shall be present at the continued/reconvened hearing.

(2) The amount of restitution will be the replacement value of the item, the cost of repair, and/or the cost of any ~~((unnecessary))~~ expense caused by the ~~((offender's))~~ incarcerated individual's misconduct.

(3) The ~~((offender))~~ incarcerated individual may appeal the amount of restitution within the time limits of this chapter. If under appeal, the amount of the restitution will be held in the ~~((offender's))~~ incarcerated individual's account, but funds will not be withdrawn/withheld until the superintendent has decided the appeal.

(4) Restitution funds may be collected in the following ways:

(a) The funds may be withdrawn from the ~~((offender's))~~ incarcerated individual's account to make restitution, provided the ~~((offender's))~~ incarcerated individual's account is not reduced to less than ~~((ten-dollars))~~ \$10; or

(b) Twenty percent of all funds being placed in the ~~((offender's))~~ incarcerated individual's account may be taken until the restitution is paid in full.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 137-28-280 Temporary prehearing placement.