SUMMARY OF REVISION/REVIEW:

Major changes to include moving information to DOC 460.050 Disciplinary Sanctions, adding exceptions for alternate Hearing Officers, adding procedures for mental health recommendations for sanctions, and updating training requirements. Read carefully!

APPROVED:

Signature on file

STEPHEN SINCLAIR, Secretary
Department of Corrections

5/15/18

Date Signed
REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 2.43.050; RCW 72.09.130; WAC 137-25; WAC 137-28; ACA 4-4227; ACA 4-4229; ACA 4-4230; ACA 4-4231; ACA 4-4233; ACA 4-4234; ACA 4-4236; ACA 4-4237; ACA 4-4238; ACA 4-4239; ACA 4-4240; ACA 4-4242; ACA 4-4243; ACA 4-4244; ACA 4-4245; ACA 4-4246; ACA 4-4247; ACA 4-4248; ACA 4-4252; DOC 280.510 Public Disclosure of Records; DOC 300.010 Offender Behavior Observation; DOC 320.100 Indeterminate Sentence Review Board (ISRB); DOC 350.240 Ten Day Release; DOC 420.375 Contraband and Evidence Handling; DOC 450.500 Language Services for Limited English Proficient (LEP) Offenders; DOC 460.050 Disciplinary Sanctions; DOC 470.150 Confidential Offender Information; DOC 580.655 Special Drug Offender Sentencing Alternative; DOC 690.400 Offenders with Disabilities; Records Retention Schedule; WAC Handbook; WAC Violation Guidelines

POLICY:

I. [4-4227] The Department has established procedures to identify and address offender misconduct and govern progressive offender discipline in Prisons. WAC 137-25, WAC 137-28, and DOC 460.050 Disciplinary Sanctions will be followed to maintain facility order and security and to support respect for rules and the rights of others.

II. Offenders are responsible for their own behavior and will be held accountable when violating rules and regulations.

III. Offenders will have access to disciplinary rules, policies, and procedures, including their rights and responsibilities, acts prohibited in the facility, and disciplinary action that may be taken as a result of misconduct.

DIRECTIVE:

I. General Requirements

A. Disciplinary hearings should be held in the facility where the alleged violation(s) occurred. When the offender is transferred before a hearing is conducted, the infraction report will be scanned/emailed and the infraction packet will be mailed to the receiving facility.

1. Confidential information will be handled per DOC 470.150 Confidential Offender Information.

2. Evidence will be processed per DOC 420.375 Contraband and Evidence Handling.
B. An offender will not be placed on disciplinary segregation before a hearing with the Disciplinary Hearing Officer. [4-4252]

II. Responsibilities

A. The Prisons Disciplinary Program Manager will oversee the Prison disciplinary process and serve as a liaison to facilities.

B. Superintendents will determine Disciplinary Hearing Officer, Hearing Clerk, and Infraction Review Officer assignments. Employees may not fill Disciplinary Hearing Officer and Infraction Review Officer roles for the same violation.

1. Disciplinary Hearing Officers

   a. Disciplinary Hearing Officers must have the rank of Lieutenant, Correctional Unit Supervisor (CUS), or Corrections Specialist 2 or higher.

      1) CUSs will be delegated as primary Disciplinary Hearing Officers for Category D serious violation hearings.

      2) Sergeants may be delegated as Disciplinary Hearing Officers for general infraction hearings only.

   b. Alternate Disciplinary Hearing Officers will not:

      1) Conduct Prison Rape Elimination Act (PREA)-related hearings, except when authorized by the Superintendant/designee to meet hearing timeframe requirements when the primary Disciplinary Hearing Officer is absent from the facility.

      2) Act on general violation appeals, unless:

          a) Approved by the Superintendant/designee when the primary Disciplinary Hearing Officer is absent from the facility, or

          b) The primary Disciplinary Hearing Officer conducted the hearing that is being appealed.

2. Infraction Review Officers
a. Serious Infraction Review Officers must have the rank of Lieutenant, CUS, Chief Investigator 3, Investigator 2, Corrections Specialist 2 or higher.

   1) Serious Infraction Review Officer responsibilities may be delegated to Sergeants at stand-alone Level 2 facilities.

b. General Infraction Review Officers must have the rank of Sergeant or higher.

c. Intelligence and Investigation Unit investigators will complete infraction reviews for infraction reports that include:

   1) Confidential information, and/or
   2) A violation(s) for or reference to any unauthorized club, organization, gang, or security threat group.

d. Infraction Review Officers will assess and evaluate the accuracy of the infraction packet, which includes:

   1) Verifying the incident,
   2) Confirming the appropriateness of the violation(s) charged,
   3) Ensuring the thoroughness of the information in the packet, and
   4) Verifying that the supporting documents are included and that all evidence was collected, photographed, and handled correctly.

C. The Superintendent may delegate serious violation appeal review responsibilities to:

1. An Associate Superintendent in major facilities (i.e., Level 3 or higher).
2. A Correctional Program Manager in stand-alone Level 2 facilities.

D. All disciplinary hearings will be conducted by an impartial Disciplinary Hearing Officer, who will not conduct hearings when they have direct personal involvement in the violation(s) being considered.

1. When an alternate Disciplinary Hearing Officer is required due to a conflict of interest or impartiality concerns, s/he will notify the Superintendent/designee, who will select and authorize the alternate.
III. General Infraction Procedures  [4-4230]

A. Employees/contract staff who observe or become aware of an act of offender misconduct that constitutes a general violation per WAC 137-28-220 will:

1. Address the behavior as an onsite adjustment and document it in a Behavior Observation Entry (BOE) per DOC 300.010 Offender Behavior Observation, or

2. If the behavior is not addressed through an onsite adjustment, or is progressive or repetitive in nature, complete and submit DOC 17-070 General Infraction Report, including a description of the incident and specific rule(s) violated.  [4-4236]

B. [4-4236] The offender will be served DOC 17-070 General Infraction Report notifying him/her of the date, time, and place of the hearing not less than 24 hours before the hearing.  [4-4238]

1. Offenders may waive their appearance to attend the hearing.

2. Failure to attend without cause will be considered refusing attendance.

C. General infraction hearings will be conducted within 5 business days of service of the infraction report and may be held within 24 hours with the offender’s written consent on DOC 17-070 General Infraction Report.

1. Hearing extensions may be requested and granted using DOC 17-073 General Infraction Hearing Extension. Extensions of more than 3 business days require approval from the primary Disciplinary Hearing Officer.

D. General infraction hearings will not be audio recorded. Written hearing documentation will be retained per the Records Retention Schedule.

E. Offenders may request a Department advisor or Department interpreter if they are unable to read, speak, or understand English per DOC 450.500 Language Services for Limited English Proficient (LEP).

F. The Disciplinary Hearing Officer will only consider the evidence presented at the hearing.  [4-4244]

G. The hearing decision and supporting reasons will be documented in the electronic file and on DOC 17-070 General Infraction Report.  [4-4245] A copy of the report will be provided to the offender.
H. If the Disciplinary Hearing Officer determines that an offender is guilty, sanctions may be imposed per WAC 137-28, DOC 460.050 Disciplinary Sanctions, and other applicable policies.

1. Sanctions will be documented on DOC 17-085 Sanction Notification.

I. Offenders may appeal the decision and/or sanctions for a guilty finding within 2 business days of receiving the decision.

1. Appeals will be submitted using DOC 17-074 Disciplinary Hearing Appeal, including the reason s/he believes the action taken was incorrect and the desired relief.

   a. DOC 17-077 Offender Appeal Receipt will be issued in response.

2. Sanctions will not be stayed pending an appeal.

3. The Disciplinary Hearing Officer will act on the appeal within 10 business days of receipt unless extended by the Superintendent. The severity of the sanction will not be increased.

4. The offender will be notified of the decision on DOC 17-084 General Infraction Appeal Decision within 3 business days unless extended by the Superintendent.

IV. Serious Infraction Procedures

A. [4-4233] Employees/contract staff who observe or become aware of an act of offender misconduct that constitutes a serious violation per WAC 137-25-030 will submit DOC 17-076 Initial Serious Infraction Report, including a description of the incident and clearly stating how the specific rule(s) was violated.

1. Employees/contract staff will submit DOC 17-069 Infraction Review Checklist when completing the report, including any supporting documents/evidence and a summary of confidential information.

2. Reports and documentation will be submitted and processed in a timely manner (i.e., as soon as time allows following the violation(s), by the end of shift, upon completion of investigation).

   a. Reports may be submitted as the result of an investigation. The completion of the investigation will be considered time of discovery for the violation.

4. Employees will immediately notify the Indeterminate Sentence Review Board (Board) for offenders under Board jurisdiction with a scheduled release date, who have committed a serious violation per DOC 320.100 Indeterminate Sentence Review Board (ISRB).

B. Investigation results will be documented on DOC 02-077 Investigation Report per DOC 470.150 Confidential Offender Information.

   1. Infraction Review Officers will document the date and time an investigation was initiated on DOC 17-069 Infraction Review Checklist. [4-4234]

   2. DOC 21-425 Shift Commander/Unit Supervisor Use of Force Report will not be submitted with DOC 17-076 Initial Serious Infraction Report.

C. [4-4236] The offender will be notified of the date, time, and place of the hearing and served DOC 05-093 Disciplinary Hearing Notice/Appearance Waiver not less than 24 hours before the hearing, including DOC 17-076 Initial Serious Infraction Report, supporting non-confidential documents, and summaries of supporting evidence and any confidential information. [4-4238]

D. The Hearing Clerk will schedule the hearing to be held within 5 business days of service.

   1. The hearing may be held within 24 hours of service with the offender’s written consent on DOC 05-093 Disciplinary Hearing Notice/Appearance Waiver.

   2. If the offender is in segregation, the hearing will be held within 3 business days of service, unless a continuance is granted. [4-4238]

E. Offenders may request a Department advisor or Department interpreter if they are unable to read, speak, or understand English per DOC 450.500 Language Services for Limited English Proficient (LEP).

F. Per DOC 350.240 Ten Day Release, hearings for Category A or B serious violations will be expedited for releasing offenders eligible for 10 day release.

G. Conduct of Hearing
1. Before the hearing begins, the Disciplinary Hearing Officer will ensure interpreters provide their qualifications and state their name and whether they are a certified or registered interpreter on the record per RCW 2.43.050.

2. The offender will be present at the hearing unless waived on DOC 05-093 Disciplinary Hearing Notice/Appearance Waiver, or s/he displays disruptive behavior during the hearing. [4-4237]
   a. If s/he refuses/waives attendance, the Disciplinary Hearing Officer will be notified both verbally and on DOC 17-071 Disciplinary Hearing Offender Refusal/Waiver of Attendance.
      1) Failure to attend without cause will be considered refusing attendance.
   b. The Disciplinary Hearing Officer will document the offender’s absence and reason(s) on DOC 21-312 Disciplinary Hearing Minutes and Findings. [4-4237]

3. [4-4241] An offender may be excluded during the testimony of any employee, contract staff, volunteer, or offender whose testimony must be given in confidence. The Disciplinary Hearing Officer will ensure the offender’s exclusion is documented on DOC 17-072 Disciplinary Hearings Review of Confidential Information Checklist.

4. [4-4242] The offender will have the opportunity to make a statement, present documentary evidence at the hearing, and request witnesses on his/her behalf.
   a. Written statements will be submitted on DOC 05-094 Witness Statement.
   b. The Disciplinary Hearing Officer will document the reason(s) for denying a request on DOC 21-312 Disciplinary Hearing Minutes and Findings.
   c. Any continuance/interruption to the hearing lasting longer than 24 hours requires completion of DOC 20-167 Continuance/Postponement of Decision of Disciplinary Hearing and will be documented in the Prison Discipline screen in the electronic file.

5. [4-4240] Category A, B, and C infraction hearings will be audio recorded and retained per the Records Retention Schedule.
H. Disciplinary Hearing Officer Decision

1. All evidence presented at the hearing must be reviewed and considered. [4-4244]

2. Hearing proceedings, including the hearing decision and supporting reasons, will be documented in the electronic file and on DOC 21-312 Disciplinary Hearing Minutes and Findings, and scanned into the electronic imaging file. A copy of the minutes and findings will be given to the offender. [4-4245]
   a. DOC 21-312A Disciplinary Hearing Minutes and Findings Continuation Sheet may be used, as necessary.
   b. The infraction report and non-confidential supporting documents will be scanned into the electronic imaging file and filed in the central file upon completion of the hearing process.
   c. A copy of the non-redacted infraction report and supporting documentation will be maintained in the Disciplinary Hearing Office per the Records Retention Schedule.

3. If the Disciplinary Hearing Officer determines that the offender is guilty, s/he may impose sanctions per WAC 137-28, DOC 460.050 Disciplinary Sanctions, and other applicable policies.
   a. Sanctions imposed will be documented on DOC 17-085 Sanction Notification.
   b. Sanctions that include restitution will be documented on DOC 05-363 Restitution Review.
   c. Offenders sanctioned to disciplinary segregation will receive credit against the sanction for time served in segregation for that violation(s).
   d. The Disciplinary Hearing Officer will ensure mental health employees/contract staff at the hearing have the opportunity to recommend sanctions.
   e. If mental health employees/contract staff have concerns relating to a sanction(s) imposed after the conclusion of the hearing, s/he may:
1) Contact the Disciplinary Hearing Officer and the Superintendent/designee to consider a sanction change(s), or

2) Submit concerns/recommendations to the Director of Mental Health for review/consideration.

4. If the offender is found guilty and under Board jurisdiction, the Board will be notified in writing, including supporting documentation and a recommendation, per DOC 320.100 Indeterminate Sentence Review Board (ISRB).

5. When the offender is found guilty of only some of the rule violations originally charged, the record will clearly describe the violation(s) for not guilty findings and the charges will be redacted from the infraction report.

6. [4-4246] When all rule violations in the infraction report are dismissed or the offender is found not guilty of any violations during a hearing, no records pertaining to the violation(s) will be placed in the central file.

   a. The Disciplinary Hearing Officer may retain the records for statistical, litigation, and recordkeeping purposes.

7. When all charges have been expunged, the infraction record will be cleared/removed from the:

   a. Central file and mailed to the Disciplinary Hearings Coordinator to retain for statistical, litigation, and recordkeeping purposes.


I. [4-4248] Appeals

1. An offender may appeal the Disciplinary Hearing Officer's decision and/or sanctions to the Superintendent/designee within 15 business days.

   a. An offender cannot appeal a finding of guilt when s/he has pled guilty to the violation(s).

   b. Sanctions will not be stayed pending an appeal.

2. Appeals will be submitted to the Disciplinary Hearing Officer on DOC 17-074 Disciplinary Hearing Appeal, including the reason(s) why the offender
believes the finding(s) and action(s) taken was incorrect and specify the desired relief.

a. DOC 17-077 Offender Appeal Receipt will be issued in response.

3. Appeals will be immediately forwarded to the Superintendent/designee.

a. Appeals of findings or sanctions imposed for PREA-related violations will be submitted to the Prisons Command B Deputy Director.

4. The Superintendent/designee will act on the appeal within 10 business days of receipt by:

a. Affirming the decision and/or sanction(s),
b. Affirming the decision and reducing the sanction(s),
c. Dismissing/modifying downward the decision and the sanction(s),
d. Reversing/vacating the decision, or
e. Remanding the matter for a new hearing.

1) The severity of the original sanction may not be increased.

5. The offender will be promptly notified of the decision on DOC 09-197 Disciplinary Hearing Appeal Decision. The decision will be final.

J. [4-4239] Continuances

1. At any time during the hearing process, the Disciplinary Hearing Officer may continue the hearing for any reason, including:

a. To determine the offender’s mental status or competency,
b. To appoint a Department advisor,
c. To obtain an interpreter,
d. To obtain witness(es) or witness statement(s),
e. To correct errors,
f. To obtain an alternate Disciplinary Hearing Officer,
g. To obtain crime lab reports or other documentation,
h. The witness(es) is temporarily unavailable,
i. To determine restitution costs,
j. The offender is unavailable (e.g., on escape status, court ordered custody, in transit to a non-Department facility),
k. A reasonable request by the offender. Denials will be documented by the Disciplinary Hearing Officer on DOC 21-312 Disciplinary Hearing Minutes and Findings and on the record, or

l. Due to unacceptable behavior by the offender, or the offender’s refusal to participate in a reasonable manner.

2. Continuances will be for no longer than necessary, and not exceed 20 business days unless approved by the Superintendent.

   a. For offenders housed in segregation, continuances may be granted for up to 5 business days.

   b. For offenders who are unavailable, only one continuance is required until the offender returns to Department jurisdiction.

      1) The hearing may be continued up to 20 business days after his/her return to Department jurisdiction.

3. The Disciplinary Hearing Officer will complete DOC 20-167 Continuance/Postponement of Decision of Disciplinary Hearing when a continuance is required and appropriately document the hearing status in the electronic file.

K. Hearing Reviews

1. The Superintendent/designee will sign DOC 20-051 Serious Infraction Report and conduct a review of all hearings and dispositions to ensure conformity with policy, WAC 137-25, and WAC 137-28. [4-4247]

   a. In major facilities, the Superintendent may delegate hearing review responsibilities to an Associate Superintendent.

   b. In stand-alone Level 2 facilities, the Superintendent may delegate hearing review responsibilities to the Correctional Program Manager.

V. Reporting to Law Enforcement

A. The Superintendent should report any felony under state or federal law committed in a facility to local law enforcement. [4-4231]

B. Offenders may be referred for prosecution for persistent Prison misbehavior when found guilty of a serious violation that is not a Class A or B felony after
losing all potential earned release time credits per DOC 460.050 Disciplinary Sanctions.

VI. [4-4243] Department Advisors

A. An employee or Department representative who did not observe or investigate the violation may be appointed as a Department advisor to help an offender prepare for and participate in a disciplinary hearing.

B. The Disciplinary Hearing Officer will ensure a Department advisor is appointed when it is apparent that the offender is not capable of preparing his/her defense, understanding the disciplinary process and charges, and/or collecting and presenting evidence effectively. The need for a Department advisor may be determined during any stage of the disciplinary process.

1. Criteria to consider will include, but not be limited to:
   a. The offender’s literacy,
   b. The complexity of the issue(s),
   c. The offender’s overall ability to speak for him/herself and adequately present his/her case,
   d. The offender’s mental status, as determined by a mental health professional or other employee with mental health training or experience,
   e. The offender’s ability to communicate in English, and
   f. Any disability that might impair the offender’s ability to adequately defend him/herself.

2. The appointment will be reported to the Disciplinary Hearing Office, appropriately documented, and clearly stated on the record.

C. The Department advisor will not provide legal advice or counsel, and information shared with the Department advisor is not privileged.

D. A list of trained Department advisors will be maintained by the Superintendent.

VII. Offender Requests for Access to Disciplinary Hearing Audio Records

A. At the conclusion of a disciplinary hearing, an offender may submit a written request to the Disciplinary Hearing Office to listen to their hearing, free of charge.
1. The audio will be forwarded to the law library or designated employee/contract staff for offender review and documented on DOC 17-088 Disciplinary Hearing Audio Request Log.

B. Copies of hearing audio recordings will be requested per DOC 280.510 Public Disclosure of Records.

C. Hearing audio recordings will not be transcribed for offenders by Disciplinary Hearing Office employees. Deaf and hard of hearing offenders may request transcription accommodation by contacting the facility ADA Coordinator per DOC 690.400 Offenders with Disabilities.

VIII. Training

A. The Training and Development Unit will ensure new employees are provided training on disciplinary procedures, including rules of offender conduct, the rationale for the rules, and available sanctions to impose as needed. [4-4229]

B. The Prison Disciplinary Program Manager will provide Disciplinary Hearing Officer training quarterly or as needed. This training is required for newly appointed Disciplinary Hearing Officers, Serious Infraction Review Officers, and Department advisors.

1. Employees assigned to conduct serious infraction hearings or as Serious Infraction Review Officers will attend the next scheduled Disciplinary Hearing Officer training.

C. The Superintendent will ensure employees are provided additional ongoing training on disciplinary procedures, as needed. [4-4229]

1. Training will include familiarity with local rules and procedures, WAC 137-25, WAC 137-28, and applicable policies.

D. The Prison Disciplinary Program Manager and the Attorney General's Office will provide additional training, as needed.

E. Appropriate employees will be notified of modifications to applicable policies, operational memorandums, WAC 137-25, WAC 137-28, WAC Handbook, and the WAC Violation Guidelines.

F. Employees who have not conducted a serious infraction hearing within the last 12 months will be required to demonstrate competency through a period of observations and review with the primary Disciplinary Hearing Officer(s).
1. A current list of employees eligible for conducting serious infraction hearings will be maintained by primary Disciplinary Hearing Officers.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

None

DOC FORMS:

DOC 02-077 Investigation Report [4-4234]
DOC 05-093 Disciplinary Hearing Notice/Appearance Waiver [4-4236]
DOC 05-094 Witness Statement
DOC 05-363 Restitution Review
DOC 09-197 Disciplinary Hearing Appeal Decision
DOC 17-069 Infraction Review Checklist
DOC 17-070 General Infraction Report
DOC 17-071 Disciplinary Hearing Offender Refusal/Waiver of Attendance
DOC 17-072 Disciplinary Hearings Review of Confidential Information Checklist
DOC 17-073 General Infraction Hearing Extension
DOC 17-074 Disciplinary Hearing Appeal
DOC 17-076 Initial Serious Infraction Report [4-4233] [4-4236]
DOC 17-077 Offender Appeal Receipt
DOC 17-084 General Infraction Appeal Decision
DOC 17-085 Sanction Notification
DOC 17-088 Disciplinary Hearing Audio Request Log
DOC 20-051 Serious Infraction Report
DOC 20-167 Continuance/Postponement of Decision of Disciplinary Hearing
DOC 21-312 Disciplinary Hearing Minutes and Findings [4-4236] [4-4245]
DOC 21-312A Disciplinary Hearing Minutes and Findings Continuation Sheet
DOC 21-425 Shift Commander/Unit Supervisor Use of Force Report