



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
PRISON/FIELD
OFFENDER/SPANISH MANUALS

REVISED DATE
8/1/21

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NUMBER
DOC 460.140

POLICY

TITLE
HEARINGS AND APPEALS

REVIEW/REVISION HISTORY:

Effective: 1/1/19
Revised: 8/1/21

SUMMARY OF REVISION/REVIEW:

Updated terminology throughout
I.E., II.C.1., II.C.2., II.C.4., V.D.2., and V.E.5. - Adjusted language as person-centered
III.A., V.G., VI.D., VI.D.1., VI.D.1.b. - Adjusted for reduction of 30 day maximum community custody sanction to 15 days to reflect legislative budget assumption
Removed IV.C.3. policy reference
Removed V.C.1. that the Hearing Officer will inform of the right to waive a full hearing with loss of the right to appeal if the conditions of a negotiated sanction are accepted
V.C.2. and VII.D. - Adjusted language for clarification
VI.C. - Removed unnecessary language


APPROVED:

Signature on file

CHERYL STRANGE, Secretary
Department of Corrections

7/30/21

Date Signed

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REFERENCES:


DOC 100.100 is hereby incorporated into this policy; [RCW 9.94A](#); [RCW 10.73](#); [WAC 137-24](#); [WAC 137-104](#); DOC 320.100 Indeterminate Sentence Review Board (Board); DOC 380.605 Interstate Compact; DOC 460.130 Response to Violations and New Criminal Activity; DOC 470.150 Confidential Offender Information; DOC 580.655 Drug Offender Sentencing Alternative; DOC 640.020 Health Records Management; [Records Retention Schedule](#)

POLICY:

- I. The Department has established hearing processes to address alleged violations for individuals under Department jurisdiction, supervised per DOC 380.605 Interstate Compact, and violations/762 infractions for Prison Drug Offender Sentencing Alternative (DOSA).
- II. Hearings for individuals under Indeterminate Sentence Review Board jurisdiction will be conducted per DOC 320.100 Indeterminate Sentence Review Board (Board).
- III. Hearing processes will provide due process and fairness including allowing individuals an opportunity to respond to allegations before sanctions are imposed.
- IV. Nothing in this policy authorizes holding the individual past the statutory maximum.

DIRECTIVE:

- I. General Requirements
 - A. Allegations of Failure to Obey All Laws will be dismissed without prejudice pending the outcome of the criminal process per DOC 460.130 Response to Violations and New Criminal Activity on DOC 09-264 Request and Authorization Administrative Dismiss Without Prejudice (DWOP).
 - B. A Classification Counselor (CC)/Community Corrections Officer (CCO)/Community Corrections Supervisor (CCS) will serve the individual with DOC 09-231 Notice of Allegations, Hearing, Rights, and Waiver and all supporting evidence no later than 24 hours before the hearing, but no sooner than 5 business days if the individual is in total confinement or 15 business days if not in total confinement.
 1. Evidence must include:
 - a. The condition(s) the individual allegedly violated,
 - b. Evidence supporting the Department's jurisdiction to hold the hearing, and

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c. Evidence supporting the allegation(s) unless it is a negotiated sanction hearing.

C. The Hearing Officer will not:

1. Issue subpoenas,
2. Enter protective orders,
3. Grant requests for change of venue,
4. Participate in prehearing conferences for settlement/simplification of issues, or
5. Decide issues set forth in pleadings, motions, objections, and/or offers of settlement.

D. Pleadings/briefs will not be filed regarding issues to be decided at a hearing.

E. Formal civil discovery may not be submitted in the form of:

1. Depositions,
2. Requests for admission,
3. Interrogatories,
4. Physical/mental examinations, or
5. Production of documents or electronically-stored information.

F. Alleged infractions/violations may be amended and/or new alleged infractions/violations added, provided the individual is given notice of such amendments at least 24 hours before the hearing, unless such notice is waived by the individual.


G. If the hearing date or location changes, a CC/CCO/CCS will notify the individual no later than 24 hours before the hearing on DOC 09-231 Notice of Allegations, Hearing, Rights, and Waiver or DOC 09-289 Hearing Continuance if the hearing will be continued.

H. Hearings for probable cause will be conducted per DOC 380.605 Interstate Compact.

II. General Responsibilities

A. The Hearing Officer will determine if the Department has jurisdiction, based on the evidence provided by a CC/CCO/CCS and the hearing preparation sheet, to hold a hearing by verifying the cause under which allegations are made is active.

1. If the Department does not have jurisdiction, the Hearing Officer will dismiss the allegation(s) and release the Department's hold.

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B. CCs, CCOs, CCSs, and Hearing Officers will ensure that hearings are conducted as safely as possible based on knowledge of the individual’s behavior and risk.

1. The CC, CCO, CCS, and Hearing Officer will collaborate with the host facility to plan for potential safety/security issues and will address them as needed throughout the hearing.

C. The Hearing Officer will conduct the hearing, assess the evidence, and render decisions in a fair and impartial manner in accordance with statute, case law, Washington Administrative Code, and Department policy.

1. A Hearing Officer may preside over a hearing where the Hearing Officer has personal involvement with any party or issue under consideration when waived by the individual.

2. If a Hearing Officer is unable to exercise fair judgment and render a fair and impartial decision for any reason, the Hearing Officer will recuse themselves by notifying their supervisor and the hearing will be rescheduled with a different Hearing Officer.

3. A Hearing Officer assigned to preside over a hearing may be replaced upon request and showing of good cause by the individual.


4. Hearing Officers should not directly/indirectly communicate outside of the hearing with anyone participating in the hearing or involved in preparing for the hearing, regarding any issue related to the hearing other than communications necessary to maintaining an orderly process, without notice and opportunity for all parties to participate (i.e., ex parte).

a. If the Hearing Officer receives ex parte communication prior to rendering a decision, the Hearing Officer must disclose on the record the communication, the response, and identities of each person the Hearing Officer communicated with. All parties must be offered an opportunity to rebut the communication on the record.

b. Violations may be reported to the Hearing Administrator.


III. Hearing Representation

A. An individual who will be participating in a full hearing on a Prison DOSA, CCP, or CCI cause, and has more than 15 days reclassification/return time remaining at the time of arrest, may request an attorney be present. The Hearing Officer will ensure an attorney is appointed when it is determined by the Hearing Officer

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that the case is unusually complex, or the individual is not able to represent themselves.

1. This does not apply to individuals being supervised under the Interstate Compact or for negotiated sanction hearings.
 2. If the Hearing Officer determines an attorney is necessary, the hearing will be continued, and an attorney will be appointed. The Hearings Unit Contract Manager/designee will notify the CC/CCO/CCS of the attorney's contact information as soon as possible following the appointment of the attorney.
 - a. If the continued hearing cannot be rescheduled during the hearing, the Hearing Officer will ensure a hearing date is secured as soon as possible.
 - b. The Hearing Officer will ensure parties are notified on DOC 09-289 Hearing Continuance of the date and time of the hearing no later than 3 business days before the hearing.
 - c. A CC/CCO/CCS will review DOC 05-831 Attorney Representation - Consent for Release of Information with the individual and request the individual signs the form.
 3. The Department will provide attorney representation unless the individual assumes all costs for representation and provides the name and contact information of an attorney at the hearing in which the Hearing Officer determines an attorney is needed.
 4. If the individual undeniably and voluntarily refuses or fires the attorney, the Hearing Officer may:
 - a. Proceed with the hearing with the appointed attorney,
 - b. Proceed without an attorney present, or
 - c. Allow the appointment of a different attorney.
- B. Upon receiving the attorney's contact information, a CC/CCO/CCS will provide the attorney with the discovery packet as soon as possible if the individual has signed DOC 05-831 Attorney Representation - Consent for Release of Information and other necessary release forms. If the individual has not signed the release, the CC/CCO/CCS will provide the discovery packet to the individual with instructions that the individual may provide it to the individual's attorney.
1. The packet may be provided to the attorney electronically.

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2. Any additional supporting evidence will be provided no later than 24 hours before the hearing to the attorney if the release form is signed or to the individual if the form is not signed.

C. If the hired attorney does not arrive as scheduled for the continued hearing, the hearing will be rescheduled for the next available date and the Department may appoint a different attorney.

IV. Hearing Discovery Requests

A. A public disclosure request is not required for prehearing discovery requests.

B. In general, discovery must be provided to the individual or the individual's attorney if the request is reasonable and not unduly burdensome. A request is reasonable if the records or witness testimony have any tendency to prove or disprove an issue that is important to the outcome of the hearing.

C. Department employees/contract staff will respond to reasonable requests in a timely manner by providing appropriately redacted/withheld materials, ensuring the safety and security of witnesses, victims, and third parties in compliance with legal requirements and Department policies including, but not limited to:

1. DOC 470.150 Confidential Offender Information, and
2. DOC 640.020 Health Records Management.


D. Communication/responses will be documented in the individual's electronic file.

E. The CC/CCO/CCS presenting the case will bring a copy of records provided to the individual or the individual's attorney to the hearing and provide them to the Hearing Officer.

F. The Hearing Officer will review and make a final decision regarding hearing discovery issues/disputes at the hearing. The Hearing Officer may resolve an issue/dispute by:


1. Continuing the hearing to a later date that is reasonable per circumstances,
2. Dismissing the allegation(s),
3. Proceeding with the hearing, or
4. Narrowing the scope of the discovery request.

G. Hearing Officers do not have the authority to compel witnesses or the production of documents.

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V. Hearing Process

- A. The Hearing Officer will control the conduct of the hearing and maintain orderly decorum.
- B. Hearings will be recorded electronically and retained per the Records Retention Schedule.
- C. If a negotiated sanction is being recommended, the Hearing Officer will:
 1. Confirm that the individual knowingly and voluntarily admits to the allegation(s) and waives the right to a full administrative hearing and right to appeal,
 2. Review the negotiated sanction and determine whether it is reasonably related to the:
 - a. Crime of conviction,
 - b. Violation committed,
 - c. Risk of reoffending, and/or
 - d. Safety of the community.
 3. Set over for a full hearing if it is determined that the sanction is not appropriate, or the individual did not knowingly and voluntarily admit guilt or waive rights, and
 4. Document the decision on DOC 11-001 Negotiated Sanction.
- D. The CC/CCO/CCS and individual participating in a full hearing will be provided with the opportunity to respond, present evidence/argument, conduct cross-examination, and rebut evidence.
 1. All testimony will be made under oath.
 - a. The Hearing Officer may accept written or telephonic testimony and will weigh the credibility of this evidence.
 2. Witnesses will only participate in the hearing to provide testimony and respond to questions.
 - a. The Department will not pay witnesses for providing testimony.
 - b. The Hearing Officer may require a witness to testify outside of the presence of the individual when it is likely that the witness will not

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be able to give effective, truthful testimony or will suffer significant psychological or emotional trauma in the presence of the individual.

- 1) The individual will be given the opportunity to submit questions to be asked of the witness in the individual's absence.
- c. Witnesses may be excluded from the hearing or testimony may be limited to maintain the safety and security of the facility and/or individuals.
- 1) The Hearing Officer will state the reason(s) for the exclusion/limitations of testimony on the record and document on DOC 09-233 Hearing and Decision Summary Report.
- E. Hearing Officers will consider only the evidence presented at the hearing and will determine if the evidence meets the preponderance of the evidence standard.
1. Evidence, including hearsay, is generally admissible.
 2. The Hearing Officer will specify on the record the evidence considered.
 3. The Hearing Officer's experience, technical competence, and specialized knowledge may be used in the evaluation of evidence.
 4. The Hearing Officer may exclude or limit evidence that is irrelevant, immaterial, or unduly repetitious.
 5. Witnesses testifying during the fact-finding phase will only be allowed to access external information (e.g., individual's electronic file) that was not included in the discovery packet if the individual waives the 24-hour notice requirement.
- F. Hearing Officers may continue a hearing for good cause, if it does not unduly delay the hearing. Good cause includes, but is not limited to:
1. A reasonable request by a CC/CCO/CCS or the individual,
 2. Unforeseen facility issues,
 3. A need to obtain:
 - a. An interpreter,
 - b. An attorney, if applicable,
 - c. Witness testimony/statements,
 - d. Reports or other documentation, and

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e. A replacement Hearing Officer due to a recusal.

G. For Prison DOSA, CCP, and CCI individuals facing potential reclassification/return to prison, the Hearing Officer may grant a request for continuance to a date after the 15th day following arrest. The hearing must take place within a reasonable time, but no later than the last remaining reclassification/return day.

H. If the hearing needs to be continued, the Hearing Officer will ensure parties are notified on DOC 09-289 Hearing Continuance of the date, time, and reason for the continuance no later than 3 business days before the hearing.

1. If the hearing cannot be rescheduled during the hearing, the Hearing Officer will ensure a hearing date is secured as soon as possible.

VI. Hearing Decision and Sanction

A. After a guilty/not guilty plea(s) is entered, the Hearing Officer will determine whether the individual is guilty or not guilty of each allegation, or will dismiss an improper, un-amended allegation. The Hearing Officer will:

1. Base the guilty/not guilty finding only on evidence presented at the hearing and matters officially noticed on the record.

2. Not rely on allegations that are unconfirmed or cannot be confirmed.


B. Hearing Officers may defer a hearing decision using DOC 09-227 Deferred Decision Waiver for no more than 2 business days unless waived by the individual. The Hearing Officer will ensure that the individual is advised in writing of the reason for the deferral and the date of the deferred hearing.

1. Hearing Officers will ensure that the deferred hearing is held in a timely manner and on the record with the individual present unless the individual waives the right to be present.


C. Witnesses testifying during the sanctioning phase will be allowed to access external information not included in the discovery packet.

D. Individuals found guilty at a hearing will be subject to confinement of no more than 15 days per hearing regardless of the number of violations addressed unless the individual is subject to reclassification or return per RCW 9.94A.633.

1. Prison DOSA, CCP, and CCI individuals may be sanctioned up to 15 days of confinement or have full reclassification/return time imposed.

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- a. Prison DOSA individuals who fail to complete or are administratively terminated from substance use disorder treatment will be reclassified to serve the unexpired term of the sentence as ordered by the sentencing court.
- b. The 15 days may be extended if the hearing is continued and the date of the hearing passes the 15th day of confinement.
2. Individuals will receive credit for time served for prehearing confinement. Time will not be credited while on conditional release.
3. The Hearing Officer will impose confinement for violation hearings on DOC 09-238 Confinement Order.
 - a. Copies will be provided to each party at the time of the sanctioning decision or immediately following the decision if the individual is not present.
- E. If the individual is found guilty of the alleged violation(s)/infraction(s), the Hearing Officer will:
 1. For violation hearings, determine an appropriate sanction using the Behavior Accountability Guide or Graduated Sanction/Violation Response Guide in DOC 460.130 Response to Violations and New Criminal Activity, as applicable.
 2. Consider the following when determining an appropriate sanction:
 - a. Recommendations by the case manager/CCS and individual.
 - b. Factors such as the individual's overall adjustment, prior infractions/violations, prior conduct, and mental status.
 - c. The sanction decision will be reasonably related to the:
 - 1) Crime of conviction,
 - 2) Violation committed,
 - 3) Risk of reoffending, and/or
 - 4) Safety of the community.
 - d. If a Prison DOSA individual was administratively terminated from or failed to complete substance use disorder treatment, the Hearing Officer will reclassify the individual to serve the remaining portion of the DOSA sentence.

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3. Specify the hearing decision and sanction on the record and document on DOC 09-233 Hearing and Decision Summary Report or DOC 11-001 Negotiated Sanction.
 - a. Copies will be provided to each party at the time of the sanctioning decision or immediately following the decision if the individual is not present.
4. Unless a negotiated sanction was used, inform the individual of the right to appeal in writing within 7 days and provide the individual with DOC 09-275 Appeal of Department Violation Process.
 - a. Appeals must be handed to an employee or postmarked within 7 days of a sanction being imposed.

F. The Hearing Officer will enter new violations on the Field Discipline screen and infractions on the Prison Discipline screen in the individual's electronic file.


VII. Appeal Process

A. The Secretary/designee will designate an appeals panel consisting of one:

1. CCS, serving a 3-month term
2. Hearing Officer
3. Hearing Supervisor, serving continually as the appeals panel chair

B. The appeals panel will:

1. Respond to all appeals within 15 business days of receipt.
2. Guard against allowing personal experience or bias to weigh into their decisions.
3. For low-level appeals, review the appeal and available evidence at the discretion of the panel.
4. For high-level appeals, review only the appeal, the record, and evidence presented at the hearing. The panel may not solicit or consider additional evidence.
5. Determine if a procedural, jurisdictional, finding of guilt, or sanctioning error occurred.
6. Affirm, modify, reverse, vacate, or remand the decision by majority vote using DOC 09-235 Appeals Panel Decision.


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- a. The panel may not increase the severity of the sanction.
- b. The panel will modify, reverse, vacate, or remand the decision if a majority of the panel finds that:
 - 1) The sanction was not reasonably related to the crime of conviction, violation committed, risk to reoffend, or safety of the community, or
 - 2) Any finding of an infraction or violation was based solely on unconfirmed allegations or allegations that cannot be confirmed.
- C. The Hearings Unit will notify the individual, presiding Hearing Officer, and supervising CC/CCO/CCS of the outcome of the appeal.
 1. If the decision is to modify, vacate, remand, or reverse a decision, the Hearings Unit will also notify the Hearing Records Unit and the holding facility if the individual is confined, and document the appeal decision in the individual's electronic file.
- D. Copies of all documents related to the appeal(s) will be documented in and scanned into the individual's electronic imaging file and retained per the Records Retention Schedule.

VIII. Administrator Authority

- A. The Deputy Secretary and Hearings Administrator have the authority to affirm, modify, reverse, vacate, or remand the Hearing Officer/appeal panel's decision.
 1. If the Deputy Secretary or Hearing Administrator modifies, vacates, remands, or reverses a decision, the Hearing Administrator/designee will notify the following of the outcome of the appeal and the holding facility if the individual is confined.
 - a. Individual involved
 - b. Presiding Hearing Officer
 - c. Supervising CC/CCO/CCS
 - d. Hearings Records Unit
- B. The Deputy Secretary or Hearing Administrator may not increase the severity of the sanction.

DEFINITIONS:

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

ATTACHMENTS:

None

DOC FORMS:

- DOC 05-831 Attorney Representation - Consent for Release of Information
- DOC 09-227 Deferred Decision Waiver
- DOC 09-231 Notice of Allegations, Hearing, Rights, and Waiver
- DOC 09-233 Hearing and Decision Summary Report
- DOC 09-235 Appeals Panel Decision
- DOC 09-238 Confinement Order
- DOC 09-264 Request and Authorization Administrative Dismiss Without Prejudice (DWOP)
- DOC 09-275 Appeal of Department Violation Process
- DOC 09-289 Hearing Continuance
- DOC 11-001 Negotiated Sanction