



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
FIELD

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POLICY

TITLE
VIOLATIONS, HEARINGS, AND APPEALS

REVIEW/REVISION HISTORY:

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- Revised: 12/6/13

SUMMARY OF REVISION/REVIEW:

Numerous changes, including incorporation of interim policy attachment throughout and removal of other attachments. Read carefully!


APPROVED:

Signature on file

BERNARD WARNER, Secretary
Department of Corrections

11/25/13

Date Signed

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REFERENCES:


DOC 100.100 is hereby incorporated into this policy; [RCW 9A](#); [RCW 9.68A](#); [RCW 9.94A](#); [RCW 46.61.520](#); [WAC 137-104](#); [DOC 320.100 Indeterminate Sentence Review Board \(ISRB\)](#); [DOC 350.750 Warrants and Detainer](#); [DOC 380.605 Interstate Compact](#); [DOC 420.390 Arrest and Search](#); [Records Retention Schedule](#)

POLICY:

- I. The Department will address and hold offenders accountable for their violation behavior.
- II. Offenders accused of violating conditions or requirements of supervision/community custody will have the opportunity to respond to the allegations before sanctions are imposed.

DIRECTIVE:

- I. Department Jurisdiction Violation Response
 - A. The Department maintains sanctioning jurisdiction on causes classified as:
 1. Community Custody Jail (CCJ)
 2. Community Custody Prison (CCP)
 3. Community Custody Max (CCM)
 4. Community Custody Inmate (CCI)
 5. Misdemeanor Community Custody (MCC)
 6. Prison Drug Offender Sentencing Alternative (DOSA)
 - B. The CCO will respond to offender violation behavior at the earliest opportunity, but no more than 3 business days after determining a violation has occurred.
 1. Each violation process of one or more violations will be counted as one violation process.
 2. Once an offender has had 5 violation processes during a continuous period of supervision, all subsequent violations will be addressed through a Department hearing.
 3. The offender's violation process count will accrue during any continuous period of Department supervision, regardless of cause number or jurisdiction.
 4. Violation behavior will be addressed only through the Department's violation response, unless the sentencing court orders otherwise.


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C. Sanctions will follow the:


1. Behavior Accountability Guide (Attachment 1) to address swift and certain sanctioning for offenders whose date of sentence is:
 - a. On or before May 31, 2012, if the offender has received an orientation on the Department's violation response, or
 - b. After May 31, 2012.
2. Graduated Sanction/Violation Response Guide (Attachment 2) for all other offenders.

D. Response to Low Level Violations


1. Low level violations are defined in the Behavior Accountability Guide (Attachment 1).
2. If possible, CCOs will address an eligible offender's first low level violation through a Stipulated Agreement using DOC 09-226 DOC Jurisdiction Only Notice of Violation/Stipulated Agreement.
 - a. The CCO will enter the Stipulated Agreement in the offender's electronic file.
3. For all subsequent low level violations, the CCO will arrest the offender per DOC 420.390 Arrest and Search and follow the applicable Violation Processes section of the Behavior Accountability Guide (Attachment 1).
 - a. With CCS approval, arrest may be mitigated for offenders with known/established mental health issues when confinement would interfere with stability of medications, treatment, employment, or housing. If mitigated, the violation will be addressed through a Stipulated Agreement.
4. Imposing Short Term Sanctions
 - a. At the time the offender is detained by the Department, or once s/he reports after release from confinement if detained by another agency, the CCO will:
 - 1) Provide the offender the opportunity to respond to the alleged violation,
 - 2) Provide the offender a copy of DOC 09-275 Appeal of Department Violation Process, and

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- 3) Advise the offender of the procedure for appealing the sanction in writing within 7 calendar days after the sanction is imposed.
- b. At a minimum, the CCO will chrono the following information in the offender's electronic file:
 - 1) Violation process number
 - 2) Case staffed with CCS/designee
 - 3) Violation(s)
 - 4) Offender sanction
 - 5) Detaining facility
 - 6) Release date
 - 7) Offender received copy of Detainer, if applicable
 - 8) Offender received a copy of the appeal form
 - c. The CCS/designee will review and approve/deny the confinement request. For offenders detained by the Department, this review is required before placement in total confinement. In his/her review, the CCS/designee will verify and chrono that:
 - 1) The Department has jurisdiction to confine the offender, and the violation was willful.
 - 2) The offender was provided:
 - a) The opportunity to respond to the alleged violation, and
 - b) A copy of DOC 09-275 Appeal of Department Violation Process.
- E. Response to High Level Violations and to Low Level Violations with Valid Aggravating Factors
1. For all high level violations and all low level violations with valid aggravating factors, the CCO will arrest the offender per DOC 420.390 Arrest and Search and follow the applicable Violation Processes section of the Behavior Accountability Guide (Attachment 1).
 - a. With CCS approval, arrest may be mitigated for offenders with known/established mental health issues when confinement would interfere with stability of medications, treatment, employment, or housing. If mitigated, the violation will be addressed through a Stipulated Agreement.

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2. All aggravating factors must be validated by the Hearings and Violations Administrator/designee or Hearings Duty Officer.
 - a. The CCO/CCS will request a review of the aggravating factor(s) within one business day of the offender's arrest.
 - b. The Hearings and Violations Administrator/designee or Hearings Duty Officer will:
 - 1) Determine if the aggravating factor(s) is a qualifying factor listed in the Behavior Accountability Guide (Attachment 1),
 - 2) Immediately notify the requesting CCO/CCS of the decision, and
 - 3) Enter the decision and aggravating factor(s) in the offender's electronic file.
 3. All high level violations and all low level violations with valid aggravating factors will be addressed through a Department hearing, and sanctions will be imposed using the Behavior Accountability Guide (Attachment 1).
 - a. The violations will be reported using DOC 09-228 DOC - Report of Alleged Violation for a full hearing or DOC 11-001 Negotiated Sanction for a negotiated sanction hearing.
 - b. The offender will be served DOC 09-231 Community Custody Notice of Allegations, Hearing, Rights, and Waiver and necessary discovery materials no later than 24 hours before the scheduled hearing unless the offender waives this requirement.
 4. The offender will be held in total confinement pending the hearing unless conditionally released per this policy.
 5. Offenders found guilty of one or more violations at a hearing will be subject to confinement of no more than 30 days.
- F. Offenders under both Department and Non-Department jurisdictions
1. Offenders who are under both Department and non-Department jurisdictions will have violations addressed under the non-Department jurisdiction until that jurisdiction is closed, if there is a similar condition under Department jurisdiction.

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- a. If the non-Department jurisdiction orders a sanction, the sanction will count as one violation process for the Department's violation response.

II. Court Jurisdiction Violation Response

A. The court maintains jurisdiction on causes classified as:

1. Special Sex Offender Sentencing Alternative (SSOSA)
2. Drug Offender Sentencing Alternative (DOSA 1), only when recommending revocation
3. Residential DOSA (DOSA 3)
4. Insanity Acquittal (IAQ)
5. Post-Release Supervision (PRS)
6. Misdemeanor (MIS)
7. Misdemeanor Community Custody (MCC), only when recommending revocation


B. The CCO will respond at the earliest opportunity but not later than 14 calendar days after determining that a violation has occurred. Options for addressing alleged violations are:

1. Written Warning/Reprimand
 - a. The CCO will complete DOC 17-080 Written Warning/Reprimand and document it in the offender's electronic file.
2. Stipulated Agreement
 - a. The CCO will complete DOC 09-051 Court Jurisdiction Only Notice of Violations/Stipulated Agreement and document it in the offender's electronic file.
3. Notice of Violation
 - a. The CCO will complete DOC 09-122 Court - Notice of Violation and document it in the offender's electronic file.

C. CCOs may recommend total confinement of up to 60 days per violation unless requesting revocation/return.

III. Indeterminate Sentence Review Board (ISRB) Jurisdiction Violation Response

- A. Violations committed by offenders under ISRB jurisdiction will be addressed per DOC 320.100 Indeterminate Sentence Review Board (ISRB).

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IV. Interstate Compact Jurisdiction Violation Response

- A. Violations committed by Interstate Compact offenders will be addressed per DOC 380.605 Interstate Compact.

V. Department Response to Failure to Obey All Laws


- A. Authorized employees shall arrest all offenders who commit a misdemeanor, gross misdemeanor, and/or felony in their presence per DOC 420.390 Arrest and Search when local law enforcement declines or is unable to arrest.

- B. Employees will use DOC 09-282 DOC - Statement of Investigating Officer Affidavit of Facts to notify the prosecutor of the detention of:

1. Any offender who has committed a misdemeanor, gross misdemeanor, and/or felony in an employee's presence, when local law enforcement declined or was unable to arrest.
2. An offender arrested by any agency for any crime, whose underlying offense is one of the felonies listed in Attachment 3.

- C. Employees will use DOC 09-278 DOC - New Criminal Activity Hold to hold the offender in total confinement as follows:


1. Offenders on supervision for one of the underlying felony offenses listed in Attachment 3 will be held for a minimum of 7 calendar days from the time of arrest or until the prosecutor files new charges, whichever comes first.
 - a. On the 7th calendar day, the CCO will review the offender's status. If the prosecutor has not filed new charges, the CCO will respond as follows:
 - 1) When there is not enough evidence to pursue the Fail to Obey all Laws violation and there are no remaining violations that require a hearing, the CCO will request an Administrative Dismiss without Prejudice per this policy and release the hold.
 - 2) When there is enough evidence to pursue the Fail to Obey all Laws violation and/or there are remaining violations that require a hearing, the CCO will schedule a hearing and pursue the violation(s).
2. All other offenders will be held for no more than 3 business days from the date the hold was placed.

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- D. When the crime was committed in an employee's presence, the employee will complete DOC 09-283 DOC - Criminal Incident Report, and all other employees with substantial involvement will complete DOC 09-284 DOC - Supplemental Report.
 - 1. All reports will be completed and submitted to the charging agency within 3 business days of arrest or on a schedule determined by that agency.
 - 2. Any information gathered after submission of the initial Criminal Incident Report will be reported to the charging agency on DOC 09-284 DOC - Supplemental Report.
- E. For offenders arrested by an outside agency who are subject to swift and certain sanctioning under the Behavior Accountability Guide (Attachment 1), the CCO will only monitor and document the criminal allegations.
- F. For all other offenders arrested by an outside agency, the CCO will respond to the violation as outlined in this policy.

VI. Administrative Dismiss Without Prejudice

- A. The CCO will request an Administrative Dismiss without Prejudice for Prison DOSA, CCP, and CCI offenders using DOC 09-264 Request for Dismiss Without Prejudice.
 - 1. This process may be used only if the offender:
 - a. Has been charged with a new felony offense, committed while on supervision for the referenced cause(s),
 - b. Has at least 30 days of revocable time remaining on the referenced cause, and
 - c. Is not being supervised for one of the underlying felony offenses listed in Attachment 3.
 - 2. If the offender receives a new felony conviction resulting from the charge(s), the CCO will take the offender into custody, request a hearing, and recommend revocation.
 - a. If the Hearings Officer determines the Department has jurisdiction to hold a hearing, the offender's sentence will be revoked and/or the remaining confinement time will be imposed.


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- b. If the Hearings Officer determines the Department does not have jurisdiction to hold a hearing, s/he will dismiss the violation and release the Department's hold on this violation.
 - c. If the CCO determines the offender no longer has revocable time at the time of conviction, the CCO will not request a hearing for the dismissed violation and will chrono the reason in the offender's electronic file.
3. If the offender receives a new misdemeanor or gross misdemeanor conviction resulting from the charge(s), the CCO will not request a hearing for the dismissed violation and will chrono the reason in the offender's electronic file.

- B. For offenders on supervision for one of the underlying felony offenses listed in Attachment 3, the CCO will only request an Administrative Dismiss without Prejudice as outlined in the Department Response to Failure to Obey All Laws section of this policy.
- C. For From Out of State (FOS) offenders, the CCO may request an Administrative Dismiss without Prejudice for violations resulting from new felony charges if the CCO feels there is not enough evidence to proceed with a hearing.
- D. The CCO will staff the decision to recommend dismissal without prejudice with the CCS using DOC 09-264 Request for Dismiss Without Prejudice, and both will document the recommendation in the offender's electronic file.
- E. The Hearings and Violations Administrator and Hearings Duty Officer are authorized to dismiss without prejudice new allegations of criminal behavior pending the outcome of local prosecution. If authorized, the Department's hold or detainer may be released.

VII. In-Custody Offenders with Significant Medical Issues


- A. If an offender is rejected from a local facility due to significant medical issues, the CCO will contact the Headquarters Nurse Desk immediately upon notification from the facility.
- B. The Nurse Desk will notify the CCO of any available booking/confinement alternatives or if the offender must be taken to a local hospital for clearance.
 - 1. If the offender must be admitted to a local hospital, the CCO will notify the CCS/designee.

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2. If it is determined that a conditional release is appropriate, the CCS/designee will ensure DOC 09-269 Conditional Release Request is submitted to the Hearings Officer, or the section Duty Officer during non-business hours.
 - a. The CCS/designee will document the basis for the Conditional Release request in the offender's electronic file.
 3. The Hearings/section Duty Officer has the authority to approve/deny the Conditional Release request using DOC 09-270 Conditional Release Authorization.
 - a. If possible, the CCO will give a copy of the DOC 09-270 Conditional Release Authorization to the offender and verbally direct him/her to report within one business day of release from the hospital.
 - b. Upon reporting, the offender will be taken back into custody to complete the original violation process.
 - c. If the offender fails to report within one business day of discharge, s/he will be considered to have absconded.
 4. The Hearings/section Duty Officer will notify the CCO and CCS and document the decision in the offender's electronic file.
- C. The CCO will notify the CCS/designee of any changes to the staffed arrest/booking plan.

VIII. Hearing Conduct

- A. CCOs, CCSs, and Hearings Officers will ensure that hearings are conducted as safely as possible based on knowledge of the offender's behavior.
 1. The CCO, CCS, and Hearings Officer will collaborate to plan for potential safety/security issues and will address safety and security issues as needed throughout the hearing.
- B. Hearings Officers will control the conduct of the hearing and maintain orderly decorum.
 1. The Hearings Officer will notify the offender that s/he may receive a new violation for failing to comply with:
 - a. Facility rules, and/or
 - b. CCO, CCS, and Hearings Officer directives.

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2. Hearings will be recorded electronically. Recordings will be retained per the Records Retention Schedule.
- C. Hearings Officers will consider only the evidence presented at the hearing and will determine if the evidence meets the preponderance standard.
1. Hearings Officers will specify on the record the evidence considered and the basis for their findings and decision.
- D. Hearings Officers will consider the CCO's sanction recommendation and will use the Behavior Accountability Guide (Attachment 1) or Graduated Sanction/ Violation Response Guide (Attachment 2), as applicable, as a tool in determining the appropriate sanction.
1. For offenders sanctioned under the Behavior Accountability Guide (Attachment 1), Hearings Officers may impose:
 - a. Total confinement (i.e., jail or Prison), or
 - b. Partial confinement (i.e., Work Release).
 2. The hearing decision will be documented using DOC 09-233 Hearing and Decision Summary Report.
 3. Offenders found guilty at a hearing will be subject to confinement of no more than 30 days per hearing, regardless of the number of violations addressed.
 - a. The Hearings Officer will impose any confinement using DOC 09-238 Confinement Order.
 4. At the hearing, the Hearings Officer will inform the offender of his/her right to appeal in writing within 7 days and provide him/her with DOC 09-275 Appeal of Department Violation Process.
- E. Hearings Officers may continue a hearing for good cause.
1. Good cause includes, but is not limited to, the following:
 - a. A reasonable request by the CCO or the offender,
 - b. Unforeseen facility issues,
 - c. To determine the offender's mental status or competency,
 - d. To obtain an interpreter,
 - e. To obtain witness testimony/statements,
 - f. To obtain reports or other documentation, and

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g. To obtain a replacement hearings officer due to a Hearings Officer's recusal.

2. Hearings Officers who continue a hearing will ensure that the hearing is held within 5 business days and that the offender is advised in writing of the basis for the continuance and the date of the next hearing.

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

1. Hearings Officers that defer a hearing decision will ensure that the deferred hearing is held timely and on the record with the offender present, unless the offender waives his/her right to be present.

IX. Offender Appeal Process

A. The Director of Executive Policy/designee will establish appeals panels throughout the state, each consisting of:

1. One Community Corrections Supervisor, serving a 12-month term, and
2. Two Hearings Officers, each serving a 6-month term, 3 months of which include serving as the appeals panel lead.


B. The panel will respond to all appeals within 15 business days of receipt.

C. The panel will notify the presiding Hearings Officer and supervising CCO when the appeal is about to be heard and provide them a copy of any appeal responses provided to the offender.


D. The panel will review the appeal, the record, and any other provided evidence to determine if a procedural or jurisdictional issue occurred, or if the sanction was reasonably related to the:

1. Crime of conviction,
2. Violation committed,
3. Offender's risk of re-offending, or
4. Safety of the community.

E. By majority vote, the panel will affirm, reverse, vacate, remand, or modify the decision using DOC 09-235 Appeals Panel Decision. The panel may not increase the severity of the sanction.

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- F. If, after the completion of the appeals panel review, an error is brought to the attention of the Hearings and Violations Administrator, s/he has the authority to vacate and/or modify the findings and sanctions.
- G. A Prison DOSA, CCP, or CCI offender who has been returned, revoked, or otherwise required to serve the remainder of his/her sentence as a result of a violation process, and whose sanction was affirmed on appeal, may appeal the panel's decision in writing to the Director of Executive Policy.
 - 1. The offender must appeal within 7 calendar days of receiving notice of the panel's decision.
 - 2. Within 15 business days of receiving the offender's appeal request, the Office of Executive Policy will notify the offender in writing of a decision or of the need for additional time for review.
- H. Copies of all documents related to the appeal(s) will be placed in the offender's central/Field file and scanned into the offender's electronic imaging file.
- X. Hearing Process Improvement
 - A. The Department will continue to improve the hearing process. The following panel and process is the mechanism for identifying areas for improvement and bringing them to the attention of Department leadership.
 - 1. A CCO or Hearings Officer identifying an issue with this policy, the violation/hearing process, or violation/hearing training will forward it to the Hearings and Violations Administrator and the applicable Regional Administrator.
 - 2. The Hearings and Violations Administrator/designee and Regional Administrator will bring the issue to the Hearing Process Improvement Panel for review, discussion, and action if necessary or refer the issue to the CCO/Hearings Officer's supervisors for consideration.
 - 3. The panel will assess the issue within 30 days of receipt and will share the action to be taken with the impacted employees.
 - B. The Hearing Process Improvement Panel will consist of the Director of Executive Policy/designee, a Regional Administrator appointed by the Assistant Secretary for Community Corrections, and one bargaining unit designee appointed by the AFL-CIO Council 28 Corrections Communications Chair.
 - C. Panel decisions will omit the names of those involved and be published in an electronic file accessible to Community Corrections personnel.

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DEFINITIONS:

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

ATTACHMENTS:

- [Behavior Accountability Guide \(Attachment 1\)](#)
- [Graduated Sanction/Violation Response Guide \(Attachment 2\)](#)
- [Underlying Felony Offenses \(Attachment 3\)](#)

DOC FORMS:

- [DOC 09-051 Court Jurisdiction Only Notice of Violations/Stipulated Agreement](#)
- [DOC 09-122 Court - Notice of Violation](#)
- [DOC 09-226 DOC Jurisdiction Only Notice of Violation/Stipulated Agreement](#)
- [DOC 09-227 Deferred Decision Waiver](#)
- [DOC 09-228 DOC - Report of Alleged Violation](#)
- [DOC 09-231 Community Custody 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 for Dismiss Without Prejudice](#)
- [DOC 09-269 Conditional Release Request](#)
- [DOC 09-270 Conditional Release Authorization](#)
- [DOC 09-275 Appeal of Department Violation Process](#)
- [DOC 09-278 DOC - New Criminal Activity Hold](#)
- [DOC 09-282 DOC - Statement of Investigating Officer Affidavit of Facts](#)
- [DOC 09-283 DOC - Criminal Incident Report](#)
- [DOC 09-284 DOC - Supplemental Report](#)
- [DOC 11-001 Negotiated Sanction](#)
- [DOC 17-080 Written Warning/Reprimand](#)