

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

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

(b) Unless excused, an incarcerated individual's failure to attend a scheduled hearing will be considered a waiver of 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 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 incarcerated individual's plea(s) to the alleged violation(s);

(vi) The names of witnesses;

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

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

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

(5) If an incarcerated individual's behavior disrupts the hearing, they may be removed and the hearing will continue on the record in the 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 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 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 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.

[Statutory Authority: RCW 79.01.090. WSR 23-22-112, § 137-28-300, filed 10/31/23, effective 12/1/23. Statutory Authority: RCW 72.01.090. WSR 20-08-037, § 137-28-300, filed 3/24/20, effective 4/24/20. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-28-300, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090. WSR 00-10-079, § 137-28-300, filed 5/2/00, effective 6/2/00. WSR 95-15-044, § 137-28-300, filed 7/13/95, effective 8/15/95.]