

Chapter 381-100 WAC
PROCEDURES FOR CONDUCTING COMMUNITY CUSTODY VIOLATION HEARINGS

Last Update: 5/31/24

WAC

381-100-010	Purpose.
381-100-020	Authority.
381-100-030	Scope.
381-100-040	Definitions.
381-100-050	Intent.
381-100-055	Board notification of alleged violations.
381-100-070	Notice of suspension of community custody.
381-100-090	Administrative reinstatements.
381-100-100	Violations specified.
381-100-110	Probable cause review.
381-100-120	Notice of violation report to be submitted by community corrections officer.
381-100-130	Administrative review.
381-100-135	Opportunity to waive hearing.
381-100-140	Scheduling community custody violation hearings.
381-100-150	Rights and privileges relating to violation hearings.
381-100-160	Acknowledgment of rights.
381-100-170	Discovery.
381-100-180	Filing with the board.
381-100-190	Subpoenas.
381-100-200	Hearing procedures—Presiding officer.
381-100-210	Hearing procedures—Prehearing conference.
381-100-220	Hearing procedures—Presentation of state's case.
381-100-230	Hearing procedures—Appearance and practice before agency—Who may appear.
381-100-240	Hearing procedures—Standards of ethical conduct.
381-100-250	Hearing procedures—Witnesses.
381-100-260	Hearing procedures—Continuances.
381-100-270	Hearing procedures—Persons present.
381-100-280	Rules of evidence—Admissibility.
381-100-290	Hearing procedures—Findings and conclusions.
381-100-310	Hearing record preservation.
381-100-320	Appeal of community custody violation sanctions.
381-100-330	Determination of competency.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

381-100-060	Notice of arrest by law enforcement officer. [Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-060, filed 3/31/09, effective 5/1/09.] Repealed by WSR 24-12-050, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.030 (1)(c).
381-100-080	Board to reinstate. [Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-080, filed 3/31/09, effective 5/1/09.] Repealed by WSR 24-12-050, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.030 (1)(c).

WAC 381-100-010 Purpose. The purpose of this chapter is to specify policies and procedures relating to community custody violation hearings. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution, the Washington Constitution, or state law. The regulations should be interpreted to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-010, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-010, filed 3/31/09, effective 5/1/09.]

WAC 381-100-020	Authority.	RCW	9.95.150,	9.95.420,
10.95.030(2),	9.94A.730,	9.95.425,	9.95.430,	9.95.435,
9.94A.507,	and 9.95.900.			9.95.440,

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-020, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-020, filed 3/31/09, effective 5/1/09.]

WAC 381-100-030 Scope. The provisions of this chapter shall apply to individuals granted community custody from a prison sentence pursuant to RCW 9.95.420, 10.95.030(2), or 9.94A.730, who are alleged to have violated the conditions of their order of release.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-030, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-030, filed 3/31/09, effective 5/1/09.]

WAC 381-100-040 Definitions. For purposes of this chapter, the following words have the following meanings:

"Appeals panel" means three reviewing officers designated by the chair of the board or their designee with the authority to review decisions made by a board member or hearing officer, and to affirm, reverse, or modify decisions and sanctions in accordance with RCW 9.95.435.

"Board" means the members of the indeterminate sentence review board.

"Board warning" means a letter served to the individual to address alleged violation behavior and notify the individual of consequences of violation behavior.

"Business day" means working day.

"Community corrections officer (CCO)" means an employee of the department of corrections responsible for carrying out specific duties concerning the supervision of individuals and monitoring of sentence conditions.

"Community custody" means that portion of an individual's sentence served in the community subject to controls placed on the individual's movement and activities by the board and supervised by the department of corrections.

"Community custody board" means the board when acting in relation to individuals who have been released, or are releasable, under RCW 9.95.420.

"Department" means the department of corrections.

"Electronically" when used in reference to submission of documents to the board, means via facsimile, electronic mail or other generally accepted electronic means.

"Graduated sanction system" means structured incremental responses designed to reduce risk to the public, effectively intervene in noncompliant behavior, where possible, repair harm to the community, and make efficient use of limited state resources. The graduated sanction system provides the board options for sanctions in response to violations to the conditions of supervision and the board may choose a sanction commensurate to the violation. Sanctions may include, but are not limited to, work release; home detention with electronic monitoring; work crew; community restitution; inpatient treatment; daily reporting; curfew; educational or counseling sessions; supervision enhanced through electronic monitoring; or any other sanctions available

in the community; or, may include board warnings, stipulated agreements, or suspension or revocation of the release to community custody.

"Hearing officer" means a member, employee, or designee of the indeterminate sentence review board authorized to preside over community custody violation hearings.

"Individual" means any person under the jurisdiction of the ISRB pursuant to RCW 9.95.420, 10.95.030, or 9.94A.730.

"ISRB" means the indeterminate sentence review board.

"Juvenile board" means the board when acting in relation to individuals who have been released by the board pursuant to RCW 10.95.030 or 9.94A.730.

"On-site desk" means the board's designee that receives notice of violations of community custody conditions and schedules violation hearings.

"Presiding officer" means a member, employee or designee of the board authorized to act as a hearing officer to preside over community custody violation hearings.

"Probable cause" means a determination, made by a hearing officer, that there is cause to believe a violation has occurred.

"Stipulated agreement" means an agreement between the individual and the board in which the individual admits violations and agrees to comply with intermediate sanctions. For the purposes of this subsection, "intermediate sanction" means board-imposed sanctions that are served in the community rather than total confinement.

"Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for 24 hours a day, to include, but not be limited to, adult correctional facilities, camp and prerelease facilities, or county or municipal jails.

"Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the criminal conduct of the individual.

"Working day" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-040, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-040, filed 3/31/09, effective 5/1/09.]

WAC 381-100-050 Intent. (1) The indeterminate sentence review board will exercise its authority over the individuals under its jurisdiction in a manner that:

(a) Places a high priority on public safety;

(b) Imposes only those reasonable and enforceable conditions of community custody necessary to facilitate the safety of previous victims and potential victims, encourage responsibility, and to assist the individual's lawful reintegration into the community; and

(c) Supports the role and responsibility of the community corrections officer to assist individuals to reenter the community in a law-abiding manner.

(2) In making a decision on sanctions, community custody revocation or reinstatement, the indeterminate sentence review board may

consider the following factors in addition to factors that are case specific:

- (a) Whether or not the community custody violation behavior has resulted, or may result in a criminal conviction;
- (b) The relationship of the community custody violation behavior to the committing offense and the nature of the violation;
- (c) The length of time the individual has been on community custody as well as time previously served on the conviction;
- (d) The perspective and recommendation of victim(s) and/or other concerned citizens;
- (e) The recommendation and supporting reasons offered by the community corrections officer, the individual and/or attorney, and the assistant attorney general;
- (f) The level of risk to the community posed by the individual;
- (g) The previous board action during the current or prior periods of community custody;
- (h) The number of previous violation processes and compliance with resulting sanctions;
- (i) The graduated sanction system;
- (j) Relevant case law; and
- (k) Adjustment to supervision.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-050, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-050, filed 3/31/09, effective 5/1/09.]

WAC 381-100-055 Board notification of alleged violations. (1)

Whenever a CCO becomes aware of an individual's alleged violation behavior, the CCO must notify the ISRB of the alleged violation(s) within one working day. Notification should be submitted electronically.

- (2) Notifications are to include:
 - (a) The factual circumstances of the alleged violation; and
 - (b) The date of violation or approximation thereof.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-055, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-055, filed 3/31/09, effective 5/1/09.]

WAC 381-100-070 Notice of suspension of community custody.

When a community corrections officer becomes aware of an individual's arrest by law enforcement or causes the arrest and detention of an individual under the jurisdiction of the ISRB, the community corrections officer shall suspend the individual's community custody by personally serving the order for arrest and detention on the individual within one working day of the arrest or becoming aware of arrest, whichever is later. The community corrections officer shall electronically submit a copy of the order for arrest and detention to the board within one working day of service.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-070, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-070, filed 3/31/09, effective 5/1/09.]

WAC 381-100-090 Administrative reinstatements. (1) A community corrections officer shall submit a written request for reinstatement or report with recommendations to the ISRB when the officer has caused the arrest and detention of an individual and after investigation determines:

(a) That the alleged violations are unfounded; or

(b) That the seriousness of the alleged violations is mitigated by new information; or

(c) That further custody is unwarranted and a community custody violation hearing is unnecessary.

(2) The board may reinstate the individual on community custody with or without a recommendation of the community corrections officer under the same or modified community custody conditions, when such reinstatement is consistent with criteria identified in WAC 381-100-050 and RCW 9.95.440.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-090, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-090, filed 3/31/09, effective 5/1/09.]

WAC 381-100-100 Violations specified. (1) **In custody:** When community custody is suspended by the community corrections officer, the community corrections officer shall cause the individual to be personally served with a copy of the *Violations Specified and Rights and Privileges* forms within three working days of the service of the order for arrest and detention suspending community custody. The CCO shall submit the signed forms electronically to the board within one working day of service.

(2) **Out of custody:** If an out of custody hearing is requested by the community corrections officer and/or ordered by the board, the *Violations Specified and Rights and Privileges* forms shall be served on the individual within three working days of notice to the board of the discovery of alleged violations of conditions of supervision occurring in WAC 381-100-055. The CCO shall submit the signed violations specified form electronically to the board within one working day of service.

(3) **New or amended allegations.** If, after service of the *Violations Specified and Rights and Privileges* forms as set forth above, the CCO alleges additional violations or changes the existing alleged violations, the CCO shall cause the individual to be personally served with a copy of the new or amended allegations in the form of a new violations specified document. The individual will have two working days from the date of service of the new or amended allegations before the board will consider the allegations. The individual may waive the two working days' notice and proceed with those new or amended allegations at an already scheduled hearing.

(a) The CCO shall electronically submit such new or amended allegations of violation electronically to the board with a copy to the attorney general and defense counsel if applicable, within one working day of service on the individual.

(b) The board will determine probable cause upon receipt of the new or amended allegations of violation(s) pursuant to WAC 381-100-110.

(c) The board will not accept new or amended violations later than two working days before the scheduled hearing. If the CCO discov-

ers new or revises the alleged violations less than two working days before the scheduled hearing, the board may choose to:

(i) Schedule a new hearing to address the new alleged violations and allow all parties to review the new information;

(ii) Address any unamended violations in the current hearing and schedule a new hearing to address the amended violations; or

(iii) Pursue the amended violations in the scheduled hearing with agreement from the individual and/or their attorney.

(4) **Interpreter services.** Community corrections officers shall obtain interpreter services for individuals with known language or communication barriers when serving documents. For a board hearing, state contracted interpreters shall be used.

(5) **Specifying the violations.** The specifications of the violations of each condition shall include:

(a) The factual circumstances of the alleged violation(s); and

(b) Date of violation or approximation thereof.

(6) **Allegations of a new crime.** Whenever an individual is accused of a violation of their community custody conditions that may constitute a felony or misdemeanor, the community corrections officer shall advise the board of the status of any pending criminal charge(s). In the case of pending criminal charges, the board may defer any board hearing pending the outcome or may dismiss without prejudice one or more alleged violations. If the individual is convicted of a new crime, the CCO shall provide the board with a certified copy of the judgment and sentence within two working days of receipt.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-100, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-100, filed 3/31/09, effective 5/1/09.]

WAC 381-100-110 Probable cause review. A probable cause review shall be conducted by the board's designee within two working days of the board's receipt of the most recent signed violations specified form to determine whether probable cause exists to believe the alleged violation(s) occurred. A written probable cause finding will be issued. If the hearing officer finds probable cause, the hearing officer will recommend to the board if the individual should be reinstated, conditionally released, or remain in custody pending further action by the board.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-110, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-110, filed 3/31/09, effective 5/1/09.]

WAC 381-100-120 Notice of violation report to be submitted by community corrections officer. (1) Prior to a hearing, the community corrections officer shall electronically submit the notice of violation report to the board, as well as serve the notice of violation report on the individual, within five working days of serving the violations specified and rights and privileges forms on the individual.

(2) The notice of violation report shall contain the following:

(a) The alleged violations as listed in the violations specified document;

- (b) A summary of facts supporting the allegations;
 - (c) Any mitigating information;
 - (d) The evidence relating to the violations to be introduced at the hearing; and
 - (e) A preliminary recommendation for disposition.
- (3) The notice of violation report should include a list of witnesses whom the community custody officer may wish to have called for testimony.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-120, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-120, filed 3/31/09, effective 5/1/09.]

WAC 381-100-130 Administrative review. (1) Following receipt of the notice of violation report, a board hearing officer will conduct an administrative review within 15 working days of the board's receiving notice of the individual's alleged violation under WAC 381-100-055 to determine the next board action.

(2) The individual and/or attorney may submit information in writing that the board shall consider in an administrative review within 15 days from the notice of the alleged violations occurring in WAC 381-100-055.

(3) The board will notify the community corrections officer if the next action is to reinstate or conditionally release the individual.

(4) If the next board action is to retain the individual in custody pending a violation hearing, the hearing officer shall:

(a) Appoint defense counsel for the individual.

(i) Prior to the violation hearing, the individual may request appointment of new counsel for good cause, such as appointed counsel's actual conflict of interest, irreconcilable conflict between attorney and the individual, or a complete breakdown in communication between attorney and the individual.

(ii) The individual's loss of confidence in appointed counsel, a disagreement over strategy, or a breakdown in communication caused by the individual is insufficient to constitute good cause;

(b) Notify the community corrections officer, the attorney general's office, and defense counsel of the probable cause findings for each of the alleged violations;

(c) Request that the community corrections officer electronically provide any served documents as well as discovery material to the attorney general's office, defense counsel, and the ISRB immediately.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-130, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-130, filed 3/31/09, effective 5/1/09.]

WAC 381-100-135 Opportunity to waive hearing. (1) The individual, after service of the violations specified and rights and privileges forms, may waive their right to a community custody violation hearing, and admit guilt to the alleged violations.

(2) If the waiver is accepted by the board, the board may do one or more of the following:

- (a) Reinstate the individual on community custody with the same or modified conditions of supervision;
 - (b) Impose an appropriate sanction short of revocation; or
 - (c) Revoke the individual's community custody, enter an order of community custody revocation, and return the individual to prison. A determination of a new minimum sentence shall be made within 30 days of return to state custody.
- (3) If the waiver is rejected by the board, a community custody violation hearing will be scheduled.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-135, filed 5/31/24, effective 7/1/24.]

WAC 381-100-140 Scheduling community custody violation hearings.

- (1) The board shall schedule all community custody violation hearings.
- (2) Out of custody hearing: The board shall provide notice to the community corrections officer and alleged community custody violator of the time and place of the out of custody hearing no less than five working days prior to the hearing.
- (3) In custody hearing: The board shall provide notice to the community corrections officer, the attorney general, and to counsel for the individual, no less than five working days prior to an in-custody violation hearing.
- (4) The board reserves the right to select and change the place of the community custody violation hearing.
- (5) The CCO will arrange interpreter services for individuals with known language or communication barriers for violation hearings and will provide the information to the board prior to the scheduling of a hearing.
- (6) Hearings may be held in person, via telephone or videoconference.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-140, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-140, filed 3/31/09, effective 5/1/09.]

WAC 381-100-150 Rights and privileges relating to violation hearings.

- (1) An alleged community custody violator shall be entitled to a fair and impartial hearing of the charges of the community custody violation within 30 working days, but not less than two working days, after notice of service of violations specified is received by the board.
- (2) The board shall notify the individual of the right to:
- (a) Be present during the fact finding and disposition phases of the hearing. If the individual waives this right, acts in a persistently disruptive manner during the hearing, or refuses to attend the hearing, the board may conduct the hearing in the absence of the individual and may impose sanctions, including the revocation of community custody;
 - (b) Have the assistance of an interpreter if the individual has a known language or communications barrier;
 - (c) Testify or remain silent;
 - (d) Call witnesses and present documentary evidence subject to the provisions in WAC 381-100-250;

- (e) Question witnesses who testify subject to WAC 381-100-250;
- (f) Be represented by counsel if revocation of the release to community custody is a probable sanction for the violation, unless the individual waives or forfeits the right to counsel;
- (g) Receive a copy of the findings and conclusions;
- (h) Receive notice of the right to appeal the sanction to the board; and
- (i) Receive notice of the right to file a personal restraint petition.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-150, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-150, filed 3/31/09, effective 5/1/09.]

WAC 381-100-160 Acknowledgment of rights. The community corrections officer shall forward to the board and attorney general signed copies of the receipt and acknowledgment of the rights set forth in WAC 381-100-150 along with copies of the violations specified. Should the individual refuse to sign either the violations specified or the rights and privileges, the community corrections officer shall witness the refusal and note the time and place of service.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-160, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-160, filed 3/31/09, effective 5/1/09.]

WAC 381-100-170 Discovery. (1) The community corrections officer shall provide the attorney general, the unrepresented individual, or the represented individual's defense attorney with a copy of the violations specified, the notice of violation report, all evidence relevant to establishing the violations charged that is intended for introduction at the hearing, and all evidence relevant for the dispositional recommendation at least two working days prior to the scheduled hearing.

(2) The unrepresented individual or defense counsel shall provide to all parties and the board all documentary evidence to be introduced at the hearing at least two working days prior to the scheduled hearing.

(3) The community corrections officer and defense shall provide to all parties a list of witnesses they may wish to call for testimony.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-170, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-170, filed 3/31/09, effective 5/1/09.]

WAC 381-100-180 Filing with the board. Materials required to be filed with the board shall be deemed filed, upon actual receipt by the board as recorded by electronic date stamp in the digital record.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-180, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-180, filed 3/31/09, effective 5/1/09.]

WAC 381-100-190 Subpoenas. (1) The board has the authority to issue subpoenas for compulsory attendance of witnesses and production of evidence at community custody revocation or violation hearings under RCW 9.95.123.

(2) Every subpoena, where authorized by law, shall state "indefinite sentence review board," and the title of the proceeding. The subpoena shall command the person to whom it is directed to appear for testimony, produce designated documents at a specified time and place, or both.

(3) Subpoenas may be issued upon application of any party, provided that such subpoenas are executed without expense to the board.

(4) Quashing subpoenas: Upon motion made promptly, and in any event, at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the board or its authorized member may quash the subpoena.

(5) Subpoena enforcement: The board may seek judicial enforcement of the subpoena in accordance with RCW 9.95.123, unless the subpoena was quashed.

(6) Geographical scope: Attendance of witnesses and the production of evidence may be required by subpoena from any place in the state of Washington to any designated place of the hearing. The board will consider requests for reasonable accommodations brought to its attention.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-190, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-190, filed 3/31/09, effective 5/1/09.]

WAC 381-100-200 Hearing procedures—Presiding officer. All hearings conducted under this chapter will be heard by a minimum of one member of the board or a designee of the board, serving as the presiding officer. It is the duty of the presiding officer to conduct hearings in an impartial and orderly manner. They shall have the authority, subject to other provisions of these rules and the law, to:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas;
- (3) Rule on all procedural matters, objections, and motions;
- (4) Rule on offers of proof and receive relevant evidence;
- (5) Question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;
- (6) Render or defer a decision; and
- (7) Take any other action necessary and authorized by these rules and the law.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-200, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW

34.05.220 (1)(b). WSR 09-08-109, § 381-100-200, filed 3/31/09, effective 5/1/09.]

WAC 381-100-210 Hearing procedures—Prehearing conference. In any proceeding, the presiding officer, upon their own motion or on the motion of one of the parties or their representatives, may direct the parties to appear in person or through electronic means at a specified time and place for a prehearing conference. Such conference may be held immediately prior to the community custody violation hearing. A prehearing conference is for the purpose of considering:

- (1) Simplification of the issues;
- (2) Amendments to any of the materials filed with the board;
- (3) Obtaining stipulations, admissions of fact, and documents;
- (4) Limiting the number of witnesses; and
- (5) Such other matters as may aid in the disposition of the proceeding.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-210, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-210, filed 3/31/09, effective 5/1/09.]

WAC 381-100-220 Hearing procedures—Presentation of state's case. A community corrections officer and/or an assistant attorney general shall present the state's case.

[Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-220, filed 3/31/09, effective 5/1/09.]

WAC 381-100-230 Hearing procedures—Appearance and practice before agency—Who may appear. No person may appear before the board in a representative capacity on behalf of the individual at a community custody violation hearing other than the following:

- (1) Attorneys at law, qualified and admitted to practice before the supreme court of the state of Washington.
- (2) Law students admitted to practice under the Washington admission and practice rules.
- (3) Out-of-state attorneys must comply with the Washington admission and practice rules.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-230, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-230, filed 3/31/09, effective 5/1/09.]

WAC 381-100-240 Hearing procedures—Standards of ethical conduct. (1) All persons appearing in community custody violation proceedings before the board shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

- (2) The board may decline to permit any person who does not conform to such standards to appear before it or any designee.

[Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-240, filed 3/31/09, effective 5/1/09.]

WAC 381-100-250 Hearing procedures—Witnesses. (1) Either party may call witnesses to testify in-person, by telephone, or electronically.

(2) The presiding officer may limit the number of witnesses and the scope of the testimony to matters relevant to the allegations and/or disposition.

(3) Witnesses may be excluded from in-person appearance for good cause determined by the presiding officer.

(4) Specifically, the presiding officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of the presence of the individual when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony in the individual's presence.

(a) In this circumstance, if the individual is not represented by counsel, they shall be provided the opportunity to submit a list of questions for any witness testifying outside of their presence. This list shall be made part of the hearing record. The presiding officer shall present these questions to the witness on the record to the extent they seek to elicit relevant testimony.

(b) If the individual is represented by counsel, the attorney shall be allowed to question the witness on the record, but outside the presence of the individual.

(5) In all cases, the presiding officer shall take reasonable precautions related to the safety concerns of witnesses.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-250, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-250, filed 3/31/09, effective 5/1/09.]

WAC 381-100-260 Hearing procedures—Continuances. (1) Any party to a community custody violation hearing who desires a continuance shall notify the board in writing and state the reasons why the continuance is necessary. If represented by counsel, all continuance requests by the individual must come from the representing counsel.

(2) Requests for continuances must be received by the board at least one business day prior to the scheduled hearing. The presiding officer shall consider whether the request was timely and made for good cause and whether the individual will be substantially prejudiced in the presentation of their defense.

(3) The board may continue a hearing on its own motion if local prosecution is pending or if other circumstances require rescheduling.

(4) The board will notify all parties when continuances are granted.

(5) During a community custody violation hearing, the presiding officer may, in their discretion or upon motion of a party, continue the hearing for the introduction of additional evidence, presentation or argument.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-260, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-260, filed 3/31/09, effective 5/1/09.]

WAC 381-100-270 Hearing procedures—Persons present. Community custody violation hearings are open to the public to attend virtually given the facility has the resources to accommodate virtual or telephonic hearings. The presiding officer may preclude public attendance for a specifically stated reason, close the hearing in whole or in part, or limits the number of persons that may be present. For in-custody hearings where the facility does not allow for virtual public attendance, the public may attend dependent on facility rules.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-270, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-270, filed 3/31/09, effective 5/1/09.]

WAC 381-100-280 Rules of evidence—Admissibility. (1) All relevant evidence shall be admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness. "Relevant evidence" has the same meaning as in Washington rule of evidence 401.

(2) In passing upon admissibility of evidence, the presiding officer shall give consideration to, but shall not be bound to follow, the Washington rules of evidence.

(3) When objection is made to the admissibility of evidence, the evidence may be received subject to a later ruling.

(4) The presiding officer may, in their discretion, either with or without objection, exclude inadmissible evidence, or order cumulative evidence discontinued.

(5) Parties objecting to the introduction of evidence shall state the precise grounds of objection at the time such evidence is offered.

(6) A certified laboratory report or a copy of such shall be admissible without further authentication.

(7) If the sole evidence to support the allegation is hearsay that would be inadmissible in a superior court proceeding and is not substantiated or corroborated, the board shall not enter a finding of guilt.

(8) If the sole evidence presented to substantiate the allegation is the result of a polygraph examination, a finding of guilty shall not be made. The results of polygraph examinations shall not be admissible into evidence at community custody violation hearings unless the parties have stipulated that the polygraph examination be conducted and the results be admissible in community custody violation hearing. Such stipulation may be evidenced by:

(a) Showing that the individual has submitted to a condition of supervision that they submit themselves to polygraph examination at the request of the community corrections officer, and that the results of said examination(s) shall be admissible at a subsequent community custody violation hearing; or

(b) Presenting a written stipulation entered by the individual, signed by the community corrections officer or their designee and by the individual before the polygraph examination in question was taken.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-280, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-280, filed 3/31/09, effective 5/1/09.]

WAC 381-100-290 Hearing procedures—Findings and conclusions.

(1) Alleged violations of the conditions of community custody must be proven by a preponderance of evidence.

(2) No finding of a violation of conditions may be based on unsubstantiated or uncorroborated hearsay evidence alone.

(3) If the presiding officer concludes that none of the alleged violations of conditions of community custody have been proven by a preponderance of evidence, the individual shall be reinstated on community custody on the same or modified conditions.

(4) If the presiding officer concludes that at least one of the alleged violations of conditions of community custody has been proven by a preponderance of the evidence, the presiding officer may, in accordance with the graduated sanction system, impose sanctions reasonably related to at least one of the following: The crime of conviction, the violation committed, the individual's risk of reoffending, or the safety of the community. If the sanction is revocation of the individual's community custody, the board shall enter an order of community custody revocation and return the individual to prison.

(5) After issuance of a revocation sanction, the board will set a new minimum term within 30 days of return to state custody in accordance with WAC 381-90-060.

(6) An individual convicted and sentenced to incarceration on a new criminal charge will have the right to a dispositional violation hearing by the board where the individual has the rights and privileges set forth in WAC 381-100-150. The individual may waive the right to a dispositional violation hearing. The board may:

(a) Revoke the community custody of the individual and enter an order of community custody revocation or impose other appropriate sanctions.

(b) Reinstatement the individual on community custody supervision under the same or modified conditions.

(7) The presiding officer shall make written findings and conclusions concerning the allegations within 10 working days of the hearing.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-290, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-290, filed 3/31/09, effective 5/1/09.]

WAC 381-100-310 Hearing record preservation. There will be an audio recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved in accordance with the indeterminate sentence review board's records retention policies. Parties requesting duplication of any hearing must submit a request in

writing; response to all such requests shall be governed by the applicable public disclosure statutes.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-310, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-310, filed 3/31/09, effective 5/1/09.]

WAC 381-100-320 Appeal of community custody violation sanctions.

(1) The individual may appeal the sanction of the community custody violation hearing. Appeals must be filed with the board within seven days after the individual receives the findings and conclusions.

(2) The chair of the board or the chair's designee shall appoint a panel of three reviewing examiners to consider the appeal.

(3) The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to at least one of the following:

- (a) The crime of conviction;
- (b) The violation committed;
- (c) The individual's risk of reoffending; or
- (d) The safety of the community.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-320, filed 5/31/24, effective 7/1/24. Statutory Authority: RCW 34.05.220 (1)(b). WSR 09-08-109, § 381-100-320, filed 3/31/09, effective 5/1/09.]

WAC 381-100-330 Determination of competency. (1) If, at any

time prior to, or at the beginning of, the violation hearing, the individual or defense counsel raises the issue of the individual's competency, or there is reason to doubt competency, the presiding board member may order an evaluation of competency to be completed.

(2) The certified evaluator shall have access to all information obtained by the board including the ISRB file.

(3) The evaluation/assessment should include:

- (a) A diagnosis of the mental condition of the individual;
- (b) If the individual has indicated their intention to rely on the fact of their competency at the time of the specified violations, an opinion as to the individual's competency at the time of the alleged violation behavior;

(c) An opinion as to whether the individual is a danger to themselves or other persons;

(d) An opinion as to whether the individual is able to understand the nature of the proceeding and/or assist in their own defense.

(4) At the time the competency evaluation is ordered, the fact determination phase of the hearing may be completed. The dispositional phase of the hearing shall be continued until the competency evaluation can be submitted to the board for consideration and inclusion in the dispositional phase of the hearing.

(5) The board shall not lose jurisdiction of an individual, regardless of the outcome of the competency evaluation.

(6) Once the dispositional phase has been convened, the board shall consider the results of the evaluation and the evidence presented by both parties in making its decision to revoke or reinstate the individual.

(7) Should the board determine that the individual is competent, the board may reinstate the individual to supervision with special or modified conditions, revoke the individual and return them to a state correctional institution, or impose other appropriate sanctions.

(8) Should the board member determine that the individual is not competent, the board may reinstate the individual with the special condition that the individual utilize the voluntary commitment provisions under chapter 71.05 RCW, or the board may revoke the individual and recommend that the individual seek further mental health services while at the correctional institution.

[Statutory Authority: RCW 34.05.030 (1)(c). WSR 24-12-050, § 381-100-330, filed 5/31/24, effective 7/1/24.]