

Chapter 381-40 WAC
PROCEDURES FOR ADMINISTRATIVE PROGRESS AND PAROLE REVIEWS

Last Update: 4/15/98

Reviser's note: The following chapter has **not** been adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was filed in the code reviser's office and was published as WSR 91-14-029 in the Washington State Register. It is published in the Washington Administrative Code exactly as filed by the agency with history notes added by the code reviser's office.

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

381-40-170	Loss of life policy. [WSR 91-14-029, § 381-40-170, filed 6/26/91, effective 7/27/91.] Repealed by WSR 92-22-008, filed 10/21/92, effective 10/19/92.
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WAC 381-40-010 Purpose. The purpose of this chapter is to specify policies and procedures for the administrative review of an inmate's progress while incarcerated, as well as review of parole eligibility. 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 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.

[WSR 93-23-077, § 381-40-010, filed 11/17/93, effective 8/23/93. WSR 91-14-029, § 381-40-010, filed 6/26/91, effective 7/27/91.]

WAC 381-40-020 Authority. RCW 9.95.150 and 9.95.009(2).

[WSR 91-14-029, § 381-40-020, filed 6/26/91, effective 7/27/91.]

WAC 381-40-030 Scope. The provisions of this chapter shall apply to persons convicted of felony offenses in the state of Washington and sentenced to confinement in an adult correctional facility, whose crimes were committed on or before June 30, 1984, and are therefore subject to the state's jurisdiction under the indeterminate sentencing system, and those officials charged with processing such convicted persons through the adult correctional system.

[WSR 98-09-045, § 381-40-030, filed 4/15/98, effective 4/13/98. WSR 91-14-029, § 381-40-030, filed 6/26/91, effective 7/27/91.]

WAC 381-40-040 Progress review. The board may elect to review each prisoner's progress during confinement. This review will normally be done at intervals of twenty-four months.

The department of corrections may request, in writing, the following:

- (1) An advance of the regularly scheduled progress review date;
- (2) That the progress review be conducted at an in-person meeting;
- (3) That a scheduled progress review be changed to either a parole review or a parolability meeting pursuant to RCW 9.95.100.

[WSR 98-09-045, § 381-40-040, filed 4/15/98, effective 4/13/98. WSR 92-22-008, § 381-40-040, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-40-040, filed 6/26/91, effective 7/27/91.]

WAC 381-40-050 Required documents—Progress reviews. In order for the board to conduct a progress review on an inmate, the following documents pertaining to that inmate shall be present in the official board file prior to the review.

- (1) The institutional progress report covering his or her adjustment, achievement, infractions, and program participation since the last meeting with the board (Form 530X).
- (2) Complete furlough report, if applicable.
- (3) A current psychological or psychiatric report, if specifically requested by the board in writing to the superintendent.

[WSR 91-14-029, § 381-40-050, filed 6/26/91, effective 7/27/91.]

WAC 381-40-060 Parole reviews. At its discretion, the board may elect to meet with selected prisoners prior to parole to consider the parole plan. The board may authorize parole after an administrative review only.

[WSR 98-09-045, § 381-40-060, filed 4/15/98, effective 4/13/98. WSR 91-14-029, § 381-40-060, filed 6/26/91, effective 7/27/91.]

WAC 381-40-070 Required documents—Parole reviews. In order for an inmate to be approved for a parole meeting or an administrative parole decision, the board must first be satisfied that he or she is ready to be considered for release. In addition, the following documents pertaining to the inmate shall be provided by the department of corrections and shall be present in the official board file prior to the meeting or the decision:

- (1) The institution progress report covering his or her adjustment, achievement, infractions and program participation since the last meeting with the board.
- (2) The institution preparole referral report.
- (3) A current preparole investigation report prepared by a community corrections officer.
- (4) Certification of good time credits, earned or denied.

In the case of administrative parole, the good time shall be certified through the date of the submission of the preparole referral. The board will assume that all good time is earned from that date un-

til the date of parole. The department of corrections shall notify the board of all infractions and loss of good time which occurs between the date the preparole referral is sent and the date of parole.

(5) A current psychological or psychiatric report, if requested by the board.

[WSR 95-13-083, § 381-40-070, filed 6/20/95, effective 6/19/95. WSR 91-14-029, § 381-40-070, filed 6/26/91, effective 7/27/91.]

WAC 381-40-080 Persons present: In-person parole meetings. The convicted person and such institutional persons as the members conducting the meeting deem appropriate may be present during the parole meeting. A limited number of observers may be present by approval of the panel members conducting the meeting provided that the superintendent of the institution where the meeting is to be conducted does not object. Normally, attorneys or advocates will not be permitted at parole meetings. The board will accept and consider any written statements submitted by individuals expressly excluded from in-person meetings. Exclusion of observers other than those expressly excluded herein shall be had only upon a finding of cause made by the board panel on the hearing record except in cases where the institutional superintendent denies access to the hearing room. The board reserves the right to exclude any person(s) from the room during the conduct of any meeting under this chapter upon its own motion or that of any party to the hearing provided that good cause for such exclusion is articulated on the record. In the event of a language communication problem, an interpreter designated by the board shall be present to interpret and assist. The board will accept information from any interested person in writing.

[WSR 98-09-045, § 381-40-080, filed 4/15/98, effective 4/13/98. WSR 91-14-029, § 381-40-080, filed 6/26/91, effective 7/27/91.]

WAC 381-40-090 Good time credits. RCW 9.95.070 provides that every convicted person who has a favorable record of conduct and who performs the work, duties, and tasks assigned to him to the satisfaction of the superintendent and in whose behalf the superintendent files a report certifying that his conduct and work have been meritorious and recommending allowance of time credits to him shall, upon but not until, the adoption of such recommendation by the board, be allowed time credits from the term of imprisonment fixed by the board. The board will consider granting of good time credits only when certification is received from the superintendent. In every case there shall be a report filed, either certifying good time credits or denying them. This report shall set forth the reasons for the action taken.

[WSR 91-14-029, § 381-40-090, filed 6/26/91, effective 7/27/91.]

WAC 381-40-100 Parole eligibility. Upon completion of the minimum term, an inmate is eligible to be considered for parole when he or she presents an acceptable parole plan unless the board determines that the inmate is not parolable pursuant to RCW 9.95.100. The board

may waive the requirement for a preparole investigation if appropriate.

An acceptable parole plan must include:

- (1) Legal means of support (family, friends, job, school, grant, etc.);
- (2) Suitable residence;
- (3) Agreement to comply with standard or special conditions of parole, if deemed necessary by the board, to aid reintegration into the community and reduce the potential to re-offend.

[WSR 92-22-008, § 381-40-100, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-40-100, filed 6/26/91, effective 7/27/91.]

WAC 381-40-110 Orders of parole. (1) The board's order of parole and conditions shall include five standard conditions of parole as follows:

(a) Upon release from the institution, report as instructed to your community corrections officer (or any other person designated) and thereafter make a correct report as often as directed.

(b) Secure written permission of your community corrections officer before leaving the state of Washington.

(c) Obey all laws and abide by any special conditions imposed by the indeterminate sentence review board or any written instructions issued by a community corrections officer of the department of corrections.

(d) At no time purchase, own, have in your possession, or under your control, any firearm or deadly weapon. (Muzzle loading firearms and antique firearms are classified as deadly weapons and may not be owned, possessed by, or under the control of a parolee.)

(e) Submit to a search of your person, residence, vehicle, and possessions whenever requested to by your community corrections officer.

The board may impose additional conditions of parole on a case-by-case basis.

(2) The board may impose additional restitution if the court establishes the amount and orders payment. The board may impose restitution in lieu of a fine or if the defendant is ordered to contribute to the crime victims compensation fund.

(3) The order of parole in each case will be signed by the members of the board who reviewed and approved the plan or who conducted the meeting which resulted in approval for parole. The order of parole will be served in person on the inmate the day he or she is scheduled for release. The inmate's signature on the order of parole will be witnessed and the witness will also sign the order of parole in the space provided on the document. An inmate will not be released unless he or she has signed the valid order of parole in the presence of a witness. In cases where the inmate refuses to sign the order of parole, the order of parole will be returned to the board with a written explanation of the refusal to sign and the parole will be cancelled.

As a term and condition of parole, the board may impose a requirement that the parolee take a polygraph examination. Failure to pass the polygraph examination shall not be a basis for parole suspension or revocation. In accepting the polygraph condition, the parolee does not waive any constitutional rights which prohibit self-incrimination for any criminal activity for which the parolee has not been released on parole. However, the parolee is advised that the board may

still suspend and revoke parole for failure to comply with any term and condition of parole, including the condition to submit to a polygraph examination.

[WSR 91-14-029, § 381-40-110, filed 6/26/91, effective 7/27/91.]

WAC 381-40-120 Length of parole. Unless specified in statute, the length of active parole supervision will not be established at the time of parole or reinstatement of parole. The board may grant a CDFS at the time of parole.

[WSR 93-23-077, § 381-40-120, filed 11/17/93, effective 10/18/93. WSR 92-22-008 § 381-40-120, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-40-120, filed 6/26/91, effective 7/27/91.]

WAC 381-40-130 Deferred decisions. Normally, the members conducting a case review will make the decision. However, if the panel members cannot reach an agreement, if they wish further information, if they wish a legal opinion, if they wish to give the case further study and consideration, or if they wish to have the full board consider waiver of a mandatory, the board will designate the decision a "deferred decision." The institution of confinement shall be advised in writing of the board's decision as soon as the decision is final.

[WSR 91-14-029, § 381-40-130, filed 6/26/91, effective 7/27/91.]

WAC 381-40-140 Waiver of mandatory minimum term. Except when an inmate of an adult correctional institution has been sentenced under a statutorily nonwaivable mandatory, the board may parole an inmate prior to the expiration of a mandatory minimum term, provided such inmate has demonstrated a meritorious effort in rehabilitation and at least two-thirds of the board members concur in such action; provided further, that any inmate who has a mandatory minimum term and is paroled prior to expiration of such term according to this rule and pursuant to RCW 9.95.040, shall not receive a conditional discharge from supervision while on parole until after the mandatory minimum waivable mandatory term has expired. Statutorily nonwaivable mandatory terms include murder first degree, murder second degree, and rape first degree.

The question of waiver of the mandatory minimum term may be referred to the full board by any member of the panel which has been assigned to review the matter. The board will review and consider any recommendation submitted by the superintendent for waiving of a mandatory minimum term:

The resident shall serve a portion of the mandatory term as follows:

- (1) Two years if mandatory term is five years;
- (2) Three years if mandatory term is seven and one-half years;
- (3) Six years if mandatory term is fifteen years;
- (4) Eight years if mandatory term is twenty years.

[WSR 98-09-045, § 381-40-140, filed 4/15/98, effective 4/13/98. WSR 92-22-008, § 381-40-140, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-40-140, filed 6/26/91, effective 7/27/91.]

WAC 381-40-150 Parole to consecutive sentence. Upon submission of a certification of good time credits by an institution superintendent, the board may parole to the consecutive cause so that the good time release date of the first cause becomes the time start of the second cause.

[WSR 91-14-029, § 381-40-150, filed 6/26/91, effective 7/27/91.]

WAC 381-40-160 Parole to detainer or deportation. A written notice, signed by the superintendent, will be provided to the board as soon as a detainer is lodged and filed against an inmate and copies of all correspondence referring to detainers and all written notices shall be sent immediately to the board. The board's policy regarding detainers is that an individual whose minimum term has been set may be paroled to a detainer on or after his parole eligibility review date (PERD).

If paroled to an immigration detainer, the board may require an alternative board approved parole plan. If released from the immigration detainer, the parolee must report to the nearest division of community corrections office within twenty-four hours.

[WSR 91-14-029, § 381-40-160, filed 6/26/91, effective 7/27/91.]