Chapter 381-60 WAC
PROCEDURES FOR CONDUCTING PAROLABILITY HEARINGS

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.

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WAC 381-60-010 Purpose. The purpose of this chapter is to specify policies and procedures relating to hearings conducted to determine the parolability of certain offenders. 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, § 381-60-010, filed 11/17/93, effective 8/23/93. WSR 91-14-029, § 381-60-010, filed 6/26/91, effective 7/27/91.]

WAC 381-60-020 Authority. RCW 9.95.100 and 9.95.009(2).

[WSR 91-14-029, § 381-60-020, filed 6/26/91, effective 7/27/91.]

WAC 381-60-030 Scope. The provisions of this chapter shall apply to adult offenders sentenced and committed under the indeterminate sentencing laws committed to a period of confinement in a Washington state correctional facility, those state officials charged with their care and supervision, and parties to the hearing.

[WSR 91-14-029, § 381-60-030, filed 6/26/91, effective 7/27/91.]

WAC 381-60-040 Petition. RCW 9.95.100 states that any convicted person undergoing sentence in the penitentiary or reformatory not sooner released under the provisions of this chapter shall, in accordance with the provisions of law, be discharged from custody for the offense of which such person was convicted or the maximum term fixed by the court where the law does not provide for a maximum term. The board shall not, however, until the maximum term expires, release a prisoner unless in its opinion, his rehabilitation has been complete and he is a fit subject for release. Therefore, if, in the opinion of an institution superintendent, any convicted person serving a sentence in an adult correctional institution is not a fit subject for release and is considered to be incapable of succeeding on parole because of incomplete rehabilitation, the department of corrections may request in writing that the board conduct a hearing pursuant to RCW 9.95.100. The written request shall include:

(1) A statement to the board giving reasons why the subject of the request is unable to be paroled;

(2) The institutional progress report covering his or her adjustment, achievement, infractions, and program participation since the last meeting with the board;

(3) Supporting data such as psychiatric or psychological reports;

(4) Other reports and information as necessary.

The board reserves the right to schedule hearings pursuant to RCW 9.95.100 on its own motion.

[WSR 95-13-083, § 381-60-040, filed 6/20/95, effective 6/19/95. WSR 91-14-029, § 381-60-040, filed 6/26/91, effective 7/27/91.]

WAC 381-60-050 Suspension of parole date. The board may suspend the parole date of any individual who is scheduled for a parolability hearing pending the outcome of the hearing.

[WSR 91-14-029, § 381-60-050, filed 6/26/91, effective 7/27/91.]

WAC 381-60-060 Inmate to be served notice. The board will provide to the institution superintendent the copies of a hearing notice for service upon the inmate at least ten working days prior to any hearing scheduled for that inmate pursuant to RCW 9.95.100. The hearing notice shall specify the type, time, and place of the hearing as well as the reason for the hearing.

(1) Upon receipt of the hearing notice, the superintendent or his designee shall immediately serve the subject inmate with the document.

(2) The original of the hearing notice showing date of service and signed by the inmate shall be returned immediately to the board offices in Olympia. One copy may be retained in the inmate's institutional file and one copy will be provided to the inmate.

(3) In cases where the inmate refuses to sign the notice, the superintendent or his designee shall note the time and place of service and obtain the signature of a witness to such service.

[WSR 92-22-008, § 381-60-060, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-60-060, filed 6/26/91, effective 7/27/91.]

WAC 381-60-070 Inmate shall be advised of rights. Each inmate who becomes the subject of a hearing conducted under the provisions of RCW 9.95.100 shall be advised of his rights, orally and in writing, at the time he is served with a notice of the hearing. The written notice provided by the board will advise the resident that:

(1) His minimum term may be redetermined but not until after a hearing in front of the board where he is present and given the opportunity to be heard under oath;

(2) He will have the right to present evidence and witnesses in his behalf;

(3) He will have the right to have an attorney present, but at his own expense since the board has no funds to pay for attorneys, witness fees, the cost of subpoenas, or any other related costs that may be incurred by the inmate.

[WSR 91-14-029, § 381-60-070, filed 6/26/91, effective 7/27/91.]

WAC 381-60-080 Witnesses. The subject of any hearing conducted under the provisions of this chapter may call witnesses on his behalf and at his expense. Such witnesses shall appear voluntarily and shall be limited to those persons who have knowledge of, or have specific testimony about, the factors which may have caused the hearing to be convened. The superintendent or his designee shall provide assistance to the inmate in notifying witnesses of the time and place of the hearing as requested by the inmate. The presiding officer may, in certain cases, direct the superintendent to make any staff member or prisoner available for testimony. For purposes of this section, family members and friends or other interested parties who wish to testify as to disposition may do so in writing. See WAC 381-60-090 for reference.

[WSR 92-22-008, § 381-60-080, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-60-080, filed 6/26/91, effective 7/27/91.]

WAC 381-60-090 Conducting a hearing. All hearings conducted under the provisions of this chapter shall be held before a panel of at least two members of the indeterminate sentence review board. One member shall be designated, by decision of the panel, as the presiding officer.

A limited number of observers may be present by prior approval of the panel members conducting the hearing, provided that the superintendent of the institution where the hearing is to be conducted, authorizes observers in the facility. However, no family members, friends, relatives, or interested parties shall be present. The board will accept and consider written statements submitted by individuals expressly excluded from hearings.

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 from the room during the conduct of any hearing under this chapter upon its own motion or the motion of any party to the hearing provided that good cause for such exclusion is articulated on the record. The presiding officer may recess the hearing at any time for consultation with the other panel member(s). The panel may question witnesses called by the parties to the hearing (as well as the subject of the hearing whether called as a witness or not) to develop any facts deemed necessary to render a fair and impartial decision. The panel conducting the hearing will submit its recommendation to the full board for final determination after the hearing as to any change in minimum term. 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, § 381-60-090, filed 4/15/98, effective 4/13/98. WSR 92-22-008, § 381-60-090, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-60-090, filed 6/26/91, effective 7/27/91.]

WAC 381-60-100 Continuances. Continuances may be granted by the board prior to and during hearings conducted under this chapter, either on its own motion or on petition of the subject of the hearing, provided that such petition is sent to the board in writing immediately upon receipt of the hearing notice and that it specifies the reasons for the continuance. Continuances requested during the hearing may be granted by the board panel if it appears in the public interest or in the interest of justice that further testimony or argument should be received.

[WSR 91-14-029, § 381-60-100, filed 6/26/91, effective 7/27/91.]

WAC 381-60-110 Prehearing conferences. The presiding officer conducting a hearing under this chapter may require the parties to appear at a specified time and place for a conference immediately prior to the hearing to discuss and define procedural matters pertaining to the hearing.

[WSR 91-14-029, § 381-60-110, filed 6/26/91, effective 7/27/91.]

WAC 381-60-120 Inmate to be present. The subject of any hearing conducted under the provisions of this chapter shall be present during the conduct of the hearing. However, in the event the subject refuses to appear, the board will continue the hearing until the next scheduled visit by the board to that particular institution. In the event that the subject of the hearing again refuses to appear, then the hearing will be conducted in absentia.

[WSR 91-14-029, § 381-60-120, filed 6/26/91, effective 7/27/91.]

WAC 381-60-130 Oaths and affirmations. The presiding officer conducting hearings under the provisions of this chapter shall have the authority to administer oaths and affirmations.

[WSR 91-14-029, § 381-60-130, filed 6/26/91, effective 7/27/91.]

WAC 381-60-140 Opportunity to waive. At the time of the hearing under the provisions of RCW 9.95.100, it shall be the duty of the presiding officer conducting the hearing to query the inmate and to review the file to determine whether the inmate was given proper notice of the hearing, was advised of the reason for the hearing, and was properly advised of his rights to witnesses. If the presiding officer determines that this is not the case, the inmate will be advised that he can:

(1) Waive such rights, orally or in writing to the board, at which time the hearing would proceed; or

(2) Request a continuance of the hearing until proper service of notice and rights can be perfected.

[WSR 91-14-029, § 381-60-140, filed 6/26/91, effective 7/27/91.]

WAC 381-60-150 Rules of evidence—Admissibility. 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" means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. In passing upon admissibility of evidence, the presiding officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in matters not involving trial by jury in the superior courts of the state of Washington. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The presiding officer may, in his discretion, either with or without objection, exclude inadmissible evidence or order accumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time evidence is offered.

[WSR 91-14-029, § 381-60-150, filed 6/26/91, effective 7/27/91.]

WAC 381-60-160 Disposition. The board panel shall render a decision of either parolable or not parolable on each case heard under this chapter. All decisions concerning inmates convicted of murder in the first degree will be made by the full board.

Examples of adequate reasons for a finding of nonparolability include, but are not limited to:

(1) Active refusal to participate in available program or resources designed to assist an offender to reduce the risk of reoffense (e.g., anger management, substance abuse treatment).

(2) Serious and repetitive disciplinary infractions during incarceration.

(3) Evidence of an inmate's continuing intent or propensity to engage in illegal activity (e.g., victim harassment, criminal conduct while incarcerated, continued use of illegal substances).

(4) Statements or declarations by the inmate that he or she intends to re-offend or does not intend to comply with conditions of parole.

(5) Evidence that an inmate presents a substantial danger to the community if released.

In parolability hearings, actions may range from no change in the length of sentence to redetermination of the original sentence and imposition of an extension of the term not to exceed the maximum term. Good time credits will not be addressed inasmuch as there are no allegations of rule infractions.

[WSR 98-09-045, § 381-60-160, filed 4/15/98, effective 4/13/98. WSR 91-14-029, § 381-60-160, filed 6/26/91, effective 7/27/91.]

WAC 381-60-170 Statement of findings and conclusions. The board will make a concise written statement of findings and conclusions in each case heard under the provisions of this chapter.

[WSR 91-14-029, § 381-60-170, filed 6/26/91, effective 7/27/91.]

WAC 381-60-180 Hearing record preservation. There will be a recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved at the offices of the board in Olympia for not less than six months subsequent to the hearing. Parties requesting partial or total duplication of any hearing must request such recordings pursuant to public disclosure and reimburse the board for the costs involved in such a procedure.

[WSR 98-09-045, § 381-60-180, filed 4/15/98, effective 4/13/98. WSR 92-22-008, § 381-60-180, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-60-180, filed 6/26/91, effective 7/27/91.]

WAC 381-60-190 Loss of life policy. It shall be the policy of the board that any individual who has ever been convicted of murder first degree, murder second degree, manslaughter, negligent homicide, vehicular homicide, or any other crime resulting in a loss of life shall be referred to the full board for a determination as to whether or not such individual is parolable. Any affirmative vote must be by the majority of the board. A board panel may schedule a parolability meeting in such cases but will defer any decision until the full board reviews the case and the panel recommendation.

When a loss of life case has a waivable mandatory minimum term, the full board vote on the waiver must be a distinct and separate vote from the full board vote regarding parolability.

[WSR 92-22-008, § 381-60-190, filed 10/21/92, effective 10/19/92.]