



STATE OF WASHINGTON
SENTENCING GUIDELINES COMMISSION
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December 12, 2008

MEMORANDUM

TO: SGC

FROM: Jean Soliz-Conklin

RE: Rulemaking Process – Community Custody Ranges, etc.

ACTION REQUESTED: The Commission is asked to provide comments on proposals to revise the chapters of the Washington Administrative Code under SGC authority.

Background

The SGC is required to enact a rule adopting a community custody range for an offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate. (E2SHB 2712).

Staff was also directed to review the SGC administrative rules to update them as needed. The current WACs are 437-06 Public Records—Disclosure; 437-10 Bylaws; and 437-20 Community Custody Ranges.

The rulemaking process takes at least four months; and careful adherence to publication and hearing requirements is required.

Proposals

1. Community Custody

An ad hoc committee was appointed by the Chairman to recommend a community custody range. The committee members are Eldon Vail, Russ Hauge and Lenell Nussbaum.

The committee met and proposed a new range of 9-18 months to be added to WAC 437-20-010.

2. Public Disclosure

Staff counsel Shannon Hinchcliffe reviewed the SGC rules and researched the laws related to public disclosure and open meetings.

Staff proposes that the rules be updated to correct references and simplified the language in the Public Disclosure rules.

3. Bylaws

There is no statutory requirement that the Commission promulgate rules with its bylaws. The current rules are out-of-date in relation to the Open Public Meetings Act.

Staff proposes that this chapter be removed from rules and that the SGC adopt revised bylaws early in 2009, before the rules revisions take effect.

The full text of the rules with proposed changes is attached.

WAC TIMELINE

Dec. 24 - File CR-101 -- we can file this anytime. The following timeline is for a CR 101 that is filed before noon on December 24th.

Jan. 7 - CR-101 is published in WSR #09-01.

Jan. 9 - can discuss proposed text of rules (CR-102) at SGC meeting.

Can file a CR-102 anytime after **Feb. 6, 2009**. The text of CR-102, the agency's proposed rule, should be as close to the adopted rule as possible.

Feb. 13 - can discuss proposed text of rules (CR-102) at SGC meeting.

Feb. 18 - File CR-102 before February 18, 2009.

March 4 - CR-102 will be published in WSR 09-05 on March 4, 2009.

May hold public hearing anytime after **March 24, 2009**.

April 10 - Public hearing could be held at April 10, 2009 SGC Commission meeting. A rule-making order or CR-103 could potentially be made at this meeting if there are no substantial changes.

The rule would then become effective 31 days from filing the CR-103 with the code reviser.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

Chapter 437-10 WAC - Bylaws.

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AMENDATORY SECTION

WAC 437-20-010
Community custody ranges.

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COMMUNITY CUSTODY RANGES Offense Type	Community Custody Range
Sex Offenses (Not sentenced under RCW 9.94A.120(8))	36 to 48 months
Serious Violent Offenses	24 to 48 months
Violent Offenses	18 to 36 months
Crimes Against Persons (As defined in RCW 9.94A.440(2))	9 to 18 months
Offenses under chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months
<u>Unlawful Possession of a Firearm by a criminal street gang member or associate. (Under RCW 9.94A.715)</u>	9 to 18 months

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The ranges specified in this section are not intended to affect or limit the authority to impose exceptional community custody ranges, either above or below the standard community custody range as authorized by RCW 9.94A.120(2) and pursuant to guidelines specified in RCW 9.94A.390. The community custody range for offenders with multiple convictions must be based on the offense that dictates the longest term of community custody. The community custody range for offenders convicted of an offense that falls into more than one of the five categories of offense types listed in this section must be based on the offense type that dictates the longest term of community custody.

**Chapter 437-06 WAC
Public records — disclosure**

Last Update: 11/19/84

Chapter Listing

WAC Sections

437-06-010 Purpose.

437-06-020 Times for inspection and copying of records.

437-06-030 Public records officer.

437-06-040 Request for public records.

437-06-050 Fees — Inspection and copying.

437-06-060 Protection of public records.

437-06-070 Disclosure procedure.

437-06-080 Remedy for review of denial of disclosure.

437-06-090 Exemptions to public records disclosure.

437-06-100 Interagency disclosure.

**437-06-010
Purpose.**

The purpose of this chapter shall be to ensure compliance by the Washington state sentencing guidelines commission with the provisions of the Public Disclosure Act, chapter 42.56 RCW, in conjunction with the Criminal Records Privacy Act, chapter 10.97 RCW, as well as chapter 9.94A RCW.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-010, filed 11/19/84.]

**437-06-020
Times for inspection and copying of records.**

All public records are available for inspection and copying at the commission office during normal business hours (8:00 a.m. - 12 and 1:00 p.m. - 5:00 p.m.). However, if these activities would interfere with essential agency functions, the agency reserves the right to require advance notice and to limit the amount of time spent on inspection of documents.

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- Deleted: 437-06-120
- Deleted: Interagency disclosure.
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Definitions.¶
(1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by the commission regardless of physical form or characteristics.
- (2) "Writing" means handwriting, typewriting, printing, photostating, photographs, and every other ... [1]
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437-06-030
Public records officer.

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The commission shall designate a public record officer, located in the commission office, who shall be responsible for implementing the commission's rules regarding disclosure of public records, coordinating staff in this regard, and generally ensuring compliance by the staff with public records disclosure requirements.

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437-06-040
Request for public records.

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According to chapter 42.56 RCW, members of the public may inspect, copy, or get copies of public records if they comply with the following procedures:

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(1) Make a request in writing which includes:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request is made; and
- (c) Name or describe the record(s) needed.

Deleted: (4) If the public record contains material exempt from disclosure pursuant to law, including those laws cited in WAC 437-06-100, the commission must provide the person requesting disclosure with a written explanation for the nondisclosure, pursuant to WAC 437-06-080.

(2) A request for disclosure shall be made during the customary business hours or by mail.

(3) This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law.

(4) When a person's identity is relevant to an exemption, that person may be required to provide personal identification, including photographic identification and/or fingerprints.

(5) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure, pursuant to WAC 437-06-080, may request a review under the provisions of WAC 437-06-090.

437-06-050
Fees — inspection and copying.

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(1) No fee shall be charged for the inspection of public records.

(2) The commission shall collect fees, plus postage, to reimburse itself for actual costs incident to providing copies of public records.

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(a) Copies produced on copying and duplicating equipment are 15 cents per page.

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(b) Copies of other items such as magnetic tapes and records on other formats will be the cost of services required to copy them.

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(3) Nothing contained in this section shall preclude the commission from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies. One copy of the implementation manual will be issued to public agencies upon request.

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(4) Prepayment of copying costs and postage shall be a prerequisite to copying and/or mailing of public records. However, the public records officer may waive the costs of copying or postage.

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[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-060, filed 11/19/84.]

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Protection of public records.

Public records shall be disclosed only in the presence of a public records officer or his or her designee, who shall withdraw the records if the person requesting disclosure acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the commission. This section shall not be construed to prevent the commission from accommodating a client by use of mails in the disclosure process.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-070, filed 11/19/84.]

~~437-06-070~~

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Disclosure procedure.

(1) The public records officer shall acknowledge receipt of request within five business days. The public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(2) The public records officer shall review file materials prior to disclosure.

(3) If the file does not contain materials exempt from disclosure, the public records officer shall ensure full disclosure.

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(4) If the file does contain materials exempt from disclosure, the public records officer shall deny disclosure of those exempt portions of the file and will provide a written statement explaining the reason for denial. The remaining nonexempt materials shall be fully disclosed pursuant to WAC 437-06-050.

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(5) The statement of denial shall include:

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- (a.) The specific exemption that authorizes the commission to withhold the record; and
- (b.) A brief explanation of how the exemption applies to the record the commission withheld.

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(6) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure, may request a review under the provisions of WAC 437-06-080.

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[Statutory Authority: Chapter 9.94A RCW, 84-23-048 (Order 84-01), § 437-06-080, filed 11/19/84.]

Deleted: , and shall, at the time of the denial, in writing, clearly specify the reasons for the denial of disclosure, including a statement of the specific exemptions or reasons authorizing the withholding of the record and a brief explanation of how the exemption applies. The remaining nonexempt materials shall be fully disclosed pursuant to WAC 437-06-050.

437-06-080
Remedy for review of denial of disclosure.

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(1) If the person requesting disclosure disagrees with the decision of a public records officer denying disclosure of a public record, this person may within twenty days petition the commission's public records officer for review of the decision denying disclosure. The form used to deny disclosure of a public record shall clearly indicate this right of review.

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(2) The public records officer shall review decisions denying disclosure in the most prompt fashion possible, and such review shall be deemed completed at the end of the second business day following receipt by the commission of the petition for review. This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.56.520.

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[Statutory Authority: Chapter 9.94A RCW, 84-23-048 (Order 84-01), § 437-06-090, filed 11/19/84.]

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437-06-090
Exemptions to public records disclosure.

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The commission reserves the right to determine if a public record requested in accordance with the procedures outlined herein is exempt or nondisclosable under RCW 42.56.040 through 42.56.550. Nondisclosable records include, but are not limited to:

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(1) All exemptions as set out in RCW Chapter 42.56.

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(2) Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of a pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general privileged under RCW 5.60.060(2).

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(3) Nonconviction data, as defined in RCW 10.97.030(2), shall be disclosed to the subject of the record in person in the central office of the commission, but may not be copied except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete (RCW 10.97.080). Persons who are incarcerated, or their attorneys, shall receive a copy of nonconviction data upon asserting the belief in writing that the information regarding such person is inaccurate or incomplete.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-100, filed 11/19/84.]

437-06-100
Interagency disclosure.

(1) Unless prohibited by law, information may be disclosed by the commission to outside agencies, including other state of Washington agencies, or other state agencies.

(2) Outside agencies receiving information pursuant to subsection (1) of this section shall be thereby subject to the same standards of disclosure as are required of the commission.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-120, filed 11/19/84.]

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Qualifications on nondisclosure.¶
(1) To the extent that nondisclosable information can be deleted from the specific records sought, the remainder of the records shall be disclosable.

(2) No exemptions shall be construed to require nondisclosure of statistical information not descriptive of identifiable persons, as required by RCW 42.17.310(2).

(3) Inspection and copying of any specific records otherwise nondisclosable is permissible pursuant to an order of the superior court in accordance with the provisions of RCW 42.17.310(3).

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-110, filed 11/19/84.]

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437-06-020
Definitions.

(1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by the commission regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographings, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(3) "Commission" means the Washington state sentencing guidelines commission.

(4) "Disclosure" means inspection and/or copying.

(5) "Denial of disclosure" denotes any exempting from disclosure of any public record.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-020, filed 11/19/84.]

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Requests for any identifiable public record may be initiated at the commission office during normal

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The commission shall at all times take the most timely possible action on requests for disclosure, and shall be required to respond in writing within ten working days of receipt of the request for disclosure. The commission's failure to respond shall entitle the person seeking disclosure to petition the public records officer pursuant to WAC 437-06-090.

Community Custody Terms for Adult Jail and Prison Sentences in FY2008

County	Jail Sentences			Prison Sentences			Grand Total
	Total Jail Felonies	Community Custody Imposed	Percent	Total Prison Felonies	Community Custody Imposed	Percent	
Adams	74	3	4%	20	13	65%	94
Asotin	98	65	66%	59	43	73%	157
Benton	451	238	53%	297	191	64%	748
Chelan	247	164	66%	118	85	72%	365
Clallam	251	149	59%	96	67	70%	347
Clark	1,157	579	50%	630	440	70%	1,787
Columbia	12	6	50%	9	3	33%	21
Cowlitz	659	259	39%	262	189	72%	921
Douglas	122	74	61%	54	36	67%	176
Ferry	9	7	78%	2	2	100%	11
Franklin	226	132	58%	87	59	68%	313
Garfield	14	14	100%	4	3	75%	18
Grant	258	61	24%	90	51	57%	348
Grays Harbor	322	213	66%	156	98	63%	478
Island	99	50	51%	41	28	68%	140
Jefferson	69	19	28%	27	19	70%	96
King	3,102	1,469	47%	1,953	1,355	69%	5,055
Kitsap	791	355	45%	342	224	65%	1,133
Kittitas	92	49	53%	27	16	59%	119
Klickitat	42	18	43%	18	8	44%	60
Lewis	371	240	65%	182	138	76%	553
Lincoln	24	10	42%	7	3	43%	31
Mason	158	91	58%	131	85	65%	289
Okanogan	117	45	38%	52	31	60%	169
Pacific	66	38	58%	43	39	91%	109
Pend Oreille	25	12	48%	5	3	60%	30
Pierce	2,730	1,838	67%	1,715	1,234	72%	4,445
San Juan	18	7	39%	12	9	75%	30
Skagit	380	176	46%	206	136	66%	586
Skamania	28	19	68%	19	15	79%	47
Snohomish	1,438	528	37%	903	577	64%	2,341
Spokane	1,961	1,247	64%	796	558	70%	2,757
Stevens	100	58	58%	25	19	76%	125
Thurston	751	474	63%	418	307	73%	1,169
Wahkiakum	13	10	77%	10	8	80%	23
Walla Walla	172	109	63%	84	60	71%	256
Whatcom	691	73	11%	300	179	60%	991
Whitman	69	15	22%	14	12	86%	83
Yakima	852	328	38%	434	261	60%	1,286
Total	18,059	7,222	51%	9,648	6,072	63%	27,707

Totals exclude Residential DOSA Sentences.