

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***

A Statement of Need and Fiscal Impact accompanies this form.

|  |   |              |
|--|---|--------------|
| Oregon Board of Parole and Post-Prison Supervision | OAR 255   |              |
| Agency and Division                                | Administrative Rules Chapter Number               |              |
| Michelle Mooney                                    | 2575 Center St NE, Ste. 100, Salem, OR 97301-4621 | 503-945-0914 |
| Rules Coordinator                                  | Address   | Telephone    |

**RULE CAPTION**

Adopts guidelines for specified juvenile offender prison terms (crimes after October 1989, before May 1991)

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

|                   |      |   |                  |
|-------------------|------|---|------------------|
| November 16, 2009 | 9:00 | 2575 Center St NE, Room 108, Salem, OR 97301-4621 | Aaron Felton     |
| Hearing Date      | Time | Location  | Hearings Officer |

|              |      |          |                  |
|--------------|------|----------|------------------|
| Hearing Date | Time | Location | Hearings Officer |
|--------------|------|----------|------------------|

*Auxiliary aids for persons with disabilities are available upon advance request.*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 255-032-0007

**AMEND:**

**REPEAL:** 255-032-0007(t)

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth. : ORS 144.050, 144.110, 144.120, 144.140

Other Auth.:

Stats. Implemented: ORS 144.120

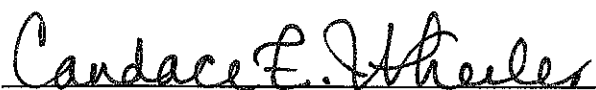
**RULE SUMMARY**

OAR 255-032-0007 adopts hearing procedures and a matrix for specified juvenile offenders where the Board is required to hold a prison term hearing. Specifically, for inmates who were under the age of 17 years at the time of their crime(s), and who were waived to adult court under ORS 419C.340 through 419C.364, and who were convicted of Aggravated Murder under ORS 163.095, and whose crimes were committed after October 31, 1989, and before May 1, 1991, the Board will hold a prison term hearing. At the hearing, the Board will apply Divisions 30 and 35 of its rules except that, to determine an initial parole release date, the Board will use the guidelines and matrix set out in Exhibits P-I through P-III instead of the guidelines and matrix set out in Exhibits A through C of the Board's rules.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

November 16, 2009

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

|   |                    |                 |
|---|--------------------|-----------------|
|  | Candace E. Wheeler | October 7, 2009 |
| Signature   | Printed name       | Date            |

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Board of Parole and Post-Prison Supervision

OAR chapter 255

Agency and Division

Administrative Rules Chapter Number

Adopts procedures for specified juvenile offender prison terms (crimes after October 1989, before May 1991)

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Rulemaking - Specified Juvenile Offender Prison Term Rule

Statutory Authority: ORS 144.050, 144.110, 144.120, 144.140

Other Authority:

Stats. Implemented: ORS 144.120

Need for the Rule(s): On May 12, 2008, the Marion County Circuit Court in case no. 07C18859 issued a peremptory writ of mandamus directing the Board to conduct a parole hearing "forthwith" and set an initial release date for a named offender under ORS 144.120(1)(a) (1989). The Board's existing rules do not include hearing procedures applicable to persons who, like the named offender, were under the age of 17 years at the time of their crime(s), and who were waived to adult court under ORS 419C.340 through 419C.364, and who were convicted of Aggravated Murder under ORS 163.095, and whose crimes were committed after October 31, 1989, and before May 1, 1991. The Appellate Commissioner subsequently stayed the trial court's judgment pending appeal. By order on reconsideration dated May 1, 2009, the Court of Appeals vacated the stay. Although the Board does not agree with the courts' orders, and without waiving its right to continue pursuing review of courts' orders, the Board adopted a temporary rule to comply with the circuit court's judgment. On August 26, 2009, the Board received an order from the Court of Appeals appellate commissioner finding that named offender had raised a colorable claim that the temporary rule is invalid under ORS 183.225(6)(a), because it is identical to an earlier temporary rule, OAR 255-032-0006, which had expired. For this reason, and others, the appellate commissioner granted named offender's motion to stay the rule pending judicial review of the rule. Therefore, the Board is promulgating this permanent rule, which adopts hearing procedures and a matrix for specified juvenile offenders where the Board is required to hold a prison term hearing. Specifically, the Board will hold a prison term hearing for inmates who were under the age of 17 years at the time of their crime(s), and who were waived to adult court under ORS 419C.340 through 419C.364, and who were convicted of Aggravated Murder under ORS 163.095, and whose crimes were committed after October 31, 1989, and before May 1, 1991. At the hearing, the Board will apply Divisions 30 and 35 of its rules except that, to determine an initial parole release date, the Board will use the guidelines and matrix set out in Exhibits P-I through P-III instead of the guidelines and matrix set out in Exhibits A through C.

Documents Relied Upon, and where they are available:

General Judgment Allowing Peremptory Writ of Mandamus dated May 12, 2008, Marion County Circuit Court Case no. 07C18859, available from the Marion County Circuit Court;

Order Granting Reconsideration and Vacating Stay; Order Granting Motion to Take Judicial Notice dated May 1, 2009, Court of Appeals case no. A139059, available from the Oregon Court of Appeals;

Order Granting Motion to Stay dated August 25, 2009, Court of Appeals case no. A142699, available from the Oregon Court of Appeals.

Fiscal and Economic Impact: None identified.

Statement of Cost of Compliance:

- 1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): None Identified.
2. Cost of compliance effect on small business (ORS 183.336): Not applicable.

Administrative Rule Advisory Committee consulted?: No If not, why?: The Board enacted these rules during a business meeting, and due to the nature of the rules, felt it was not necessary to convene an Administrative Rule Advisory Committee.

Signature [Handwritten Signature]

DARCEY L. BAKER September 8, 2009
Printed name Date

OAR 255-032-0007:

(1) When required by law or by order of a court of competent jurisdiction, inmates who were under 17 years of age at the time of their crime(s), and who were waived to adult court under ORS 419C.340 through 419C.364, and who were convicted of Aggravated Murder under ORS 163.095, and whose crimes were committed after October 31, 1989, and before May 1, 1991, will receive a prison term hearing. At the hearing, the board will apply Divisions 30 and 35 of its rules except that, to determine an initial parole release date, the board will use the guidelines and matrix set out in Exhibits P-I through P-III instead of the guidelines and matrix set out in Exhibits A through C.