

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form

Board of Parole and Post-Prison Supervision	255
Agency and Division	Administrative Rules Chapter Number
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Rules Coordinator	Telephone

Board of Parole and Post-Prison Supervision, 2575 Center St. NE, Salem, OR 97301
Address

RULE CAPTION

Amends rules and exhibits governing procedures for setting prison terms for qualified aggravated murderers.

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

Hearing Date	Time	Location	Hearings Officer
2-17-12	09:00 AM	2575 Center St NE, Salem Oregon 97301	Aaron Felton, Board Chairperson

Auxiliary aids for persons with disabilities are available upon request.

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:

255-032-0005(4); Exhibit A Part I; Exhibit A Part II; OAR 255-032-0037(2).

REPEAL:

255-032-0011.

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

ORS 144.050, ORS 144.110, ORS 144.120, ORS 144.140, ORS 144.780

Other Authority:

Janowski/Fleming v. Board of Parole, 349 Or 432 (2010); Severy/Wilson v. Board of Parole, 349 Or 461 (2010); State ex rel Engweiler v. Felton, 350 OR 592 (2011); OAR 255 Division 30.

Statutes Implemented:

ORS 144.110, ORS 144.120, ORS 163.105

RULE SUMMARY

Division 32 rules govern procedures related to persons convicted of aggravated murder under ORS 163.105. Division 35 rules and related exhibits govern procedures related to setting a prison term. Recent Oregon Supreme Court decisions necessitate changes in the Board's rules:

(1) In Janowski/Fleming v. Board of Parole, 349 Or 432 (2010), the Board was directed to apply the "matrix system" in effect at the time the crimes were committed in order to set a prison term for adults convicted of aggravated murder who had been found likely to be rehabilitated within a reasonable period of time under ORS 163.105. Exhibit A-I is amended to restore crime severity ratings to aggravated murder. Exhibit A-II is amended to restore the subcategory rationale for aggravated murder, including Category 7 and Category 8. Both of these changes are required in order to allow the Board to establish a matrix range for persons convicted of aggravated murder. OAR 255-032-0037(2) is amended to clarify the rules to be applied to aggravated murderers who have been found likely to be rehabilitated within a reasonable period of time.

(2) In State ex rel Engweiler v. Felton, 350 Or 592 (2011), the court concluded that the Board exceeded its statutory authority when it promulgated rules requiring five juvenile aggravated murderers to undergo the intermediate review process of a murder review hearing before the Board makes parole release decisions regarding them. OAR 255-032-0005 is amended and OAR 255-032-0011 is repealed to comply with this decision.

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.

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Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed
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*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003