

DIVISION 30

PRISON TERM HEARING AND HEARING PROCEDURES

255-030-0010

Scheduling Prison Term Hearings

(1) The Board shall conduct a hearing to establish a prison term for each new inmate whose crime was committed prior to November 1, 1989, within:

(a) Six ~~(6)~~ months of admission to a Department of Corrections facility for those sentenced to five years or less;

(b) Eight ~~(8)~~ months of admission to a Department of Corrections facility for those sentenced to more than five years but less than fifteen years; or

(c) Twelve ~~(12)~~ months of admission to a Department of Corrections facility for those sentenced to life or fifteen ~~(15)~~ years or more.

(2) The Board shall follow section 1 of this rule to schedule a prison term hearing for any additional sentence received while in custody of a Department of Corrections facility.

(3) For those prison term hearings which must be conducted within six ~~(6)~~ months, the Board may defer setting a prison term for ninety days to obtain additional information.

(4) The Board may establish prison terms after a hearing or as an administrative action without a hearing, pursuant to 255-030-0024.

Stat. Auth.: ORS 144.120(1)

Stats. Implemented: ORS 144.120

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 7-1985, f. & ef. 5-31-85; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00

255-030-0013

Notification of Hearing

(1) The Board shall send written notice of the hearing and its purpose to the inmate. The inmate shall receive a copy of the Board Review Packet, including the notice of rights (Exhibit NOR-1), at least 14 days prior to the hearing.

(2) If the inmate did not receive 14 days notice, the Board may reschedule the hearing or the inmate may waive the notice and the Board shall conduct the hearing.

(3) The Board shall attempt to notify the victim, if the victim requests notification and furnishes the Board a current address, and the District Attorney of the committing county at least ninety (90) days before all hearings by sending written notice to the current addresses of both parties.

Stat. Auth.: ORS 144.120(7) & 144.130

Stats. Implemented: ORS 144.120(7) & 144.130

Hist.: 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1990(Temp), f. & cert. ef. 2-20-90; PAR 2-1990, f. & cert. ef. 4-5-90; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 7-2010, f. & cert. ef. 9-3-10; PAR 8-2010, f. & cert. ef. 9-29-10; PAR 2-2012(Temp), f. & cert. ef. 6-28-12 thru 12-25-12

255-030-0021

Teleconference Manner of Hearing

At the chairperson's discretion, the Board or its designated representative may conduct any hearing by teleconference call, videoconference call, or other electronic medium that ensures the inmate, the Board, and other participants the opportunity to hear and be heard.

255-030-0023

Prisoner-Inmate Appearance at Board Hearing

(1) The inmate shall be present in person ~~or~~, by telephone or videoconference, or by any other electronic medium that ensures the inmate, the Board, and other participants the opportunity to hear and be heard at the Parole Board hearing.

(2) If an inmate refuses to appear at a hearing, the refusal will be considered to be the inmate's waiver of appearance.

(3) The Board may compel an inmate's appearance when a the inmate refuses to appear.

~~(3)~~ (4) The Board may ~~elect~~ choose not to compel the inmate to attend the hearing. ~~In this instance~~ The Board may then reschedule the hearing, or hold the hearing and make a decision in the inmate's absence. set the prison term in the inmate's absence.

Stat. Auth.: ORS 144.035(5) & ORS 144.120

Stats. Implemented: ORS 144.035(5) & ORS 144.120

255-030-0024

Prison Term Hearing Waiver

(1) Notwithstanding OAR 255-030-0023(3), an inmate may waive his/her right to a prison term hearing based on the following criteria:

(a) Sentence of less than 15 years; and

(b) Non-person felony (The non-person felonies are designated on Exhibit A-I of these rules.); and

(c) Matrix range of up to 14–20 months; and

(d) Completed Prison Term Hearing Packet.

(2) Within the time limits provided by OAR 255-030-0010, the Board, at its discretion, may notify the inmate in writing of:

(a) His/her eligibility to waive the prison term hearing; and

(b) The proposed prison term and conditions of parole.

(3) A Department of Corrections counselor will review the ~~Prison Term Hearing Packet and the~~ waiver form with the inmate.

(4) Upon receipt of a signed waiver, the Board shall make the findings required by OAR 255-035-0013 or 255-035-0014 and shall send the final Board order to the inmate.

(5) If the Board is not satisfied that the waiver was made knowingly and intelligently or if it needs more information before making its decision, the Board may deny the waiver and order a hearing.

Stat. Auth.: ORS 144.120(1)(b)

Stats. Implemented: ORS 144.120(1)(b)

Hist.: PAR 8-1988, f. & ef. 7-1-88; PAR 9-1988(Temp), f. & ef. 7-14-88; PAR 12-1988(Temp), f. & ef. 7-20-88; PAR 13-1988(Temp), f. & ef. 8-5-88; PAR 18-1988, f. & ef. 12-6-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1990(Temp), f. & cert. ef. 2-20-90; PAR 3-1990, f. 6-29-90, cert. ef. 7-1-90; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00

255-030-0025

Inmate Accompaniment to Board of Parole and Post-Prison Supervision Hearing

(1) Purpose: The purpose of these rules is to jointly establish with the Department of Corrections policies and procedures governing who may accompany an inmate in a hearing before the Board of Parole and Post-Prison Supervision.

(2) Policy: It is the joint policy of the Department of Corrections and Board of Parole and Post-Prison Supervision that inmates be permitted to have a person accompany them in hearings before the Board in accordance with ORS 144.123, as provided in these rules.

The decision to approve a person's physical access to a Board hearing held within a Department of Corrections facility will be made by the functional unit manager or designee of the facility in which the inmate is confined, in accordance with the department's rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127). A person's physical access to a Department of Corrections facility may be prohibited or restricted by the functional unit manager or designee consistent with these rules; the health, safety and security of staff, inmates, and the public; and with the safe, secure, and orderly operation and management of the facility.

Stat. Auth.:ORS 144.123 & 144.120(7)

Stats. Implemented: ORS 144.120(7), ORS 144.123 & ORS 192.630

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 10-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 2-1990, f. & cert. ef. 4-5-90; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00PAR 4-2004(Temp), f. & cert. ef. 5-14-04 thru 11-10-04; PAR 10-2004, f. & cert. ef. 11-2-04

255-030-0026

Who May Appear at a Board of Parole and Post-Prison Supervision Hearing

(1) Inmate Accompaniment: When appearing before the Board of Parole and Post-Prison Supervision in a hearing, an inmate may be accompanied at the Department of Corrections facility in which the inmate is confined, subject to the prior approval of the facility functional unit manager or designee, by:

(a) A person who has been approved for privileged visiting in accordance with the Department of Corrections rule on Visiting (Inmate) (OAR 291-127);

(b) An assigned inmate legal assistant, selected in accordance with the Department of Corrections rule on Legal Affairs (Inmate) (OAR 291-139), from the Department of Corrections facility where the inmate is confined; or

(c) The inmate's attorney.

(2) In addition to those persons specified in subsection (1) of this rule, the inmate may be accompanied at the hearing via telephone or videoconference by such other person or persons as the Board of Parole and Post-Prison Supervision, in its discretion, may approve by prior arrangement.

(a) The inmate may select one person to speak on his/her behalf. The statement shall not exceed 15 minutes. The presiding Board member may grant the support person additional time upon a finding that further testimony is likely to be

relevant to the Board's decision. The presiding Board member may exclude or limit irrelevant, immaterial or unduly repetitious testimony and evidence.

(3) The Department of Corrections, if requested by the inmate or the Board, will assign an ~~assigned~~ approved inmate legal assistant from the Department of Corrections facility where the inmate is confined to accompany an inmate at a Board hearing.

(a) The selection of the inmate legal assistant shall be governed by the policies and rules of the Department of Corrections.

(4) Others Who May Attend/Appear at a Board Hearing:

~~(a) Victim and District Attorney: The victim(s), personally; or by counsel or other representative, and the District Attorney from the committing jurisdiction or his/her representative or designee, may attend/appear Board of Parole and Post-Prison Supervision Hearings and may submit written and oral statements, including supporting documents, expressing any views concerning the crime and the offender.~~

(b) District attorney: the district attorney from the committing jurisdiction or his/her representative or designee, may attend Board hearings and may submit written and oral statements, including supporting documents, expressing any views concerning the crime and the offender.

(c) Public: Members of the public may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings.

(d) Media Representatives: Approved media representatives may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings.

(e) Department of Corrections Employees, Volunteers, and Contractors: Department of Corrections employees, volunteers, and contractors may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings, except as requested or approved by the Board in order to provide testimony in the hearing.

(f) Other: The Board retains the discretion to allow oral statements at hearings from one or more persons not otherwise identified in OAR 255-030-0026, if the Board deems the person(s) to have a substantial interest in the case, or to be able to provide information that may assist the Board in its deliberations.

(5) Means and Manner of Appearance/Attendance:

(a) Board Hearings Conducted With Inmate in Person Within a Department of Corrections Facility:

(A) If the inmate will appear before the Board of Parole and Post-Prison Supervision in person within a Department of Corrections facility, the person(s) accompanying the inmate, the victim, ~~and the District Attorney~~, and/or their representatives, members of the public, and approved media representatives, may ~~appear~~/attend the hearing in person at the Department of Corrections facility, subject to the approval by the functional unit manager of the facility in which the hearing is being conducted, or if arranged in advance with the Board, via telephone, or videoconference call, or other electronic medium that ensures the inmate, the Board, and other participants the opportunity to hear and be heard, as arranged in advance with the Board

(B) A person ~~desiring who wants to appear~~/attend a Board of Parole and Post-Prison Supervision hearing in a Department of Corrections facility must contact the ~~functional unit manager or designee of the Department of Corrections facility in which the hearing is scheduled to take place~~ Board at least two weeks in advance of the hearing to arrange ~~for their~~ to attendance/appearance.

(C) A person's access to a Department of Corrections facility^{yies} is subject to the Department of Corrections rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127), and may be prohibited or restricted by the functional unit manager or designee of the facility in which the hearing is being conducted consistent with the health, safety and security of staff, inmates, and the public, and with the safe, secure, and orderly operation and management of the facility.

(D) A person who ~~appears~~/attends a Board of Parole and Post-Prison Supervision hearing in a Department of Corrections facility is subject to the rules of conduct, and the terms and conditions of visiting set forth in the department's rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127).

(b) Board Hearings Conducted With Inmate ~~V~~^yvia Telephone, ~~or~~ Videoconference, or Other Electronic Medium: If the inmate will appear before the Board of Parole and Post-Prison Supervision via telephone, ~~or~~ videoconference, or other electronic medium, the person(s) accompanying the inmate, the victim(s), and the ~~D~~istrict Attorney, and/or their representatives, members of the public, and approved media representatives, may appear/attend the hearing at the place in which the Board is ~~meeting for purposes of~~ conducting the hearing, or via telephone, ~~or~~ videoconference, or other electronic medium, as arranged in advance with the Board.

(6) Conduct of Hearing: The Board of Parole and Post-Prison Supervision may eject any disruptive person from a hearing. The Board may require all persons to leave the designated hearing area during deliberations.

Stat. Auth.: ORS 144.123, ORS 144.750, *former* ORS 144.120(7), [ORS 192.690](#)
Stats. Implemented: ORS 144.123, ORS 144.750, and *former* ORS 144.120(7)

255-030-0027

Victim, District Attorney and Inmate Statements

(1) During the hearing, the victim(s), personally, by counsel, or by representative, and the ~~D~~istrict ~~A~~ttorney from the committing jurisdiction may make statements not to exceed 15 minutes. The presiding Board member may grant the representative of the victim or the district attorney additional time upon a finding that further testimony is likely to be relevant to the Board's decision. The presiding Board member may exclude or limit irrelevant, immaterial, or unduly repetitious testimony and evidence.

(a) Following the statement(s) by the victim(s) and/or district attorney, the inmate may [address the Board with his/her response](#).

(2) ~~Following the victim(s) and the D~~istrict ~~A~~ttorney statements, ~~o~~ One person selected by the inmate may make a statement not to exceed 15 minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the Board's decision. The presiding Board member may exclude or limit irrelevant, immaterial, or unduly repetitious testimony and evidence.

Stat. Auth.: ORS 144.750, and *former* ORS 144.120(7)

Stats. Implemented: ORS 144.750, and *former* ORS 144.120(7)

Hist.: 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 1-1992, f. & cert. ef. 1-13-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00; PAR 5-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11

255-030-0032

Evidence

(1) The presiding ~~chairperson~~ Board member at a Board hearing shall explain the issues ~~for to be decided~~ decision, which, i In the case of a prison term hearing, ~~are~~ those issues are set forth in OAR 255-035-0013. In the case of other types of hearings, the issues are set forth in the applicable division of the Board's administrative rules.

(2) Evidence of a type that reasonably prudent persons would commonly rely upon in the conduct of their serious affairs shall be admissible in Board hearings, including:

(a) The information set forth in OAR 255-030-0035;

(b) Other relevant evidence concerning the inmate ~~if reasonably~~ that is available.

(3) Reliable, probative, and substantial evidence shall support Board orders. Substantial evidence is found when the record, viewed as a whole, would permit a reasonable person to make a particular finding.

(4) The Board may exclude evidence if it is:

(a) Unduly repetitious;

(b) Not of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs;

(c) Provided by a person, other than a justice system official, without first hand knowledge of the circumstances of the crime that is the subject of the proceeding before the Board;

(d) Provided by a person, other than a justice system official, without first hand knowledge of the character of the inmate;

(e) Addressing only guilt or innocence; or

(f) Irrelevant or immaterial to the ~~findings being~~ decision(s) to be made at that particular hearing.

(5) The Board may receive evidence to which the inmate objects. If the presiding ~~chairperson~~ Board member does not make rulings on its admissibility ~~or exclusion~~ during the hearing, the Board shall make findings on the record at the time a final order is issued.

(6) Erroneous rulings on evidence shall not preclude Board action on the record unless shown to have substantially prejudiced the rights of the inmate.

Stat. Auth.: ORS 144.050 & ORS 144.140

Stats. Implemented: ORS 144.050 & ORS 144.140

Hist.: PAR 4-1989, f. & ef. 11-1-89; PAR 5-1990, f. & cert. ef. 10-5-90; PAR 1-1992, f. & cert. ef. 1-13-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00

255-030-0035

Information the Board Shall Consider at a Prison Term Hearing

(1) The Board Review Packet shall contain information relevant to the purpose of the hearing, which may include, but is not limited to:

(a) Inmate's notice of rights and notice of administrative appeal;

(b) ~~PSI, PAR, PSR~~ resentence Investigation (PSI), Postsentence Investigation Report (PSR), Parole Analyst Report (PAR), or report of similar content;

- (c) Sentencing/judgement orders;
- (d) Department of Corrections Inmate Face sheet;
- (e) Certification of time served credits;
- (f) Board Action Forms;
- (g) Information pursuant to Ballot Measure 10;
- (h) Material submitted by the inmate or representative relating to the calculation of the prison term, or to the subject matter of the hearing;
- (i) Current psychological/psychiatric evaluations;
- (j) Other relevant material selected at the Board's discretion.

(2) The Board Review Packet need not include all documents in the inmate's file.

(3) At its discretion, ~~t~~The Board may consider additional written information and recommendations from those with a special interest in the case. If considered, the Board Review Packet shall include the information. The Board must receive any information submitted pursuant to this section at least seven-fourteen days prior to the hearing. The Board may waive the seven-fourteen-day requirement.

Stat. Auth.: ORS 144.185 & ORS 144.223

Stats. Implemented: ORS 144.185-~~&~~, ORS 144.125(1), ORS 144.223

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 16-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 7-1985, f. & ef. 5-31-85; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1992, f. & cert. ef. 1-13-92

255-030-0040

Inmate's Access to Written Materials/Rebuttal and Deadlines for Receiving Materials

(1) The inmate shall have access to all the material in the Board Review Packet except that exempted by OAR 255-015-0010 (Criteria for Denial of Disclosure of Records).

(2) The inmate shall have access to all the victim and ~~D~~istrict ~~A~~ttorney 's responses pursuant to OAR 255-030-0035 except that as exempted by the Board pursuant to OAR 255-015-0010. The Board shall include the responses in the Board Review Packet or shall give the responses to the inmate as soon as they are available to the Board.

(3) If the victim, his/her representative, or the ~~D~~istrict ~~A~~ttorney wishes to rebut any of the material in the Board Review Packet, the Board must receive the response seven (~~7~~)

days prior to the hearing. The Board shall notify the victim that the Board will include the response in the Board Review Packet sent to the inmate unless the victim requests confidentiality.

(4) The inmate or representative shall submit any relevant information at least ~~seven (7)~~ fourteen days prior to the hearing.

(5) The Board may waive deadline requirements if it finds good cause to do so.

Stat. Auth.: ORS 144.050, ORS 144.130, ORS 144.223, ORS 192.502(4) or (5).

Stats. Implemented: ORS 144.130

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 7-1985, f. & ef. 5-31-85; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00

255-030-0045-0046

Continuance of Hearings: Cancellation of Hearings

(1) Upon the request of any party or on its own motion, the Board may, for good cause, continue a hearing for a reasonable period of time.

(2) A request for cancellation or postponement of a hearing must be for good cause, in writing, and at least seven days before the hearing.

(3) A hearing may not be postponed or cancelled if that action would violate any statute or rule requiring the hearing to be held.

(4) If the Board cancels a hearing at an inmate's request, the inmate shall not be eligible to request another hearing for 90 days from the date of the scheduled hearing. The decision to grant a hearing is at the discretion of the Board.

Stat. Auth.: ORS 144.050

Stats. Implemented: ORS 144.185

255-030-0055

Notice of Decision Following Prison Term Hearing

(1) Following a Board decision concerning the prison term of an inmate, the Board shall send written notice of the Board's final order to the inmate, ~~D~~istrict ~~A~~ttorney, sheriff or arresting agency, the Department of Corrections, and upon request, the victim, the sentencing judge and the trial counsel.

(2) The Board's final order shall contain the following ~~applicable~~ findings, as applicable:

(a) The prison term commencement date;

- (b) The history/risk assessment score;
- (c) The crime category with the subcategory rationale;
- (d) The matrix range;
- (e) When there are consecutive sentences, whether the range is unsummed and the reason for unsumming;
- (f) When there is a variation from the range, the reason for the variation;
- (g) Aggravation;
- (h) Mitigation;
- (i) The votes on minimum sentences;
- (j) The prison term set;
- ~~(k) The votes of the Board members;~~
- ⊕ (k) The parole release date;
- ~~(m) When there are conditions of parole or post-prison supervision set, findings concerning the waiver of the residency condition, if any; and~~
- ⊕ (l) Sentencing guidelines range, if applicable.

Stat. Auth.: ORS 144.120, ORS 144.260 & ORS 144.135

Stats. Implemented: ORS 144.120, ORS 144.260 & ORS 144.135

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 7-1985, f. & ef. 5-31-85; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97

DIVISION 32

AGGRAVATED MURDER

255-032-0005

Prison Term Hearing to Be Held

(1) An adult person convicted of Aggravated Murder under ORS 163.095 shall receive a hearing within one year of sentencing. A person convicted of Murder under ORS 163.115 that was committed on or after June 30, 1995, and who was sentenced to life with a twenty-five (25) year minimum shall receive a hearing within one year of sentencing. At the hearing the Board shall set a review date congruent with the minimum terms set forth in OAR 255-032-0010 rather than a parole release date. In lieu of holding a hearing, the Board may determine the prison term/murder review date by administrative file pass.

(2) Adult persons sentenced to death or life without the possibility of release or parole shall not receive a hearing.

(3) Adult persons sentenced to life with a twenty (20) or thirty (30) year minimum for aggravated murder shall receive a prison term hearing pursuant to ORS 144.120 if they also have a sentence to the Department of Corrections' custody for a crime other than aggravated murder.

(4) Inmates, who were juveniles and waived to adult court pursuant to ORS 419C.340 through 419C.364, and were under the age of 17 years at the time of their crime(s), and were convicted of Aggravated Murder, per ORS 163.095, and whose crimes were committed after October 31, 1989 and prior to April 1, 1995, shall receive a prison term hearing. At the hearing, the Board shall set a projected parole release date, in accordance with the guidelines and matrix that apply with respect to the date of the crime.

- a) The Board will apply the applicable procedural rules under OAR Divisions 30 and 35, in effect at the time of the hearing, for the conduct of the hearing.

Stat. Auth.: ORS 144.120, 163.095, 163.115, 419C.340 & 419C.364

Stats. Implemented: ORS 163.105

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 4-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 4-1999, f. & cert. ef. 5-18-99; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 1-2003, f. & cert. ef. 5-13-03; PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10; PAR 3-2010, f. & cert. ef. 3-26-10

BOARD OF PAROLE AND POST-PRISON SUPERVISION

DIVISION 32

AGGRAVATED MURDER

255-032-0022

Murder Review Hearings Notice

The Board's notice (Exhibit NOR-3MR) must include:

- (1) A statement that the sole issue to be considered shall be whether or not the inmate is likely to be rehabilitated within a reasonable period of time, and that the inmate shall have the burden of proof, by a preponderance of the evidence;
- (2) A statement of the inmate's right to be represented by counsel; and if the inmate is without sufficient funds, counsel will be appointed by the Board at Board expense;
- (3) A statement that the Board has authority and jurisdiction to hold a hearing on the issue pursuant to ORS 163.105(2) or 163.115(5); and
- (4) A statement of rights of the inmate at the hearing.

Stat. Auth.: ORS 183.415, 163.105(2), 163.115(5)

Stats. Implemented:

Hist.: PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; PAR 5-2007, f. & cert. ef. 7-30-07

DIVISION 32

AGGRAVATED MURDER

255-032-0037

Prison Term Hearings for Inmates Found Likely to be Rehabilitated

(1) The Board shall hold a prison term hearing for an adult inmate convicted of murder as defined in ORS 163.115 or Aggravated Murder as defined in ORS 163.095 committed on or before October 22, 1999, whose sentence has been converted to life with the possibility of parole based on the Board's determination that the inmate is likely to be rehabilitated within a reasonable period of time.

(2) The Board will conduct the hearing under the provisions of Division 030 of the Board's rules in place at the time the hearing is conducted, and will establish the prison term or take other action authorized under the law and administrative rules that apply with respect to the date of the crime.

Stat. Auth.: ORS 144.120; Other Auth.: OAR 255-030-0012(1982), 255-032-0005(1)(1985), 255-032-0005(1)(1982)(1985), Janowski/Fleming v. Board of Parole, 349 OR 432(2010), Severy/Wilson v. Board of Parole, 349 OR 461(2010)

Stats. Implemented: ORS 144.120

Hist.: PAR 7-2011, f. & cert. ef. 11-30-11

DIVISION 60

RELEASE TO POST-PRISON SUPERVISION OR PAROLE ~~AND EXIT~~ INTERVIEWS

255-060-0006

Exit Interviews: Parole Plan; and Psychiatric Records

(1) At any time prior to an inmate's scheduled release to post-prison supervision or parole, the Board on its own initiative or at the request of the Department of Corrections, may conduct an exit interview to review the inmate's:

(a) Release plan;

(b) Victim's statements, if any;

(c) ~~PSR or similar~~ Parole analysis report, a presentence investigation report, or comparable report;

(d) Psychiatric/psychological reports, if any;

(e) Conduct while in confinement; ~~and~~

(f) Any other information relevant to the inmate's reintegration into the community that the inmate, the inmate's attorney, the Department of Corrections or any other person submits; and

(g) Any other information deemed by the Board to be relevant to its determination of whether the inmate is appropriate for release on parole.

(2) The procedures for records, disclosure and notice outlined in Division 15 and 30 shall govern exit interviews.

(3) A panel shall conduct the interview, except where a full Board is required by ORS 144.054 or other rule or statute, and the Board shall make decisions pursuant to OAR 255-030-0015.

Stat. Auth.: ORS 144.098, ORS 144.125 & ORS 144.800

Stats. Implemented: ORS 144.098, ORS 144.125 & ORS 144.800

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80; 2PB 1-1981, f. 1-20-81, ef. 2-15-81; 2PB 8-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 13-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 2-1990, f. & cert. ef. 4-5-90; Sections (3), (4), (5) & (6) renumbered to 255-060-0008; PAR 3-1991(Temp), f. & cert. ef. 5-1-91; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 2-1992(Temp), f. & cert. ef. 2-12-92; PAR 3-1992, f. & cert. ef. 4-15-92; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 6-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 5-1998, f. & cert. ef. 11-9-98

255-060-0008

Release Plans

(1) At any time prior to release on parole or post-prison supervision, the Board shall examine the inmate's plans for residence, employment, or other situation in the community to determine whether the release plan is adequate. The plan may include, but is not limited to:

(a) Employment;

(b) School, or other situation (e.g., retirement income);

(c) Verifiable residence;

(d) A description of support services, program opportunities and treatment programs;

(e) Prescribed medication;

(f) Recommended conditions of supervision for the purpose of reformation and public safety, ~~including a recommendation for waiver of the condition of supervision that the inmate reside for the first six months in the county where the inmate resided at the time of the offense that resulted in imprisonment;~~

(g) ~~Level of supervision consistent with the prisoner's risk assessment classification; and~~
A recommendation for waiver of the six month residency requirement as required by ORS 144.102 (6)(a) and 144.270 (5)(a);

(h) ~~A restitution and compensatory fine payment schedule. Notice, where applicable, that the inmate has been designated or is being considered for predatory sex offender of sexually violent dangerous offender designation;~~

(i) Verification of restitution and compensatory fine obligations; and

(j) Notice of any active detainer or hold.

(2) The Board may defer parole release up to ~~ninety (90)~~ days from the parole release date when a plan is deficient or unverified in order to obtain verification or a satisfactory plan from the Department of Corrections.

(3) An inmate requesting an out-of-state parole waives the ~~ninety (90)~~ days limitation on deferral of release. Such waiver is for the purpose of an adequate parole plan in the accepting state.

(4) ~~Except as provided in OAR 255-060-0014, the Board shall not defer release to post-prison supervision. The following procedure shall apply:~~

~~(a) If the release plan the Department of Corrections or designee of Local Supervisory Authority submits at least 60 days prior to release is deficient, the Board will return it to the submitting agency with the Board's recommended modifications.~~

~~(b) The Department or designee of Local Supervisory Authority shall submit a revised plan to the Board not less than ten days prior to the inmate's release.~~

~~(c) If the Board does not accept the revised plan, the Board shall determine the provisions of the final plan prior to the prisoner's release.~~

(4) One Board member or designated staff member under supervision of the Board shall review and approve the release plan.

(6) When an offender is released from the custody of the Department of Corrections or Local Supervisory Authority, after serving a sentence of incarceration as a result of a conviction for an offense listed in subsection (a) of this section, the Board or Local Supervisory Authority shall subject the inmate/offender to intensive supervision as defined in OAR 255-005-0005(26), for the full period of the offender's parole or post-prison supervision if the inmate/offender was eighteen (18) years of age or older at the time the inmate/offender committed the offense and the Board or Local Supervisory Authority finds that the inmate/offender is a sexually violent dangerous offender, as defined in OAR 255-005-0005(46).

(a) The crimes to which section (6) of this rule apply are:

(A) Rape in the First Degree and Sodomy in the First Degree if the victim was subject to forcible compulsion or under 12 years of old or was incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; and

(B) Unlawful Sexual Penetration in the First Degree; and

(C) An Attempt to commit a crime listed in this subsection.

(b) When the Board or Local Supervisory Authority makes a finding that an inmate/offender is a sexually violent dangerous offender under this section, the Board or Local Supervisory Authority shall make this finding in the Order of Supervision.

Stat. Auth.: ORS 144.096, ORS 144.125, ORS 144.185 & ~~Ch. 924, 1999 OL~~ ORS 144.635, ORS 144.637

Stats. Implemented: ORS 144.635, ORS 144.637

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80; 2PB 1-1981, f. 1-20-81, ef. 2-15-81; 2PB 8-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 13-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 2-1990, f. & cert. ef. 4-5-90; Sections (1), (2) & (3) renumbered from 255-060-0006; PAR 3-1991(Temp), f. & cert. ef. 5-1-91; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 9-1992, f. & cert. ef. 12-8-92; PAR 6-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 7-1999, f. 9-21-99, cert. ef. 9-22-99; PAR 4-2000, f. & cert. ef. 2-15-00

255-060-0009

Residence Requirements for Certain Sex Offenders Upon Release from Custody

(1) A sex offender classified as a sexually violent dangerous offender (ORS 137.765) or a predatory sex offender (ORS 181.765) may not reside near locations where children are the primary occupants or users.

(2) This prohibition applies to permanent housing and not to transitional housing. For purposes of this rule, transitional housing means housing intended to be occupied by a sexually violent dangerous offender or a predatory sex offender for 45 days or less immediately after release from custody.

(3) Exceptions to this prohibition may be made by the supervising parole/probation officer if it is determined that there is sufficient information to support this placement in terms of public safety and the rehabilitation of the offender. In making this determination, the following factors must be considered:

(a) Other residential placement options pose a higher risk to the community, or

(b) An enhanced support system that endorses supervision goals and community safety efforts is available at this residence, or

(c) Enhanced supervision monitoring will be in place (e.g. electronic supervision, curfew, live-in-care provider, along with community notification), or

(d) This residence includes 24-hour case management, or

(e) The offender is being released from prison unexpectedly and more suitable housing will be arranged as soon as possible. If any of these factors apply to the offender and the residence under review, an exception to the permanent residence prohibition may be allowed.

(4) The supervising officer must inform the community affected by this decision about the reasons for the decision prior to the offender's release from custody.

Stat. Auth.: ORS 144.642, 144.644, 181.585

Stats. Implemented: ORS 144.641, 144.642, 144.644

Hist.: PAR 5-2001(Temp), f. 12-10-01, cert. ef. 1-1-02 thru 6-29-02; PAR 2-2002, f. & cert. ef. 1-29-02; PAR 6-2002(Temp), f. & cert. ef. 4-15-02 thru 10-11-02, PAR 7-2002, f. & cert. ef. 6-17-02; PAR 3-2003(Temp), f. & cert. ef. 6-13-03 thru 12-9-03; PAR 5-2003, f. & cert. ef. 10-10-03

255-060-0012

Psychological or Psychiatric Reports

Sections (1)–(6) of this rule ~~do not apply to inmates whose only crimes are committed on or after November 1, 1989.~~ apply to inmates whose crimes were committed before November 1, 1989, or to inmates who are serving sentences for murder or aggravated murder committed on or after November 1, 1989, and who are eligible for parole or post-prison supervision under applicable statutes and rules.

- (1) Pursuant to ORS 144.125, the Board may order any available psychiatric/psychological report(s) from the Department of Corrections.
- (2) Pursuant to ORS 144.223, the Board may postpone ~~the~~ a projected parole release date administratively and order a psychiatric/psychological evaluation of any inmate at any time prior to release.
- (3) After review of the psychiatric/psychological reports, and all other information or documents presented during the hearing the Board may defer parole release until a specified future date upon finding:
 - (a) The inmate has a present severe emotional disturbance, such as to constitute a danger to the health or safety of the community.
- (4) The Board shall not deny release on parole solely because of an inmate's present severe emotional disturbance. The Board must also find the condition constitutes a danger to the health or safety of the community.
- (5) ~~The majority of~~ If the Board finds that the inmate has a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, the Board may defer a ~~scheduled~~ projected parole release date ~~up to~~ for no less than two years, unless such a deferral would cause the inmate to be held beyond the maximum sentence date. The Board may defer the projected parole release date for no more than 10 years from the current date. ~~A panel may defer a scheduled parole release date up to 18 months.~~
 - (a) The Board may not defer a projected parole release date for more than two years from the date of the current projected parole release date unless the Board finds that it is not reasonable to expect that the inmate would be granted a firm release date before the end of the extended deferral period, , i.e., not reasonable to expect that the inmate will be found to no longer have a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, or found to have such a disturbance but that it is not presently so severe as to constitute a threat to the health or safety of the community.
 - (b) A decision to establish a deferral period of longer than two years requires a unanimous vote of the Board members participating in the hearing; the length of the deferral shall be determined by a majority vote.

- (c) Factors to be considered in establishing a deferral period of longer than two years include those listed in OAR 255-062-0015.
- (d) The inmate may request an interim exit interview hearing pursuant to OAR 255-062-0020.
- (e) If the Board finds, based upon the request for an interim hearing, that there is reasonable cause to believe that the inmate may be found to no longer have a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, or may be found to have such a disturbance but that it is not presently so severe as to constitute a threat to the health or safety of the community, the Board shall conduct a hearing as soon as is reasonably convenient. An interim hearing may be granted by a majority of the Board.
- (f) If the Board denies a petition for an interim hearing, it shall issue a final order accompanied by findings of fact and conclusions of law, pursuant to ORS144.280(3) (2009).
- (g) A finding by the Board under (e) above does not bind the Board to any specific finding at the interim exit interview hearing.

(6) If the Board finds the inmate does not have a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, or finds that the emotional disturbance is not presently so severe as to constitute a danger, the Board shall affirm the parole release date and set parole conditions.

(7) For purposes of the Board's finding that an inmate/offender is a sexually violent dangerous offender pursuant to OAR 255-060-0008(6), the Board may order a psychological or psychiatric evaluation.

Stat. Auth.: ORS 144.125, ORS 144.223, ORS 144.280 & ~~Ch. 924, 1999 OL~~

Stats. Implemented: ORS 144.125, ORS 144.280(1)(b) (2009).

Hist.: PAR 2-1990, f. & cert. ef. 4-5-90; PAR 6-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 5-1998, f. & cert. ef. 11-9-98; PAR 4-2000, f. & cert. ef. 2-15-00

255-060-0013

Postponement Order

Any order regarding the postponement of a projected parole release date shall be sent to the ~~prisoner~~ inmate and shall set forth:

- (1) The facts and specific reasons for the decision and the ~~individual~~ votes of the Board members.
- (2) Notice of the right to administrative appeal pursuant to the procedures of division 80.

Stat. Auth.: ORS 144

Stats. Implemented: ORS 144

Hist.: PAR 2-1990, f. & cert. ef. 4-5-90

255-060-0018

Offenders Eligible for Sexually Violent Dangerous Offender Designation

(1) “Sexually violent dangerous offender” is a person who is being released from custody after serving a sentence of incarceration as a result of conviction for an offense listed in subparagraph (a) of this paragraph, who has psychopathic personality features, sexually deviant arousal patterns or interests and a history of sexual assault, and who the State Board of Parole and Post-Prison Supervision or local supervisory authority finds presents a substantial probability of committing an offense listed in subparagraph (a) of this paragraph.

(a) The offenses to which this rule applies are:

(A) Rape in the first degree and sodomy in the first degree if the victim was:

(i) Subjected to forcible compulsion by the person;

(ii) Under 12 years of age; or

(iii) Incapable of consent by reason of mental defect, mental incapacitation or physical helplessness;

(B) Unlawful sexual penetration in the first degree; and

(C) An attempt to commit a crime listed in (1) or (2) of this subparagraph.

(b) “History of sexual assault” means that a person has engaged in unlawful sexual conduct that:

(A) Is not related to the crime for which the person is currently on parole or post-prison supervision; and

(B) Seriously endangered the life or safety of another person or involved a victim under 12 years of age.

(c) All exhibits referenced in this rule are filed with the rule and are available at the Secretary of State’s office, the Board’s website, or on request from the Board.

(2) Every six months the Department of Corrections will provide the Board of Parole and Post-Prison Supervision with a list of offenders who have a history of sexual assault as defined in (1)(b) above, are serving a sentence of incarceration as a result of conviction for an offense listed in (1)(a) above, and who are within six months of release from custody.

(3) When any offender convicted as a “dangerous offender” under ORS 161.725 and 161.735 is granted a firm release date by the Board of Parole and Post-Prison Supervision or is otherwise within six months of release from custody, Board of Parole and Post-Prison Supervision staff will screen the offender to determine if the offender’s record reveals that the offender was convicted of an offense listed in (1)(a) and has a history of sexual assault as described in (1)(b).

(4) If Board staff determines that an offender has the qualifying conviction and history of sexual assault, the Board of Parole and Post-Prison Supervision will make a finding that the offender is eligible for designation as a sexually violent dangerous offender.

(5) The Board may designate an offender as a sexually violent dangerous offender only if the offender:

(a) Participated in or refused to participate in a psychological evaluation ordered by the Board of Parole and Post-Prison Supervision; and,

(b) Requested an evidentiary hearing in accordance with these rules or waived entitlement to such a hearing.

(6) An offender who has been identified as eligible for designation as a sexually violent dangerous offender designation will receive notice of the offender’s eligibility for designation and of the offender’s right to request a hearing before the Board of Parole and Post-Prison Supervision to present evidence why the sexually violent dangerous offender finding should not be made.

(7) The Board of Parole and Post-Prison Supervision will provide the offender with a copy of the SVDO-1, Notice of Rights, prior to the evidentiary hearing. Upon receipt of the Notice of Rights the offender may request an evidentiary hearing or waive his or her right to the hearing.

(8) The Board of Parole and Post-Prison Supervision must receive and review the signed SVDO-1 Notice of Rights before an evidentiary hearing is conducted or waived to determine a SVDO finding. A refusal to participate in the hearings process shall also constitute a waiver of the right to a hearing.

(9) The Board of Parole and Post-Prison Supervision will consider any written objections to the psychological evaluation that are submitted by the offender. An offender may elect to waive the right to submit written objections.

(10) The purposes of the evidentiary hearing are to:

(a) Determine whether the offender meets the criteria of a sexually violent dangerous offender as defined in OAR 291-202-0210(1)(a) & (b), and;

(b) Determine if there is a substantial probability of offender’s committing one of the offenses listed in OAR 291-202-0210(1)(a).

(11) At the conclusion of the evidentiary hearing, the Board of Parole and Post-Prison Supervision will determine whether the offender should be designated as a sexually violent dangerous offender. A finding that an offender is a sexually violent dangerous offender may be made by two Board of Parole and Post-Prison Supervision members, except in the case of an offender who has been sentenced to life imprisonment or convicted of a crime involving the death of a victim, pursuant to ORS 144.054.

(12) When an offender eligible for designation as a sexually violent dangerous offender has waived the right to an evidentiary hearing, the Board of Parole and Post-Prison Supervision will make the determination whether to designate the offender a sexually violent dangerous offender based on all the information in the record, including any psychological evaluations.

(13) A finding that an offender is a sexually violent dangerous offender will be contained in the offender's original order of supervision or an amended order of supervision.

(14) The community corrections agency supervising an offender found to be a sexually violent dangerous offender shall subject the offender to intensive supervision as defined in OAR 255-005-0005(26).

Stat. Auth.: ORS 144.637

Stat. Implemented: ORS 144.635

Hist.: PAR 2-2011, f. & cert. ef. 1-11-11

255-060-0020

Out-of-State Parole Release Hearing ~~Procedures~~

~~When an inmate in the Department of Corrections' custody who is housed in an out-of-state facility, the Board shall conduct the exit interview hearing via teleconference, videoconference, or other electronic medium.~~ exit interview in conformance with rule 255-060-0006.

Stat. Auth.: ORS 144.098 & ORS 144.125

Stats. Implemented: ORS 144.098 & ORS 144.125

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 13-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 6-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 5-1998, f. & cert. ef. 11-9-98

255-060-0030

Exit Interview Board Review Packet

The exit interview Board Review Packet shall contain, but is not limited to:

(1) Institution face sheet;

(2) All Board Action Forms since the prison term hearing, if any;

- (3) Current Ppsychiatric and/or psychological evaluations (previous 6 months), and two previous psychological evaluations, if available;
- (4) Correspondence;
- (5) Field parole analysis report, a pre-sentence investigation report, or comparable report;
- (6) Court orders;
- (7) Misconduct reports; and
- (8) ~~R~~ Information submitted by the inmate, including a release plan, if any.
- (9) Inmate's Notice of Rights and Board of Parole & Post-Prison Supervision Procedures.
- (10) Any risk needs assessment(s).
- (11) Any other information or documentation deemed relevant by the Board.

Stat. Auth.: ORS 144.096, ORS 144.098 & ORS 144.185, ORS 144.223

Stats. Implemented: ORS 144.096, ORS 144.098 & ORS 144.185, ORS 144.223

Hist.: PAR 6-1988, f. & ef. 5-19-88; PAR 2-1990, f. & cert. ef. 4-5-90; PAR 6-1997, f. 3-11-97, cert. ef. 3-14-97

255-062-0016

Factors to be Considered in Establishing a Deferral Period Longer Than Two Years

Following an interview and consideration of all the information presented at the hearing, the Board may find by ~~unanimous~~ majority vote of the members participating in the hearing, that it is not reasonable to expect that the inmate would be granted a change in the terms of confinement, or it is not reasonable to expect that the inmate would be granted a firm release date before the end of a specified deferral period, not to exceed ten years, based on one or more of the following non-exclusive factors:

- (1) A determination by the Board, based on the psychological evaluation and all the information available at the hearing, that the inmate has a mental or emotional disturbance, deficiency, condition, or disorder predisposing him/her to the commission of any crime to a degree rendering the inmate a danger to the health or safety of others;
- (2) Infractions of institutional rules and discipline;
- (3) Commission of crimes subsequent to the crime of conviction;
- (4) Inmate's failure to demonstrate understanding of the factors that led to his/her criminal offense(s);
- (5) Inmate's demonstrated lack of effort to address criminal risk factors of psychological or emotional problems;
- (6) Inmate's demonstrated lack of effort to address criminal risk factors of substance abuse problems;
- (7) Failure to seek and maintain appropriate work or training;
- (8) Inmate's failure to seek out and benefit from programming including but not limited to sex offender treatment, batterers intervention programs, anger management, cognitive therapy, and victim impact panels where available;
- (9) Inmate's inability to experience or demonstrate remorse or empathy;
- (10) Demonstrated poor planning and foresight;
- (11) Demonstrated impulsivity; or
- (12) Demonstrated lack of concern for others, including but not limited to any registered victims.
- (13) Refusal to participate in Board-ordered psychological evaluation(s) and/or refusal to participate in Board hearing.

(14) The inmate is serving a concurrent sentence over which the Board does not have release authority, and which has a release date ten or more years from the projected parole release date on the Board sentence.

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Hist.: PAR 6-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11; PAR 9-2010, f. & cert. ef. 9-29-10

BOARD OF PAROLE AND POST-PRISON SUPERVISION

DIVISION 75

PROCEDURES FOR RESPONSES TO PAROLE AND POST-PRISON SUPERVISION CONDITIONS VIOLATIONS FOR OFFENDERS UNDER THE JURISDICTION OF THE BOARD OF PAROLE AND POST-PRISON SUPERVISION OR LOCAL SUPERVISORY AUTHORITY

255-075-0025

Rights at Hearing

- (1) The designee of the Sanction Authority (eg. Hearings Officer) shall provide the offender a written notice of the hearing at least three (3) working days prior to the hearing.
- (2) The hearing notice shall include:
 - (a) A Notice of Rights as provided in ORS 144.343(3) (Exhibit NOR-2);
 - (b) A written statement of alleged violations;
 - (c) Any documents or evidence which form the basis of the alleged violations; and
 - (d) The date and location of the hearing.
- (3) The offender may elect to waive the three working day notification period prior to the hearing and begin the hearing immediately.
- (4) If the offender elects to waive the three working day notification period, the Hearings Officer shall obtain a written waiver or tape record the offender's verbal statement waiving the three working day notification period.
- (5) The Hearings Officer shall ascertain whether the offender has understood the allegations and the offender's rights and whether the offender can read, hear and understand the language of the proceedings. The Hearings Officer shall postpone the hearing if needed assistance is not readily available.

Stat. Auth.: ORS 144.343(3)

Stats. Implemented: ORS 144.096, ORS 144.098, ORS 144.102, ORS 144.106, ORS 144.108, ORS 144.346 & Ch. 525 OL 1997 (Enrolled SB 156)

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 1-1984(Temp), f. & ef. 11-19-84; 2PB 1-1985, f. & ef. 2-28-85; PAR 1-1988(Temp), f. 3-11-88, ef. 3-14-88; PAR 6-1988, f. & ef. 5-19-88; PAR 3-1989, f. 10-13-89, ef. 10-16-89; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 11-1997(Temp), f. & cert. ef. 11-14-97; PAR 1-1998, f. & cert. ef. 5-11-98

BOARD OF PAROLE AND POST-PRISON SUPERVISION

DIVISION 75

PROCEDURES FOR RESPONSES TO PAROLE AND POST-PRISON SUPERVISION CONDITIONS VIOLATIONS FOR OFFENDERS UNDER THE JURISDICTION OF THE BOARD OF PAROLE AND POST-PRISON SUPERVISION OR LOCAL SUPERVISORY AUTHORITY

255-075-0035

Representation/Ability to Pay Attorney Fees

(1) In all cases, the offender is entitled to representation by an attorney at the offender's own expense.

(2) For Board cases only, if the Hearings Officer or the Board deems the offender indigent, and unable to pay for an attorney, the offender is entitled to a Board appointed attorney if the Board or Hearings Officer further finds that the offender has made a timely and colorable claim that:

(a) The offender has not committed the alleged violation;

(b) There are substantial or complex mitigating circumstances which make revocation inappropriate even if the offender admits violation or it is a matter of record; or

(c) The offender appears incapable or representing himself/herself.

(3) For Board cases only, after a Board member has approved findings that there is a timely and colorable claim, the Hearings Officer may appoint an attorney. The Hearings Officer shall notify the Board of payment to be made to the appointed attorney. When the Board approves payment for a Board appointed attorney, it shall not exceed ~~\$60~~\$100 per hour and ~~\$300~~\$5500 per case. The attorney shall send the Board a billing within 90 days of the violation hearing.

(4) When the Hearings Officer or Board refuses to appoint an attorney, the Hearings Officer or Board shall state the grounds for refusal in the record.(5) For Local Supervisory Authority cases, the Local Supervisory Authority may set its own criteria for appointment of an attorney and shall set its own standards for payment of appointed attorneys.

Stat. Auth.: ORS 144. ~~050, 144, 140, 144, 346~~343

Stats. Implemented: ORS 144. ~~096, 144, 098, 144, 102, 144, 106, 144, 108, 144, 346~~343 & Ch. ~~525 OL 1997~~
(~~Enrolled SB 156~~)

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 1-1982, f. & ef. 5-19-82; 2PB 1-1984(Temp), f. & ef. 11-19-84; 2PB 1-1985, f. & ef. 2-28-85; PAR 1-1988(Temp), f. 3-11-88, ef. 3-14-88; PAR 6-1988, f. & ef. 5-19-88; PAR 10-1988(Temp), f. & ef. 7-14-88; PAR 15-1988, f. & ef. 9-20-88; PAR 3-1989, f. 10-13-89, ef. 10-16-89; PAR 6-1991, f. & cert. ef. 10-15-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 11-1997(Temp), f. & cert. ef. 11-14-97; PAR 1-1998, f. & cert. ef. 5-11-98; PAR 3-2001, f. & cert. ef. 2-6-01; PAR 3-2005, f. & cert. ef. 12-29-05

EXHIBIT A

CRIME SEVERITY RATINGS
ORS 144.120, 144.780, OAR 255-35-013-014

<u>ORS</u>	<u>CRIME</u>	<u>FELONY</u>	<u>CLASS RATING</u>	<u>PERSON</u>
163.535	Abandonment of Child	C	2	Yes
166.085	Abuse of Corpse	C	3	Yes
475.993	Act by Registrant	C	1	No
163.095	Aggravated Murder	U	7,8	Yes
	Conspiracy to Commit Aggravated Murder	A	6	Yes
164.057	Aggravated Theft I	B	4	No
164.325	Arson I	A	6,5	Yes
164.315	Arson II	C	2	Yes
163.185	Assault I	A	6,5	Yes
163.175	Assault II	B	4	Yes
163.165	Assault III	C	3,2	Yes
161.405	Attempt - Receives the crime severity rating one rating below the rating for the lowest subcategory of the completed crime, for example, Attempted Arson I would be a 4 if the completed crime could have been classified in subcategory 1 of Arson I as a 6. An attempt remains a rating of 1 if 1 is the lowest rating for the completed crime.			
163.515	Bigamy	C	1	Yes
162.015	Bribe Giving	B	3	No
162.025	Bribe Receiving	B	3	No
162.275	Bribe Receiving by a Witness	C	2	No
162.265	Bribing a Witness	C	2	No
164.225	Burglary I	A	5,4,3	Yes
164.215	Burglary II	C	3,2,1	No
166.220	Carrying Weapon With Intent to Use	C	2	Yes
163.275	Coercion	C	4,3	Yes
167.017	Compelling Prostitution	B	4	Yes
164.377(2)(3)	Computer Crimes Proprietary Info	C	2,1	No
161.450	Conspiracy - Classified at same rating as conspired crime (except murder or treason)			
803.080	Counterfeit Vehicle Title	C	1	No
475.992(3)	Creation or Delivery of a Counterfeit Substance	A,B,C	5,4,3,1	No
163.005	Criminal Homicide	A	2	Yes
164.365	Criminal Mischief I	C	1	No
163.205	Criminal Mistreatment I	C	2	Yes
163.555	Criminal Nonsupport	C	1	No

10/9/92
Ratings

Crime Severity

165.022	Criminal Possession Forged Instrument I	C	1	No
165.032	Criminal Possession Forgery Device	C	1	No
164.140	Criminal Possession Rented/Leased Property	C	2,1	No
163.145	Criminally Negligent Homicide	C	4,3	Yes
163.257	Custodial Interference I	B	3	Yes
163.245	Custodial Interference II	C	1	Yes
163.673	Dealing in Depictions of Child's Sexual Conduct	B	4	Yes
475.995(1)	Delivery of Controlled Substance to Minor	A	4	Yes
475.995(2)	Delivery of Controlled Substance to Minor	B	3	Yes
475.995(5)	Delivery of Marijuana to Minor	A	4	Yes
475.999	Delivery of Controlled Substance to Student or Minor within 1000 feet of School	A	4	Yes
475.992(2)	Delivery of Marijuana for Payment	B	4,3,1	No
167.365	Dogfighting	C	1	No
811.175; 811.182	Driving While Suspended or Revoked	C	1	No
260.402; 260.555; 260.575; 260.615; 260.645; 260.665(2); 260.655(3); Election Law 260.665(2)(d)-(f); 260.715	Offenses	C	1	No
164.885	Endangering Aircraft	C	2	Yes
162.165	Escape I	B	5	Yes
162.155	Escape II	C	2,1	No
162.205	Failure to Appear I	C	2	No
811.705	Failure to Perform Duties of Driver	C	3,2	Yes
822.605	False Swearing Relating to Regulation Vehicle Related Business	C	1	No
166.270	Felon in Possession of Firearm	C	2	Yes
506.991	Fishing Violation	C	1	No
532.140; 532.610; 532.620; 532.990(2)	Forest Products Offenses	U	1	No
803.230	Forge/Alter Vehicle Title Registration	C	1	No
165.013	Forgery I	C	3,2,1	No
59.055; 59.115; 59.127;	Fraud Involving	B	4,3	No

10/9/92
Ratings

Crime Severity

59.135; 59.145; 59.165; Securities 59.730; 59.740; 59.750; 59.760; 59.770; 59.780; 59.790; 59.800				
165.055(3b)	Fraudulent Use of Credit Card	C	1	No
811.185	Habitual Traffic Offender (OMVVCO)	C	1	No
166.420	Handgun/Failure to Keep Register	C	2	Yes
162.325	Hindering Prosecution	C	1	No
163.525	Incest	C	3	Yes
166.165	Intimidation I	C	2	Yes
163.235	Kidnapping I	A	6	Yes
163.225	Kidnapping II	B	4	Yes
163.118	Manslaughter I	A	6	Yes
163.125	Manslaughter II	B	5,4,3	Yes
166.410	Manufacture, Importation, Sale, Gift, Loan or Possession of Firearms	B	4	Yes
471.440	Manufacture of Mash; Operating Distillery Without a License	C	1	No
475.992(1); 475.993(2a)	Manufacture or Delivery of Controlled Substance	A,B,C	5,4,3,1	No
166.384	Manufacture of Destructive Device	C	3	Yes
163.115	Murder	U	7,8	Yes
	Conspiracy to Commit Murder	A	6	Yes
165.065(3b)	Negotiating a Bad Check	C	2,1	No
166.450	Obliteration of ID Marks (Firearm)	C	1	Yes
815.410	Odometer Tampering	C	1	No
815.430	or False Report			
166.660	Paramilitary Activity	C	1	Yes
163.680	Paying for Viewing Child's Sexual Conduct	C	1	Yes
162.065	Perjury	C	2	No
496.992	Poaching	C	2	No
475.992(4)	Possession of a Controlled Substance	B,C	3,2,1	No
166.382	Possession of a Destructive Device	C	3	Yes

10/9/92
Ratings

Crime Severity

165.070	Possession of a Fraudulent Communications Device	C	2,1	No
167.137	Possession of Gambling Records	C	1	No
166.272	Possession of Machine Gun, Short-Barreled Rifle or Shotgun or Silencer	B	3	Yes
819.300	Possession of a Stolen Vehicle	C	1	No
166.275	Possession of Weapon by Inmate of Penal Institution	A	5	Yes
167.127	Promoting Gambling I	C	1	No
167.012	Promoting Prostitution	C	2	Yes
166.720	Racketeering	A	5,4	
163.375	Rape I	A	6,5	Yes
163.365	Rape II	B	4,3	Yes
163.355	Rape III	C	2	Yes
166.015	Riot	C	2	Yes
164.415	Robbery I	A	6,5	Yes
164.405	Robbery II	B	4	Yes
164.395	Robbery III	C	2	Yes
167.062(4)	Sadomasochistic Abuse or Sexual Conduct in Live Show	C	1	Yes
163.425	Sexual Abuse I	C	3	Yes
163.411	Sexual Penetration Foreign Object I	A	6,5	Yes
163.408	Sexual Penetration Foreign Object II	B	4	Yes
166.429	Shipping, Transporting, Receiving, Selling Furnishing Firearm in Furtherance of a Felony	B	4	Yes
163.405	Sodomy I	A	6,5	Yes
163.395	Sodomy II	B	4	Yes
163.385	Sodomy III	C	2	Yes
161.435	Solicitation - Classified the same as attempt.			
165.090	Sports Bribe Receiving	C	2	No
165.085	Sports Bribery	C	2	No
162.185	Supplying Contraband	C	4,3,2,1	Yes
167.212	Tampering With Drug Records	C	1	No
162.285	Tampering With a Witness	C	2	Yes
164.085	Theft by Deception	C	2,1	No
164.075	Theft by Extortion	B	4,3	Yes

10/9/92
Ratings

Crime Severity

164.095	Theft by Receiving	C	2	No
164.055	Theft I	C	2,1	No
164.125(4)(c)	Theft of Services	C	2,1	No
164.125(4)(d)	Theft of Services \$10,000 +	B	4	No
164.065	Theft, Lost/Mislaid Property	C	1	No
819.310	Trafficking in Stolen Vehicles	C	3	No
163.677	Transporting Child Pornography	B	4	Yes
166.005	Treason	U	7	
	Conspiracy to Commit Treason	A	6	
164.872(2)	Tree Spiking, Inconvenience, Annoyance or Alarm	C	2	Yes
164.872(3)	Tree Spiking, Serious Injury	B	4	Yes
164.135	Unauthorized Use of Vehicle	C	2,1	No
163.670	Using a Child in a Display of Sexually Explicit Conduct	A	6,5	Yes
247.121(2); 247.125; 247.340(4); 247.420(2)	Voter Registration Offenses	C	1	No
411.630; 411.640; 411.675; 411.690;	Welfare/ Food Stamp Fraud	C	2,1	No
411.840 127.585	Withdrawal of Life- Sustaining Procedures by Altering or Forging a Power of Attorney or by Concealing or Destroying a Revocation	A	3	No

10/9/92
Ratings

Crime Severity

EXHIBIT A
PART II
ORS 144.120, 144.780,
OAR 255-30-035, 255-35-013-014

Aggravated Murder
163.095

Effective 7/1/88; Removed 1/16/91; Restored 3/05/2012

SUBCATEGORY 1 – RATING 8

Stranger to stranger; cruelty to victim; prior conviction of murder or manslaughter;
evidence of significant planning or preparation.

SUBCATEGORY 2 – RATING 7

All other cases of aggravated murder.

Arson I
164.325

Unchanged since 1985

SUBCATEGORY 1 – RATING 6:

Knew of should have known premises were occupied at time of act or injury.

SUBCATEGORY 2 – RATING 5:

All other cases of Arson I/

Assault I
163.185

Unchanged since 1985

SUBCATEGORY 1 – RATING 6:

Cases of Assault I in which there is intentional cause of serious physical injury to another by means of a deadly or dangerous weapon.

SUBCATEGORY 2 – RATING 5:

Cases of Assault I in which the victim(s) provoke the crime to a substantial degree or other evidence that misconduct by the victim(s) contributed substantially to the criminal episode.

Assault III
163.165

Effective 4/4/88

SUBCATEGORY 1 – RATING 3:

Assault III/Vehicular where defendant has at least 2 prior DUII convictions within a 5-year period.

SUBCATEGORY 2 – RATING 2:

All other cases of Assault III.

BURGLARY I
164.225

Effective 7/20/88

SUBCATEGORY 1 – RATING 5:

Entry into a dwelling, where defendant causes or attempts to cause physical injury to any person; is armed with a deadly weapon; uses or threatens to use a dangerous weapon; or death occurs.

SUBCATEGORY 2 – RATING 4:

Entry into a dwelling in which goods taken has a value of \$5,000 or more.

SUBCATEGORY 3 – RATING 3:

Entry into a dwelling in which goods taken had a value or less than \$5,000.

BURGLARY II
164.215

Unchanged since 1985

SUBCATEGORY 1 – RATING 3:

Theft or destruction of over \$5,000 in property.

SUBCATEGORY 2 – RATING 2:

Theft or destruction of between \$1,000 - \$5,000.

SUBCATEGORY 3 – RATING 1:

Theft of less than \$1,000.

Coercion
163.275

Unchanged since 1985

SUBCATEGORY 1 – RATING 4:

Compelling another to act through threat of serious physical harm or property damage; blackmail.

SUBCATEGORY 2 – RATING 3:

All others.

Computer Crime
164.377(2)(3)

Added 7/1/88; Theft I amended 8/5/88

Breakdown is the same as for Theft I.

**Criminal Possession Rented/Leased
Property
164.140**

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

**Criminally Negligent Homicide
163.145**

Effective 4/4/88

SUBCATEGORY 1 – RATING 4:

Vehicular Homicide where defendant with criminal negligence causes the death of another person.

SUBCATEGORY 2 – RATING 3:

Cases where the victim's misconduct contributed to the criminal episode [(i.e. victim was drinking buddy of defendant)].

**Delivery of Controlled Substance
475.992(1); 475.995; 475.993(2)(a)**

Effective 7/14/88

SUBCATEGORY 1 – RATING 5:

Operating or participating in the operation of a location in which crack cocaine or heroin is sold. 475.993(2)(a). The delivery of heroin as part of a distribution or sales network. See Exhibit A-III. 475.992(1)-(b).

SUBCATEGORY 2 – RATING 4:

Delivery of an illegal drug (including, but not limited to methamphetamines) (Schedule I, II or III) other than marijuana where there is evidence that the delivery is part of a drug selling or distribution network or scheme; see Exhibit A-III. 475.992(a)-(c).

Knowingly owning or providing a location for the sale or distribution of illegal drugs other than marijuana. 475.993(2)(a)(Schedule I).

Delivery or any quantity of illegal drug in and on, or within one thousand feet of, the real property comprising a public or private elementary and/or middle school. 475.992(1)(a)-(c); 475.992.(2); 475.995. (Schedule I, II, or III).

Delivery or assisting in the delivery of illegal drugs in which a minor is involved. 475.995(1) & (5) (includes marijuana, but not Schedule III).

SUBCATEGORY 3 – RATING 3:

Delivery or assisting in the delivery of illegal drugs for compensation or profit in circumstances other than those listed above. 475.992(1)(a)-(c); 475.992(2)(a); 475.995. (Schedule I, II or III).

SUBCATEGORY 4 – RATING 1:

Delivery of a small amount of any illegal drug not for profit or compensation. All other cases of delivery of illegal drugs not noted above.

Escape II
162.155

Effective 12/6/88

SUBCATEGORY 1 – RATING 2:

Use or threat to use physical force escaping from custody; or, having been convicted or found guilty of a felony, escapes from custody imposed as a result thereof; or escapes from a correctional facility or, while otherwise under the jurisdiction of the Psychiatric Security Review Board, departs from state without authorization of Board.

SUBCATEGORY 2 – RATING 1:

Escapes while on pass, terminal leave or work release from a county correctional facility; all other cases.

Failure to Perform Duties of a Driver
Where There is Injury or Death
811.705

Effective 7/1/88

SUBCATEGORY 1 – RATING 3:

If death results.

SUBCATEGORY 2 – RATING 2:

Injury and all other cases.

Forgery I
165.013

Effective 7/1/88

SUBCATEGORY 1 – RATING 3:

Loss, potential loss, or receiving of over \$5,000.

SUBCATEGORY 2 – RATING 2:

Loss, potential loss, or receiving of \$1,000 to \$5,000.

SUBCATEGORY 3 – RATING 1:

Loss, potential loss, or receiving of under \$1,000.

Fraud Involving Securities

Effective 7/20/88

**59.055; 59.115; 59.127; 59.135; 59.145;
59.165; 59.730; 59.740; 59.750; 59.760;
59.770; 59.780; 59.790; 59.800**

SUBCATEGORY 1 – RATING 4:

Loss, potential loss, or receiving of \$10,000 or more.

SUBCATEGORY 2 – RATING 3:

All other cases of fraud involving securities.

Manslaughter II

Effective 4/4/88

163.125

SUBCATEGORY 1 – RATING 5:

Cases where death of a victim, usually a child, results from prolonged abuse; failure to provide for victim's welfare resulting in death; medical treatment withheld to conceal physical signs of abuse.

SUBCATEGORY 2 – RATING 4:

Causes another to commit suicide or aids, cases where death of victim involves use of a weapon or follows an assault; cases where death is by negligent use of vehicle and defendant has at least 2 prior DUI convictions within 5 years.

SUBCATEGORY 3 – RATING 3:

Cases where death is by negligent use of a vehicle; all other cases.

Manufacture of Controlled Substance

Effective 7/14/88

475.992(1); 475.993(2)(a)

SUBCATEGORY 1 – RATING 5:

Operating or assisting in the operation of a laboratory for the production of methamphetamines. Cultivating or assisting in the manufacture of marijuana for distribution or sale as part of a distribution network or scheme; see Exhibit A-III. Cultivation or assisting in the cultivation of more than 100 marijuana plants.

SUBCATEGORY 2 – RATING 4:

Manufacturing or assisting in the manufacture of illegal drugs other than methamphetamines or marijuana, when there is evidence that the manufacture is part of a drug selling or distribution network or scheme; see Exhibit A-III. (Schedule I, II or III.) Knowingly owning or providing a location for the manufacture of illegal drugs other than marijuana for sale or distribution. 475.993(2)(a) (Schedule I).

SUBCATEGORY 3 – RATING 3:

Manufacture or assisting in the manufacture of illegal drugs for distribution. Manufacture of marijuana in the amount of 24 or more plants and/or in circumstances other than those listed in Subcategory 1. See Exhibit A-III. (Schedule I, II or III.)

SUBCATEGORY 4 – RATING 1:

Manufacture of illegal drugs for the offender's own use. All other cases of manufacturing of illegal drugs. (Schedule I, II or III.)

**Murder
163.115**

Unchanged since 1985

SUBCATEGORY 1 – RATING 8:

Stranger to stranger; cruelty to victim; prior conviction of murder or manslaughter; evidence of significant planning or preparation.

SUBCATEGORY 2 – RATING 7:

All other cases of murder.

**Negotiating a Bad Check
165.065(3b)**

Added 7/1/88; Theft I amended 8/5/88

Breakdown is the same as for Theft I.

**Possession of Controlled Substance
475.992(4)**

7/14/88; Amended 11/1/89

SUBCATEGORY 1 – RATING 3:

Possession of illegal drugs other than marijuana with intent to deliver. (Schedule I, II or III.) See Exhibit A-III. Possession of illegal drugs which constitute the precursors or byproducts of the manufacturing process (as defined by ORS 475.940.)

SUBCATEGORY 2 – RATING 2:

Possession of illegal drugs other than cocaine/crack, methamphetamines, and heroin (which are included in Subcategory 1) with intent to deliver. (Schedule I, II & III.)

SUBCATEGORY 3 – RATING 1:

Possession of illegal drugs in circumstances other than those listed above (e.g. for personal use.) (Schedule I, II or III.)

**Possession of a Fraudulent
Communications Device**
165.070

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Racketeering
166.720

Unchanged since 1985

SUBCATEGORY 1 – RATING 5:

The principle party involved in violation of the Racketeering statute. Involvement is that of planning, directing or participating in the scheme or schemes resulting in direct profit or gain.

SUBCATEGORY 2 – RATING 4:

The subordinate party involved in violation of the Racketeering statute. Involvement is limited to acting as an agent or employee of the principle. There is no involvement in planning, directing or participating in the scheme or schemes in violation of this statute.

Rape I
163.375

Amended 11/1/89

SUBCATEGORY 1 – RATING 6:

Stranger to stranger; breaking and entering; threat to use or use of a weapon; actual or threat of serious bodily or emotional harm; intercourse with female or male under 12. Cases in which the female is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

SUBCATEGORY 2 – RATING 5:

All other cases.

Rape II
163.365

Amended 11/1/89

SUBCATEGORY 1 – RATING 4:

Cases in which the female is under 14 years of age.

SUBCATEGORY 2 – RATING 3:

All other cases.

Robbery I
164.415

Effective 7/20/88

SUBCATEGORY 1 – RATING 6:

Cases of robbery in which the defendant is armed with a deadly or dangerous weapon; discharges a firearm; uses a dangerous weapon; makes explicit or immediate threats by word or gesture; causes death of or physical injury tot he victim.

SUBCATEGORY 2 – RATING 5:

All other cases of Robbery I.

Sexual Penetration with
Foreign Object I
163.411

Amended 11/1/89

SUBCATEGORY 1 – RATING 6:

Sexual Penetration with Foreign Object I is broken down in the same manner as Rape I.

SUBCATEGORY 2 – RATING 5:

All other cases.

Sodomy I
163.405

Amended 11/1/89

SUBCATEGORY I – RATING 6:

Sodomy I is broken down in the same manner as Rape I.

SUBCATEGORY 2 – RATING 5:

All other cases.

Supplying Contraband
162.185

Effective 12/6/88

SUBCATEGORY 1 – RATING 4:

While confined in a correctional facility, juvenile facility or state hospital, makes, obtains or possesses any firearm; knowingly introduces any firearm into a correctional facility, juvenile facility, or state hospital.

SUBCATEGORY 2 – RATING 3:

While confined in a correctional facility, juvenile facility or state hospital, makes, obtains or possesses a dangerous weapon; knowingly introduces any dangerous weapon into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 3 – RATING 2:

While confined in a correctional facility, juvenile facility or state hospital, makes, obtains or possesses any Schedule I, II or III controlled substance except marijuana; knowingly introduces any Schedule I, II or III controlled substance into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 4 – RATING 1:

All other cases.

Theft by Deception
164.085

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Theft by Extortion
164.075

Unchanged since 1985

SUBCATEGORY 1 – RATING 4:

Threat of serious bodily harm or death.

SUBCATEGORY 2 – RATING 3:

All others.

Theft I
164.005

Amended 4/4/88 & 8/5/88; Effective 8/5/88

SUBCATEGORY 1 – RATING 2:

**Theft or receiving of \$1,000 or more.
Theft of a motor vehicle for personal transportation
Theft of a livestock animal.
Theft of a firearm or explosive
Theft during riot or catastrophe.**

SUBCATEGORY 2 – RATING 1:

Thefts under \$1,000.

Theft of Services
164.125(4)-(c)

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Unauthorized Use of a Motor Vehicle
164.135

Unchanged since 1985

SUBCATEGORY 1 – RATING 2:

Loss, destruction or severe damage to vehicle or property; or injury to others.

SUBCATEGORY 2 – RATING 1:

All others.

Unlawful Creation or Delivery
Of Counterfeit Substance
475.992(3)

Effective 7/14/88

Breakdown is the same as for Manufacture or Delivery of Controlled Substance.

Using a Child in a Display of
Sexually Explicit Conduct
163.670

Effective 4/4/88

SUBCATEGORY 1 – RATING 6:

Child 12 years of age or under.

SUBCATEGORY 2 – RATING 5:

All other cases.

Welfare/Food Stamp Fraud
411.630; 411.640; 411.675;
411.690; 411.840

Added 4/4/88; Theft I amended 8/5/88

Breakdown is the same as for Theft I.

OREGON BOARD OF PAROLE & POST-PRISON SUPERVISION

HEARING NOTICE & NOTICE OF RIGHTS PACKET

INMATE: _____

HEARING DATE: _____ **HEARING LOCATION:** _____

You have been scheduled by the board for a(n): _____ hearing.

If an attorney is going to represent you at your hearing, please tell the attorney that the date should be verified at least one day before the hearing date by calling the Board of Parole & Post-Prison Supervision at 503-945-0902. Please tell your attorney or any visitor(s) that they must contact the Board in advance to find out about attending and/or participating in the hearing. Please read the attached notice of rights and procedures carefully.

HEARING ABBREVIATIONS:

EI.....	EXIT INTERVIEW	PC.....	PAROLE CONSIDERATION
PH.....	PAROLE HEARING	PT.....	PRISON TERM
FD.....	FUTURE DISPOSITION	PR.....	PERSONAL REVIEW
AR.....	ADMINISTRATIVE REVIEW	PP.....	POSTPONEMENT
MR.....	AGGRAVATED MURDER REVIEW	PI.....	PERSONAL INTERVIEW
PD	PREDATORY SEX OFFENDER DESIGNATION	SVPS	SEXUALLY VIOLENT DANGEROUS OFFENDER DESIGNATION

(PSY or PS.....indicates that a psychological evaluation will be considered.)

BE PREPARED

1. Read all information before the hearing.
2. Bring your hearing packet to the hearing.
3. If you need an interpreter or other help, contact the Board or your institutional counselor immediately.
4. Any written information you want the Board consider at your hearing should be received by the Board at least one week before the hearing. Please write on it: "FOR HEARING."
5. For a Prison Term Hearing, review your history risk score, aggravation, and mitigation carefully.
6. If you want to challenge any information in the PSI, you must provide a signed order showing that the court has approved changes to your PSI.

Copies of Board administrative rules are available in the inmate legal library.

DEFINITIONS OF HEARINGS

PRISON TERM:

Hearing held to establish a prison term, deny parole, or set a parole consideration hearing date.

PAROLE POSTPONEMENT:

Hearing to determine whether the parole release date should be postponed for misconduct.

The extension of the prison term can be from 5% to 100% of the prison term, but no more than 5 years. Inoperative (escape) time will be added.

FUTURE DISPOSITION:

Hearing conducted after parole revocation to determine whether the inmate should be re-released on parole.

PAROLE CONSIDERATION:

Hearing to determine whether a dangerous offender's condition is absent, in remission, or whether inmate remains dangerous but can be adequately controlled in the community with supervision and mental health treatment. If the dangerous condition is absent or in remission, a parole release date may be set. If the condition is present, another parole consideration hearing date may be scheduled to be held no sooner than 2 years and no longer than 10 years from the current parole consideration date.

ADMINISTRATIVE REVIEW:

Hearing conducted on a specific issue where it has been found that: prior Board action is not supported by the written findings; the written findings are inaccurate; pertinent information was not considered at a prior hearing; the action was inconsistent with Board rules or policies; or there is a change in the rules or statutes or a prison sentence.

PAROLE HEARING:

Interview of inmate who is under the Discretionary System (crime committed before approximately 1977), to determine whether to grant release on parole. This may result in no action or the setting of a parole date.

PERSONAL REVIEW:

Hearing to determine whether to grant a reduction in inmate's prison term, based on a positive recommendation from the Department of Corrections,, which would result in advancing the projected parole release date.

PERSONAL INTERVIEW:

A discretionary hearing scheduled by the **B**oard to review the progress of an inmate.

AGGRAVATED MURDER REVIEW:

Hearing to determine whether or not the inmate is likely to be rehabilitated within a reasonable period of time so that the terms of his/her sentence may be converted to life with the possibility of parole.

EXIT INTERVIEW:

Interview with the inmate to determine whether to affirm or defer inmate's projected parole release date. Projected parole release date may be affirmed, or postponed for no fewer than 2 years or no more than 10 years from the current projected parole release date.

PREDATORY SEX OFFENDER DESIGNATION:

Hearing to determine if an offender who meets the criteria to be designated a Predatory Sex Offender is currently exhibiting behavior that warrants the designation.

SEXUALLY VIOLENT DANGEROUS OFFENDER DESIGNATION:

Hearing to determine if an offender should be deemed a sexually violent dangerous offender under ORS 144.635 and OAR 255-060-0018.

**BOARD OF PAROLE AND POST-PRISON SUPERVISION
INMATE RIGHTS AND HEARINGS PROCEDURES
(OAR 255-030-0035(2)(a), OAR 255-030, 255-032, 255-040, 255-050, 255-060, 255-075)**

This is an informal summary of your rights at a hearing; please obtain and refer to the rules and statutes that govern the Board's conduct of hearings.

Law that Applies

You are scheduled for a hearing before the Oregon State Board of Parole and Post-Prison Supervision. Based on the hearing results, the Board will issue an order which may affect your release date from the institution. Refer to the previous page – Definitions of Hearings – for more specific information on the type of hearing.

You may be released on parole or post-prison supervision (PPS). It is also possible that your parole release date or parole consideration date may be postponed or that parole/PPS release may be denied.

The hearing will be conducted as provided in Chapter 144 of the Oregon Revised Statutes and as further provided in the administrative rules of the Oregon Board of Parole and Post-Prison Supervision, OAR Chapter 255. Ordinarily the Board will apply the substantive* rules in effect at the time you committed your crime(s) as well as the applicable procedural* rules and laws. These statutes and rules are available through the institution's inmate law library; please consult the law librarian or inmate legal assistant.

Right to an Attorney

The Board will not be represented by an attorney at the hearing. The Board will not appoint or pay an attorney for you. You may represent yourself at the hearing. You may also choose to bring your attorney at your expense. Legal aid organizations may be able to assist an inmate who has limited financial resources. Most Department of Corrections institutions have inmate legal assistants available through the legal library who can assist you in preparing for the hearing, and who may accompany you to the hearing. If you choose to consult an attorney or legal assistant, make sure you begin your contacts well before the hearing; the process can be time-consuming. If you hire an attorney, it is your responsibility to notify your attorney of the date of your hearing.

Who May Attend the Hearing

You may be accompanied by one person of your choice to the hearing, who may make a statement on your behalf. The hearing is public, and other persons who wish to observe or support you may attend in person, subject to Department of Corrections rules. Attendees may also participate by telephone if telephone access is available (the Board's phone lines are limited). Tell your supporters and attorney to contact the Board at least two weeks in advance to arrange to attend the hearing.

Victim(s) of your crime(s) and their supporters, and/or a representative of the District Attorney's office from the county where you were sentenced may also attend the hearing. The identified victim(s) and the DA representative have the right to make statements at the hearing under ORS 144.750 (*former* ORS144.120 (7)). You will be able to respond to any comments that are made.

Because Board hearings are public, representatives of the press may attend. The Board does not usually notify the parties that press representatives intend to be present at a hearing.

* "Substantive" rules or laws are those that create, define, or regulate the rights and duties of you and the Board.

"Procedural" rules or laws are those that set out the methods for holding a hearing or taking an action. Procedural rules do not affect your rights.

Information Considered at the Hearing*

The Board will consider the documents in the packet prepared for your hearing and provided to you. It is your responsibility to provide any other information you want considered. Please be aware that information you submitted for previous hearings will not automatically be considered by the Board for this hearing. You must resubmit any such information. The Board will not research and obtain information for you. You may not call witnesses or cross-examine any one who has provided information to the Board.

In general, information that you want the Board to consider should be provided in writing at least seven days before the hearing and you should write clearly on it: "FOR HEARING." Please send a written list of your certificates, instead of photocopies of the certificates themselves. The Board, at its discretion, may also accept limited amounts of written information during the hearing. You and one support person or representative may make statements to the Board. The support person's statement is usually limited to 15 minutes.

Presiding Officer

Either the full Board or a panel of the Board (one or more members) will hear your case. One of the members will serve as the presiding officer (or "lead") and will rule on all matters that arise at the hearing. The Board will usually announce its decision at the end of the hearing. If not you will receive the decision in writing in a Board Action Form (BAF).

Notice and Waiver

The parole packet and a notice of your hearing are sent to you at least 14 days before the hearing date. If you do not receive these materials at least 14 days prior to your hearing, you may either waive the notice period or have your hearing rescheduled. If you are near to a hearing date and have not received a packet or other information, let the Board know right away.

Refusal

You may refuse to attend your hearing. If so, please write to the Board and specifically state that you plan to refuse to attend your hearing. If it is a last minute decision, please inform your counselor, who in turn can notify the Board. When you are called out for the hearing, you should honor the call-out, and then inform institution staff of your decision not to attend the hearing. The Board may then hold the hearing without you, and make its decision. You should be aware that in your absence, the Board may deny parole, or defer parole to a date close to your good time date.

Hearing Procedure

The Board's task is to gather information to make the best possible decision with the available information while assuring a fair and full hearing to all persons entitled to participate.

A Board hearing is less formal than a court appearance. Generally it is fairly short, so be prepared to speak briefly and to the point. You should bring your copy of the parole packet to your hearing. The Board may refer to some of the documents and may want to discuss them with you.

First, the Board will review the documents in your Board Packet, which will usually include the Presentence Report or a similar report, as well as information provided by police, the victim, or the district

* Please refer to the statutes and administrative rules for the type of hearing you are having. .

attorney, any Department of Corrections reports, and any recent psychological or psychiatric evaluations. You have the right to examine these documents before the hearing, subject to the exceptions listed in OAR 255-015-0010.

In the specific case of a Prison Term Hearing, the Board will tell you the proposed findings regarding your history/risk score and crime category. Go over the forms in your packet ahead of time. You have the right to present additional relevant information, including mitigating factors (refer to Exhibit E2 and E3) and you have the right to give the Board evidence or arguments on information that you believe is not accurate. If so, or if you wish to ask the Board to find mitigation, please send to the Board or bring with you written documentation to verify your statements. (Be aware that if you successfully appeal your conviction or sentence, any comments made to the Board during the hearing can be used upon retrial or resentencing.)

Depending on the purpose of the hearing, the Board will ask you questions about the crime(s) you committed, about your programming, prison adjustment or parole performance, efforts to deal with the factors that led to your criminal behavior, your parole planning, etc. If you have prepared a written statement, the Board prefers that you submit the statement to the Board and not plan to read aloud from it during the hearing. However, you can bring any notes that you want to remind yourself of what you want to tell the Board.

As noted above, your representative, the victim(s), and the DA representative may make statements to the Board. You will have an opportunity to speak to the Board and respond to the statements made by the victim(s) and DA.

Continuances

There are normally no continuances granted at the end of a hearing. You should be prepared to finish what you want to say or submit it in writing at the time of the hearing. However, if you can show that the record should remain open for additional evidence, the presiding Board member may, at his or her discretion, continue the hearing for a short period of time to allow you or others to submit extra information.

Decision

Following the fact-finding portion of the hearing, the Board will make its decision in private, and then will (usually) give its decision to you. There will not be an opportunity after the Board deliberates for re-arguments or objections. After the hearing, you will also be sent an order that states the Board's decision in your case. This order will be captioned Board Action Form (referred to as a "BAF").

Record

An audio recording will be made of the entire hearing to preserve the testimony for future reference and in the event of appeal from the Board's order. The hearing audio record will not be transcribed by the Board unless requested by the Department of Justice to prepare a record for a judicial appeal. Inmates may purchase a copy of the recording from the Board. The Board only keeps hearing recordings for 4 years from the date of the hearing; after 4 years they are destroyed.

Administrative Reviews and Appeals

If you believe the Board made a mistake in making its decision, you may seek administrative review.

You must ask the Board to examine your claims ("exhaust your administrative remedies") before you may ask for judicial review from the Court of Appeals (see ORS 144.335 and OAR 255-080-0001). You may

request review if you have evidence that:

1. The Board action is not supported by evidence in the record;
2. Pertinent information was available at the time of the hearing which through no fault of yours, was not considered;
3. Pertinent information was not available at the time of the hearing, e.g., information concerning convictions from other jurisdictions;
4. The Board acted inconsistently with its rules, policies, and procedures, and the inconsistency is not explained;
5. The Board acted in violation of a constitutional or statutory provision; or
6. The Board acted outside the range of discretion given to the agency by law.

Please use the blue form called Administrative Review Request Form (Exhibit O) to request a review. The form is available at the inmate law library. If you cannot get this form, please type or print your request in ink on blue or white paper. There are rules about how long the administrative review request can be, and about the format you should use. *Be sure* to look up OAR 255-080-0008 and follow the rules there.

The request for review must be received by the Board within 45 days after the date the Board Action Form is mailed, or within 45 days of the date you receive a supervision order. Read OAR 255-080-0005. Do not use the Exhibit O form to ask questions or to request corrections of obvious clerical errors. You can write to the Board for that.

The Board's limited staffing may result in the response to your review request taking several months. The Board regrets such delays, and works to complete your Administrative Review Response (ARR) as quickly as possible.

After you receive the Board response to your request, if you still believe that the Board erred, and you can show that the order "adversely affects or aggrieves" * you, you may then request judicial review from the Oregon Court of Appeals (see ORS 144.335). You must file a Petition for Review with the Oregon Court of Appeals within 60 days after the final administrative review response is mailed (see OAR 255-080-0001 to 0015).**

Pay attention to the time and format requirements for your administrative review request and your petition for review so that they will not be too late to be considered or may be rejected for other reasons.

* Harms you.

** If you cannot afford a lawyer to help you with an appeal to the court, you might qualify for appointed counsel. You should contact the Public Defender's Office about having an attorney appointed for you.

OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION
OAR 255-075-0025

Offender

SID #

NOTICE OF RIGHTS

Hearing: You have been provided a copy of the violation report describing your violation behavior. You are entitled to a violation hearing. The purpose of the hearing is to determine whether there is probable cause to believe that you violated conditions listed on the violation report. If that finding is made the Hearings Officer may order or recommend a sanction or revocation that may include local detention, return to prison, or modification of conditions of supervision.

Waive a Hearing: You may waive the hearing in two ways: (1) voluntarily, by checking the appropriate box and signing your name on the back of this form; or, (2) involuntarily, by refusing to participate in your hearing. If you waive the hearing:

- You admit violating one or more of the conditions alleged or you do not contest the allegations and neither admit nor deny them.
- The Hearings Officer and, if applicable, the Board, will make findings based on the Supervising Officer's Violation Report alone. There will be no other hearing.
- If you voluntarily waive a hearing, you may offer an oral or written statement with reasons why the Hearings Officer or Board should not order sanctions, modifications of conditions, or return to prison.

Results of Hearing: Unless you waive your right to a hearing, an impartial Hearings Officer will conduct the hearing and will either:

1. Order a sanction or modification of conditions within the Hearings Officer's authority. When the Hearings Officer's order is the final order, it is immediately effective, but subject to override by the Board; **or**
2. Make findings, conclusions and recommendations to the Board. The Board may order a sanction, revocation that includes local detention or return to prison, or modification of conditions different from those recommended based upon the record of the hearing **without another hearing or appearance.**

Rights Before and During the Hearing: You have the right to:

1. Present relevant oral and written information;
2. Examine witnesses presenting evidence that you violated conditions of supervision, unless the Hearings Officer finds good cause not to allow you that opportunity;
3. Request witnesses who have relevant information regarding the alleged violations, unless the Hearings Officer finds good cause not to allow certain witnesses to testify;
4. Obtain an attorney at your own expense, or request an appointed attorney provided you cannot afford an attorney and (a) you did not violate the conditions and your claim has substantial merit, or (b) there are substantial reasons that justify or mitigate the violation that are complex and difficult to present without an attorney, or (c) you cannot speak effectively on your behalf.

Rights After the Hearing and Appeals: You have the right to:

1. Submit exceptions or appeals to the Hearings Officer's findings, conclusions, and recommendations to the Board **within 10 days** of the Hearing Officer's report (10-day waiting period);
2. Submit a request asking the Board to conduct administrative review of the Hearings Officer's or Board's final order **within 45 days of the mailing date of the final order** by using an Administrative Appeal Request form (Exhibit O) or by letter stating: "This is an administrative review request pursuant to Division 80 of Board rules"; and
3. If administrative relief is denied you may seek judicial review by petitioning the **Oregon Court of Appeals within 60 days** of the mailing date of the Board's response to your request for administrative review.

See reverse side of this form. For further information, see ORS Chapter 144 and OAR 255, Divisions 70, 75, and 80.

DECISIONS ABOUT RIGHTS

Hearing: I understand the rights contained in this notice and:

- I **DO NOT** want a hearing (Waive Hearing) I **WANT** a hearing

Three-Day Notice: I understand that a hearing will not be conducted less than three days from the date I am notified of my rights, the date, time and place of the hearing, and the allegations against me unless I waive that right.

- Not Applicable** -- Hearing Waived
 I **WAIVE** the right to three days notice I **WANT** three days notice before the hearing

10-Day Waiting Period: When the Hearings Officer makes findings, conclusions, and recommendations to the Board, I understand that I have ten days to submit written exceptions concerning the report to the Board of Parole and Post-Prison Supervision (attention Sanctions Specialist).

- I **WAIVE** the 10-day waiting period to submit any written exceptions before the final decision is made
 I **DO NOT WAIVE** the 10-day waiting period. (A final decision by the Board will be delayed 10 days to allow you to submit written exceptions concerning the Hearings Officer's report.)

Attorney: I have obtained my own attorney to represent me in this violation hearing. My attorney is:

_____ Phone: _____

- Not Applicable** – Hearing Waived
 I **DO NOT** want an appointed attorney
 I **WANT** an appointed attorney

Request for appointed attorney is: <input type="checkbox"/> Allowed <input type="checkbox"/> Denied by Hearings Officer Reason(s) for denial by Hearings Officer: <input type="checkbox"/> Offender is not indigent; <input type="checkbox"/> Offender IS indigent, BUT: <input type="checkbox"/> There is not a timely and colorable claim offender has not committed the alleged violation; <input type="checkbox"/> Reasons which justify or mitigate the violation are not complex or otherwise difficult <input type="checkbox"/> Offender is capable of speaking effectively in his or her own behalf
--

Witnesses: **Not Applicable** – Hearing Waived
 I **DO NOT** want witnesses
 I **WANT** witnesses at the hearing

Allowed/Denied	Name	Address/Phone	Why Denied by Hearings Officer
<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

Understanding (if Hearing Waived): Having waived my right to a hearing, I consent to the modification of conditions and/or sanctions ordered by the Supervisory Authority or Hearings Officer as listed on the sanction report. I understand that the Board may within its authority override any sanction ordered by the supervising officer or Hearings Officer and impose a greater or different sanction, including revocation that may include local detention or return to prison, without another hearing or personal appearance.

Proposed sanction/revocation/modification: _____

I have read, or have had read to me, and fully understand and acknowledge this Notice of Rights and Decisions about Rights form.

Signature of Hearings Officer or Representative

Signature of Offender

Printed Name of Hearings Officer or Representative

Printed Name of Offender and SID #

Date: _____

Date: _____

OREGON BOARD OF PAROLE & POST-PRISON SUPERVISION

HEARING NOTICE & NOTICE OF RIGHTS PACKET

INMATE: _____

HEARING DATE: _____ **HEARING LOCATION:** _____

You have been scheduled by the board for a Murder Review hearing.

If an attorney is going to represent you at your hearing, please tell the attorney that the date should be verified at least one day before the hearing date by calling the Board of Parole & Post-Prison Supervision at 503-945-0902. Please tell your attorney or any visitor(s) that they must contact the Board in advance to receive information about attending and/or participating in the hearing. Please read the attached notice of rights and procedures carefully.

HEARING ABBREVIATIONS:

EI.....	EXIT INTERVIEW	PC.....	PAROLE CONSIDERATION
PH.....	PAROLE HEARING	PT.....	PRISON TERM
FD.....	FUTURE DISPOSITION	PR.....	PERSONAL REVIEW
AR.....	ADMINISTRATIVE REVIEW	PP.....	POSTPONEMENT
MR.....	AGGRAVATED MURDER REVIEW	PI.....	PERSONAL INTERVIEW
PD	PREDATORY SEX OFFENDER DESIGNATION	SVPS	SEXUALLY VIOLENT DANGEROUS OFFENDER DESIGNATION

(PSY or PS.....indicates that a psychological evaluation will be considered.)

BE PREPARED

1. Read all information before the hearing.
2. Bring your hearing packet to the hearing.
3. If you need an interpreter or other help, contact the Board or your institutional counselor immediately.
4. Any written information you want the Board consider at your hearing should be received by the Board at least one week before the hearing. Please write on it: "FOR HEARING."

Copies of Board administrative rules are available in the inmate legal library.

**OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION
AGGRAVATED MURDER REVIEW HEARING
INMATE RIGHTS AND PROCEDURES**

(OAR 255-032-0022, OAR 255-030, 255-032, 255-040-0035, 255-050-0010, 255-060-0006, 255-080)

This is an informal summary of your rights at the hearing; please obtain and refer to the rules and statutes that govern the Board's conduct of Murder Review hearings.

Law that Applies

- 1) You are scheduled for a Murder Review hearing before the Oregon State Board of Parole and Post-Prison Supervision. The Board has the authority and jurisdiction to hold a hearing on the issue pursuant to ORS 163.105(2) or 163.115(5).
- 2) The sole issue to be considered shall be whether you are likely to be rehabilitated within a reasonable period of time. You have the burden of proving, by a preponderance of the evidence, the likelihood of rehabilitation within a reasonable period of time. If after hearing all the evidence, the full Board, upon a unanimous vote of all members, or by such other vote as is specified in statute, finds that you are capable of rehabilitation, and that the terms of your confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of confinement to life imprisonment with the possibility of parole or work release and may set a projected parole release date. Otherwise, the Board shall not change the terms of confinement.
- 3) The hearing will be conducted in the manner prescribed by ORS 163.105 or ORS 163.115, and in the manner provided in the administrative rules of the Oregon Board of Parole and Post-Prison Supervision, OAR chapter 255, Division 32. Ordinarily the Board will apply the substantive* rules in effect at the time you committed your crime(s) as well as the applicable procedural* rules and laws. These statutes and rules are available through the institution's inmate law library; please consult the law librarian or your inmate legal assistant.
- 4) OAR 255-032-0020 specifies that the criteria indicating whether an inmate is likely to be rehabilitated prior to release will include:
 - a. The inmate's involvement in correctional treatment, medical care, educational, vocational or other training in the institution which will substantially enhance his/her capacity to lead a law-abiding life when released;
 - b. The inmate's institutional employment history;
 - c. The inmate's institutional disciplinary conduct;
 - d. The inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate personality which may promote or hinder conformity to law;
 - e. The inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcoholic liquor;
 - f. The inmate's prior criminal history, including the nature and circumstances of previous offenses;
 - g. The inmate's conduct during any previous period of probation or parole;
 - h. The inmate does/does not have a mental or emotional disturbance, deficiency, condition or disorder predisposing them to the commission of a crime to a degree rendering them a danger to the health and safety of the community;
 - i. The adequacy of the inmate's parole plan including community support from family, friends, treatment providers, and others in the community; type of residence, neighborhood or community in which the inmate plans to live;

* "Substantive" rules or laws are those that create, define, or regulate the rights and duties of you and the Board. "Procedural" rules or laws are those that set out the methods for holding a hearing or taking an action. Procedural rules do not affect your rights.

- j. There is a reasonable probability that the inmate will remain in the community without violating the law, and there is substantial likelihood that the inmate will conform to the conditions of parole.

This is not an exclusive list, and the Board will consider such other information as may contribute to its ability to reach a decision.

Right to an Attorney

The Board may be represented by an attorney at the hearing. You may hire an attorney to represent you. In that case, it is your responsibility to notify the attorney of the date of your hearing. The Board will appoint and pay for an attorney if you do not have the funds to pay for an attorney and if you request an attorney. You may also represent yourself at the hearing. If you choose to represent yourself, but determine in the course of the hearing that an attorney is necessary, you may not request a recess.

Who May Attend the Hearing

The hearing is public, and persons who wish to observe or support you may attend in person, subject to Department of Corrections rules. Attendees may also participate by telephone as long as telephone access is available (the Board's phone lines are limited). Instruct your support persons and attorney to contact the Board at least two weeks in advance to arrange to attend the hearing.

Also attending the hearing, pursuant to statute and rule, may be victim(s) of your crime(s) and their supporters, and/or a representative of the District Attorney's office from the committing jurisdiction (the county where you were sentenced). The identified victim(s) and the DA representative have the right to make statements at the hearing under ORS 144.750 (*former* ORS 144.120(7)). You will have an opportunity to respond to any comments that are made.

Because Board hearings are public, representatives of the press may attend. The Board does not usually notify the parties that press representatives intend to be present at a hearing.

Information Considered at the Hearing/Witnesses

All material relevant and pertinent to issues before the Board will be made a part of the record. Exhibits not available prior to the hearing will be made available to you or your attorney at the hearing. Any material considered but not made part of the public record shall be separated and a statement to that effect shall be placed in the record. The Board shall follow the criteria for denial or disclosure of records set out in OAR 255-015-0010.

Requests that the Board research and obtain information you want considered cannot be honored. It is your responsibility to provide that information.

You must make your own arrangements for calling and presenting witnesses. However, upon a proper showing of general relevance and reasonable scope of the evidence being sought, the Board may issue subpoenas on your behalf. Make your request to the Board as soon as possible. If the Board allows the subpoena, the subpoena will be sent to you. **You are responsible for serving it on the witness.** Witnesses are not required to appear in person unless good cause can be shown why an in-person appearance is necessary. Witnesses may participate via teleconference. Instruct your attorney, witnesses, or any other visitor(s) that they must contact the Board in advance to receive information about attending and/or participating in the hearing. Testimony of each witness will ordinarily be limited to ten minutes.

In general, information that you want the Board to consider should be provided in writing at least one week prior to the hearing and you should write clearly on it: "FOR HEARING." The Board, at its discretion, may accept limited amounts of information during the hearing. Please be aware that information you submitted for previous hearings **will not automatically be considered by the Board for**

this hearing. You must resubmit any such information. You and your representative may make oral statements to the Board.

Notice and Waiver

You should receive your parole packet and a notice of your hearing at least 14 days before your hearing date. You should bring your copy of the parole packet to your hearing. If you do not receive these materials at least 14 days prior to your hearing, you may either waive the notice period or have your hearing rescheduled.

Presiding Officer

The full Board will hear your case. One of the members will serve as the presiding officer and will rule on all matters that arise at the hearing.

Hearing Procedure

The Board's task at any hearing is to gather information to make the best possible decision with the available information while assuring a fair and full hearing to all persons entitled to participate. A Board hearing is less formal than a court appearance. Generally it is fairly short, so be prepared to speak concisely.

You should bring your copy of the parole packet to your hearing. You may want to call the Board's attention to one or more documents, or the Board may refer to various documents and may want to discuss them with you. The Board will have reviewed the documents in your Board Review Packet, which will usually include the Presentence Report or a report of similar content, as well as any additional information provided by the police, counsel, the victim, or the district attorney, any Department of Corrections reports, and any recent psychological/psychiatric evaluations, as well as what you have submitted.

Please remember that under statute you have the responsibility (the "burden") of proving, by a preponderance of the evidence, the likelihood of rehabilitation within a reasonable period of time. **Be prepared to present your evidence!** However, the Board may also ask you questions about the crime(s) you committed, about your programming, prison adjustment or parole performance, efforts to deal with the factors that led to your criminal behavior, your parole planning, etc. If you have prepared a written statement, the Board prefers that you submit the statement for review and not plan to read aloud from it during the hearing. However, you can bring any notes that you want to remind yourself of what you want to tell the Board.

Relevant evidence of a type of commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. Hearsay evidence is not automatically excluded, but the fact that it is hearsay will affect how much reliance the Board will place on it in reaching a decision.

If you object to the admissibility of evidence you must state your objection at the time the evidence is offered.

You should be aware that irrelevant, immaterial, or unduly repetitious evidence will be excluded, and you should plan your witness list and your own testimony with that in mind.

(If you successfully appeal your conviction or sentence in a court of law, any comments made to the Board during the hearing can be used upon retrial or resentencing.)

Continuances/Cancellation

There are normally no continuances granted at the end of a hearing. You should be prepared to finish what you want to say or submit it in writing at the time of the hearing. However, if you can show that the record should remain open for additional evidence, or upon the Board's own motion, the presiding Board member may, at his or her discretion, continue the hearing for a period of time not to exceed 60 days, to obtain additional information required to assist the Board in its decision.

If you ask for cancellation of a hearing, it must be for good cause, in writing, and with seven days' advance notice. If the Board finds the cancellation request does not fulfill these requirements, an inmate shall not be eligible to request another hearing for 90 days from the date of the scheduled hearing.

The Board's Decision

At the end of the hearing the Board will close the testimony and adjourn the hearing. It will then deliberate and in most cases will issue its final order in writing. The Board may also issue its decision orally on the record at the hearing. If the Board does not find the likelihood of rehabilitation within a reasonable period of time, the order will include findings of fact and conclusion(s) of law. If the Board finds that you have proven by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time, then it is not necessary that the final order include findings of fact or conclusions of law.

Please be aware that the Board's careful consideration of your case may result in preparation of the final order taking several months. The Board regrets such delays, and works to issue your order as quickly as possible.

Effect of Denying Relief Request

If the Board does not find likelihood of rehabilitation within a reasonable period of time, the Board may specify the period until you are eligible to petition again for a change in the terms of confinement. The period shall be no less than two years and no longer than ten years after the denial.

Exceptions to Order

After the hearing, you will be sent a final order reflecting the Board's decisions in your case. This final order will be captioned "Board Action Form." If you disagree with the final order, you may seek reconsideration of the order by means of an administrative review. See Appeals and Administrative Reviews below and Division 80 of the Board's rules. If you disagree with the administrative review response, you may appeal to the Oregon Court of Appeals pursuant to ORS 144.335. There will not be an opportunity after the Board issues its final order for re-arguments or objections.

Record

An audio recording will be made of the entire hearing to preserve the testimony and other evidence for future reference. The hearing record will not be transcribed by the Board unless requested by the Department of Justice to prepare a response for judicial appeal. Inmates may purchase a copy of the audio recording of the hearing at a cost of \$8.00. The Board only retains hearing recordings for four years from the date of the hearing. After four years, the record is destroyed.

Administrative Reviews and Appeals

You must exhaust your administrative review remedies before you may appeal to the Court of Appeals (see ORS 144.335 and OAR 255-80-0001). You may request administrative review from the Board if you have evidence that:

1. The Board action is not supported by evidence in the record;
2. Pertinent information was available at the time of the hearing which through no fault of yours, was not considered;
3. Pertinent information was not available at the time of the hearing, e.g., information concerning convictions from other jurisdictions;
4. The Board acted inconsistently with its rules, policies, and procedures and the inconsistency is not explained;
5. The Board acted in violation of a constitutional or statutory provision; or
6. The Board acted outside the range of discretion delegated to the agency by law.

In order to request a review, the Board asks you to use the blue form called Administrative Review Request Form (Exhibit O). The form is available at the inmate law library and the Board's website. If you cannot get this form, please type or print your request in ink on white paper. There are rules about how long the administrative review request can be, and about the format you should use. Be sure to look up OAR 255-080-0008 and follow the rules there. The request for review must be received by the Board within 45 days after the date the Board Action Form is mailed (see OAR 255-080-0005). Do not use this form to make inquiries or to request corrections of obvious clerical errors. You can write to the Board for that.

Please note that the Board's limited staffing may result in the response to your review request taking several months. The Board regrets such delays, and works to complete your Administrative Review Response (ARR) as quickly as possible.

After you receive the Board response to your request, if you still believe that the Board erred, and you can show that the order "adversely affects or aggrieves" you (harms you), you may then request judicial review from the Oregon Court of Appeals (see ORS 144.335). You must file a Petition for Review with the Oregon Court of Appeals within 60 days after the final administrative review response is mailed (see OAR 255-080-0001 to 0015).

Pay attention to the time requirements for your administrative review request and your petition for review so that they will not be too late to be considered.

If you cannot afford a lawyer to help you with an appeal to the Court, you might qualify for appointed counsel. You should contact the Public Defender's Office about having an attorney appointed for you.

Exhibit Q-1
Static-99R Coding Form

Question Number	Risk Factor	Codes		Score
1	Age at release	Aged 18 to 34.9 Aged 35 to 39.9 Aged 40 to 59.9 Aged 60 or older		1 0 -1 -3
2	Ever Lived With	Ever lived with lover for at least two years? Yes No		0 1
3	Index non-sexual violence - Any Convictions	No Yes		0 1
4	Prior non-sexual violence - Any Convictions	No Yes		0 1
5	Prior Sex Offences	<u>Charges</u>	<u>Convictions</u>	
		0	0	0
		1,2	1	1
		3-5	2,3	2
		6+	4+	3
6	Prior sentencing dates (excluding index)	3 or less 4 or more		0 1
7	Any convictions for non-contact sex offences	No Yes		0 1
8	Any Unrelated Victims	No Yes		0 1
9	Any Stranger Victims	No Yes		0 1
10	Any Male Victims	No Yes		0 1
	Total Score	Add up scores from individual risk factors		

Translating Static-99R scores into risk categories

Score Label for Risk Category

-3 through 1 = Low
 2, 3 = Low-Moderate
 4, 5 = Moderate-High
 6 plus = High