

DIVISION 32

AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115

Prison Term Hearing to be Held
255-032-0005

- (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 [October 23, 1999] 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.
- (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 review date consistent with the terms set forth in OAR 255-032-0011 rather than a projected parole release date.

Statutory Authority: (ORS 144.120, 163.095, 163.115, 419c.340, 419c.364)
History: (5/31/85; 11/1/89; 1/16/91; 10/9/92; 5/18/99, 01-04-00,
05-13-03)

PERMANENT EFFECTIVE 05-13-03

DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

Prison Term Hearing to be Held
255-032-0005

- (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 October 23, 1999, 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.
- (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 review date consistent with the terms set forth in OAR 255-032-0011 rather than a projected parole release date.

Statutory Authority: (ORS 144.120, 163.095, 163.115, 419c.340, 419c.364)

History: (5/31/85; 11/1/89; 1/16/91; 10/9/92; ~~1/15/99~~, 01-04-00)

5-18-99

Permanent effective 1/4/00

DIVISION 32

AGGRAVATED MURDER
ORS 163.105

Prison Term Hearing to be Held
255-032-0005

- (1) An adult person convicted of Aggravated Murder under ORS 163.095 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.
- (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 review date consistent with the terms set forth in OAR 255-032-0011 rather than a projected parole release date.

History: (5/31/85; 11/1/89; 1/16/91; 10/9/92; 5/18/99)

Permanent effective 5/18/99

DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

255-032-0005

Prison Term Hearing to be Held

- (1) A person convicted of Aggravated Murder under ORS 163.095 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 255-32-010 rather than a parole release date.
- (2) Persons sentenced to death or life without the possibility of release or parole shall not receive a hearing.
- (3) 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, to which the aggravated murder is consecutive.

Statutory Authority: ORS 163.105

History: (5/31/85; 11/1/89; 1/16/91; 10/9/92; 03/14/97)

Permanent effective 3/14/97

DIVISION 32

AGGRAVATED MURDER
ORS 163.105

Prison Term Hearing to be Held
255-32-005

- (1) A person convicted of Aggravated Murder under ORS 163.095 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 255-32-010 [shall be set] rather than a parole release date.
- (2) Persons sentenced to death or life without the possibility of release or parole shall not receive a hearing.
- (3) 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.

History: (5/31/85; 11/1/89; 1/16/91; 10/9/92)

Permanent effective 10/9/92

Aggravated Murde

DIVISION 32

AGGRAVATED MURDER

Prison Term Hearing [to be Held]
255-32-005

- (1) A person convicted of Aggravated Murder and sentenced to life with a possibility of parole under ORS 163.095 shall receive a [prison term] hearing [under the provisions of Division 30 of these rules] within one year of sentencing. At the hearing [A] a review date congruent with the minimum terms set forth in 255-32-010 shall be set rather than a parole release date.
- (2) Persons sentenced to death or life without the possibility of release or parole shall not receive a hearing.
- (3) 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.

DIVISION 32

AGGRAVATED MURDER

Prison Term Hearing to be Held
255-32-005

- (1) A person convicted of Aggravated Murder under ORS 163.095 shall receive a prison term hearing under the provisions of Division 30 of these rules. A review date congruent with the minimum terms set forth in 255-32-010 shall be set rather than a parole release date.

- (2) Persons sentenced to death or life without the possibility of release or parole shall not receive a prison term hearing.

Permanent effective 11/1/89

DIVISION 32
AGGRAVATED MURDER

255-32-005 Prison Term Hearing To Be Held

A person convicted of Aggravated Murder under
ORS 163.095 shall receive a prison term hearing
under the provisions of Division 30 of these
rules.

Permanent effective 5/31/85



DIVISION 32

AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115

Minimum Period of Confinement Pursuant to ORS 163.105 or ORS 163.115
255-032-0010

- (1) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(1) shall be thirty (30) years.
- (2) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(2) prior to December 6, 1984, shall be twenty (20) years.
- (3) The minimum period of confinement for a person sentenced to life for Murder under ORS 163.115 committed on or after [October 23, 1999] June 30, 1995, shall be twenty-five (25) years.

Statutory Authority: (ORS 144.110, 163.105, 163.115)
History: (5/31/85; 5/19/88, 5/18/99, 01-04-00, 05-13-03)

PERMANENT EFFECTIVE 05-13-03

DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

Minimum Period of Confinement Pursuant to ORS 163.105 or ORS 163.115
255-032-0010

- (1) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(1) shall be thirty (30) years.
- (2) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(2) prior to December 6, 1984, shall be twenty (20) years.
- (3) The minimum period of confinement for a person sentenced to life for Murder under ORS 163.115 committed on or after October 23, 1999, shall be twenty-five (25) years.

Statutory Authority: (ORS 144.110, 163.105, 163.115)
History: (5/31/85; 5/19/88, ~~1/15/99~~, 01-04-00)

5-18-99

01-04-00

Aggravated Murder

Permanent effective 1/4/00

DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

Minimum Period of Confinement Pursuant to ORS 163.105
255-032-0010

- (1) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(1) shall be thirty (30) years.
- (2) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(2) prior to December 6, 1984, shall be twenty (20) years.

History: (5/31/85; 5/19/88, 5/18/99)

Permanent effective 5/18/99

DIVISION 32
AGGRAVATED MURDER

Minimum Period of Confinement Pursuant to ORS 163.105
255-32-010

- (1) The minimum period of confinement for a person convicted of Aggravated Murder as defined by ORS 163.105(1) shall be thirty (30) years.
- (2) The minimum period of confinement for a person convicted of Aggravated Murder as defined by ORS 163.105(2) prior to Dec. 6, 1984 shall be twenty (20) years.

DIVISION 32
AGGRAVATED MURDER

255-32-010 Minimum Period of Confinement Pursuant to
ORS 163.105

- (1) The minimum period of confinement for a person convicted of Aggravated Murder as defined by ORS 163.105(1) shall be thirty (30) years.
- (2) The minimum period of confinement for a person convicted of aggravated murder as defined by ORS 163.105(2) shall be twenty (20) years.



DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

255-032-0011

Schedule of Initial Parole Consideration for Inmates Described in OAR 255-032-0005(4)

- (1) The Board shall conduct a hearing pursuant to OAR 255-030-0013, 255-030-0015, 255-030-0021, 255-030-0023 and 255-030-0025 through -0055.
- (2) The Board shall set a review date pursuant to Exhibit P-III, or deny parole, pursuant to OAR 255-035-0030.
- (3) The method established by sections (1) to (3) of OAR 255-035-0021 shall not apply to inmates described in OAR 255-032-0005(4). To determine the unified range for inmates described in OAR 255-032-0005(4) with consecutive sentences for aggravated murder, the Board shall establish the matrix range for each crime by using the inmate's history/risk score pursuant to Exhibit P-III. The unified range shall be the sum of the ranges established under this section.
- (4) The Board may depart from the appropriate matrix range for inmates described in OAR 255-032-0005(4) only upon making a specific finding that there is aggravation or mitigation which justifies departure from the range pursuant to Exhibits E-1 and E-2. The Board shall clearly state on the record the facts and specific reasons for its finding. The Board may give items of aggravation and mitigation different weight and not necessarily balance them one for one. Exhibit D does not apply to inmates described in OAR 255-032-0005(4). The Board cannot apply aggravating or mitigating factors to adjust an inmate's matrix range more than one level up or down. Mitigating factors cannot reduce an inmate's matrix range below the lowest possible range on the matrix.
- (5) If the Board denies parole, the inmate may petition for review after 480 months from the adjusted inception date. If the Board determines, following a review of the inmate's petition and institutional record, there is reasonable grounds to believe that rehabilitation may have occurred and that the possibility of parole should be considered, a review hearing shall be scheduled.
- (6) If the Board sets a review date pursuant to Exhibit P-III, the Board shall conduct a progress review five years prior to the established review date. The progress review does not require a hearing with the inmate; however, the inmate may submit materials to be considered. The purpose of the progress review is to determine the inmate's institutional conduct and rehabilitation efforts since the prison term hearing.
- (7) The Board may determine a parole release date or future review dates any time after the established review date. The Board may order a psychological evaluation. Refusal to submit to an evaluation if one is ordered will be grounds for automatic deferral of the hearing for up to five years or a lesser time if deemed appropriate by the Board. If parole was previously denied, that decision will remain in effect and further petitions for review will not be considered at less than two (2) year intervals.
- (8) At the review hearing, the Board will consider, but is not limited to, the following:
 - (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's 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 alcohol;
- (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;
- (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.

The decision for the Board shall be whether there are significant indications of reformation and rehabilitation such that the offender does not represent a risk to the community and that it is in the offender's and the community's best interest that he/she be released to the community under conditions of supervision.

If the Board does not make the above finding, the Board shall set a subsequent review hearing date not to exceed five (5) years from the present review.

Statutory Authority: (ORS 163.105)

History: ~~(1/15/99)~~
5-18-99



DIVISION 32

AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115

Petition/Purpose for Review Hearing
255-032-0015

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after thirty (30) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after [June 30, 1995] October 23, 1999; or
- (2) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or between [April 1, 1995 through] June 30, 1995 through October 22, 1999; or
- (3) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before [April 1, 1995] June 30, 1995; or
- (4) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2); or
- (5) Anytime after twenty-five (25) years from the date of imposition of confinement pursuant to OAR 255-032-0010(3).

Statutory Authority: (ORS 163.115)
History: (5/31/85; 5/19/88; 1/16/91, 03/01/97, 5/18/99, 01-04-00, 05-13-03,
04-15-04 – Notice/Temp)

TEMP NOTICE 04-15-04 to 10-11-04
perm adopt 06-14-04

DIVISION 32

AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115

Petition/Purpose for Review Hearing
255-032-0015

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after thirty (30) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after [October 23, 1999] June 30, 1995; or
- (2) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed between April 1, 1995 through [October 22, 1999] June 30, 1995; or
- (3) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before April 1, 1995; or
- (4) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2); or
- (5) Anytime after twenty-five (25) years from the date of imposition of confinement pursuant to OAR 255-032-0010(3).

Statutory Authority: (ORS 163.115)

History: (5/31/85; 5/19/88; 1/16/91, 03/01/97, 5/18/99, 01-04-00, **05-13-03**)

PERMANENT EFFECTIVE 05-13-03

DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

Petition/Purpose for Review Hearing
255-032-0015

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after thirty (30) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after October 23, 1999; or
- (2) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed between April 1, 1995 through October 22, 1999; or
- (3) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before April 1, 1995; or
- (4) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2); or
- (5) Anytime after twenty-five (25) years from the date of imposition of confinement pursuant to OAR 255-032-0010(3).

Statutory Authority: (ORS 163.115)

History: (5/31/85; 5/19/88; 1/16/91, 03/01/97, ~~1/15/99~~, 01-04-00

5-18-99

Permanent effective 5/18/99

DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

Petition/Purpose for Review Hearing
255-032-0015

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after April 1, 1995; or
- (2) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before April 1, 1995; or
- (3) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2).

History: (5/31/85; 5/19/88; 1/16/91, 03/01/97, 05/18/99)

05-18-99

Aggravated Murder

Permanent effective 5/18/99

DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

255-032-0015

Petition/Purpose for Hearing

The inmate may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(1) for an offense committed on or after June 30, 1995; or
- (2) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(1) for an offense committed before June 30, 1995; or
- (3) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(2).

Statutory Authority: ORS 163.105

History: (5/31/85; 5/19/88; 1/16/91, 03/14/97)

Permanent effective 3/14/97

DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

Petition/Purpose for Hearing
255-32-015

The [prisoner] inmate may petition and the Board shall hold a hearing to determine if the [prisoner] inmate is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(1);
- (2) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(2); or
- [(3) In the case of consecutive aggravated murder sentences the [prisoner] inmate may petition after:
 - (a) fifteen (15) years times the number of consecutive sentences imposed pursuant to the ORS 163.105(2) in effect prior to December 6, 1984; or
 - (b) twenty (20) years times the number of consecutive sentences imposed pursuant to ORS 163.105(1).

History: (5/31/85; 5/19/88; 1/16/91)

Permanent effective 10/29/93

DIVISION 32
AGGRAVATED MURDER

Petition/Purpose for Hearing
255-32-015

The prisoner may petition and the Board shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(1); [or]
- (2) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(2) [.] ; or
- (3) In the case of consecutive aggravated murder sentences the prisoner may petition after:
 - (a) fifteen (15) years times the number of consecutive sentences imposed pursuant to the ORS 163.105(2) in effect prior to December 6, 1984; or
 - (b) twenty (20) years times the number of consecutive sentences imposed pursuant to ORS 163.105(1).

DIVISION 32

AGGRAVATED MURDER

Petition/Purpose for Hearing
255-32-015

The prisoner may petition and the Board shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(1); or
- (2) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(2).

[At any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(1), or at any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(2), upon petition of a prisoner so confined, the Board shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period to time.]

DIVISION 32
AGGRAVATED MURDER

255-32-015 Petition for Hearing

At any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(1), or at any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(2), upon petition of a prisoner so confined, the Board shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time.

DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

Purpose of Review Hearing
255-032-0020

- (1) The sole issue of the hearing described in OAR 255-032-0015 shall be to determine whether or not the inmate is likely to be rehabilitated within a reasonable period of time. Criteria indicating whether the inmate is likely to be rehabilitated prior to release 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;
 - (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.

History: (5/31/85; 10/29/93; 5/18/99)

Permanent effective 5/18/99

DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

Purpose of Hearing
255-32-020

- (1) The sole issue of the hearing shall be to determine whether or not the [prisoner] inmate is likely to be rehabilitated within a reasonable period of time. Criteria indicating whether the inmate is likely to be rehabilitated prior to release include:
- (a) the inmate's involvement in correctional treatment, medical care, educational, vocational or other training in the institution will substantially enhance their 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's 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 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;
 - (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.

History: (5/31/85; 10/29/93)

Permanent effective 10/29/93

DIVISION 32
AGGRAVATED MURDER

255-32-020 Purpose of Hearing

The sole issue of the hearing shall be to determine whether or not the prisoner is likely to be rehabilitated within a reasonable period of time.

DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

Murder Review Hearings Notice
255-032-0022

- (1) The Board's contested case notice issued pursuant to ORS 183.415 must include:
- (a) 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;
 - (b) 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;
 - (c) 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
 - (d) A statement of rights of the inmate at the hearing.

Stat. Auth.: ORS 183.415; ORS 163.105(2), 163.115(5)
History: **02-01-07-NOTICE/TEMP**

Temporary Effective 2-1-07 thru 7-30-07



DIVISION 32

AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99 ORS 163.105 and ORS 163.115

Manner of Review Hearing **255-032-0025**

- (1) The Board shall conduct the proceeding in the manner prescribed for a contested case hearing under ORS Chapter 183 [.310 to 183.550] except that:
 - (a) The inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) If the inmate is without sufficient funds to employ an attorney, the inmate shall have the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$100 [75] per hour and \$1000 [750] per case. The attorney shall send the Board a billing within 90 days of the hearing.
- (2) During hearings of the Board, the chairperson or designated board member shall preside. The presiding member shall designate the order of presentation and questioning. The presiding member shall also determine the scope of questioning and may set time limits and cut off irrelevant questions and irrelevant or unresponsive answers. [If upon hearing all the evidence, the Full Board upon a unanimous vote of all members finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.]
- (3) At the commencement of the hearing, the presiding board member shall explain the issues involved in the hearing and that the inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time. [When a inmate has a consecutive sentence for a crime other than aggravated murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentence(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the aggravated murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.]
- (4) Testimony at the hearing shall be taken upon oath or affirmation of the witness from whom it is received. The presiding board member shall administer oaths or affirmations to witnesses.
- (5) The initial testimony of each witness shall not exceed three 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.
- (6) The record in a Murder Review Hearing must include:
 - (a) Evidence received or considered;
 - (b) Stipulations;
 - (c) Questions and offers of proof, objections and rulings thereon;
 - (d) Proposed findings and exceptions; and
 - (e) Any proposed, intermediate, or final order prepared by the Board.

DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

- (7) If upon hearing all the evidence, the [F]full Board, upon a unanimous vote of all members, finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.
- (8) When an inmate has a consecutive sentence for a crime other than [a]Aggravated [m]Murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentences(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the [a]Aggravated [m]Murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Stat. Auth: (ORS 144.120, ORS 163.105, ORS 163.115, ORS 183.415)
History: (5/31/85; 5/19/88; 11/1/89; 1/16/91; 5/1/91, temporary; 10/15/91;
10/29/93, 01-04-00, 02-06-01, **02-01-07-NOTICE/TEMP**)

Temporary Effective 2-1-07 thru 7-30-07

DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

Manner of Review Hearing
255-032-0025

- (1) The Board shall conduct the proceeding in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) If the inmate is without sufficient funds to employ an attorney, the inmate shall have the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$75 per hour and \$750 per case. The attorney shall send the Board a billing within 90 days of the hearing.
- (2) If upon hearing all the evidence, the Full Board upon a unanimous vote of all members finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.
- (3) When a inmate has a consecutive sentence for a crime other than aggravated murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentences(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the aggravated murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Statutory Authority: (ORS 144.120, 163.105, 163.115, 183-310-550)

History: (5/31/85; 5/19/88; 11/1/89; 1/16/91; 5/1/91, temporary; 10/15/91;
10/29/93, 01-04-00, 02-06-01)

Permanent effective 02/06/2001

DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

Manner of Review Hearing
255-032-0025

- (1) The Board shall conduct the proceeding in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) If the inmate is without sufficient funds to employ an attorney, the inmate shall have the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$60 per hour and \$300 per case. The attorney shall send the Board a billing within 90 days of the hearing.
- (2) If upon hearing all the evidence, the Full Board upon a unanimous vote of all members finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.
- (3) When a inmate has a consecutive sentence for a crime other than aggravated murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentence(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the aggravated murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Statutory Authority: (ORS 144.120, 163.105, 163.115, 183-310-550)

History: (5/31/85; 5/19/88; 11/1/89; 1/16/91; 5/1/91, temporary; 10/15/91;
10/29/93, 01-04-00)

01-04-00

Aggravated Murder

Permanent effective 1/4/00

DIVISION 32

AGGRAVATED MURDER
ORS 163.105

Manner of Hearing
255-32-025

- (1) The Board shall conduct the proceeding in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The [prisoner] inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) If the [prisoner] inmate is without sufficient funds to employ an attorney, the [prisoner] inmate shall have the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$40 per hour and \$200 per case. The attorney shall send the Board a billing within 90 days of the hearing.
- (2) If upon hearing all the evidence, the Full Board upon a unanimous vote of all members finds that the [prisoner] inmate is capable of rehabilitation and that the terms of the [prisoner's] inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the [prisoner's] inmate's confinement to life imprisonment with the possibility of parole or work release and shall set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.
- (3) When a [prisoner] inmate has a consecutive sentence for a crime other than aggravated murder, the Board shall determine the [parole release date for the consecutive sentence at the time the Board determines a parole release date on the aggravated murder conviction] prison term for the consecutive sentences(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the aggravated murder sentence established pursuant to ORS 163.105.

History: (5/31/85; 5/19/88; 11/1/89; 1/16/91; 5/1/91, temporary; 10/15/91; 10/29/93)

Permanent effective 10/29/93

DIVISION 32
AGGRAVATED MURDER

Manner of Hearing

255-32-025 (5/31/85; 5/19/88; 11/1/89; 1/16/91; 5/1/91, temporary; 10/15/91)

- (1) The Board shall conduct the proceeding [shall be conducted] in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The prisoner shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) [The prisoner shall have the right, if] If the prisoner is without sufficient funds to employ an attorney, the prisoner shall have the right to [be represented by] Board appointed legal counsel[, appointed by the Board, at state expense].

- (2) If upon hearing all the evidence, the Full Board upon a unanimous vote of all [five] members finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole or work release and shall set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.

- (3) When a prisoner has a consecutive sentence for a crime other than aggravated murder, the Board shall determine the parole release date for the consecutive sentence [shall be determined] at the time the Board determines a parole release date on the aggravated murder conviction.

DIVISION 32
AGGRAVATED MURDER

Manner of Hearing

255-32-025 (5/31/85; 5/19/88; 11/1/89; 1/16/91; 5/1/91, temporary)

- (1) The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The prisoner shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) The prisoner shall have the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the Board, at state expense.
- (2) If upon hearing all the evidence, the Full Board upon a unanimous vote of all [five] members finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole or work release and shall set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.
- (3) When a prisoner has a consecutive sentence for a crime other than aggravated murder, the parole release date for the consecutive sentence shall be determined at the time the Board determines a parole release date on the aggravated murder conviction.

Temporary effective 5/1/91 to 10/27/91
superceded by permanent filing 10/15/91

5/1/91

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Aggravated Murder

DIVISION 32
AGGRAVATED MURDER

Manner of Hearing
255-32-025

- (1) The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The prisoner shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) The prisoner shall have the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the Board, at state expense.
- (2) If upon hearing all the evidence, the full Board upon a unanimous vote of all five members finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole or work release and shall set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.
- (3) When a prisoner has a consecutive sentence for a crime other than aggravated murder, the parole release date for the consecutive sentence shall be determined at the time the Board determines a parole release date on the aggravated murder conviction.

DIVISION 32
AGGRAVATED MURDER

Manner of Hearing
255-32-025

- (1) The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The prisoner shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) The prisoner shall have the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the Board, at state expense.

- (2) If upon hearing all the evidence, the full Board upon a unanimous vote of all five members finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole or work release and shall set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.

Permanent effective 11/1/89

DIVISION 32
AGGRAVATED MURDER

Manner of Hearing
255-32-025

- (1) The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The prisoner shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) The prisoner shall have the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the Board, at state expense.
- (2) If upon hearing all the evidence, the Full Board upon a unanimous vote of all five members finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole or work release. Otherwise, the Board shall deny the relief sought in the petition.

DIVISION 32
AGGRAVATED MURDER

255-32-025 Manner of Hearing

- (1) The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
- (a) The prisoner shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) The prisoner shall have the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the Board, at state expense.
- (2) If upon hearing all the evidence, the Board finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole or work release. Otherwise, the Board shall deny the relief sought in the petition.



DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

Inmate's Right to Review Record; Exceptions
255-032-0027

- (1) Except as provided in OAR 255-015-0010, all exhibits to be considered by the Board shall be disclosed to the inmate's attorney or the inmate, if proceeding *pro se*, within a reasonable period of time before the hearing:
- (a) Exhibits not available prior to the hearing shall be made available to the inmate's attorney or to the inmate, if not represented, at the hearing.
 - (b) All material relevant and pertinent to issues before the Board shall be made a part of the record.
 - (c) Any material not made part of the 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.

Stat. Auth.: (ORS 183.335, ORS 192.410 – ORS 192.505, ORS 144.025(3) & ORS 144.050)
History: (02-01-07-NOTICE/TEMP)

Temporary Effective 2-1-07 thru 7-30-07

DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

Subpoenas for a Murder Review Hearing
255-032-0029

- (1) Inmates must make their own arrangements for calling and presenting witnesses. However, upon the request of an inmate, and upon a proper showing of general relevance and reasonable scope of the evidence being sought, the Board may issue subpoenas requiring the attendance and testimony of witnesses.
- (a) Witnesses are not required to appear in person, but may participate via teleconference.
- (1) Witnesses appearing pursuant to subpoena, other than inmates, state officers, or employees of the Board, must receive fees and mileage payable by the Board as prescribed by law for witnesses in ORS 44.415(2), provided the Board certifies that the witness's testimony was relevant and material to the hearing.

Stat. Auth: (ORS 44.415, ORS 183.440)
History: (02-01-07-NOTICE/TEMP)

Temporary Effective 2-1-07 thru 7-30-07

DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

Evidence in a Murder Review Hearing
255-032-0030

- (1) Irrelevant, immaterial, or unduly repetitious evidence will be excluded, and privileges afforded by Oregon law shall be recognized by the presiding member. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs will be admissible. All offered evidence, not objected to, will be received by the presiding member subject to the presiding member's power to exclude irrelevant, immaterial, or unduly repetitious matter.
- (2) In determining whether the evidence is material, relevant or reliable, the Board shall consider the following:
 - (a) The age and source of the documents;
 - (b) The ability of the witness to have observed and had personal knowledge of the incidents;
 - (c) The credibility of the witness and whether the witness has bias or interest in the matter.
- (3) The inmate, the inmate's attorney, or the Board, may object to any evidence. Objections to evidence being introduced by the Board or the inmate may be made and will be noted in the record. The presiding board member must accept an offer of proof for excluded evidence. The offer of proof must contain sufficient detail to allow the Board or a court to determine whether the evidence was properly excluded. The presiding member shall have discretion to decide whether the offer of proof is to be oral or written and at what stage of the proceeding it will be made. The presiding member may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer. The Board may decide the following:
 - (a) To sustain the objection and deny the admission and consideration of the evidence on the grounds that it is not material, relevant or reliable; or
 - (b) To overrule the objection and admit the evidence and in considering the weight given to that evidence, consider the reason for the objection.
- (4) The Board will consider all available relevant evidence for purposes of determining the inmate's likelihood of rehabilitation within a reasonable period of time.
- (5) The Board and the inmate will have the right of cross-examination of each witness that testifies, and will have the right to submit rebuttal evidence.

Stat. Auth: (ORS 163.105, ORS 163.115, ORS 183.450)
History: (02-01-07-NOTICE/TEMP)

DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

Final Orders in Murder Review Hearings
255-032-0031

- (1) Final orders in Murder Review hearings must be in writing, and if adverse to the inmate include the following:
 - (a) Findings of fact – a concise statement of those matters that are either agreed as fact or that, when disputed, are determined by the Board to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based; and
 - (b) Conclusion(s) of law -- applications of the controlling law to the facts found and the legal results of the application.
- (2) If the Board finds that the inmate has proven by a preponderance of the evidence that the inmate is likely to be rehabilitated within a reasonable period of time, then it is not necessary that the final order include findings of fact or conclusions of law.
- (3) The Board may also issue its decision orally on the record at the hearing.

Stat. Auth: (ORS 163.105, ORS 163.115, ORS 183.470)
History: (02-01-07-NOTICE/TEMP)

Temporary Effective 2-1-07 thru 7-30-07

DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

Continuance of Hearings: Cancellation of Hearings
255-032-0032

- (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 not to exceed 60 days to obtain additional information required to assist the Board in its decision.
- (2) If an inmate asks for cancellation of a hearing, it must be for good cause, in writing, and with seven days advance notice. If the board finds that the cancellation request does not fulfill these requirements, the inmate shall not be eligible to request another hearing for 90 days from the date of the scheduled hearing.

Stat. Auth: (ORS 183.341(2))
History: (02-01-07-NOTICE/TEMP)

Temporary Effective 2-1-07 thru 7-30-07

DIVISION 32

**AGGRAVATED MURDER
ORS 163.105**

255-032-0035

Effect of Denying Relief Request

If the Board finds that the inmate is not capable of rehabilitation, the Board shall deny the relief sought in the inmate petition. Not less than two years after the denial the inmate may petition again for a change in the terms of confinement. Further petitions for a change may be made at intervals of not less than two years thereafter.

Statutory Authority: ORS 163.105
History: (5/31/85; 5/19/88, 03/14/97)

Permanent effective 3/14/97

DIVISION 32

AGGRAVATED MURDER
ORS 163.105

Effect of Denying Relief Request
255-32-035

If the Board finds that the [prisoner] inmate is not capable of rehabilitation, the Board shall deny the relief sought in the [prisoner's] inmate's petition. Not less than two years after the denial the [prisoner] inmate may petition again for a change in the terms of confinement. Further petitions for a change may be made at intervals of not less than two years thereafter.

History: (5/31/85; 5/19/88)

Permanent effective 10/29/93

DIVISION 32
AGGRAVATED MURDER

Effect of Denying Relief Request
255-32-035

If the Board finds that the prisoner is not capable of rehabilitation, the Board shall deny the relief sought in the prisoners petition. Not less than two years [thereafter,] after the denial the prisoner may petition again for [relief] a change in the terms of confinement. Further petitions for a change may be made at intervals of not less than two years thereafter.

DIVISION 32
AGGRAVATED MURDER

255-32-035 Effect of Denying Relief Requested

If the Board finds that the prisoner is not capable of rehabilitation, the Board shall deny the relief sought in the prisoners petition. Not less than two years thereafter, the prisoner may petition again for relief.



DIVISION 32
AGGRAVATED MURDER

Record/Notice
255-32-040

Provisions for maintaining a record of the hearings and providing notice of decision shall be those set forth in Divisions 15 and 30 of these rules.

Permanent effective 5/19/88

DIVISION 32
AGGRAVATED MURDER

255-32-040 Record/Notice

Provisions for maintaining a record of hearings
and providing notice of decision shall be those
set forth in Division 30 of these rules.

Permanent effective 5/31/85



DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

Prison Term Hearing to be Held
255-032-0005

- (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 October 23, 1999, 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.
- (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 review date consistent with the terms set forth in OAR 255-032-0011 rather than a projected parole release date.

Statutory Authority: (ORS 144.120, 163.095, 163.115, 419c.340, 419c.364)
History: (5/31/85; 11/1/89; 1/16/91; 10/9/92; 1/15/99, 01-04-00)

Minimum Period of Confinement Pursuant to ORS 163.105 or ORS 163.115
255-032-0010

- (1) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(1) shall be thirty (30) years.
- (2) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(2) prior to December 6, 1984, shall be twenty (20) years.
- (3) The minimum period of confinement for a person sentenced to life for Murder under ORS 163.115 committed on or after October 23, 1999, shall be twenty-five (25) years.

Statutory Authority: (ORS 144.110, 163.105, 163.115)
History: (5/31/85; 5/19/88, 1/15/99, 01-04-00)

255-032-0011

Schedule of Initial Parole Consideration for Inmates Described in OAR 255-032-0005(4)

- (1) The Board shall conduct a hearing pursuant to OAR 255-030-0013, 255-030-0015, 255-030-0021, 255-030-0023 and 255-030-0025 through -0055.
- (2) The Board shall set a review date pursuant to Exhibit P-III, or deny parole, pursuant to OAR 255-035-0030.
- (3) The method established by sections (1) to (3) of OAR 255-035-0021 shall not apply to inmates described in OAR 255-032-0005(4). To determine the unified range for inmates described in OAR 255-032-0005(4) with consecutive sentences for aggravated murder, the Board shall establish the matrix range for each crime by using the inmate's history/risk score pursuant to Exhibit P-III. The unified range shall be the sum of the ranges established under this section.
- (4) The Board may depart from the appropriate matrix range for inmates described in OAR 255-032-0005(4) only upon making a specific finding that there is aggravation or mitigation which justifies departure from the range pursuant to Exhibits E-1 and E-2. The Board shall clearly state on the record the facts and specific reasons for its finding. The Board may give items of aggravation and mitigation different weight and not necessarily balance them one for one. Exhibit D does not apply to inmates described in OAR 255-032-0005(4). The Board cannot apply aggravating or mitigating factors to adjust an inmate's matrix range more than one level up or down. Mitigating factors cannot reduce an inmate's matrix range below the lowest possible range on the matrix.
- (5) If the Board denies parole, the inmate may petition for review after 480 months from the adjusted inception date. If the Board determines, following a review of the inmate's petition and institutional record, there is reasonable grounds to believe that rehabilitation may have occurred and that the possibility of parole should be considered, a review hearing shall be scheduled.
- (6) If the Board sets a review date pursuant to Exhibit P-III, the Board shall conduct a progress review five years prior to the established review date. The progress review does not require a hearing with the inmate; however, the inmate may submit materials to be considered. The purpose of the progress review is to determine the inmate's institutional conduct and rehabilitation efforts since the prison term hearing.
- (7) The Board may determine a parole release date or future review dates any time after the established review date. The Board may order a psychological evaluation. Refusal to submit to an evaluation if one is ordered will be grounds for automatic deferral of the hearing for up to five years or a lesser time if deemed appropriate by the Board. If parole was previously denied, that decision will remain in effect and further petitions for review will not be considered at less than two (2) year intervals.

- (8) At the review hearing, the Board will consider, but is not limited to, the following:
- (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's 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 alcohol;
 - (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;
 - (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.

The decision for the Board shall be whether there are significant indications of reformation and rehabilitation such that the offender does not represent a risk to the community and that it is in the offender's and the community's best interest that he/she be released to the community under conditions of supervision.

If the Board does not make the above finding, the Board shall set a subsequent review hearing date not to exceed five (5) years from the present review.

Statutory Authority: (ORS 163.105)
History: (1/15/99)

Petition/Purpose for Review Hearing
255-032-0015

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after thirty (30) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after October 23, 1999; or
- (2) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed between April 1, 1995 through October 22, 1999; or
- (3) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before April 1, 1995; or
- (4) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2); or
- (5) Anytime after twenty-five (25) years from the date of imposition of confinement pursuant to OAR 255-032-0010(3).

Statutory Authority: (ORS 163.115)

History: (5/31/85; 5/19/88; 1/16/91, 03/01/97, 1/15/99, 01-04-00)

Purpose of Review Hearing
255-032-0020

- (1) The sole issue of the hearing described in OAR 255-032-0015 shall be to determine whether or not the inmate is likely to be rehabilitated within a reasonable period of time. Criteria indicating whether the inmate is likely to be rehabilitated prior to release 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;

02-06-01

Aggravated Murder

- (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;
- (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.

Statutory Authority: (ORS 163.115)
 History: (5/31/85; 10/29/93; 1/15/99)

Manner of Review Hearing
255-032-0025

- (1) The Board shall conduct the proceeding in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) If the inmate is without sufficient funds to employ an attorney, the inmate shall have the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$75 per hour and \$750 per case. The attorney shall send the Board a billing within 90 days of the hearing.
- (2) If upon hearing all the evidence, the Full Board upon a unanimous vote of all members finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.
- (3) When a inmate has a consecutive sentence for a crime other than aggravated murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentences(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the aggravated murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Statutory Authority: (ORS 144.120, 163.105, 163.115, 183-310-550)
 History: (5/31/85; 5/19/88; 11/1/89; 1/16/91; 5/1/91, temporary; 10/15/91; 10/29/93, 01-04-00, 02-06-01)

Effect of Denying Relief Request
255-032-0035

If the Board finds that the inmate is not capable of rehabilitation, the Board shall deny the relief sought in the inmate petition. Not less than two years after the denial the inmate may petition again for a change in the terms of confinement. Further petitions for a change may be made at intervals of not less than two years thereafter.

Statutory Authority: (ORS 163.115)
History: (5/31/85; 5/19/88, 03/01/97)

Record/Notice
255-032-0040

Provisions for maintaining a record of the hearings and providing notice of decision shall be those set forth in Divisions 15 and 30 of these rules.

Statutory Authority: (ORS 183.335, 183.360)
History: (5/31/85)