

**DIVISION 38**

**DANGEROUS OFFENDERS**

**[Parole Consideration Hearing Instead of a Release Date: Reviews**  
**255-38-005**

- (1) Notwithstanding the provisions of Division 60, the Board shall set a date for a parole consideration hearing instead of an initial release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender.
- (2) The Board shall set a date for a parole consideration hearing pursuant to the provisions of Division 35, within six (6) months after commitment to the Department of Corrections' custody.
- (3) The Board shall set the date for parole consideration on the date the Board would otherwise have set parole release if the court had not sentenced the prisoner as a dangerous offender.
- (4) If the Board finds the condition which made the prisoner dangerous still present on the parole consideration hearing date, the Board will schedule reviews once every two (2) years until it finds the condition absent or in remission.
- (5) The Board shall not set a release date unless the psychological or psychiatric report reveals that the condition which made the prisoner dangerous is absent or in remission. The psychologist or psychiatrist shall make the report required under this subsection within two (2) months of the date of its consideration.
- (6) The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other pertinent data. The evaluation should include recommendations for treatment or medication that would assist the prisoner in performing satisfactorily in the community upon release.
- (7) If, at the parole consideration hearing or at any subsequent review, the Board finds the condition absent or in remission, the Board shall order parole release subject to the provisions of 144.125.
- (8) At any hearing or review, the Board shall consider:
  - (a) the examining psychologists/psychiatrist's written report as defined by ORS 144.226(1) and (2);
  - (b) a written report by the executive officer of the penal or correctional institution in which the prisoner has been confined pursuant to the standards set forth in ORS 144.228(2)(b); and
  - (c) all other information available regarding the prisoner.

Temporarily suspended 7/26/93 to 1/24/94  
permanently repealed 10/29/93

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**DANGEROUS OFFENDERS**

- (9) Notwithstanding the above, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner believes that he is no longer dangerous, request a parole consideration hearing prior to the earliest time the prisoner is eligible for parole or a two year review.
- (10) The Board shall review the request pursuant to subsection (9) of this section by administrative file pass. Should the Board find, based upon the request and the information therein, there is a reasonable cause to believe the dangerous condition is in remission, the Board shall conduct a review as soon as reasonably convenient.]

Statutory Authority: ORS 144.226, 144.228

History: (2/1/79; 11/4/81, temporary; 5/19/82; 5/31/85; 5/19/88; 7/1/91, temporary; 12/1/91; 7/26/93, suspended)

Temporarily suspended 7/26/93 to 1/24/94  
permanently repealed 10/29/93

DIVISION 38

DANGEROUS OFFENDERS  
(ORS 144.226, 144.228)

Parole Consideration Hearing Instead of a Release Date; Reviews

255-38-005 (2/1/79; 11/4/81, temporary; 5/19/82; 5/31/85; 5/19/88; 7/1/91,  
temporary; 12/1/91)

- (1) Notwithstanding the provisions of Division 60, the Board shall set a date for a parole consideration hearing instead of an initial release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender.
- (2) The Board shall set a date for a parole consideration hearing pursuant to the provisions of Division 35, within six (6) months after commitment to the Department of Corrections' custody [of the Department of Corrections].
- (3) The Board shall set the date [set] for parole consideration [shall be] on the date [upon which the prisoner] the Board would otherwise [be] have set [for] parole release if the court had not sentenced the prisoner as a dangerous offender.
- (4) If the Board finds the condition which made the prisoner dangerous [is] still present on the parole consideration hearing date, the Board will schedule reviews [will be scheduled at least] once every two (2) years until it finds the condition [is] absent or in remission.
- (5) The Board shall not set a release date unless the psychological or psychiatric report reveals that the condition which made the prisoner dangerous is absent or in remission. The psychologist or psychiatrist shall make the report required under this subsection [shall be made] within two (2) months of the date of its consideration.
- (6) The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other pertinent data. The evaluation should include recommendations for treatment or medication that would assist the prisoner in performing satisfactorily in the community upon release.
- (7) If, at the parole consideration hearing or at any subsequent review, the Board finds the condition [is determined to be] absent or in remission, the Board shall order parole release subject to the provisions of 144.125.
- (8) At any hearing or review, the Board shall consider:
  - (a) the examining psychologist or psychiatrist's written report [of the examining psychiatrist] as defined by ORS 144.226 (1) and (2);

Permanent effective 12/1/91

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**DANGEROUS OFFENDERS  
(ORS 144.226, 144.228)**

- (b) a written report [to be made] by the executive officer of the penal or correctional institution in which the prisoner has been confined pursuant to the standards set forth in ORS 144.228(2)(b); and
  - (c) all other information available regarding the prisoner.
- (9) Notwithstanding the above, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner believes that he is no longer dangerous, request a parole consideration hearing prior to the earliest time the prisoner is eligible for parole or a two year review.
- (10) The Board shall review the request pursuant to subsection (9) of this section by administrative file pass. Should the Board find, based upon the request and the information therein, there is a reasonable cause to believe the dangerous condition is in remission, the Board shall conduct a review as soon as reasonably convenient.

Permanent effective 12/1/91

DIVISION 38

DANGEROUS OFFENDERS  
(ORS 144.226, 144.228)

Parole Consideration Hearing Instead of a Release Date; Reviews

255-38-005 (2/1/79; 11/4/81, temporary; 5/19/82; 5/31/85; 5/19/88; 7/1/91,  
temporary)

- (1) Notwithstanding the provisions of Division 60, the Board shall set a date for a parole consideration hearing instead of an initial release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender.
- (2) The Board shall set a date for a parole consideration hearing pursuant to the provisions of Division 35, within six (6) months after commitment to the custody of the Department of Corrections.
- (3) The date set for parole consideration shall be the date upon which the prisoner would otherwise be set for parole release.
- (4) If the condition which made the prisoner dangerous is still present on the parole consideration hearing date, reviews will be scheduled at least once every two (2) years until the condition is absent or in remission.
- (5) The Board shall not set a release date unless the psychological or psychiatric report reveals that the condition which made the prisoner dangerous is absent or in remission. The report required under this subsection shall be made within two (2) months of the date of its consideration.
- (6) The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other pertinent data. The evaluation should include recommendations for treatment or medication that would assist the prisoner in performing satisfactorily in the community upon release.
- (7) If, at the parole consideration hearing or at any subsequent review, the condition is determined to be absent or in remission, the Board shall order parole release subject to the provisions of 144.125.
- (8) At any hearing or review, the Board shall consider:
  - (a) the written report of the examining psychologist or psychiatrist as defined by ORS 144.226 (1) and (2);
  - (b) a written report to be made by the executive officer of the penal or correctional institution in which the prisoner has been confined pursuant to the standards set forth in ORS 144.228(2)(b); and
  - (c) all other information available regarding the prisoner.

Temporary effective 7/1/91 to 12/1/91  
superceded by permanent filing 12/1/91

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(ORS 144.226, 144.228)**

- (9) Notwithstanding the above, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner believes that he is no longer dangerous, request a parole consideration hearing prior to the earliest time the prisoner is eligible for parole or a two year review.
- (10) The Board shall review the request pursuant to subsection (9) of this section by administrative file pass. Should the Board find, based upon the request and the information therein, there is a reasonable cause to believe the dangerous condition is in remission, the Board shall conduct a review as soon as reasonably convenient.

DIVISION 38

DANGEROUS OFFENDERS

Permissible Action: Setting Parole Consideration Hearing Instead  
of a Release Date, Setting Release Dates and Statutory Reviews  
255-38-005

- [(1) Notwithstanding the provisions of Division 60, the Board shall not set a parole release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender. The Board shall within six (6) months after commitment to the custody of the Corrections Division set a parole consideration hearing date instead of a parole release date as otherwise required by Division 60. The parole consideration hearing date shall be at the earliest time the prisoner would be eligible for release. If the condition (e.g., psychiatric or psychological diagnosis of a present severe emotional disturbance, such a severe personality disorder indicating a propensity toward criminal activity) is still present, reviews will be scheduled at least every two (2) years thereafter. If at the parole consideration hearing or a subsequent review the condition is determined to be absent or in remission, the Board shall set a release date or order parole if the prisoner is otherwise eligible under the rules.]
- [(2) The Board shall set a parole consideration hearing date pursuant to the provisions in Division 35.]
- [(3) At any hearing or review, the Board shall consider the report of the Executive officer of the facility in which the prisoner is confined regarding the prisoner's conduct, attitude, and work record as defined in ORS 144.228(2) and a psychiatric or psychological report received within two (2) months of the hearing.]
- [(a) The Board shall not set a parole release date unless the psychiatric or psychological report reveals that the severe emotional disturbance which has made the prisoner dangerous is no longer present;]
- [(b) If the disturbance is present, the Board may defer release to a specified future time or deny parole under rule 255-35-030.]
- [(1) Notwithstanding the provisions of Division 60, the Board shall set a date for a parole consideration hearing instead of an initial release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender.]

Permanent effective 5/19/88

- (2) The Board shall set a date for a parole consideration hearing pursuant to the provisions of Division 35, within six (6) months after commitment to the custody of the Department of Corrections.
- (3) The date set for parole consideration shall be the date upon which the prisoner would otherwise be set for parole release.
- (4) If the condition which made the prisoner dangerous is still present on the parole consideration hearing date, reviews will be scheduled at least once every two (2) years until the condition is absent or in remission.
- (5) The Board shall not set a release date unless the psychiatric report reveals that the condition which made the prisoner dangerous is absent or in remission. The report required under this subsection shall be made within two (2) months of the date of its consideration.
- (6) The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other pertinent data. The evaluation should include recommendations for treatment or medication that would assist the prisoner in performing satisfactorily in the community upon release.
- (7) If, at the parole consideration hearing or at any subsequent review, the condition is determined to be absent or in remission, the Board shall order parole release subject to the provisions of 144.125.
- (8) At any hearing or review, the Board shall consider:
- (a) the written report of the examining psychiatrist as defined by ORS 144.226 (1) and (2);
  - (b) a written report to be made by the executive officer of the penal or correctional institution in which the prisoner has been confined pursuant to the standards set forth in ORS 144.228(2)(b); and
  - (c) all other information available regarding the prisoner.
- (9) [(4)] Notwithstanding the above, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner believes that he is no longer dangerous, request a parole consideration hearing prior to the earliest time the prisoner is eligible for parole or a two year review.
- (10) The Board shall review the request pursuant to subsection (9) of this section by administrative file pass. Should the Board find, based upon the request and the information therein, [that] there is a reasonable cause to believe the dangerous condition is in remission, the Board shall conduct a review as soon as reasonably convenient. [Order a parole consideration hearing pursuant to the above procedures. Applications received more often than every two years will carry a greater burden in establishing that the request is reasonable.]
- [(5) Support for the application from the superintendent of the institution in which the prisoner has been confined under section (4) of this rule, shall be considered reasonable cause pursuant to section (4) of this rule.]

DIVISION 38

DANGEROUS OFFENDERS

255-38-005 Permissible Action: Setting Parole Consideration Hearing Instead of a Release Date, Setting Release Dates and Statutory [Periodic] Reviews

- (1) Notwithstanding the provisions of Division 60, the Board shall not set a parole release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender. The Board shall within six (6) months after commitment to the custody of the Corrections Division set a parole consideration hearing date instead of a parole release date as otherwise required by Division 60. The parole consideration hearing date shall be at the earliest time the prisoner would be eligible for release. If the condition (e.g., psychiatric or psychological diagnosis of a present severe emotional disturbance, such as severe personality disorder indicating a propensity toward criminal activity) is still present, reviews will be scheduled at least every two (2) years thereafter. If at the parole consideration hearing or a subsequent review the condition is determined to be absent or in remission, the Board shall set a release date or order parole if the prisoner is otherwise eligible under the rules.
- (2) The Board shall set a [date for a] parole consideration hearing date pursuant to the provisions in Division 35. [within the matrix guidelines in Exhibit C and provisions for variations under Rule 255-35-035]
- (3) At any hearing or review, the Board shall consider the report of the executive officer of the facility in which the prisoner is confined regarding the prisoner's conduct, attitude, and work record as defined in ORS 144.228(2) and a psychiatric or psychological report received within two (2) months of the hearing:
  - (a) The Board shall not set a parole release date unless the psychiatric or psychological report reveals that the severe emotional disturbance which has made the prisoner dangerous is no longer present;
  - (b) If the disturbance is present, the Board may defer release to a specified future time or deny parole under Rule 255-35-030.

- (4) Notwithstanding the above, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner believes that he is no longer dangerous, request a parole consideration hearing. Should the Board find based upon the request that there is a reasonable cause to believe the dangerous condition is in remission, the Board shall order a parole consideration hearing pursuant to the above procedures. Applications received more often than every two (2) years will carry a greater burden in establishing that the request is reasonable.
- (5) Support for the application from the superintendent of the institution in which the prisoner has been confined under Section (4) of this rule, shall be considered reasonable cause pursuant to Section (4) of this rule.
- [(6) The Board shall consider at the parole consideration hearing a report pursuant to ORS 144.228 from the executive officer of the penal or correctional institution in which the prisoner has been confined.]

..... Release Date may not be  
Set; Procedures When a Parole Release Date is Not Set] Setting  
Parole consideration hearing instead of a release date, setting  
release dates and periodic reviews.

255-38-005 (1) Notwithstanding the provisions of Division [30]  
60, the Board shall not set a parole release date for a person  
sentenced under ORS 161.725 and 161.735 as a dangerous offen-  
der. [if the record includes a psychiatric or psychological  
diagnosis of a present severe emotional disturbance (e.g.,  
severe personality disorder).] The Board shall within six  
months after commitment to the custody of the Corrections  
set a parole consideration hearing instead of a parole release  
date as otherwise required by Division 60. The parole consid-  
eration hearing shall be at the earliest time the prisoner would  
be eligible for release. If the condition (e.g. psychiatric or  
psychological diagnosis of a present severe emotional disturbance,  
such as severe personality disorder indicating a propensity toward  
criminal activity) is still present, reviews will be scheduled at  
least every two years thereafter. If at the parole consideration  
hearing or a subsequent review the condition is determined to be  
absent or in remission, the Board shall set a release date or order  
parole if the prisoner is otherwise eligible under the rules.

(2) The Board shall set a date for a parole consideration  
hearing within the matrix guidelines in Exhibit C and provi-  
sions for variations under rule 255-35-035.

(3) At any hearing or review, the Board shall consider the  
report of the executive officer of the facility in which the  
prisoner is confined regarding the prisoner's conduct, attitude,  
and work record as defined in ORS 144.228(2) and a psychiatric  
or psychological report<sup>received</sup> [made] within two months of the hearing:

(a) The Board shall not set a parole release date unless the  
psychiatric or psychological report reveals that the severe  
emotional disturbance which has made the prisoner dangerous is  
no longer present.

(b) If the disturbance is present, the Board may defer release to a specified future time or deny parole under rule 255-35-030.

(4) Notwithstanding the above, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner believes that he is no longer dangerous, request a parole consideration hearing. Should the Board find based upon the request that there is a reasonable cause to believe the dangerous condition is in remission, the Board shall order a parole consideration hearing pursuant to the above procedures. Applications received more often than every two years will carry a greater burden in establishing that the request is reasonable.

(4) [Periodic reviews shall be given dangerous offenders pursuant to rule 255-40-005. If, at the review, the psychiatric or psychological reports and the executive officer's report reveals that the severe emotional disturbance which has made the prisoner dangerous is not longer present, the Board shall review the matter and set a parole release date according to Divisions 30 and 35.]

(5) Support for the application from the superintendent of the institution in which the prisoner has been confined under subsection 4 above, shall be considered reasonable cause pursuant to subsection (4) of this section.

(6) The Board shall consider at the parole consideration hearing a report pursuant to ORS 144.228 from the Executive Officer of the penal or correctional institution in which the prisoner has been confined.

Amending and temporarily adopting OAR 255-38-005

Permissible Action: [When a Parole Release Date May Not be Set; Procedures When a Parole Release Date is Not Set] Setting Parole consideration hearing instead of a release date, setting release dates and periodic reviews.

255-38-005 (1) Notwithstanding the provisions of Division [30] 60, the Board shall not set a parole release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender. [if the record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance (e.g., severe personality disorder).] The Board shall within six months after commitment to the custody of the Corrections set a parole consideration hearing instead of a parole release date as otherwise required by Division 60. The parole consideration hearing shall be at the earliest time the prisoner would be eligible for release. If the condition is still present, reviews will be scheduled at least every two years thereafter. If at the parole consideration hearing or a subsequent review the condition is determined to be absent or in remission, the Board shall set a release date or order parole if the prisoner is otherwise eligible under the rules.

(2) The Board shall set a date for a parole consideration hearing within the matrix guidelines in Exhibit C and provisions for variations under rule 255-35-035.

(3) At any hearing or review, the Board shall consider the report of the executive officer of the facility in which the

Temporary effective 11/4/81 to 5/2/82

prisoner is confined regarding the prisoner's conduct, attitude, and work record as defined in ORS 144.228(2) and a psychiatric or psychological report made within two months of the hearing:

(a) The Board shall not set a parole release date unless the psychiatric or psychological report reveals that the severe emotional disturbance which has made the prisoner dangerous is no longer present.

(b) If the disturbance is present, the Board may defer release to a specified future time or deny parole under rule 255-35-030.

(4) Notwithstanding the above, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner believes that he is no longer dangerous, request a parole consideration hearing. Should the Board find based upon the request that there is a reasonable cause to believe the dangerous condition is in remission, the Board shall order a parole consideration hearing pursuant to the above procedures. Applications received more often than every two years will carry a greater burden in establishing that the request is reasonable.

(4) [Periodic reviews shall be given dangerous offenders pursuant to rule 255-40-005. If, at the review, the psychiatric or psychological reports and the executive officer's report reveals that the severe emotional disturbance which has made the prisoner dangerous is not longer present, the Board shall review the matter and set a parole release date according to Divisions 30 and 35.]

(5) Support for the application from the superintendent of the institution in which the prisoner has been confined under

subsection 4 above, shall be considered reasonable cause pursuant to subsection (4) of this section.

(6) The Board shall consider at the parole consideration hearing a report pursuant to ORS 144.228 from the Executive Officer of the penal or correctional institution in which the prisoner has been confined.

Temporary effective 11/4/81 to 5/2/82

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 38 — BOARD OF PAROLE

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DIVISION 38

DANGEROUS OFFENDERS

**Permissible Action: When a Parole Release Date May Not be Set;  
Procedures When a Parole Release Date is Not Set**

255-38-005 (1) Notwithstanding the provisions of division 30, the Board shall not set a parole release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender if the record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance (e.g., severe personality disorder).

(2) The Board shall set a date for a parole consideration hearing within the matrix guidelines in Exhibit C and provisions for variations under rule 255-35-035.

(3) At any hearing or review, the Board shall consider the report of the executive officer of the facility in which the prisoner is confined regarding the prisoner's conduct, attitude, and work record as defined in ORS 144.228(2) and a psychiatric

or psychological report made within two months of the hearing:

(a) The Board shall not set a parole release date unless the psychiatric or psychological report reveals that the severe emotional disturbance which has made the prisoner dangerous is no longer present.

(b) If the disturbance is present, the Board may defer release to a specified future time or deny parole under rule 255-35-030.

(4) Periodic reviews shall be given dangerous offenders pursuant to rule 255-40-005. If, at the review, the psychiatric or psychological reports and the executive officer's report reveals that the severe emotional disturbance which has made the prisoner dangerous is not longer present, the Board shall review the matter and set a parole release date according to divisions 30 and 35.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79

Permanent effective 2/1/79



**DIVISION 38**

**DANGEROUS OFFENDERS**

**[The Parole Consideration Hearing Packet**  
**255-38-010**

The Parole Consideration Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) psychological or psychiatric evaluations, and reports pursuant to ORS 144.226 to ORS 144.228;
- (4) documents listed in OAR 255-38-005(8);
- (5) correspondence;
- (6) field parole analysis report; and
- (7) court orders.]

Statutory Authority: ORS 144.228

History: (5/19/88; 7/1/91, temporary; 12/1/91; 7/26/93, suspended)

Temporarily suspended 7/26/93 to 1/24/94  
permanently repealed 10/29/93

DIVISION 38

**DANGEROUS OFFENDERS  
(ORS 144.226, 144.228)**

The Parole Consideration Hearing Packet

255-38-010 (5/19/88; 7/1/91, temporary; 12/1/91)

The Parole Consideration Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) [Oregon State Hospital] psychological or psychiatric evaluations, and reports pursuant to ORS 144.226 to ORS 144.228
- (4) documents listed in OAR 255-38-005(8);
- (5) correspondence;
- (6) field parole analysis report; and
- (7) court orders.

Permanent effective 12/1/91

DIVISION 38

**DANGEROUS OFFENDERS**  
(ORS 144.226, 144.228)

The Parole Consideration Hearing Packet

255-38-010 (5/19/88; 7/1/91, temporary)

The Parole Consideration Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) [Oregon State Hospital] psychological or psychiatric evaluations, and reports pursuant to ORS 144.226 to ORS 144.228
- (4) documents listed in OAR 255-38-005(8);
- (5) correspondence;
- (6) field parole analysis report; and
- (7) court orders.

Temporary effective 7/1/91 to 12/1/91  
superceded by permanent filing 12/1/91  
**Dangerous Offenders**

DIVISION 38  
DANGEROUS OFFENDERS

The Parole Consideration Hearing Packet  
255-38-010

The Parole Consideration Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) Oregon State Hospital [psych] psychiatric evaluations, and reports pursuant to ORS 144.226 to ORS 144.228
- (4) documents listed in OAR 255-38-005(8);
- (5) correspondence;
- (6) field parole analysis report; and
- (7) court orders.

Permanent effective 5/19/88

This rule should have been completely underlined