

The Oregon Administrative Rules contain OARs filed through ~~June 15, 2009~~

BOARD OF PAROLE AND POST-PRISON SUPERVISION

DIVISION 32

AGGRAVATED MURDER

255-032-0005

Prison Term Hearing to Be Held

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

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

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

(4) Inmates, who were juveniles and waived to adult court pursuant to ORS 419C.340 through 419C.364, and were under the age of 17 years at the time of their crime(s), and were convicted of Aggravated Murder, per ORS 163.095, and whose crimes were committed after October 31, 1989 and prior to April 1, 1995, shall receive a prison term hearing. At the hearing, the Board shall set a review date consistent with the terms set forth in OAR 255-032-0011 rather than a projected parole release date.

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

Stats. Implemented: ORS 163.105

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1991, f. &

cert. ef. 1-16-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 4-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 4-1999, f. & cert. ef. 5-18-99; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 1-2003, f. & cert. ef. 5-13-03

255-032-0010

Minimum Period of Confinement Pursuant to ORS 163.105 or ORS 163.115

(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 June 30, 1995, shall be twenty-five (25) years.

Stat. Auth.: ORS 144.110, ORS 163.105 & ORS 163.115

Stats. Implemented: ORS 144, ORS 163.105 & ORS 163.115

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1999, f. & cert. ef. 5-18-99; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 1-2003, f. & cert. ef. 5-13-03

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 255-030-0055.

(2) The Board shall set a review date pursuant to Exhibit P-~~IIII~~, 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 are 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~~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 ~~lessor~~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.

[**NOTE:** 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.]

[ED. NOTE: The exhibits referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 144.110(2)(b), ORS 163.105(1), ORS 161.620 & ORS 144.780

Stats. Implemented:

Hist.: PAR 4-1999, f. & cert. ef. 5-18-99

255-032-0015

Petition/Purpose for Review Hearing

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 completion~~ 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 on or between 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 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).

Stat. Auth.: ORS 163.115

Stats. Implemented: ORS 163.105 (1977-1983); ORS 163.105 (1984-1994) ; ORS 163.105 (1995-1999); ORS 163.105 (2001)

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 4-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 4-1999, f. & cert. ef. 5-18-99; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 1-2003, f. & cert. ef. 5-13-03; PAR 3-2004(Temp), f. & cert. ef. 4-15-04 thru 10-11-04; PAR 6-2004, f. & cert. ef. 6-14-04

255-032-0020

Purpose of Review Hearing

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:

- (1) 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;
- (2) The inmate's institutional employment history;
- (3) The inmate's institutional disciplinary conduct;
- (4) The inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate personality which may promote or hinder conformity to law;
- (5) The inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcoholic liquor;
- (6) The inmate's prior criminal history, including the nature and circumstances of previous offenses;
- (7) The inmate's conduct during any previous period of probation or parole;
- (8) 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;

(9) 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;

(10) 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.

Stat. Auth.: ORS 144.110(2)(b), ORS 163.105(1), ORS 161.620 & ORS 144.780
Stats. Implemented: ORS 144.050, ORS 144.140, ORS 144.226, ORS 144.228 & ORS 144.232

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 4-1999, f. & cert. ef. 5-18-99

255-032-0022

Murder Review Hearings Notice

The Board's contested case notice issued pursuant to ORS 183.415 must include:

(1) A statement that the sole issue to be considered shall be whether or not the inmate is likely to be rehabilitated within a reasonable period of time, and that the inmate shall have the burden of proof, by a preponderance of the evidence;

(2) A statement of the inmate's right to be represented by counsel; and if the inmate is without sufficient funds, counsel will be appointed by the Board at Board expense;

(3) A statement that the Board has authority and jurisdiction to hold a hearing on the issue pursuant to ORS 163.105(2) or 163.115(5); and

(4) A statement of rights of the inmate at the hearing.

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

Stats. Implemented:

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

255-032-0025

Manner of Review Hearing

(1) The proceedings shall be governed by the procedures for records, disclosure, and notice outlined in Divisions 15 and 30.

(2) At the hearing, the inmate has:

(a) 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 right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$100 per hour and \$1000 per case. The attorney shall send the Board a billing within 90 days of the hearing.

(c) The right to a subpoena issued by the Board upon a showing of the general relevance and reasonable scope of the evidence sought, and pursuant to Board rules.

(3) The initial testimony of each witness shall not exceed ten 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.

(4) Pursuant to ORS 144.120, the crime victims have the right to appear at the hearing, or to submit a written statement concerning the crime and the person responsible. For the purposes of these rules, victim means any person determined by the prosecuting attorney, the court, or the Board to have suffered direct financial, psychological, or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor. The victim may be represented by counsel or a designee of the victim's choice. If a victim chooses to speak, his/her statement should be concluded within 15 minutes. The Board may allow the victim to exceed that period when additional time is needed.

(5) Pursuant to ORS 144.120, the district attorney from the committing jurisdiction has the right to appear at the hearing, or to submit a written statement concerning the crime and the inmate. The district attorney may be represented by a designee if he/she wishes. The district attorney's statement should be concluded within 15 minutes. The Board may allow the statement to exceed that period when additional time is needed.

(6) [(3)] If upon hearing all the evidence, the full Board, upon a unanimous vote of all members, or by such other vote as is specified in statute, finds that 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. The Board's final order granting or denying relief shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Board's order.

(7) [(4)] When an 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.

Stat. Auth.: ORS 144.120, 163.105, 163.115, 183.415

Stats. Implemented:

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 3-1991(Temp), f. & cert. ef. 5-1-91; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 3-2001, f. & cert. ef. 2-6-01; PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; PAR 5-2007, f. & cert. ef. 7-30-07

255-032-0026

Manner of Review Hearing For Hearings Requested Before June 28, 2007

~~(1) OAR 255-032-0022 to 255-032-0032 apply only to hearings conducted for inmates who:~~

~~(a) Were eligible for a murder review hearing prior to June 28, 2007; and~~

~~(b) Petitioned the Board for a hearing under ORS 163.105 or 163.115 prior to June 28, 2007; and~~

~~(c) Were not granted a hearing on the petition that was filed prior to June 28, 2007.~~

~~(2) The Board shall conduct the proceeding in the manner prescribed for a contested case hearing under ORS Chapter 183 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 per hour and \$1000 per case. The attorney shall send the Board a billing within 90 days of the hearing.~~

~~(3) 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.~~

~~(4) 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.~~

~~(5) 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.~~

~~(6) 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.~~

~~(7) 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.~~

~~(8) 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.~~

~~(9) When an 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.~~

~~Stat. Auth.: ORS 144.120, 163.105, 163.115, 183.415~~

~~Stats. Implemented:~~

~~Hist.: (PAR 5-2007, f. & cert. ef. 7-30-07, / /2009 repealed)~~

255-032-0027

Inmate's Right to Review Record; Exceptions

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:

(1) 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.

(2) All material relevant and pertinent to issues before the Board shall be made a part of the record.

(3) Any material not made part of the record shall be separated and a statement to that effect shall be placed in the record. The ~~b~~Board shall follow the criteria for denial or disclosure of records set out in OAR 255-015-0010.

Stat. Auth.: ORS 183.335, 192.410 - 192.505, 144.025(3) & 144.050

Stats. Implemented:

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

255-032-0029

Subpoenas for a Murder Review Hearing

(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 on behalf of the inmate.~~

(2) Witnesses are not required to appear in person unless good cause can be shown why an in-person appearance is necessary. ~~Witnesses, but~~ may participate via teleconference.

(3) 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, 183.440

Stats. Implemented:

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

255-032-0030

Evidence in a Murder Review Hearing

(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, 163.115, 183.450

Stats. Implemented:

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

255-032-0031

Final Orders in Murder Review Hearings

(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, 163.115, 183.470

Stats. Implemented:

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

255-032-0032

Continuance of Hearings: Cancellation of Hearings

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

Stats. Implemented:

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

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.

Stat. Auth.: ORS 163.105

Stats. Implemented: ORS 144, ORS 163.105 & ORS 183.310 - ORS 183.550

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 4-1997, f. 3-11-97, cert. ef. 3-14-97

255-032-0040

Record/Notice

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.

Stat. Auth.: ORS 144

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

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [August 11, 2009]
by the

Date prior to or same as filing date

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

to become effective August 21, 2009 through February 16, 2010
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Amending division 94 to expand the jurisdiction and to add definitions

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

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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

ADOPT: 255-094-0001

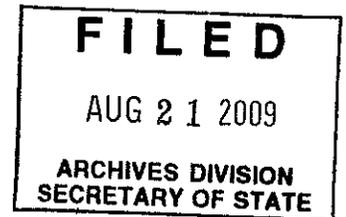
AMEND & RENUMBER: 255-094-0000 to 255-094-0005

AMEND: 255-094-0010, 255-094-0015, 255-094-0020

SUSPEND:

BOPPPS

SEP 14 2009



Stat. Auth.: ORS 144.085, SB 1145 (passed in 1995 Legislative session), Ch. 163 & 924 (1999 OL)

Other Auth.: None

Stats. Implemented: None

RULE SUMMARY

These rules are being amended to add a "Definition" section, and to include the Local Supervisory Authority in the rules.

Adding 255-094-0001 to provide definition of Releasing Authority

Renumbering 255-094-0000 to 255-094-0005 to better organize the rules of Division 94 and because of the new rule added at the beginning of the division.


Authorized Signer

Darcey L. Baker
Printed name

September 8, 2009
Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.
ARC 940-2005

BOARD OF PAROLE AND POST-PRISON SUPERVISION

DIVISION 94

ACTIVE AND INACTIVE PAROLE AND POST-PRISON SUPERVISION FOR OFFENDERS UNDER THE JURISDICTION OF THE BOARD OF PAROLE AND POST-PRISON SUPERVISION OR LOCAL SUPERVISORY AUTHORITY

255-094-0001

Definitions

(1) Releasing Authority means:

(a) The Board or its designee for:

(A) Any felony offender who received a sentence of more than twelve (12) months in the custody of the Department of Corrections; or

(B) Any felony offender who received a sentence of twelve (12) months or less but who also has an additional sentence(s) of greater than twelve (12) months.

(i) If an offender is on post-prison supervision for multiple sentences which include a sentence that exceeds twelve (12) months ("Board case") and sentence of twelve (12)-months or less ("Local Supervisory Authority case"), the Board will maintain jurisdiction of the post-prison supervision of the Local Supervisory Authority case until the Board's active involvement in the Board case(s) expires. Following expiration of the Board's case(s), the Board will maintain jurisdiction over the post-prison supervision of the Local Supervisory Authority case(s) until an offender is re-released following revocation of the post-prison supervision for the Local Supervisory Authority case(s), or until the Local Supervisory Authority petitions to assume jurisdiction, whichever comes first. Jurisdiction will fall under the Local Supervisory Authority at that point.

(ii) If the Board issued the order of post-prison supervision for an offender whose only sentence was twelve (12) months or less, jurisdiction will remain with the Board until petition by the Supervisory Authority to assume jurisdiction or upon re-release following revocation of the post-prison supervision for that sentence; whichever comes first.

(b) The Local Supervisory Authority or its designee for any felony offender whose crime was committed after November 1, 1989, was sentenced by the court to twelve (12) months or less, and who does not have an additional sentence of more than twelve (12) months for a felony.

255-094-0005

Period of Active Parole or Post-Prison Supervision

(1) The minimum periods of active parole and post-prison supervision shall be:

- (a) Six (6) months for offenders whose crimes were committed on or after November 1, 1989, and whose crimes fall within sentencing guidelines crime categories 1, 2 and 3;
- (b) Twelve (12) months for offenders whose crimes were committed on or after November 1, 1989, and whose crimes fall within sentencing guidelines crime categories 4, 5, 6, 7, 8, 9 and 10;
- (c) For offenders whose crimes were committed after December 4, 1986, but prior to November 1, 1989, the period of active supervision shall be set by determining the equivalent sentencing guidelines crime category and applying sub-section (a) and (b) above, subject to the exceptions in section (2) below;
- (d) For offenders whose crimes were committed prior to December 4, 1986, the Releasing Authority shall apply the rules in effect at the time the crime was committed.

(2) The following minimum periods of active parole and post-prison supervision are exceptions to section (1) of this rule:

- (a) Three (3) years for offenders sentenced as dangerous offenders under ORS 161.725 to 161.737;
- (b) Three (3) years for offenders sentenced for murder under ORS 163.115;
- (c) Three (3) years for offenders sentenced for aggravated murder under ORS 163.105;
- (d) Offenders sentenced for Rape I, Sodomy I, Sexual Penetration I, Sexual Penetration 2, Sex Abuse 2, and Attempts of these which occurred on or after September 29, 1991, shall serve active supervision to the expiration of the indeterminate sentence;
- (e) Offenders sentenced for Sex Abuse I or Attempted Sex Abuse I for crimes occurring on or after November 4, 1993, shall serve active supervision to the expiration of the indeterminate sentence;
- (f) Offenders sentenced for Sodomy II or Rape II for crimes occurring on or after October 23, 1999, shall serve active supervision to the expiration of the indeterminate sentence.
- (g) Offenders sentenced for Sex Abuse I or Attempted Sex Abuse I, for crimes which occurred on or after November 1, 1989, and prior to November 4, 1993, will serve active supervision in accordance with the period of post-prison supervision set by the sentencing court and the sentencing guidelines grid;

(h) Offenders sentenced for Rape I, Sodomy I, Sexual Penetration I, Sexual Penetration 2, or Sexual Abuse I, which occurred on or after December 4, 1986, and prior to November 1, 1989, shall serve a minimum of 36 months active supervision or to expiration of the sentence which ever comes first;

(i) Offenders sentenced for Robbery in the First Degree under ORS 164.415 which occurred on or after June 30, 1995, shall serve a minimum period of 36 months active supervision; and

(j) Offenders sentenced for Arson in the First Degree under ORS 164.325 which occurred on or after June 30, 1995, shall serve minimum period of 36 months active supervision; and

(k) Offenders sentenced as sexually violent dangerous offenders pursuant to Chapter 163 (1999 OR Laws) for crimes committed on or after October 23, 1999, shall serve active supervision for life.

(3) Upon completion of the specified period of active parole or post-prison supervision, the supervisory authority shall place the offender on inactive supervision status subject to the exceptions in OAR 255-094-0010, and notify the Releasing Authority of the status change.

(4) Upon revocation of supervision and rerelease to the community, the period of active supervision shall be as provided in OAR 255-094-0001(1) & (2) provided that the period of active supervision does not exceed the sentence expiration date.

(5) After a rereleased offender has completed the minimum active supervision period as provided in OAR 255-094-0001(1)(2) and has substantially fulfilled the conditions of supervision, the supervising officer may place the offender on inactive supervision.

(6) Inmate/offenders found to be sexually violent dangerous offenders pursuant to OAR 255-060-0008(6) shall be subject to intensive supervision for the full period of parole or post-prison supervision as defined in OAR 255-005.

Stat. Auth.: ORS 144.085, SB 1145 (passed in 1995 Legislative session), Ch. 163 & 924 (1999 OL)

Stats. Implemented: ORS 144.085, SB 1145, OL 1995 & Ch. 163 & 924, 1999 OL

Hist.: PAR 8-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 3-2000, f. & cert. ef. 1-25-00; PAR 4-2000, f. & cert. ef. 2-15-00; PAR 2-2001, f. & cert. ef. 1-12-01; PAR 2-2005, f. & cert. ef. 4-25-05

255-094-0010

Exceptions to Inactive Supervision and Return to Active Supervision

(1) No sooner than thirty days prior to the expiration of the offender's active period of supervised parole or post-prison supervision or during a period of inactive supervision, the supervising officer or designee may send to the Releasing Authority a report on offenders who have not substantially fulfilled the supervision conditions, or who have failed to complete payment of

restitution. The supervising officer or designee may request continuation on active supervision, or return to active supervision if it is in the community's or the offender's best interest. This report shall include:

- (a) An evaluation of the offender's compliance with supervision conditions;
- (b) The status of the offender's court ordered monetary obligations, including fines and restitution, if any;
- (c) The offender's employment status;
- (d) The offender's address;
- (e) Treatment program outcome;
- (f) Any new criminal activity;
- (g) Other relevant information;
- (h) A recommendation that the Releasing Authority extend the active supervision period or return the offender to active supervision.

(2) After reviewing the report, if the Releasing Authority or its designated representative finds the offender has not substantially fulfilled the supervision conditions, or it is in the offender's or the community's best interest, the Releasing Authority may order that the offender remain on active supervision or return to active supervision for the remainder of the supervision period set by the sentencing court or set by law. The Releasing Authority shall send the offender notice of the continuation or return to active supervision.

(3) Once extended or returned to active supervision, the supervising officer may place the offender on inactive supervision when the offender has substantially fulfilled the conditions of supervision and completed restitution payments, or active supervision is no longer in the best interest of the offender and the community.

(4) When an offender being supervised in Oregon is placed on inactive supervision, the general and special conditions of supervision remain in effect with the following exceptions:

- (a) General condition #1: Pay supervision fees (fines, restitution or other fees previously ordered by the Releasing Authority remain in effect).
- (b) Special Conditions specifically deleted by the Releasing Authority.

(5) An offender being supervised via Interstate Compact is not eligible to be placed on unsupervised status.

Stat. Auth.: ORS 144.085 & SB1145 (passed during 1995 Legislative session)
Stats. Implemented: ORS 144.085 & SB 1145, OL 1995
Hist.: PAR 8-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 2-2005, f. & cert. ef. 4-25-05

255-094-0015

Return to Active Supervision

- (1) An offender is subject to arrest for violations of conditions of supervision while on either active or inactive supervision.
- (2) The Releasing Authority may return an offender to active supervision for the remainder of the supervision period set by the sentencing court or set by law when the Releasing Authority receives a report from the supervising agency showing good cause why the inactive status is no longer in the offender's best interest or the best interest or safety of the community.
- (3) If the supervising agency has good cause to return an offender to active supervision, and the whereabouts of the offender are unknown, the supervising agency may request a warrant from the Releasing Authority.
- (4) When an offender is returned to active supervision status, all general conditions plus all previously imposed special conditions shall be in effect.

Stat. Auth.: ORS 144.085 & SB 1145, OL 1995
Stats. Implemented: ORS 144.085 & SB 1145, OL 1995
Hist.: PAR 8-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 3-2000, f. & cert. ef. 1-25-00; PAR 2-2001, f. & cert. ef. 1-12-01

255-094-0020

Sentence Expiration

- (1) During the pendency of violation proceedings, the running of the supervision period both active and inactive, the sentence is stayed, and the Releasing Authority retains jurisdiction over the offender until the proceedings are resolved. The Releasing Authority may grant credit toward the sentence for time the offender serves incarcerated pending the violation proceedings.
- (2) These rules shall not preclude more than one extension or renewal of active parole or post-prison supervision, however an extension or renewal period may not exceed the maximum sentence.
- (3) After expiration of the sentence of an offender on parole or post-prison supervision, the Releasing Authority shall send written notice of the expiration to the offender and the supervisory authority.

(4) For offenders sentenced as sexually violent dangerous offenders pursuant to Chapter 163 (1999 OR Laws) for crimes committed on or after October 23, 1999, upon receipt of a court order resentencing the offender and terminating post-prison supervision, the Releasing Authority shall send written notice of the termination of post-prison supervision to the offender and supervisory authority.

Stat. Auth.: ORS 144.085, SB 1145 (1995 OL) & Ch. 163, 1999 OL

Stats. Implemented:

Hist.: PAR 8-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 3-2000, f. & cert. ef. 1-25-00; PAR 4-2000, f. & cert. ef. 2-15-00

EXHIBIT J

(ORS 144.102, 144.270, 144.275, 181.595)
OAR 255-060-0008, 255-065-0005, 255-070-0001-0015, 255-075-0002, 255-075-0004)

GENERAL/SPECIAL PAROLE AND POST-PRISON SUPERVISION CONDITIONS

Parole/Post-Prison Supervision is subject to all listed General Conditions and the designated Special Conditions. Prior to release the Board may modify the conditions at any time. After parole/post-prison supervision has commenced, conditions may be added upon your signed consent or after opportunity to be heard, orally or in writing.

Parole or Post-Prison Supervision may be revoked for violation of any of these conditions and/or you may be returned when parole or post-prison supervision is not in your best interest or the best interest of society.

The Board may, at its discretion, sanction violations of Parole or Post-Prison Supervision Conditions; sanctions may include returning you to the Department of Corrections custody.

As used in this exhibit, the following words have the following meanings: "Offender" means persons released to parole or post-prison supervision. "Parole Officer" shall also mean the supervisory authority under the post-prison supervision system.

GENERAL CONDITIONS

1. Pay supervision fees, fines, restitution or other fees ordered by the Court.
2. Not use or possess controlled substances except pursuant to a medical prescription.
3. ~~Submit to testing of breath or urine for controlled substance or alcohol use if the offender has a history of substance abuse or if there is a reasonable suspicion that the offender has used alcohol or controlled substances. Submit to testing of breath or urine for controlled substance or alcohol use if the offender has a history of substance abuse or if there is a reasonable suspicion that the offender has illegally used controlled substances.~~
4. ~~Participate in a substance abuse evaluation, treatment, or aftercare as directed by the supervising officer and follow the recommendations of the evaluator or treatment provider, if there are reasonable grounds to believe there is a history of substance abuse. Participate in a substance abuse evaluation as directed by the supervising officer and follow the recommendations of the evaluator if there are reasonable grounds to believe there is a history of substance abuse.~~
5. Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency. Offender automatically waives extradition if offender absconds supervision out of State.
6. If physically able, find and maintain gainful full-time employment, approved schooling, or a full-time combination of both.
7. Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency.
8. Permit the supervising officer to visit the offender or the offender's residence or work site, and to conduct a walk-through of the common areas and of the rooms in the residence occupied by or

under the control of the offender. Report as required and abide by the direction of the supervising officer.

9. Consent to the search of person, vehicle or premises upon the request of a representative of the supervising officer if the supervising officer has reasonable grounds to believe that evidence of a violation will be found, and submit to fingerprinting or photographing, or both, when requested by the Department of Corrections or a county community corrections agency for supervision purposes.
10. Obey all laws, municipal, county, state and federal.
11. Promptly and truthfully answer all reasonable inquiries by the Department of Corrections or a county community corrections agency.
12. Not possess weapons, firearms, or dangerous animals.
13. Report as required and abide by the direction of the supervising officer.

SPECIAL CONDITIONS

1. Offender shall be evaluated by a mental health evaluator and follow all treatment recommendations.
2. Offender shall continue to take any psychiatric or psychotropic medication that was prescribed prior to or at the time of release from custody until otherwise directed by a physician. At the direction of the parole officer, the offender shall undergo a psychiatric evaluation and take any medications recommended. The offender shall comply with a medication monitoring program at the request of the parole officer.
3. Without prior written approval of the PO, a prohibition against contacting a person under 18 years of age.
~~3. Offender shall have no contact with minor females and shall not be present more than one time, without the prior written approval from the board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate. The offender shall also not be present, without the prior written approval of the board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.~~
4. Without prior written approval of the PO, a prohibition against being present more than one time at or on property adjacent to a place primarily intended for the use by persons under 18 years of age or places where they regularly congregate.
~~4. Offender shall have no contact with minor males and shall not be present more than one time, without the prior written approval from the board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate. The offender shall also not be present, without the prior written approval of the board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.~~
5. Offender shall submit to random polygraph tests as part of a sex offender surveillance program. Failure to submit to the tests may result in return to custody. Specific responses to the tests shall not be the sole basis for return to custody.
6. Offender shall enter and complete or be successfully discharged from a recognized and approved sex offender treatment program at the direction of the PO, which may include polygraph and/or plethysmograph testing. The offender shall abide by all rules and conditions of the sex offender

~~treatment program. Offender shall abide by a prohibition of sexually deviant materials, activities or behavior that the offender may use for the purpose of deviant sexual arousal, unless otherwise allowed by the PO in writing. Offender shall enter and complete or be successfully discharged from a recognized and approved sex offender treatment program which may include polygraph and/or plethysmograph testing. The offender shall abide by all rules and conditions of the sex offender treatment program. Offender shall abide by a prohibition of sexually deviant materials, activities or behavior that the offender may use for the purpose of deviant sexual arousal, unless otherwise allowed by the Parole Officer in writing.~~

7. Offender shall pay court ordered restitution to the clerk of the court of the county of sentencing (ORS 137.106, OAR 255-065-0005).
8. If required to report as a sex offender under ORS 181.595, report with the Department of State Police, a Chief of Police, a county Sheriff, or the Supervising Agency when supervision begins, within 10 days of a change in residence and once a year within 10 days of the person's date of birth.
9. Offender shall not possess or use intoxicating beverages.
10. Other: Special conditions may be imposed that are not listed above when the Board of Parole and Post-Prison Supervision determines that such conditions are necessary.
11. Offender shall have no contact direct or indirect with those listed below:
12. Consent to search of computer or other electronic equipment upon the request of the supervising officer, or their representative, if the supervising officer has reasonable grounds to believe that evidence of a violation will be found.
13. Sex Offender Package:
 - (a) Agreement to comply with any curfew set by the board, the supervisory authority or the supervising officer.
 - (b) A prohibition against contacting a person under 18 years of age without the prior written approval of the board, supervisory authority or supervising officer.
 - (c) A prohibition against being present more than one time, without the prior written approval of the board, supervisory authority or supervising officer, a place where persons under 18 years of age regularly congregate.
 - (d) In addition to the prohibition under subparagraph (C) of this paragraph, a prohibition against being present, without the prior written approval of the board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.
 - (e) A prohibition against working or volunteering at a school, day care center, park, playground or other place where persons under 18 years of age regularly congregate.
 - (f) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board, supervisory authority or supervising officer. The offender shall abide by all rules and conditions of the sex offender treatment program. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.
 - (g) A prohibition against any contact with the victim, directly or indirectly, unless approved by the victim, the person's treatment provider and the board, supervisory authority or supervising officer.
 - (h) Unless otherwise indicated for the treatment required under subparagraph (F) of this paragraph, a prohibition against viewing, listening to, owning or possessing any sexually stimulating visual or auditory materials that are relevant to the person's deviant behavior.
 - (i) Agreement to consent to a search of the person or the vehicle or residence of the person upon the request of a representative of the board or supervisory authority if the

representative has reasonable grounds to believe that evidence of a violation of a condition of post-prison supervision will be found.

- (j) Participation in random polygraph examinations to obtain information for risk management and treatment. The person is responsible for paying the expenses of the examinations. The results of a polygraph examination under this subparagraph may not be used in evidence in a hearing to prove a violation of post-prison supervision.
- (k) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.
- (l) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.
- (m) A prohibition against residing in any dwelling in which another sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or supervising officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or a designee of the board. As soon as practicable, the supervising officer of a person subject to the requirements of this subparagraph shall review the person's living arrangement with the persons' sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subparagraph:
 - (i) "Dwelling" has the meaning given that term in ORS 469.160.
 - (ii) "Dwelling" does not include a residential treatment facility or a halfway house.
 - (iii) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.
- (n) If the person is in post-prison following conviction of a sex crime, as defined in ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the board or supervisory authority, if requested by the victim, shall include as a special condition of the person's post-prison supervision that the person not reside within three miles of the victim.