

Black BINDER

BOARD RULES

2000 →

2000

AK

14-00

PERMANENT ADMINISTRATIVE RULES

Certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 01-03-00 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 01-04-00 Rulemaking Notice was published in the 12-01-99 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

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

AMEND:
255-001-0005

REPEAL:

number: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.
Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

183.335
Stat. Auth.: ORS
House Bill 3035 (Oregon Legislative Assembly – 1999 Regular Session)
Other Authority
None
Stats. Implemented: ORS

RULE SUMMARY

These amendments are needed to bring the Board's rules into conformity with House Bill 3035 passed into law by the 1999 Oregon Legislature and requires state agencies to submit a copy of any new rules or amendments to legislative counsel 49 days before the agency adopts the new rule or amendment.

Michael R. Washington

Authorized Signer _____ Date 01-04-2000

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 183.335

Other Authority: House Bill 3035 (Oregon Legislative Assembly – 1999 Regular Session)

Statutes Implemented: None

Need for the Rule(s): These amendments are needed to bring the Board's rules into conformity with House Bill 3035 passed into law by the 1999 Oregon Legislature and requires state agencies to submit a copy of any new rules or amendments to legislative counsel 49 days before the agency adopts the new rule or amendment.

Documents Relied Upon:

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

11-15-99

Authorized Signer and Date

DIVISION 1

RULEMAKING PROCEDURE ORS 144.050, 144.140, 183.325-355

Notice of Rulemaking: Time and Manner 255-001-0005

- (1) Prior to the permanent adoption, amendment, or repeal of any rule, the chairperson of the Board shall give notice of the proposed action at least twenty-one (21) days prior to the effective date:
 - (a) in the Secretary of State's Bulletin referred to in ORS 183.360;
 - (b) By mailing a copy of the notice to the legislators specified in ORS 183.335(14) at least 49 days before the effective date of the rule; and
 - (c) by mailing a copy of the notice at least 28 days prior to the effective date to persons on the Board mailing list established pursuant to ORS 183.335(7); and
 - (d) by mailing or furnishing a copy of the notice to:
 - (A) Oregon State Bar Bulletin;
 - (B) Associated Press;
 - (C) Release Services, County Community Corrections Offices, State of Oregon Department of Corrections;
 - (D) Oregon District Attorneys Association;
 - (E) Oregon Criminal Defense Attorneys Association;
 - (F) All County Public Defender Offices;
 - (G) All County Law Libraries;
 - (H) Attorney General's Office;
 - (I) State Public Defender;
 - (J) Oregon Supreme Court Law Library;
 - (K) University of Oregon Law Library;
 - (L) Northwestern School of Law, Lewis and Clark College;
 - (M) College of Law, Willamette University;
 - (N) American Civil Liberties Union;
 - (O) The Oregonian, Portland, Oregon;
 - (P) Pendleton Eastern Oregonian, Pendleton, Oregon;
 - (Q) The Statesman Journal, Salem, Oregon;
 - (R) Medford Mail Tribune;
 - (S) The Register Guard, Eugene, Oregon; and
 - (T) Others upon formal written request of the Board.
- (2) When the Board has filed a temporary rule with the Secretary of State's Office, the Board shall mail a copy of the certificate and order and a copy of the temporary rule to the persons on the Board's mailing list, and to those listed in subsection (1)(c) of this section.
- (3) Notwithstanding subsection (2) of this section, when the Board has filed a temporary rule with the Secretary of State's Office, newspapers and media service shall only receive a copy of the certificate and order.

Statutory Authority: 183.335, 183.360
History: (2/1/79; 5/31/85; 5/19/88; 10/9/92; 4/4/94; 8/15/94, 01-04-00)

Rulemaking Procedure
255-001-0010

- (1) The Board shall adopt all new and revised rules in accordance with the provisions of ORS Chapter 183, the Oregon Attorney General's Model Rules of Procedure and ORS 192.610 to 192.690. The Board will use only those sections of the Model Rules which relate to rulemaking.
- (2) The Board shall hold a business meeting, pursuant to Division 20, to consider a change in the rules after the Board has filed a notice of intent.
- (3) The Board, in its discretion, may limit participation by inmates in the proposed adoption, amendment or repeal of any rule to written submissions. The Board shall make reasonable accommodations for inmates for who the Board finds cannot submit written submissions.

Statutory Authority: ORS 183.335(3)(b)
History: (2/1/79; 5/31/85; 5/19/88; 10/9/92; 4/4/94, 11-15-99)

Contents of Notice of Rulemaking when
Public Hearing will be held Only if Requested
255-01-015

History: (2/1/79; 5/31/85; repealed)

Obtaining Copies of Board Rules
255-001-0016

- (1) The Board shall provide a free copy of its rules to all Oregon Department of Corrections inmate libraries and to any state agency or legislative entity that requests a copy.
- (2) Others who desire copies of Board's rules shall make their requests in writing. The Board will charge ten (.10) cents per page to cover the costs for individual rules. The Board must receive payment in advance. Prisoners who request copies of rules shall send authorization to withdraw funds from their inmate trust account and the Board shall verify that the account contains sufficient funds to cover the cost.

Statutory Authority:
History: (5/31/85; 5/19/88; 10/9/92)

Draft to Legislative Counsel
255-001-0020

Prior to a proposed change in the rules, including temporary rules, the Board may submit a draft of the proposed action to Legislative Counsel.

Statutory Authority:
History: (2/1/79; 5/19/88; 12/6/88)

Postponing Intended Action
255-00-025

History: (2/1/79; 5/31/85; repealed)

Conduct of Hearing
255-01-030

History: (2/1/79; 5/31/85; repealed)

Presiding Officer's Report
255-01-035

History: (2/1/79; 5/31/85; repealed)

Action of the Board
255-01-040

History: (2/1/79; 5/31/85; repealed)

Notice of Board Action: Certification to Secretary of State; Submitting Copy to Legislative Counsel
255-01-045

History: (2/1/79; 5/31/85; repealed)

Petition to Adopt, Amend, or Repeal Rule: Contents of Petition; Filing of Petition
255-01-050

History: (2/1/79; 5/31/85; repealed)

Temporary Rules
255-01-055

History: (2/1/79; 5/31/85; repealed)

01-04-00

Rulemaking Procedure

Joint Rules With Other Agencies
255-001-0060

- (1) The Board shall adopt rules jointly with other administrative agencies as required by statute.
- (2) The Board may adopt rules jointly with another administrative agency when necessary to implement its own rules.
- (3) Jointly adopted rules shall be specifically designated as joint rules, and the appropriate agency shall be identified in the rules.

Statutory Authority:

History: (5/19/88)

AK

1/401

Secretary of State
Certificate Order for Filing

PERMANENT ADMINISTRATIVE RULES

Verify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 01-03-00 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 01-04-00 Rulemaking Notice was published in the 12-01-99 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

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

AMEND:
255-032-0005, 255-032-0010, 255-032-0015, 255-032-0020

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing

144.120, 144.125, 163.095, 163.105, 163.115
Stat. Auth.: ORS

House Bill 3586 (Oregon Legislative Assembly - 1999 Regular Session)
Other Authority

None
Stats. Implemented: ORS

RULE SUMMARY

The amendment of the proposed rules creates a parole system for offenders convicted of Murder and sentenced to life in prison with a judicial minimum of 25 years. These amendments are needed to bring the Board's rules into conformity with House Bill 3586 passed into law by the 1999 Oregon Legislature.

Michael R. Washington 01-04-2000
Authorized Signer Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

FILED
JAN 03 2000
ARCHIVES DIVISION
SECRETARY OF STATE

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.120, 144.125, 163.095, 163.105, 163.115

Other Authority: House Bill 3586 (Oregon Legislative Assembly – 1999 Regular Session)

Statutes Implemented: None

Need for the Rule(s): To create a parole system for offenders convicted of Murder and sentenced to life in prison with a 25-year minimum. Also, to bring the Board's rules into conformity with House Bill 3586 passed into law by the 1999 Oregon legislature.

Documents Relied Upon: House Bill 3586 (Oregon Legislative Assembly – 1999 Regular Session)

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

11-15-99

Authorized Signer and Date

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)

01-04-00

Aggravated Murder

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;

01-04-00

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 \$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 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)

01-04-00

Aggravated Murder

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)

lbb

✓ 25-00

Secretary of State
Certificate Order for Filing

PERMANENT ADMINISTRATIVE RULES

certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 11-24-99 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Salem, OR 97310
Address

to become effective 01-25-00 Rulemaking Notice was published in the 08-01-99 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

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

AMEND: 255-075-0015, 255-075-0079
255-094-0000, 255-094-0015, 255-094-0020

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

144.085, 144.103, 133.107, 144.340, 144.350
Stat. Auth.: ORS

House Bill 2218, House Bill 2302, House Bill 2327 (OR Laws 1999)
Other Authority

ORS 144.085
Stats. Implemented: ORS

RULE SUMMARY

To establish effective and efficient procedures for setting periods of active supervision for parole and post-prison supervision. Also, to establish effective and efficient procedures for setting periods of inactive supervision for parole and post-prison supervision.

The Amendment of the Proposed Rules which allows offenders returning to Oregon from another State for parole/pps violations to be held on a local correctional facility or in a Department of Corrections facility pending violation hearing;

Adds Rape II and Sodomy II to ORS 144.085 and 144.103 extending the length of pps to the end of the indeterminate sentences;

Established lifetime pps for offenders found to be sexually dangerous offenders by a court at the time of sentencing; and

Establishes that sexually violent dangerous offenders are subject to intensive supervision. These amendments are needed to bring the Board rules into conformity with House Bill 2218, 2302, and 2327 passed into law by the 1999 Oregon Legislature.

Michael R. Washington 01-25-00
Authorized Signer Date

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.085.

Other Authority: None

Statutes Implemented: ORS 144.085

Need for the Rule(s): To establish effective and efficient procedures for setting periods of active supervision for parole and post-prison supervision. Also, to establish effective and efficient procedures for setting periods of inactive supervision for parole and post-prison supervision.

Documents Relied Upon: None.

Fiscal and Economic Impact: We are not aware of any fiscal or economic affect these rules may have on the Board, other Agencies, Local Government, and the identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole & Post-Prison Supervision enacted these rules and changes during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.


Authorized Signer and Date

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.085, 144.103, 144.107, 144.340, 144.350

Other Authority: House Bill 2218, House Bill 2302, House Bill 2327

Statutes Implemented: None

Need for the Rule(s):

The Amendment of the Proposed Rules which allows offenders returning to Oregon from another State for parole/pps violations to be held in a local correctional facility or in a Department of Corrections facility pending violation hearing;

Adds Rape II and Sodomy II to ORS 144.085 and 144.103 extending the length of pps to the end of the indeterminate sentences;

Establishes lifetime pps for offenders found to be sexually dangerous offenders by a court at the time of sentencing;

Establishes that sexually violent dangerous offenders are subject to intensive supervision, are needed to bring the Board rules into conformity with House Bills 2218, 2302, and 2327 passed into law by the 1999 Oregon Legislature.

Documents Relied Upon: House Bill 2218, House Bill 2302, House Bill 2327 (Oregon Legislative Assembly – 1999 Regular Session.

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

10-13-99

Authorized Signer and Date

DIVISION 75

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

255-075-0001

Definitions

- (1) Administrative Sanction means local, structured, or intermediate sanctions as those terms are used in OAR 291-58-010 etal, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.

- (2) Sanction Authority means:
 - (a) The Board or its designee for:
 - (1) Any felony offender who received a sentence of more than twelve (12) months in the custody of the Department of Corrections; or
 - (2) 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.

 - (A) If an offender is on post-prison supervision for multiple sentences which include a sentence that exceeds twelve (12) months ("Board case") and a less than twelve (12)-month sentence ("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.

 - (B) 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.

Statutory Authority: ORS 144.140
History: (2/28/85; 3/14/88, temporary; 5/19/88, repealed, temporary 11/14/97;
05/11/98; temporary 07/13/98, 08/27/98

01-25-00 PERM

Conditions Violations

255-075-0002

Suspension of Parole or Post-Prison Supervision; Citation to Appear

- (1) When the supervising officer or other person informs the Sanction Authority of reasonable grounds to believe that a person has violated the conditions of parole or post-prison supervision, or that supervision is no longer in the best interests of the offender or the community, and that the revocation of parole or post-prison supervision may be justified or, in the case of parole only, an extension of parole may be justified, the Sanction Authority may:
 - (a) suspend the running of the sentence and the parole or post-prison supervision term and order the offender arrested and detained pending a violation hearing; or
 - (b) issue a citation to appear at a violation hearing without first suspending parole or the post-prison supervision term or ordering detention.
- (2) The Sanction Authority may issue a suspend and detain warrant or a citation to appear at a violation hearing.
- (3) The Sanction Authority may authorize, in writing, that its designated representative may issue citations to appear at a violation hearing.

Statutory Authority: ORS 144.025(3), 144.106, 144.331, 144.334

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary; 6/24/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0003

Criteria for Allowing Offender to Remain in Community Pending Hearing

In determining whether to allow an offender to remain in the community pending the violation hearing and final order, the Sanction Authority may consider:

- (1) the seriousness of the allegations and the risk to the offender or the community;
- (2) the likelihood of the offender absconding or failing to appear at the hearing;
- (3) the availability of resources in the community such as residence or employment;
- (4) any recommendation by the parole and post-prison supervision officer.
- (5) The Sanction Authority may release offenders detained under a Sanction Authority warrant, after the violation hearing, when recommending local sanctions or intervention and continuance of parole or post-prison supervision.

Statutory Authority: ORS 144.331(2)

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary, 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98)

255-075-0004

Guidelines for "Best Interest" Return

When the Sanction Authority determines that an offender's release on parole or post-prison supervision is not in the best interest of the offender or in the best interest of society, the Sanction Authority may return the offender to custody. This type of return to custody may apply when:

- (1) The offender is suffering from an emotional or psychological disturbance which makes the offender dangerous to self or others if left in the community. The following behavior may indicate a dangerous emotional or psychological disturbance:
 - (a) showing a present capacity to carry out any statements or threats of violence against the offender or the community; or
 - (b) circumstances and conduct similar to that which led to the initial incarceration; or
- (2) The offender's behavior cannot be adequately controlled if left in the community.
- (3) Best interest returns for offenders on post-prison supervision shall not exceed 90 days, and must be approved by the Sanction Authority.

Statutory Authority: ORS 144.270(2)(g), 144.350(2)

History: (3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97;
05/11/98)

255-075-0005

Hearing Requirement: Procedure

- (1) Except as otherwise provided by these rules, before the Board can revoke parole or extend active parole supervision for offenders whose crimes occurred on or after December 4, 1986, and before November 1, 1989 (BM10), the Board or Hearings Officer shall conduct a hearing.
- (2) When the offender waives the hearing and/or consents to the order, the Board need not conduct a hearing when the Board extends supervision for offenders whose crimes occurred on or after December 4, 1986 and before November 1, 1989 (BM10).
- (3) Except in the cases set forth in OAR 255-075-0015 and section (6) of this rule, the Sanction Authority shall impose administrative sanctions or shall initiate a hearing within fifteen (15) days of arrest or detention for the violation of parole or post-prison supervision conditions.
- (4) If an in-custody violation hearing and a final order cannot be accomplished within fifteen (15) days, a supervising officer or Hearings Officer shall request a non-bailable suspend and detain warrant from the Sanction Authority

- (5) Before a Hearings Officer can order more than sixty (60) days of local confinement without the offender's consent, the Hearings Officer shall conduct a violation hearing. Unless the Hearings Officer recommends a sanction, which is beyond his or her authority to order, the Hearings Officer may issue a final order subject to approval of the Sanction Authority, but immediately effective. If the recommended sanction exceeds sixty (60) days, it must be approved by the Supervisory Authority.
- (6) A hearing is not required when an administrative sanction or intervention involves local confinement of ninety (90) days or less when the offender consents to the sanctions or interventions. If the offender contests the allegations, the offender may request a hearing.

Statutory Authority: ORS 144.106(3), 144.108, 144.331(2), 144.343, 144.350, 144.370
History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88;
10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92
temporary 11/14/97; **05/11/98**)

255-075-0006

Method of Hearing

The Hearing Officer may conduct hearings by teleconference or video conference. The Hearing Officer shall conduct hearings in person or by video conference in the following situations:

- (1) the alleged violations are contested and the offender or the offender's attorney shows that the witness's credibility, including observation of the witness's demeanor is necessary;
- (2) physical exhibits may be part of the record and viewing the exhibits is essential, and the exhibits can not be viewed in some other manner;
- (3) there are unusual circumstances not covered by this section, determined at the Hearing Officer's discretion.

Statutory Authority: ORS 144.035(5), 144.343(1)
History: (11/4/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88,
temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0007

Designated Representative Conducts Hearing

- (1) The Sanction Authority or its designated representative shall conduct the probable cause and violation hearing.
- (2) "Designated representative" shall include those persons designated by the Sanction Authority, and trained and certified as Hearings Officers.

Statutory Authority: ORS 144.104(1), 144.331, 144.343
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89;
10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0008

Locations of Hearing

History: (11/19/84, temporary, expired)

255-075-0010

**Board Action Upon Notification of Alleged Parole Violation:
Criteria for; Release of Parolee Pending Hearing**

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0015

When Offender in Another Jurisdiction: Return

- (1) The Sanction Authority may suspend parole or post-prison supervision and may order the offender's return to custody in Oregon without first conducting a hearing when:
 - (a) the offender has, without permission, left the state to which the Sanction Authority released the offender on parole or post-prison supervision, and is in custody in another jurisdiction;
 - (b) the offender is in custody in another correctional facility;
 - (c) the offender has absconded from supervision and the offender's whereabouts are unknown; or
 - (d) the offender has been convicted of a new crime.
- (2) Except as provided in ORS 144.345(2) and OAR 255-075-0005(6), the Sanction Authority or the Hearings Officer shall conduct a violation hearing after the offender returns to custody in Oregon. For purposes of these rules, the arrest date is the date the offender is returned to custody in Oregon.
- (3) Persons retaken and returned to this state from outside the state upon order or warrant of the Department of Corrections, the State Board of Parole & Post-Prison Supervision or the Governor, for violation of conditions of parole or post-prison supervision, shall be detained in a Department of Corrections facility or a local correctional facility pending any hearing concerning the alleged violation and ultimate disposition by the State Board of Parole & Post-Prison Supervision.
- (4) Persons retaken and returned to this state from outside the state upon order or warrant of a local supervisory authority for violation of conditions of post-prison supervision may be detained in a local correctional facility pending a hearing concerning the alleged violation and ultimate disposition by the local supervisory authority.

Statutory Authority: ORS 144.340, 144.345(2), 144.349

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/15/92, temporary; 4/15/92, temporary 11/14/97; 05/11/98, 01-25-00)

255-075-0020

Rights of a Parolee at a Formal Hearing

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0025

Rights at Hearing

- (1) The designee of the Sanction Authority (eg. Hearings Officer) shall provide the offender a written notice of the hearing at least three (3) working days prior to the hearing.
- (2) The hearing notice shall include:
 - (a) a Notice of Rights as provided in ORS 144.343(3);
 - (b) a written statement of alleged violations; [and]
 - (c) any documents or evidence which form the basis of the alleged violations; and
 - (d) the date and location of the hearing.
- (3) The offender may elect to waive the three working day notification period prior to the hearing and begin the hearing immediately.
- (4) If the offender elects to waive the three working day notification period, the Hearings Officer shall obtain a written waiver or tape record the offender's verbal statement waiving the three working day notification period.
- (5) The Hearings Officer shall ascertain whether the offender has understood the allegations and the offender's rights and whether the offender can read, hear and understand the language of the proceedings. The Hearings Officer shall postpone the hearing if needed assistance is not readily available.

Statutory Authority: ORS 144.343(3)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0026

Waiver of Hearing

- (1) In all cases, the offender may waive the right to a hearing by signing a Notice of Rights form. A refusal to participate in the hearings process shall also constitute a waiver of the right to a hearing.
- (2) When the purpose of a hearing is to consider a parole or post-prison supervision violation, the waiver of the right to a hearing acknowledges that the offender violated the conditions in whole or in part and that the Sanction Authority may order local sanctions, may modify conditions of supervision, may extend active supervision or that the Board may order return to prison, without further hearing.

- (3) When the purpose of the hearing is to modify parole or post-prison supervision conditions or, in the case of parole, to consider extending active supervision, the waiver of the hearing indicates acceptance of the modifications.
- (4) If the offender waives the right to a hearing, the offender may offer a written or verbal statement pertaining to the dispositional phase of the violation hearing.
- (5) If the hearing is conducted via teleconference or video conference, the offender shall submit written waiver of the right to a hearing to the Hearings Officer within five (5) days after the waiver.
- (6) The person delivering the Notice of Rights shall tape record or document in writing any statement made at the time of waiver.
- (7) If the offender waives the right to a hearing, the Hearings Officer or Supervising Officer shall submit to the Sanction Authority the following:
 - (a) a Notice of Rights form;
 - (b) any written offender statements and/or a summary of oral statements;
 - (c) the Hearing Summary, including a history of local interventions and sanctions ordered and a recommendation regarding disposition;
 - (d) any supporting information, including the supervising officer's report and other documentary evidence submitted.

Statutory Authority: ORS 144.050, 144.140; 144.343
 History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 4/15/92, temporary 11/14/97; **05/11/98**)

255-075-0030
Rejection of Waiver

If the Sanction Authority is not satisfied that the offender knowingly and intelligently waived his or her hearing rights or if it needs more information before making its decision, it may order a new hearing, to be conducted by the Hearings Officer or the Sanction Authority.

Statutory Authority: ORS 144.050, 144.140, 144.343
 History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0031
Hearings Process

- (1) The Hearings Officer shall conduct the violation hearing reasonably near the place of the alleged violation or the place of confinement or may conduct the hearing by teleconference or video conference.

- (2) Unless the Hearings Officer finds good cause on the record, the parole and post-prison supervision officer shall present information and evidence at the hearing and arrange for the presence of witnesses for the state. The parole and post-prison supervision officer shall make dispositional recommendations.
- (3) The Hearings Officer shall make a tape recording of the hearing.

Statutory Authority: ORS 144.050, 144.106, 144.140, 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary, 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0035

Representation/Ability to Pay Attorney Fees

- (1) In all cases, the offender is entitled to representation by an attorney at the offender's own expense.
- (2) For Board cases only, if the Hearings Officer or the Board deems the offender indigent, and unable to pay for an attorney, the offender is entitled to a Board appointed attorney if the Board or Hearings Officer further finds that the offender has made a timely and colorable claim that:
 - (a) the offender has not committed the alleged violation;
 - (b) there are substantial or complex mitigating circumstances which make revocation inappropriate even if the offender admits violation or it is a matter of record; or
 - (c) the offender appears incapable or representing himself/herself.
- (3) For Board cases only, if the Hearings Officer appoints an attorney, the Hearings Officer shall notify the Board of payment to be made to the appointed attorney. When the Board approves payment for a Board appointed attorney, it shall not exceed \$40 per hour and \$200 per case. The attorney shall send the Board a billing within 90 days of the violation hearing.
- (4) When the Hearings Officer or Board refuses to appoint an attorney, the Hearings Officer or Board shall state the grounds for refusal in the record.
- (5) For Local Supervisory Authority cases, the Local Supervisory Authority may set its own criteria for appointment of an attorney and shall set its own standards for payment of appointed attorneys.

Statutory Authority: ORS 144.343

History: (2/1/79; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 10/15/91; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0036

Subpoenas; Witnesses

- (1) Offenders shall make their own arrangements for calling and presenting witnesses. However, upon the request of any party to the hearing, and upon a proper showing of the relevance and reasonable scope of the testimony to be offered, the Sanction Authority or Hearings Officer shall issue subpoenas requiring the attendance and testimony of witnesses. In addition, the Sanction Authority or the Hearings Officer may subpoena documents when relevant.
- (2) The Board shall reimburse fees and mileage as prescribed by law to witnesses appearing under subpoena, other than the parties, state officers or employees, provided the Hearing Officer or Sanction Authority certifies that the witness's testimony was relevant and material to the hearing.
- (3) The offender may present witnesses who have relevant information, and has the right to confront the persons or witnesses who have presented information against the offender.
- (4) The Hearings Officer or Sanction Authority may deny confrontation of witnesses by the offender if that confrontation would subject the witness to the risk of harm.
- (5) If the Hearings Officer or Sanction Authority denies confrontation of witnesses, the Hearings Officer or Sanction Authority shall state the reason(s) for the decision and conduct an independent examination of the witness on the record.

Statutory Authority: ORS 144.347

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98)

255-075-0040

Compelling of Witnesses: Contempt

The Sanction Authority or Hearings Officer or party requesting a subpoena, may seek contempt proceedings in the circuit court of any county against any person refusing to honor the subpoena.

Statutory Authority: ORS 144.347(4)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 10/9/92; 05/11/98)

255-075-0042

Probable Cause; Preliminary Hearing; Deferral of Revocation Hearing

- (1) The Sanction Authority or Hearings Officer may use evidence received and the order of a court at a preliminary hearing or a conviction or other reliable, relevant information to establish that probable cause exists to believe that the offender has committed a violation of a condition of parole or post-prison supervision.
- (2) Should the offender waive the right to a preliminary hearing, the waiver shall constitute a waiver of a probable cause hearing.

- (3) When the Sanction Authority or Hearings Officer defers completion of a violation hearing until a trial is over and until the court or the parole and post-prison supervision officer notifies the Sanction Authority or Hearings Officer of the final disposition of the case, the Sanction Authority or Hearings Officer shall use a finding of probable cause to support the decision to suspend and detain an offender charged with the commission of a new crime.
- (4) Notwithstanding subsection (3) of this section, the Sanction Authority or Hearings Officer shall not extend a deferral following a finding of probable cause for a period greater than 120 days from the date of the preliminary hearing or waiver, unless the offender is released from jail pending final disposition of the case, or waives in writing further delay. Subsequent waivers shall not extend beyond 120 days.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (11/25/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98)

255-075-0045

Evidence; Subpoena of Documents

- (1) The Sanction Authority or Hearings Officer may receive the following as evidence at a violation hearing:
 - (a) oral testimony under oath;
 - (b) affidavits or other sworn statements;
 - (c) letters;
 - (d) documents;
 - (e) reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole and post-prison supervision officers, doctors, psychologists, attorneys);
 - (f) uncertified copies of letters, documents, or reports shall be admissible in a revocation hearing if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable;
 - (g) evidence of criminal activity even when charges have been dismissed, not brought, or the offender has been acquitted at trial;
 - (h) reliable hearsay evidence; or
 - (i) any evidence determined to be material, relevant, and reliable, regardless of its nature.
- (2) Upon the request of any party to the hearing, the Sanction Authority, or Hearings Officer, may issue a subpoena duces tecum upon a proper showing of relevant and reasonable scope of the documentary or physical evidence being sought. Otherwise, the offender shall make the offender's own arrangements for presenting evidence.

- (3) The Sanction Authority or Hearings Officer may exclude documents or physical evidence upon making a finding that such evidence would pose a hazard to facility security or would not assist in the resolution of the allegation(s). The reason for exclusion shall be made part of the record.
- (4) The Sanction Authority or Hearings Officer may classify documents or physical evidence as confidential upon making a finding that revealing such evidence would pose a threat to the safety of the person providing the evidence.
- (5) The Sanction Authority or Hearings Officer shall make evidence received without disclosing the identity of the witness a sealed part of the record.
- (6) When a witness is unavailable, the Sanction Authority or Hearings Officer may receive statements in the form of documentary evidence. The Sanction Authority or Hearings Officer shall determine at an in-camera hearing the reliability and relevance of the absent witness's statement.

Statutory Authority: ORS 144.343, 144.347
 History: (2/1/79; 11/25/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92; 05/11/98)

255-075-0046
Postponement

- (1) The Sanction Authority or Hearings Officer with Sanction Authority approval, may postpone a hearing for good cause and for a reasonable period of time, which shall not exceed 120 days.
- (2) The criteria for "good cause" includes, but is not limited to:
 - (a) the preparation of defense;
 - (b) illness or unavailability of the offender or other persons;
 - (c) gathering of additional evidence; or
 - (d) avoiding interference with an ongoing police investigation or pending prosecution.
- (3) The Sanction Authority, or Hearings Officer with Sanction Authority approval, may make a finding of a violation and defer disposition for a reasonable time which may exceed 120 days if such delay is reasonably necessary for the offender, the Sanction Authority or Hearings Officer to obtain information relevant to disposition decision.

Statutory Authority: ORS 144.050, 144.140, 144.343
 History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/18/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0050
Procedure for Receiving Evidence if Good Cause Exists Not to Require Confrontation or Disclosure of an Informant's Identity

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

01-25-00 PERM

Conditions Violations

255-075-0055

Reopening Hearings: Criteria; Procedure

- (1) After the completion of a violation hearing, the Sanction Authority or Hearings Officer may reopen a hearing if substantial new information is discovered which was not known or could not be anticipated at the time of the hearing and which would significantly affect the outcome of the hearing.
- (2) The Sanction Authority or Hearings Officer shall send the offender notice of the decision to reopen the hearing and the new information to be considered. The re-opened hearing shall conform to the procedures of this Division.

Statutory Authority: ORS 144.050, 144.140, 144.343
History: (2/1/79; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0056

Hearings Record

- (1) The hearings record shall include:
 - (a) a Hearings Report Summary;
 - (b) a written statement of alleged violations;
 - (c) supporting materials, including documentary evidence admitted;
 - (d) a signed Notice of Rights;
 - (e) the Order of Parole or Post-Prison Supervision;
 - (f) a notice of time and place of hearing;
 - (g) a tape recording of the advice of rights and the hearing;
 - (h) the supervising officer's report, including recommended dispositions; [and]
 - (i) the history of supervision, local sanctions and modifications; and
 - (j) if any, the written waiver of the offender's right to three working days notice of the hearing.
- (2) The Hearings Officer shall retain the tape recording used in subsection (1)(g) of this rule for two (2) years.

Statutory Authority: ORS 144.343
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0060

Record of Parole Revocation Hearing

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0065

Ten Day Period for Offender's Evidence and Exceptions

- (1) Within a reasonable time after the hearing, the Hearings Officer shall provide his or her report to the offender.
- (2) Unless the offender waives the right to respond, the offender shall have 10 days from the date the Hearings Officer mails the report to the offender to submit evidence and make written exceptions to the report for the Sanction Authority's consideration.
- (3) If the offender waives the right to respond, the Hearings Officer shall include the waiver in the Hearings Officer's report to the Sanction Authority.
- (4) When a Hearings Officer makes a final order pursuant to Board authority granted in writing, the offender shall not have a ten day period within which to submit evidence and written exceptions. The offender may appeal a Hearings Officer's order under Division 80 of these rules.

Statutory Authority: ORS 144.343(7)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0067

Final Action: Authority to Impose Administrative (Local) Sanctions, Revoke Supervision or Modify Conditions of Supervision

- 1) If an offender waives a hearing after receipt and review of the notice of rights, as provided in OAR 255-075-0005(6) a supervising officer may order administrative sanctions, including a local confinement sanction not exceeding thirty (30) days. The Local Supervisory Authority's designee may review the decision to order a local confinement sanction if the offender's underlying sentence was for 12 months or less. The Board may review the decision if the underlying sentence was more than 12 months.
- 2) After a hearing, or if an offender waives a hearing after receipt of the notice of rights, as provided in OAR 255-075-0005(6), a Hearings Officer or agency designee may order administrative sanctions, including a local confinement sanction not exceeding sixty (60) days. The Hearings Officer or agency designee shall send a copy of the final order and report to the Sanction Authority and, upon request, shall send the record of the hearing as described in OAR 255-075-0056. The Hearings Officer or agency designee shall retain the record for two (2) years.

- 3) After a hearing, or waiver, the Board may order administrative sanctions for offenders originally sentenced to more than 12 months, and a Local Supervisory Authority designee may order administrative sanctions for offenders originally sentenced to 12 months or less. The Board or a Local Supervisory Authority designee ordered local administrative confinement sanction may not exceed ninety (90) days.
- 4) The Board (for offenders originally sentenced to more than 12 months) or the Local Supervisory Authority designee (for offenders originally sentenced to 12 months or less) may override any sanction ordered by a supervising officer, agency designee or Hearings Officer.
- 5) Administrative Sanctions, including local confinement shall be applied in accordance with the Department of Corrections rules for structured, intermediate sanctions, OAR 291-58-010 et al., subject to jointly drafted revisions by the Department of Corrections and the Board.
- 6) If an administrative sanction is not sufficient to address the violation or to protect the public, the Sanction Authority may revoke supervision for a period(s) as set out in OAR 255-075-0079, or deny re-release for offenders on parole.
- 7) Conditions of supervision may be modified at any time by the Sanction Authority when necessary for the offender or public safety. If an offender objects to the modification, administrative review must be made within 45 days of the mailing date on the Board order or receipt of a written order by the Local Supervisory Authority.

Statutory Authority: ORS 144.106, 144.343

History: (4/30/92, temporary; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98)

255-075-0070

Final Action: Procedure

- (1) When a case comes before the Board or Supervisory Authority or designee for decision, the Board or Supervisory Authority shall consider the Hearings Officer's report, and the offender's evidence and exceptions. The Board or Supervisory Authority or designee shall enter a decision, and shall record the decision in accordance with the sanction/intervention guidelines, OAR 291-58-010 et al. The Board shall vote in accordance with Exhibit K.
- (2) The Board or Supervisory Authority may adopt or reject any or all the Hearings Officer's findings and recommendations. The Board or Supervisory Authority may find a violation of conditions not alleged, if the evidence admitted at the hearing supports the finding and the evidence is uncontroverted. The final order shall indicate the findings adopted by the Board or Supervisory Authority.
- (3) A copy of the final order shall be forwarded to the offender with notice of the right to administrative and judicial review.
- (4) All final orders of the Board are subject to Administrative Review by the Board prior to seeking judicial review.

Statutory Authority: 144.125, 144.343

History: 2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/1/88; 10/18/88; 4/19/89, temporary; 10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0072

Re-release Order After Revocation

- (1) At the time of a revocation decision, the Sanction Authority shall make an order concerning re-release.
- (2) In the re-release order, the Sanction Authority may:
 - (a) continue parole or post-prison supervision pursuant to 255-075-0075 or 255-075-0080; or
 - (b) set the re-release date in accordance with rule 255-075-0079; or
 - (c) The Board may defer the re-release decision pending a future disposition hearing for offenders on parole.
- (3) Upon notification that parole or post-prison supervision has terminated by operation of ORS 144.345(2), the Board shall apply subsection (2) of this rule.
- (4) Revocation of post-prison supervision stops the period of post-prison supervision from running while the offender is serving time in custody for a revocation sanction. The re-release order following a revocation sanction shall include a re-calculation of the post-prison supervision expiration date to account for the time the offender was in custody serving the revocation sanction.
- (5) The sum of the time actually served on the original incarceration sentence, all days served as a revocation sanction, and the time served in the community on post-prison supervision cannot exceed the maximum indeterminate sentence for the offense(s) for which the offender is on post-prison supervision.

Statutory Authority: ORS 144.346, 144.395

History: (4/19/89, temporary; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98 9-22-99)

255-075-0075

Offenders Convicted of New Crime in This or Another Jurisdiction

- (1) If an offender has violated parole or post-prison supervision as a result of a conviction of a new crime and the court has ordered a prison term to the Department of Corrections, parole or post-prison supervision terminates without a violation hearing by operation of ORS 144.345(2).
- (2) Upon release from custody, if the Oregon sentence has not expired, Oregon supervision shall resume either in another jurisdiction under Interstate Compact or in Oregon. If, in preparing the re-release plan, the Department of Corrections cannot arrange supervision under Interstate Compact, the offender shall report to the appropriate Supervisory Authority for supervision.
- (3) The Sanction Authority shall make extradition decisions on a case-by-case basis in cooperation with the holding jurisdiction.

- (4) If the offender absconded supervision, the Sanction Authority shall count the inoperative time from the date the Sanction Authority issued its arrest and detention warrant to the arrest date in Oregon or if arrested out of state, upon return to Oregon custody. The Board shall forward the dates to the Department of Corrections for use in recalculating the sentence good time and expiration dates for those offenders under the Board's jurisdiction. For those not under the Board's authority, the inoperative time shall be calculated by the Supervisory Authority's designee.

Statutory Authority: ORS 144.345, 144.380, 144.610-.622
History: (2/1/79; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89;
4/15/92, temporary 11/14/97; 05/11/98)

255-075-0076

Designation of Parole Failure

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88, repealed)

255-075-0078

Commencement Date for Prison Term Following a Violation

- (1) The commencement date for a new commitment which is concurrent to an incarceration sanction for a violation of parole or post-prison supervision shall be the sentencing date for the new crime.
- (2) The commencement date for a new commitment which is consecutive to an incarceration sanction for a violation of parole or post-prison supervision shall be either the release date established for the violation or the sentencing date for the new crime, whichever is later.
- (3) Notwithstanding subsection (2) of this rule, when the new commitment is consecutive to a sanction for a violation, the Sanction Authority may treat the violation and the new commitment as if they were concurrent. If treated as concurrent, the commencement date for the new commitment shall be the sentencing date for the new crime plus adjustment for credit for time served.
- (4) If the offender is returned with a parole or post-prison supervision violation and a new sentence which is consecutive to the sentence for which the offender was on parole, the commencement date for the new conviction shall be the date parole was revoked, if so stated on the court order.

Statutory Authority: ORS 144.346, 144.395, 144.780, 144.783
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89,
temporary; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0079

Guidelines for Re-release

- (1) For technical violation(s):
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-11-004.
- (2) For conduct constituting a crime:
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.
- (3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.
- (4) Offenders sentenced to life imprisonment for murder or aggravated murder may serve further incarceration to the sentence expiration date.
- (5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.
- (7)
 - (a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.
 - (b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.
 - (c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.
- (8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.

- (9) Notwithstanding subsections 1-7 of this rule, the Board may choose to postpone re-release on parole pursuant to Divisions 50 and 60 of this chapter.
- (10) Notwithstanding subsections 1-8 of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.
- (11) Administrative sanctions do not count toward the revocation sanction limits.

Statutory Authority: ORS 135, 055, 144.103, 144.107, 144.108, 144.120(4), 144.125, 144.232, 144.345, 144.346, 144.395, 161.735
 History: (4/19/89, temporary; 11/1/89; 10/15/90, temporary; 1/16/91; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98, **01-25-00**)

255-075-0080
Continuance on Parole or Supervision

- (1) The Sanction Authority may continue an offender on parole or post-prison supervision and order modification of conditions and/or sanction to time served.
- (2) The Sanction Authority may continue an offender on parole or post-prison supervision and order administrative sanctions as limited by OAR 255-075-0067

Statutory Authority: ORS 144.106, 144.343, 144.345(1)
 History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0082
Authority of Revocation Panel to Set New Parole Release Date for Parole Violators

History: (11/4/81 - 5/2/82, temporary; 11/19/84, suspended; 2/28/85, repealed)

255-075-0085
Parole Violators with No New Commitment; Action Required

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, suspended; 10/16/89, repealed)

255-075-0090
Guidelines for Reparole

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 11/1/89, repealed)

255-075-0095

Variation From Guidelines for Aggravation/Mitigation Permitted

History: (11/19/84, temporary; 2/28/85; 5/19/88; 7/1/88; 4/19/89, suspended; 10/16/89, repealed)

255-075-0096

Denial of Re-release Consideration

- (1) Upon a finding of aggravation pursuant to Exhibit E or Exhibit H, the Board may deny re-release on parole and set the parole release date up to two (2) days before the statutory good time date, or, in the case of murder or aggravated murder, require the parole violator to serve for life. This action requires the affirmative vote of a majority of members, except that if the result is life imprisonment, the full Board must vote unanimously.
- (2) Denial of re-release on parole requires a future disposition hearing.
- (3) Cases in which the Board sets a parole violator within the guidelines set forth in rule 255-075-0079 and the result requires the parole violator to serve to the end of the sentence, do not require a majority vote of all members.
- (4) At any time after denial of re-release, the Board may adjust the parole release date to accommodate changes in the good time date.

Statutory Authority: ORS 144.085, 144.120(4), 144.245, 144.395, 144.780, 144.783-787

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 5/1/91, temporary; 10/15/91, 03/14/97)

255-075-0097

Time for Future Disposition Hearing

When the Board holds a future disposition hearing pursuant to 255-075-0072(2) or 255-075-0096, the following timelines shall apply:

- (1) If the offender has a new conviction, the Board may schedule the future disposition hearing at the same time as the new prison term hearing.
- (2) If the offender has no new conviction or has no prison term hearing, the Board shall schedule the future disposition hearing within 60 days of return to the institution.

Statutory Authority: ORS 144.050, 144.140, 144.395

History: (4/19/89, temporary; 10/16/89; 10/9/92)

255-075-0098

Restoration of Statutory and Meritorious Goodtime

Upon recommendation of the superintendent of the institution, the Board may restore part or all of forfeited statutory and meritorious goodtime when:

- (1) there is no violation of parole; or
- (2) parole is revoked on a best interest basis and there is no actual parole violation; or
- (3) parole is revoked on a technical violation; or
- (4) parolee is within 180 days of discharge; or
- (5) parole is revoked for new criminal activity which is a misdemeanor or non person-to-person class C felony and:
 - (a) the new criminal activity was already sanctioned at the local level;
or
 - (b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.
- (6) An offender ordered to serve a term of incarceration as a Revocation sanction for a post-prison supervision violation is not eligible for goodtime, earned-credit time, work release, transitional or temporary leave.

Statutory Authority: ORS 421.120, 144.108(3)

History: (3/14/88, temporary; 5/19/88; 12/6/88; 10/16/89; 10/9/92, 03/14/97, temporary 11/14/97; 05/11/98)

255-075-0100

Future Disposition Hearing Packet

The Future Disposition Hearing Packet shall contain:

- (1) institution face sheet;
- (2) revocation recommendation;
- (3) final order of revocation;
- (4) administrative action sheet;
- (5) revocation hearing findings;
- (6) Board Action Form ordering parole or Board Action Form ordering post-prison supervision conditions;
- (7) disciplinary report, when extension is recommended;
- (8) recommendation regarding statutory and meritorious goodtime;
- (9) correspondence;
- (10) statements of imprisonment for violation; and
- (11) face sheet from old parole analysis report or comparable report.
- (12) Inmate's Notice of Rights and Board of Parole & Post-Prison Supervision Procedures.

Statutory Authority: ORS 144.185, 144.395

History: (5/19/88; 12/6/88; 10/16/89, 03/14/97)

Handwritten signature or scribble consisting of several overlapping loops and a long tail extending to the right.

Handwritten signature or scribble consisting of a large loop on the left, followed by a vertical stroke, a horizontal stroke, and a circular loop on the right.

Secretary of State
Certificate Order for Filing

FILED

FEB 15 2000

PERMANENT ADMINISTRATIVE RULES

**ARCHIVES DIVISION
SECRETARY OF STATE**

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 02-15-00 by the Secretary of State
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 02-15-00 Rulemaking Notice was published in the 01-01-00 Oregon Bulletin **
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

ADOPT: 255-060-0011
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 255-005-0005, 255-060-0008, 255-060-0012, 255-094-0000, 255-094-0020

REPEAL:
Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.
Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

144.050, 144.096, 144.103, 144.125, 144.185
Stat. Auth.: ORS

House Bills 2327, 2328 (Oregon Legislative Assembly - 1999 Regular Session)
Other Authority

None
Stats. Implemented: ORS

RULE SUMMARY

The adoption of the proposed rule establishes the procedure that needs to be followed in order to designate an offender as a predatory sex offender.

The amendment of the proposed rules establishes which offenders fit the criteria to be designated sexually violent dangerous offenders and what is the definition of intensive supervision. These amendments are needed to bring the Board's rules into conformity with HB 2327 and HB 2328, passed into law by the 1999 Oregon Legislature. The adoption is needed to bring the Board's rules into conformity with its current practice.

Michael R. Washington

02-15-00

Authorized Signer Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision

Chapter 255

Agency and Division
Number

Administrative Rules Chapter

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.050, 144.096, 144.103, 144.125, 144.185

Other Authority: House Bills 2327 & 2328 (Oregon Legislative Assembly – 1999 Regular Session)

Statutes Implemented: None

Need for the Rule(s): To establish a procedure that should be followed in order to designate an offender as a predatory sex offender. The amendment to current rules are necessary to bring the Board's rules into conformity with House Bill 2327 & 2328 passed into law by the 1999 Oregon Legislature.

Documents Relied Upon: None

Fiscal and Economic Impact: The fiscal impact of House Bill 2328 on the Board is that it increased the Board's 99-01 budget by \$5,580 for projected additional psychological evaluations. There may be some effect on other agencies, local government, or identified public. However, there is insufficient data to determine the size of the impact.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

Authorized Signer and Date

12-15-99

DIVISION 5

DEFINITIONS

These definitions have been renumbered.

255-005-0005

Definitions

- (1) "**Abscond**": Unauthorized absence from parole or post-prison supervision.
- (2) "**Active Community Supervision**": A period of supervision in the community, requiring the supervising officer's regular contact and monitoring to assure that the supervisee complies with the conditions of parole or post-prison supervision, has committed no new crimes and has paid restitution, attorney fees, and compensatory fines, if required.
- (3) "**Active Supervision**": Supervision requiring the supervising officer's regular contact and monitoring to assure continued compliance with the general and special conditions of parole or post-prison supervision.

"Active Supervision" shall not include:
 - (a) the period of confinement in a local, state, or federal correctional facility while serving on parole or post-prison supervision;
 - (b) the period of time between the suspension of parole or post-prison supervision and the date parole or post-prison supervision is continued;
 - (c) inactive parole or inactive post-prison supervision;
 - (d) involuntary commitment to a state or federal psychiatric facility.
- (4) "**Administrative Sanction**": Local, structured, or intermediate sanctions as those terms are used in OAR 291-58-010 et al, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.
- (5) "**Aggravation**": The factors or elements surrounding the crime which appear to increase the seriousness of the criminal episode or reflect on the character of the offender pursuant to Exhibit E-1 and E-3.
- (6) "**BAF**": A Board order after a decision called a "Board Action Form".
- (7) "**Base Range**": The range for each crime category reflected in Exhibit C under the "excellent" column.
- (8) "**Board**": Board of Parole and Post-Prison Supervision.
- (9) "**Board Review Packet**": The information the Board shall consider at the inmate's hearing. Each of the Divisions which establishes a hearing shall list the contents of the packet.
- (10) "**Compensatory Fines**": A court-imposed penalty for the commission of a crime resulting in injury for which the person injured has a remedy by civil action (unless the issue of punitive damages has been previously decided on a civil case arising out of the same act and transaction). The court may award compensatory fines in addition to restitution.

- (11) **"Correctional Facility"**: Any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order.
- "Correctional Facility"**: includes a juvenile facility, if the juvenile is confined for a felony charge or conviction, and applies to a state hospital only as to persons detained therein after acquittal of a crime by reason of mental disease or defect or after a finding of guilty except for insanity.
- (12) **"Crime Severity Rating"**: A classification for crimes committed prior to November 1, 1989, from a low of one (1) to a high of seven (7) assigned to each crime, based on the seriousness of the crime pursuant to Exhibits A-I, A-II, and A-III.
- (13) **"Crime Spree"**: A set of criminal activities congruent in time or actually overlapping that are so joined by place and circumstances as to be the product of a continuous disposition or intent.
- (14) **"Date of Return"**: The date another in-state or out-of-state jurisdiction physically returns the inmate to the Department of Corrections' custody following a hold.
- (15) **"De Novo Hearing"**: A new initial prison term hearing, required when a court orders additional consecutive sentences for crimes which occurred prior to the first prison term hearing.
- (16) **"Escape"**:
- (a) the unlawful or unauthorized departure from custody, a correctional facility or any form of temporary release or transitional leave;
 - (b) includes the unauthorized departure or absence from this state or failure to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board;
 - (c) does not include failure to comply with provisions of a conditional or security release as in ORS 135.245.
- (17) **"Future Disposition Hearing"**: A hearing the Board may set at its discretion for purposes of deciding whether to deny or grant re-release for a violation of parole or post-prison supervision when authorized by law.
- (18) **"Gang Member"**: A person who associates with a group which identifies itself through the use of a name, unique appearance, language (including hand signs), the claiming of geographical territory, or the espousing of a distinctive belief system and one of the purposes of the group is criminal activity.
- (19) **"Gang-Related Activity"**: Crime committed by a gang member:
- (a) with other known gang members;
 - (b) against other known gang members; or
 - (c) against a person who is not a gang member; in order to further the purposes of the gang or impress other gang members.
- (20) **"History/Risk Score"**: A rating from a high of eleven (11) to a low of zero (0) points, reflecting the prisoner's prior record and other factors which predict the likelihood of success on parole pursuant to Exhibit B, Part I and Part II.

- (21) **"Inactive Parole and Inactive Post-Prison Supervision"**: The offender remains under supervision however;
- (a) there is no direct supervision by a supervising officer and no requirement of regular reporting;
 - (b) no additional supervision fees; and
 - (c) the offender remains subject to arrest by a supervising officer for violation of conditions of supervision and return to active supervision at any time until expiration of the sentence or post-prison supervision term as outlined in Division 94.
- (22) **"In Camera Hearing"**: The inspection of a document by the Hearings Officer in private before the document may be introduced as evidence.
- (23) **"Initial Parole Release Date"**: The date, by month, day and year, assigned to a prisoner for parole release based on the prisoner's matrix range, aggravation, mitigation, and judicially imposed minimum sentence(s).
- (24) **"Inmate"**: Any person under the supervision of the Department of Corrections or a local supervisory authority who is not on parole, post-prison supervision or probation status (also referred to as prisoner).
- (25) **"Inoperative Time"**: Time spent on abscond, escape, or unauthorized departure from custody, leave, parole or post-prison supervision, which does not count toward service of the sentence.
- (26) **"Intensive Supervision"**: means enhanced level of supervision exceeding a county's high risk level supervision standards. Intensive supervision may include, but not be limited to, electronic monitoring, house arrest, curfew, day reporting, supervised housing, multiple supervising officers, adjunct surveillance by law enforcement or other specialists, increased face-to-face offender contacts in the community, increased collateral contacts (such as with family, therapist and employer), community notification, geographic restrictions, offender mileage logs, medication monitoring (such as depo provera, psychotropics, antabuse), intensive outpatient or residential treatment programming, urinalysis, and polygraph.
- (27) **"Less Than the Sum of the Terms"**: An action by the Board whereby one or more of the consecutive ranges are treated as if they are concurrent.
- (28) **"Mail Date" or "Mailed on Date"**: Is the date from which the Board calculates the timelines of receipt of Administrative Review Requests and other time sensitive responses. The date is computer generated and scheduled to insure actual mailing occurred on or before the listed date.
- (29) **"Matrix Ranges"**: Ranges of months within which the Board has the discretion to set a prison term. The ranges are based on crime severity ratings and history/risk scores.
- (30) **"The Matrix"**: A table which displays the matrix ranges by showing the intersection of the crime severity rating and the history/risk score pursuant to Exhibit C.
- (31) **"Mitigation"**: The factors or elements surrounding the crime which appear to decrease the seriousness of the criminal episode or reflect on the character of the prisoner pursuant to Exhibit E-2 and E-3.

- (32) "**Offender**": Any person under the supervision of the Department of Corrections or a local supervisory authority who is not presently in the custody of a correctional facility, including persons on probation, parole or post-prison supervision.
- (33) "**Parole**": Applies to offenders whose crime(s) were committed before November 1, 1989. A Board authorized conditional release from a state correctional facility into the community or to a detainee.
- (34) "**Particularly Violent or Otherwise Dangerous Criminal Conduct**": Conduct which is not merely unpleasant or offensive, but which is indifferent to the value of human safety or property.
- (35) "**Parole Board Record**": The file the Board maintains for each inmate/offender containing the information listed in ORS 144.185.
- (36) "**Period Under Review**": Under Division 40, the time already served on the prison term, normally the three (3) or (5) year period prior to the personal review hearing.
- (37) "**Post-Prison Supervision**": Applies to crimes committed on or after November 1, 1989. A term, as set by statute or the court under the supervision of the Department of Corrections or a correctional agency designated by the Department or a local supervisory authority.
- (38) "**Principal Range**": The range of months for the crime holding the highest crime severity rating. When the ranges are the same, the Board shall designate one range as the principal range.
- (39) "**Preponderance**": Evidence which is of greater weight or more convincing than the evidence offered in opposition to it.
- (40) "**Probable Cause**": A substantial objective basis for believing that more likely than not an offense or violation has been committed and the person to be arrested has committed it.
- (41) "**Prison Term**": The Board established time the inmate must serve before the initial parole release date, in accordance with applicable laws and the Board's Administrative Rules.
- (42) "**Prison Term Hearing**": The hearing at which the Board establishes an inmate's prison term and initial parole release date.
- (43) "**Revocation**": An action by a Sanction Authority to terminate an offender's parole or post-prison supervision. Sanction Authority may resume an offender's parole or post-prison supervision following the act of revocation.
- (44) "**Revocation Hearing**": A hearing to determine whether a violation of conditions of parole or post-prison supervision occurred and whether the Hearings Officer should recommend that the parolee or offender return to custody or continue on parole or post-prison supervision with additional conditions. (Commonly known as a Morrissey Hearing)
- (45) "**Sanction Authority**": Means the Board for felony offenders sentenced by the court for crimes occurring before November 1, 1989, or sentenced to more than 12 months in the custody of the Department of Corrections or sentenced to 12 months or less and have additional sentences of greater than 12 months; and the Local Supervisory Authority for felony offenders sentenced by the court to 12 months or less.

- (46) **"Sexually Violent Dangerous Offender"**: means an inmate/offender who has psychopathic personality features, sexually deviant arousal patterns or interests and a history of sexual assault, and who the Board or Local Supervisory Authority finds presents a substantial probability of committing an offense listed in OAR 255-060-0008(6). "History of sexual assault" means that an inmate/offender has engaged in unlawful sexual conduct that is not revealed to the crime for which the inmate/offender is currently on parole or post-prison supervision and seriously endangered the life or safety of another person or involved a victim under twelve (12) years of age.
- (47) **"Serious Physical Injury"**: Any physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, or impairment of health or protracted loss or impairment of the function of any bodily organ.
- (48) **"Stranger"**: A person who is either unknown to a victim or with whom the victim has a superficial acquaintance or acquaintance of short duration or infrequent contact.
- (49) **"Subcategory"**: The criteria for rating criminal conduct within the crime categories based on the seriousness of the offense (Exhibit A).
- (50) **"Subordinate Range"**: Any range less than or equal to the principal range.
- (51) **"Subpoena Duces Tecum"**: A subpoena requiring the party to appear at a hearing with a document or piece of evidence to be examined at the hearing.
- (52) **"Summing the Ranges"**: Adding ranges of consecutive sentences to produce a unified range pursuant to OAR 255-035-0021.
- (53) **"Supervising Officer"**: Parole and post-prison supervision officer.
- (54) **"Supervisory Authority"**: The state or local corrections agency or official designated in each county by that county's Board of County Commissioners or County Court to operate correction supervision services, custodial facilities, or both (per ORS 144.087(1)).
- (55) **"Unauthorized Absence"**: Time spent outside a state correctional facility without Department of Corrections' or local supervisory authority's authorization, whether it is an escape or an unauthorized departure.
- (56) **"Unified Range"**: The total range computed under OAR 255-035-0021 for consecutive sentences.
- (57) **"Unsum the Ranges"**: To establish a matrix range at less than the unified range. The effect of unsumming is treatment of one or more ranges as if concurrent.
- (58) **"Variations"**: The time periods which the Board may use to set a prison term above or below the matrix range pursuant to Exhibit D.

- (59) **"Victim"**: The actual victim, a representative selected by the victim, the victim's next of kin or, in the case of abuse or corpse in any degree, an appropriate member of the immediate family of the decedent (Per ORS 144.120(7)).
The person or persons who have suffered financial, social, psychological or physical harm as a result of a crime and includes, in the case of a homicide or abuse or corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor (Per ORS 131.007).

Statutory Authority: ORS 144.050, 144.140

History: (5/19/88; 12/6/88; 11/1/89; 10/5/90; 10/15/91; 10/9/92, 03/14/97,
Temporary 11/14/97; 05/11/98, **02-15-00**)

DIVISION 60

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

255-060-0006

Exit Interviews: Parole Plan; and Psychiatric Records

- (1) At any time prior to an inmate's scheduled release to post-prison supervision or parole, the Board on its own initiative or at the request of the Department of Corrections, may conduct an exit interview to review the inmate's:
 - (a) release plan;
 - (b) victim's statements, if any;
 - (c) PSR or similar report;
 - (d) psychiatric/psychological reports, if any;
 - (e) conduct while in confinement; and
 - (f) any other information relevant to the inmate's reintegration into the community that the inmate, the inmate's attorney, the Department of Corrections or any other person submits.
- (2) The procedures for records, disclosure and notice outlined in Division 15 and 30 shall govern exit interviews.
- (3) A panel shall conduct the interview and the Board shall make decisions pursuant to OAR 255-030-0015.

Statutory Authority: ORS 144.098, 144.125, 144.800

History: (2/1/79; 5/20/80; 2/15/81; 11/4/81, temporary; 5/19/82; 5/31/85; 5/19/88; 11/1/89; 4/5/90; 5/1/91, temporary; 10/15/91; 2/12/92, temporary; 4/15/92; 10/9/92, 03/14/97 11/09/98)

255-060-0008

Release Plans

- (1) At any time prior to release on parole or post-prison supervision, the Board shall examine the inmate's plans for residence, employment, or other situation in the community to determine whether the release plan is adequate. The plan may include, but is not limited to:
 - (a) employment;
 - (b) school, or other situation (e.g., retirement income);
 - (c) verifiable residence;
 - (d) a description of support services, program opportunities and treatment programs;

02-15-2000

Parole Release & Exit Interview

- (e) prescribed medication;
 - (f) recommended conditions of supervision for the purpose of reformation and public safety, including a recommendation for waiver of the condition of supervision that the inmate reside for the first six months in the county where the inmate resided at the time of the offense that resulted in imprisonment;
 - (g) level of supervision consistent with the prisoner's risk assessment classification; and
 - (h) a restitution and compensatory fine payment schedule.
- (2) The Board may defer parole release up to ninety (90) days from the parole release date when a plan is deficient or unverified in order to obtain verification or a satisfactory plan from the Department of Corrections.
- (3) An inmate requesting an out-of-state parole waives the ninety (90) days limitation on deferral of release. Such waiver is for the purpose of an adequate parole plan in the accepting state.
- (4) Except as provided in OAR 255-060-0014, the Board shall not defer release to post-prison supervision. The following procedure shall apply:
- (a) If the release plan the Department of Corrections or designee of Local Supervisory Authority submits at least 60 days prior to release is deficient, the Board will return it to the submitting agency with the Board's recommended modifications.
 - (b) The Department or designee of Local Supervisory Authority shall submit a revised plan to the Board not less than ten days prior to the inmate's release.
 - (c) If the Board does not accept the revised plan, the Board shall determine the provisions of the final plan prior to the prisoner's release.
- (5) One Board member shall review and approve the release plan.
- (6) When an offender is released from the custody of the Department of Corrections or Local Supervisory Authority, after serving a sentence of incarceration as a result of a conviction for an offense listed in subsection (a) of this section, the Board or Local Supervisory Authority shall subject the inmate/offender to intensive supervision as defined in OAR 255-005, for the full period of the offender's parole or post-prison supervision if the inmate/offender was eighteen (18) years of age or older at the time the inmate/offender committed the offense and the Board or Local Supervisory Authority finds that the inmate/offender is a sexually violent dangerous offender, as defined in OAR 255-005..
- (a) The crimes to which section (6) of this rule apply are:
 - (1) Rape in the First Degree and Sodomy in the First Degree if the victim was subject to forcible compulsion or under 12 years of old or was incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; and
 - (2) Unlawful Sexual Penetration in the First Degree; and

- (3) An Attempt to commit a crime listed in this subsection.
- (b) When the Board or Local Supervisory Authority makes a finding that an inmate/offender is a sexually violent dangerous offender under this section, the Board or Local Supervisory Authority shall make this finding in the Order of Supervision.

Statutory Authority: ORS 144.096, 144.125, 144.185, Chapter 924 (1999 OR Laws)
History: (4/5/90; 5/1/91, temporary; 10/15/91; 1992 proposed change, 03/14/97, 9-22-99, **02-15-00**)

255-060-0010

Waiver of the 90-Day Limitation; Deferral for Serious Misconduct

History: (2/1/79; 5/20/80; 2/15/81; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

255-060-0011

Procedures for Predatory Sex Offender

- (1) For purposes of this rule, a person is a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use only the Sex Offender Risk Assessment Scale (Exhibit Q-I) and definitions (Exhibit Q-II) which have been approved by the Department of Corrections as required by ORS 181.585(2).
- (2) The procedures set forth in this rule only apply to inmates or offenders whose original order of supervision is issued by the Board on or after January 1, 1999.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale. The Board may make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores less than three or more starred (*) items and has no automatic override item(s) but scores at least -50 on the Sex Offender Risk Assessment Scale.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.
- (5) Inmates or offenders who score three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.

- (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) A Board Member must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before a predatory sex offender finding is made.
 - (c) A Board Member must consider any written objections to the score on the Sex Offender Risk Assessment Score timely submitted by the inmate or offender before making a predatory sex offender finding. A Board Member shall make the predatory sex offender finding if there is evidence to support a score on the Sex Offender Risk Assessment Scale (Exhibit Q-I) of three or more starred (*) items or one or more automatic override item(s) using the definitions for the Sex Offender Risk Assessment Scale (Exhibit Q-I).
- (6) The Board may also make a predatory finding for inmates or offenders with a total score of at least -50 on the Sex Offender Risk Assessment Scale but fewer than three starred (*) items and no automatic override items.
- (a) Inmates or offenders referred to in section (6) of this rule are entitled to a Morrissey-type hearing prior to the Board making a predatory sex offender finding. This hearing must be held in accordance with the rules governing supervision violations as set forth in OAR 255-075-0031 through 255-075-0056. OAR 255-075-0065 does not apply to this rule.
 - (b) Following the hearing, the hearing officer shall submit written findings to the Board. A Board Member must review these written findings prior to making a predatory sex offender finding. A Board Member shall make a predatory sex offender finding if the Board Member determines that the evidence presented at the hearing supports a score of at least -50 on the Sex Offender Risk Assessment Scale.
- (7) Inmates or offenders may elect to waive their right to submit written objections or waive their right participate in a hearing as set forth in this rule. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections or to participate in a hearing, the Board may make the predatory sex offender finding if the inmate's or offender's score on the Sex Offender Risk Assessment Scale is at least -50, or there are at least three starred (*) items or there is at least one automatic override item.
- (8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: Chapter 163 (1999 OR Laws)
History: (Notice 02-15-00)

255-060-0012

Psychological or Psychiatric Reports

Sections 1-6 of this rule do not apply to inmates whose only crimes are committed on or after November 1, 1989.

- (1) Pursuant to ORS 144.125, the Board may order any available psychiatric/psychological report(s) from the Department of Corrections.
- (2) Pursuant to ORS 144.223, the Board may postpone the parole release date administratively and order a psychiatric/psychological evaluation of any inmate anytime prior to release.
- (3) After review of the psychiatric/psychological reports, and all other information or documents presented during the hearing the Board may defer parole release until a specified future date upon finding:
 - (a) the inmate has a present severe emotional disturbance, such as to constitute a danger to the health or safety of the community.
- (4) The Board shall not deny release on parole solely because of an inmate's present severe emotional disturbance. The Board must also find the condition constitutes a danger to the health or safety of the community.
- (5) The majority of the Board may defer a scheduled parole release date up to two years. A panel may defer a scheduled parole release date up to 18 months.
- (6) If the Board finds the inmate does not have a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, the Board shall affirm the parole release date and set parole conditions.
- (7) For purposes of the Board finding that an inmate/offender is a sexually violent dangerous offender pursuant to OAR 255-060-0008, the Board may order a psychological or psychiatric evaluation.

Statutory Authority: ORS 144.125, 144.223, Chapter 924 (1999 OR Laws)
History: (4/5/90; 1/13/92; 7/26/93, temporary; 10/29/93, 03/14/97, 11/09/98, **02-15-00**)

255-060-0013

Postponement Order

Any order regarding the postponement of parole release shall be sent to the inmate and shall set forth:

- (1) the facts and specific reasons for the decision and the votes of the Board members;
- (2) notice of the right to administrative appeal pursuant to the procedures of Division 80.

Statutory Authority: ORS 144.125, 144.135, 144.335
History: (4/5/90, 03/14/97)
02-15-2000

Parole Release & Exit Interview

255-060-0014

Detainers

- (1) When an inmate has a detainer from another jurisdiction, the Department of Corrections will release the inmate to the detainer and Oregon active community supervision shall begin upon the inmate's release into the community from the holding jurisdiction, if the Oregon sentences have not expired while the inmate is incarcerated in another jurisdiction.
- (2) If a parolee is released by the Department of Corrections to a detainer from another jurisdiction and is recommitted to the Oregon Department of Corrections, the previous parole order shall be voided.
- (3) When an inmate has a new Sentencing Guidelines commitment to the Department of Corrections' custody, the Oregon active community supervision shall begin upon the inmate's release into the community, if the sentences have not expired while the inmate is incarcerated.
- (4) For Sentencing Guidelines inmates released from a Department of Corrections Institution directly to a hold or sentence that results in the offender remaining in jail or prison for more than 30 days continuously, the post-prison supervision start date will be calculated from the date the offender is released from that hold or sentence. The following procedure shall apply:
 - (a) The Board will issue an order of supervision when the offender is released from a Department of Corrections institution to the hold or sentence. The Order shall state that post-prison supervision has started on the date the offender left the Department of Corrections institution.
 - (b) The supervising officer must inform the Board in writing of the date the offender was or will be released from the hold or sentence that kept the offender in jail or prison for more than 30 continuous days. If the supervising officer knows the exact length of the hold or sentence, the supervising officer shall inform the Board in writing of the date the offender will be released from the hold or sentence. The supervising officer shall submit a written, updated release planning form to include the new release date, any changes in conditions, and the offender's new address, if any.
 - (c) The Board shall issue an amended order calculating the start of post-prison supervision based on the date provided by the supervising officer pursuant to subsection (b) or this rule.

Statutory Authority: ORS 144.305, 144.310

History: (4/5/90; 10/9/92, 03/14/97, 11/09/98, 9-22-99)

255-060-0015

Instate Parole Release Interview Procedures

History: (2/1/79; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

02-15-2000

Parole Release & Exit Interview

255-060-0020

Out-of-State Parole Release Hearing Procedures

An inmate in the Department of Corrections' custody who is housed in an out-of-state facility may receive a teleconference exit interview in conformance with rule 255-060-0006.

Statutory Authority: ORS 144.098, 144.125

History: (2/1/79; 5/31/85; 5/19/88; 10/9/92, 03/14/97, **11/09/98**)

255-060-0025

Parole Consideration for Prisoners in a Local Jail

History: (2/1/79; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

255-060-0030

Exit Interview Board Review Packet

The exit interview Board Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing, if any;
- (3) psychiatric and/or psychological evaluations (previous 6 months);
- (4) correspondence;
- (5) field parole analysis report, a pre-sentence investigation report or comparable report;
- (6) court orders;
- (7) misconduct reports; and
- (8) release plan.
- (9) Inmate's Notice of Rights and Board of Parole & Post-Prison Supervision Procedures.

Statutory Authority: ORS 144.096, 144.098, 144.185

History: (5/19/88; 4/5/90, 03/14/97)

DIVISION 94

**ACTIVE AND INACTIVE PAROLE
AND POST-PRISON SUPERVISION
(ORS 144.085 AS AMENDED BY SB1145 §22, EFFECTIVE DATE 7/1/95)**

255-094-0000

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 Board 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) three (3) years for offenders sentenced for Robbery in the First Degree under ORS 164.415; and
 - (j) three (3) years for offenders sentenced for Arson in the First Degree under ORS 164.325.
 - (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 255-94-010, and notify the Board 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 255-94-000(1 & 2) or to the expiration of the sentence, whichever is longer.
 - (5) After a rereleased offender has completed the minimum active supervision period as provided in OAR 255-94-000 (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.

Statutory Authority: ORS 144.085, SB 1145 (passed in 1995 Legislative session), Chapters 163 & 924 (1999 OR Laws)
 History: (09/01/95, 03/14/97, 12-15-99, **02-15-00**)

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 Board 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 Board extend the active supervision period or return the offender to active supervision.
- (2) After reviewing the report, if the Board or it's 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 Board 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 Board 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 is on inactive supervision the general and special conditions of supervision shall remain in effect with the following exceptions:
- (a) General condition #1: Pay supervision fees (fines, restitution or other fees previously ordered by the Board remain in effect);
 - (b) General condition #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.;
 - (c) General condition #7: Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency;
 - (d) Special Conditions specifically deleted by the Board.

Statutory Authority: ORS 144.085, SB1145 (passed during 1995 Legislative session).
History: (09/01/95- Notice, 03/14/97)

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 Board 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 Board receives notice of a violation of a condition of inactive supervision; or 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 Board.
- (4) When an offender is returned to active supervision status, all general conditions plus all previously imposed special conditions shall be in effect.

Statutory Authority: ORS 144.085, SB1145 (passed during 1995 Legislative session).
History: (09/01/95 - Notice, 03/14/97, 12/15/99)

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 Board retains jurisdiction over the offender until the proceedings are resolved. The Board 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 Board 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 Board shall send written notice of the termination of post-prison supervision to the offender and supervisory authority.

Statutory Authority: ORS 144.085, SB1145 (passed during 1995 Legislative session), Chapter 163 (1999 OR Laws).
History: (09/01/95 - Notice, 03/14/97, 12/15/99)

EXHIBIT Q-I

RISK ASSESSMENT SCALE

<u>CATEGORY</u>	<u>SCORE</u>
Negative Scale (increase risk)	
*History of sexual crimes	<u>10-</u>
*History of sex offense convictions	<u>10-</u>
*Stranger to victim	<u>10-</u>
*Multiple victims – On current sex offense conviction	<u>10-</u>
*Use of weapons or threats	<u>10-</u>
Victim under 14 years of age or mentally/physically disabled	<u>10-</u>
Not in “treatment”	<u>10-</u>
Shows no empathy for victim(s)	<u>10-</u>
Not progressing in treatment	<u>10-</u>
New crime during supervision	<u>10-</u>
*Technical violation related to sexual assault cycle	<u>10-</u>
Multiple paraphilia	<u>10-</u>
Impulsive or compulsive behavior	<u>10-</u>
Primary sexual preference is children	<u>10-</u>
Community instability	<u>10-</u>
*Prior non-sexual criminal history	<u>10-</u>
Substance abuse involved in sexual offending behavior	<u>10-</u>
Substance abuse problems	<u>10-</u>
Anger problems	<u>5-</u>
Technical violation during supervision	<u>5-</u>
Use of sexually arousing materials	<u>5-</u>
Mental status inhibits responsible functioning	<u>5-</u>
No support system or support system tolerates/supports denial	<u>5-</u>
Positive Scale (reduce risk)	
Takes full responsibility for offending behavior	<u>10</u>
Clear identification and understanding of sexual assault cycle	<u>10</u>
Passes disclosure polygraph	<u>10</u>
Clarification to victims completed	<u>10</u>
Successful completion of approved treatment program	<u>10</u>
Passed compliance (maintenance) polygraph	<u>10</u>
Completed substance abuse treatment and maintains abstinence	<u>10</u>
Demonstrated understanding of thinking errors	<u>5</u>
Support system reinforces compliance and treatment	<u>5</u>
Special conditions compliance	<u>5</u>
Automatic Override to Level 1	
*Forcible Rape	<u>X</u>
*Use of weapon during commission of offense	<u>X</u>
*Men who molest boys (multiple male victims)	<u>X</u>

EXHIBIT Q-II

SEX OFFENDER ASSESSMENT

If more than one sex offense, you must choose a case and score that as the "current" offense. PO interviews with offender, victims, or others can provide additional information.

NEGATIVE SCALE

- *1. **History of Sexual Crime(s)**: Offender has committed one or more sex crimes which have not resulted in conviction/adjudication. Includes adult and juvenile admissions, reported or known offenses. Does not include instant offense or any crimes subsequent to instant offense. Does not include additional offenses against victim in instant case.

Information sources used to establish this criterion may include, but are not limited to, Pre-Sentence Investigations (PSI's), offender statements or disclosures and other reliable sources.

- *2. **History of Sex Offense Conviction(s)**: The offender has a documented criminal history that includes one or more criminal convictions or juvenile adjudications for sex crimes in any jurisdiction. Does not include instant offense or any subsequent crimes.

Information sources may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.

- *3. **Stranger-to-Victim**: In regard to the current offense only, the offender-to-victim relationship was stranger-to-victim or the relationship was established for the purpose of victimization.

For the purpose of this item, the victim or victims were not personal friends, family or household members, or children of family or household members. Victims of this class of crime may be total strangers, persons who are stalked, or casual acquaintances including persons approached in bars or other social gathering places. In the case of a child victim, the offender would be someone a child would consider a stranger.

Information sources may include, but are not limited to, PSI's, victim statements, police reports, offender disclosures or statements, and other documentation.

- *4. **Multiple Victims**: There were more than one victim in the current criminal episode.

Information sources which can be used to establish this include, but are not limited to, PSI scope of crime or victim statement, police report, indictment, or any other documented information that is relevant to proving multiple victims of the current criminal episode.

- *5. **Use of Weapons or Threats:** Prior to or during the commission of the current offense, the offender threatened to use, simulated the use of, or displayed a weapon (as defined in Oregon Revised Statutes); threatened to use or used physical force to harm the victim, other persons or property closely associated with the victim; used age-related coercion or intimidation (such as, "If you tell, we will get into trouble") or used threats of abandonment in order to gain the victim's compliance. This would include the offender establishing a pattern of control over the victim during the grooming process by using threats, intimidation or weapons.

Information sources may include, but are not limited to, police reports, PSI's, court records and transcripts, offender statements and disclosures and victim/witness statements.

6. **Victim Under 14 years of age or Mentally/Physically Disabled:** Current offense victim was under 14 years at time of offense, or mentally or physically incapacitated regardless of age. Victim may have been drunk or asleep. **Obtain info:** PSI scope of crime or victim's statement, police report, etc.
7. **Not in Treatment:** Offender has a condition of sex offender treatment and is not actively involved in an approved sex offender treatment program, or has not previously completed a sex offender treatment program on this supervision. **Obtain info:** Parole or probation order, S.O. eval and progress reports, etc. **Cannot score this item if #9 is scored.*
8. **Shows no Empathy for Victim(s):** Cannot articulate or demonstrate the negative impact of crime on the victim of current offense. **Obtain info:** PSI scope of crime or offender's statement, psychosexual eval, full-disclosure polygraph, Tx progress reports, etc.
9. **Not Progressing in Treatment:** Tx provider reports that offender is not working to make changes to achieve Tx goals and reduce his risk in the community. **Obtain info:** Tx progress reports, etc. **Cannot score this item if #7 is scored.*
10. **New Crime During Supervision:** Any new misdemeanor or felony crimes committed during re-class period, whether convicted or not. **Obtain info:** Polygraphs, police reports, offender admissions, observed behavior, search, etc. *(Score drug usage on #18, not here.)*
11. **Technical Violation Related to Sexual Assault Cycle:** Violation during re-class cycle consisting of a trigger(s) to sexual assault cycle (i.e., contact with minors, use of pornography, cruising, gambling, piercing, etc.) **Obtain info:** Violation reports, maintenance polygraph, etc.
12. **Multiple Paraphilia:** More than one admitted or known sexual deviancy, i.e., frottage, bondage, group sex, bestiality, voyeurism, necrophilia, urophilia, masochism, pedophilia, hebophilia, exhibitionism, fetishes, partialism, coprophilia, sadism, auto-erotic asphyxiation, transvestic fetishism, etc. **Obtain info:** Full disclosure polygraph, psychosexual eval, criminal history, police reports, etc.
13. **Impulsive or Compulsive Behavior:** Admitted or diagnosed behavior. Behavior patterns which indicate compulsiveness or lack of forethought (i.e., overeating, gambling, substance abuse, shoplifting, exposing, etc.) **Obtain info:** MH and/or psychosexual eval, full-disclosure polygraph, etc.
14. **Primary Sexual Preference is Children:** Primary arousal to minors. **Obtain info:** Plethysmograph, psychosexual eval, admissions, etc.

15. **Community Instability:** Multiple moves, sporadic job history, no family/friend ties to area, subsidy housing, financial dependence and/or irresponsibility. Obtain info: Monthly reports, chrono history, PSI background and employment info, etc.
- *16. **Prior Non-Sexual Criminal History:** The offender has one or more convictions, adjudications or diversions for a non-sexual criminal offense(s) in any jurisdiction.

Information sources may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.
17. **Substance Abuse Involved in Sexual Offending Behavior:** Current sex offense involved offender under the influence of drugs and/or alcohol. Obtain info: PSI scope of crime or alcohol/drug section, police reports, full disclosure polygraph, A & D eval, psychosexual eval, etc.
18. **Substance Abuse Problems:** During re-class period, offender used drugs and/or abused alcohol. Obtain info: UA results, A & D eval, A & D Tx progress reports, maintenance polygraph, admissions, observed behavior, etc.
19. **Anger Problems:** Offender has difficulty managing or controlling anger. Obtain info: PSI, MH eval, psychosexual eval, observed behavior, admissions, etc.
20. **Technical Violation Not Related to Sexual Assault Cycle:** Any violation of general or special conditions. **Not scored in #11.* Obtain Info: Violation reports, polygraphs, admissions, etc.
21. **Use of Sexually Arousing Materials:** Any material that reinforces deviant sexual arousal. Initial assessment: Covers any history of using written, printed, video, computer, or any other media porn. Reassessment: Use of this material within last 6 months. Obtain info: Full disclosure or maintenance polygraphs, psychosexual evals, etc.
22. **Mental Status Inhibits Responsible Functioning:** Offender has been diagnosed with a major mental illness, is mentally impaired or has organic brain damage which interferes with offender's decision-making process and makes it unrealistic for offender to be able to use cognitive interventions. Obtain info: MH eval, PSI, SSI/SSD info, IQ testing, etc.
23. **No Support System or Support System Tolerates/Supports Denial:** No family, friends, or other support system available. Friends and/or family support offender's claim of innocence, justify or enable his behavior and minimize offender's need for treatment. Obtain info: S.O. tx eval and progress reports, direct contact with family or friends, etc.

POSITIVE SCALE

1. **Takes Full Responsibility for Offending Behavior:** Acknowledges complete responsibility for sex offending behavior without using cognitive distortions to minimize behavior and its impact on the victim. Does not excuse behavior by saying they were under the influence of alcohol or drugs. Obtain info: PSI defendant's version section, full-disclosure polygraph, S.O. treatment progress reports, staffings with treatment provider, etc.
2. **Clear Identification and Understanding of Sexual Assault Cycle:** Offender understands the concept of a sexual assault cycle and can apply the concept to their own triggers and sexual offending behavior, as demonstrated in the treatment process. Obtain info: Treatment progress report, staffings with treatment provider, etc.
3. **Passes Full Disclosure Polygraph:** Has disclosed all past sexual abuse victims, including instant offense victims, as verified by testing truthful on polygraph when asked sexual history questions. Obtain info: Full disclosure polygraph.
4. **Clarification to Victims Completed:** Minimum requirement-offender writes letter of responsibility addressed to the victim, which is approved by treatment. The letter may or may not actually be delivered to the victim. Clarification may involve the offender reading the letter to the victim in a therapeutic setting. Obtain info: Treatment progress report, copy of clarification letter, staffings with treatment provider, etc.
5. **Successful Completion of Approved Treatment Program:** Offender must have completed written assignments and demonstrated an understanding of treatment concepts by changing thinking patterns and lifestyle. Certificate or letter of successful completion must be in file. Obtain info: Treatment completion summary and/or certificate.
6. **Passes Compliance (Maintenance) Polygraph:** Offender deemed truthful on all exam questions pertaining to compliance with conditions of supervision and treatment. Obtain info: Most recent maintenance polygraph.
7. **Completed Substance Abuse Treatment and Maintains Abstinence:** Offender successfully completed an approved in-patient or outpatient A & D treatment program while incarcerated or while on supervision. Offender shows no signs of alcohol or drug use since completion of program. Obtain info: Institution file, A & D treatment program completion summary and/or certificate, U/As, offender behavior, polygraphs, etc.
8. **Demonstrated Understanding of Thinking Errors:** Offender has identified thinking errors in treatment and how they're used in his sexual assault cycle. Can recognize ongoing thinking errors and can take steps to correct these. Obtain info: Treatment progress reports, staffings with treatment providers.
9. **Support System Reinforces Compliance and Treatment:** Offender's family, friends, employer, etc., encourage attendance and participation in treatment and adherence to supervision conditions. Support persons are willing to learn offender's sexual assault cycle and thinking errors, and may even participate in non-offending partner groups or couples counseling. Obtain info: Treatment progress reports, staffings with treatment provider, contact with family, friends, employer, etc.
10. **Special Conditions Compliance:** Adhering to sex offender conditions and all other special and general conditions. Follows PO directives. Obtain info: Violation reports, contacts with offender in office or home, maintenance polygraph, U/As, etc.

AUTOMATIC OVERRIDE CHARACTERISTICS

- *1. **Forcible Rape:** In regard to the current offense only, offender must have been convicted of forcible rape (involving force or intimidation).

Information sources may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.

- *2. **Use of a Weapon During Commission of Offense:** In regard to the current offense only, offender must have actually used the weapon (as defined in Oregon Revised Statutes) during the crime to harm or threaten to harm the victim.

Information sources may include, but are not limited to, PSI's, victim statements, police reports, offender disclosures or statements, and other documentation.

- *3. **Men Who Molest Boys (Multiple Male Victims):** Males whose criminal sexual history includes multiple male victims, although not all may have led to conviction.

Information sources used to establish this criterion may include, but are not limited to, PSI's offender statements or disclosures and other reliable sources. Boys are minor males under the age of 18 years.

Effective 1/1/99

NOTICE OF RIGHT TO FILE A WRITTEN OBJECTION TO PREDATORY SEX OFFENDER DESIGNATION

You have been provided with a copy of the risk assessment scale that the Board of Parole and Post-Prison Supervision (hereafter "the Board") will use to decide whether you should be designated a predatory sex offender pursuant to ORS 181.585, et seq. If you are designated a predatory sex offender, you may be subject to community notification.

The Board will designate you a predatory sex offender if you score three or more starred (*) items on the negative scale or if you score one or more starred (*) items in the automatic override section of the scale. You have a right to inform the Board in writing of the reasons you believe the score is wrong. You must fill out a form entitled "Objections to Predatory Sex Offender Designation." This form is available through your counselor. You must clearly state on the form which categories you think were scored incorrectly and why. You must return the form to your counselor within three days of when you receive the form. Your counselor will send the form to the Board. The Board will consider your objections prior to making a predatory sex offender designation.

You must sign this Notice of Rights form whether or not you plan to object to your score on the risk assessment scale.

Inmate's Name (please print)

SID#

Inmate's Signature

Date

My risk assessment scale indicates a score of 3 or more (*) on negative scale or 1 or more (*) in the automatic override section and:

I do wish to submit a written objection (attach objections form)

I do not wish to submit a written objection

Witness

Date

Inmate's release date

Note: This form only applies to inmates/offenders who score three or more (*) on the negative scale or one or more (*) in the automatic override section of the Risk Assessment Scale. Otherwise, inmates/offenders may be designated predatory if they score -50 or more and a request for a predatory designation is made by a PO or institution counselor. A PO or institution counselor seeking a predatory designation must arrange for a hearing with the Board's Hearing Officer by electronic request or by calling (503) 699-0291. PO's and counselors should submit this form with the Release Planning Form whenever possible.

EXHIBIT Q-3

Effective 1/1/99

**WRITTEN OBJECTIONS TO SCORE ON RISK ASSESSMENT SCALE FOR
PREDATORY SEX OFFENDER DESIGNATION**

Inmate _____ SID# _____

Institution _____

Current release date _____

Date inmate was provided with this form _____

1. Please state which of the (*) categories of the risk assessment scale you believe were not scored correctly.

2. For each category listed above, please explain why you believe the category was not scored correctly. You may attach additional pages or documents if necessary.

A COPY OF YOUR RISK ASSESSMENT SCALE MUST BE ATTACHED TO THIS FORM.

Inmate's Signature

Date

Note: This form only applies to inmates/offenders who score three or more (*) on the negative scale or one or more (*) in the automatic override section of the Risk Assessment Scale. Otherwise, inmates/offenders may be designated predatory if they score -50 or more and a request for a predatory designation is made by a PO or institution counselor. A PO or institution counselor seeking a predatory designation must arrange for a hearing with the Board's Hearing Officer by electronic request or by calling (503) 699-0291. PO's and counselors should submit this form with the Release Planning Form whenever possible.

EXHIBIT Q-4

lbt

5-22-00

MAY 22 2000

PERMANENT ADMINISTRATIVE RULES

ARCHIVES DIVISION
SECRETARY OF STATE

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 01-03-00 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 05-22-00 Rulemaking Notice was published in the 03-01-2000 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

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

AMEND:
Exhibit J (OAR 255-070-0001)

REPEAL:
Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing
Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing

ORS 144.102, 144.270, 144.275, 181.595
Stat. Auth.: ORS

None
Other Authority

None
Stats. Implemented: ORS

RULE SUMMARY

This Exhibit is being amended to comply with statutory changes and to update the rules to reflect the Board's current procedures.

Michael R. Washington Date 05-22-2000
Authorized Signer

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form

Oregon Board of Parole & Post-Prison Supervision

Chapter 255

Agency and Division
Number

Administrative Rules Chapter

In the Matter of Amendments and Adoption
of Rules of the Board of Parole and
Post-Prison Supervision

)
)
)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon,
Statement of Fiscal Impact

Statutory Authority: ORS 144.102, 144.270, 144.275, 181.595

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): This Exhibit is being amended to update the rules to reflect the Board's current procedures

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted? No

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

Authorized Signer and Date

02 15 06

DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions Not Limited by Exhibit J

255-070-0001

- (1) The Board may order parole conditions pursuant to OAR 255-070-0015.
- (2) The Board shall approve post-prison supervision conditions pursuant to OAR 213-11-001.
- (3) Conditions of parole and post-prison supervision are not limited to those shown in Exhibit J.

Statutory Authority: (ORS 144.096, 144.102, 144.270)

History: (5/31/85; 11/3/86, temporary; 4/1/87; 4/15/88, temporary; 5/19/88; 7/1/88;
10/18/88; 4/5/90; 4/30/92, temporary; 10/9/92; 10/15/93, 11/09/98,
9-15-99 Notice/Temp, 11-15-99, **05-22-00**)

Offender Return to County of Residence

255-070-0003

- (1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the first six months in the county where the offender resided on the date of the last arrest for a crime resulting in imprisonment.
- (2)
 - (a) The Board or the Department of Corrections may establish the county of residency by obtaining the last address of record at the time of the offense from all of the available information in the following records:
 - (A) An Oregon driver's license, regardless of its validity;
 - (B) The Department of Revenue;
 - (C) The Department of State Police, Bureau of Criminal Identification;
 - (D) The Department of Human Resources; or
 - (E) The Department of Corrections.
 - (b) If the records do not disclose the county of residency, the Board or the Department shall find the offender resided in the county where she or he committed the crime.
 - (c) If the offender is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.
 - (d) In determining the offender's county of residence for purposes of this rule, the Board may not consider offenses committed by the offender while the offender was incarcerated in a Department of Corrections facility.
- (3) Upon motion of the Board, an offender, a victim, or a district attorney, the Board may waive the residency requirement after finding:

- (a) the offender provided proof of a job with no set ending date in a county other than the established county of residence;
- (b) the offender poses a significant danger to the victim;
- (c) the victim or victim's family poses a significant danger to the offender residing in the county of residence.
- (d) the offender has a spouse or biological or adoptive family, residing in other than the county of residence, who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole or post-prison supervision period;
- (e) the Board requires that the offender participate in a treatment program which is not available in the county of residence;
- (f) the offender desires release to another state or another state has a detainer; or
- (g) other good cause.

Statutory Authority: (ORS 144.270(5))

History: (11/1/89; 10/15/91; 10/9/92, 9-15-99 – NOTICE/TEMP, 11-15-99)

Parolee Placement in Community Corrections Centers; Standards; Limitations
255-070-0005

History: (2/1/79; 5/31/85, repealed)

Guidelines on General Condition Relating to "Best Interest" Return
255-070-0010

History: (2/1/79; 5/31/85; 11/3/86, temporary; 4/1/87; 5/19/88, repealed)

Establishing Conditions
255-070-0015

- (1) The Board may order an exit interview prior to the inmate's release date to review the inmate's case and set or approve conditions. See Division 60 for exit interview procedures.
- (2) If the Board decides to waive an exit interview, it shall specify the parole condition(s) prior to release and shall include the conditions on an order of supervision.
- (3) If the Board decides to waive an exit interview, it shall specify, in an order given to the offender upon release from incarceration, the post-prison supervision condition(s).
- (4) Once the Board establishes the conditions, the Board may amend the conditions and issue an amended order by:

- (a) considering a requested modification administratively, if the amendment is requested before the inmate's release on parole or post-prison supervision or if a condition is deleted after release; and
 - (b) citing to a hearing, if the amendment is requested after release and the offender does not consent in writing to the addition of conditions.
- (5) The Hearings Officer may amend the conditions, after a hearing, unless the offender waives the hearing. The Hearings Officer shall send notice of the amendment to the Board.
 - (6) If the offender waives the right to a hearing and consents in writing to the addition of conditions, the supervising officer may amend the conditions. The officer shall send notice of the amendment to the Board.
 - (7) If the Board does not override the Hearings Officer or supervising officer amended conditions, the Board shall issue an amended order of conditions, however, the condition is in effect from the date the supervising officer or Hearings Officer orders it.
 - (8) The Board or the Hearings Officer shall conduct a hearing under section (4) and (5) of this rule applying rules governing violation hearings in Division 75.
 - (9) When a supervisory authority requests amended conditions before the inmate is released on parole or post-prison supervision, the supervisory authority shall submit the request in writing or by teletype to the Board prior to the release date.
 - (10) An offender may appeal the conditions of parole or post-prison supervision pursuant to the procedures of Division 80.

Statutory Authority: (ORS 144.096, 144.098, 144.102, 144.106, 144.125, 144.185, 144.270, 144.343)

History: (5/19/88, 4/5/90; 4/30/92, temporary, 10/9/92, 11/09/98)

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 may be revoked for violation of any of these conditions and/or you may be returned when parole is not in your best interest or the best interest of society.

The Board may, at it's discretion, sanction violations of 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 Board.
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 illegally used controlled substances.
4. 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 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.

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. Offender shall have no contact with minor females and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
4. Offender shall have no contact with minor males and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
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 which may include polygraph and/or plethysmograph testing. Offender shall abide by [and] a prohibition of sexually deviant materials, activities or behavior [on possession of printed, photographed or recorded materials] 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.

05-22-00

Supervision Conditions

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.

28

6-9-00

JUN 09 2000

PERMANENT ADMINISTRATIVE RULES

ARCHIVES DIVISION
SECRETARY OF STATE

certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 06-07-00 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 06-09-00 Rulemaking Notice was published in the 05-01-2000 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

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

AMEND:
255-030-0010, 255-030-0015, 255-030-0024, 255-030-0025, 255-030-0027, 255-030-0032, 255-030-0040

REPEAL:
Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.
Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing

ORS 144.035, 144-054-144.120, 144.123
Stat. Auth.: ORS
None
Other Authority
None
Stats. Implemented: ORS

RULE SUMMARY

The amendment of the proposed rules establishes that the Board is not required to hold a hearing to set a parole release date for offenders sentenced to death. These amendments also give parole officers and institutional counselors the option of participating in Board hearings.

Michael R. Washington 06-09-00
Authorized Signer Date

Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form

Oregon Board of Parole & Post-Prison Supervision
Agency and Division
Number

Chapter 255
Administrative Rules Chapter

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.035, 144.054, 144.120, 144.123

Other Authority: Department of Justice Advisory Memorandum dated February 12, 1998.

Statutes Implemented: ORS None

Need for the Rule(s): These rules are necessary to delete the requirement that the Board conduct hearings for offenders that are sentenced to death and to broaden the group of people that may participate in Board hearings.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board, other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted? No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee

Michael R. Washington

4-14-05

Authorized Signer and Date

DIVISION 30

PRISON TERM HEARING PROCEDURE

255-030-0002

Policy

History: (7/20/81, temporary; 5/31/85, repealed)

255-030-0005

Definitions

History: (2/1/79; 5/31/85; 12/2/86, temporary; 4/28/87; 5/19/88, repealed)

255-030-0010

Scheduling Prison Term Hearings

- (1) The Board shall conduct a hearing to establish a prison term for each new inmate whose crime was committed prior to November 1, 1989 within:
 - (a) six (6) months of admission to a Department of Corrections facility for those sentenced to five years or less;
 - (b) eight (8) months of admission to a Department of Corrections facility for those sentenced to more than five years but less than fifteen years; or
 - (c) twelve (12) months of admission to a Department of Corrections facility for those sentenced to life or fifteen (15) years or more.
- (2) The Board shall follow section 1 of this rule to schedule a prison term hearing for any additional sentence received while in custody of a Department of Corrections facility.
- (3) For those prison term hearings which must be conducted within six (6) months, the Board may defer setting a prison term for ninety days to obtain additional information.
- (4) The Board may establish prison terms after hearing or administratively pursuant to 255-030-0024.

Statutory Authority: ORS 144.120(1)

History: (2/1/79; 5/31/85; 12/2/86, temporary; 4/28/87; 5/19/88; 11/1/89; 10/9/92, 03/14/97, **06-09-00**)

255-030-0012

Scheduling and Hearing Procedure for Aggravated Murder

History: (11/4/81, temporary; 5/19/82; 5/31/85, repealed)

06-09-00

Prison Term Hearing

255-030-0013

Notification of Hearing

- (1) The Board shall send written notice of the hearing and its purpose to the inmate. The inmate shall receive a copy of the Board Review Packet at least 14 days prior to the hearing.
- (2) If the inmate did not receive 14 days notice, the Board may reschedule the hearing or the inmate may waive the notice and the Board shall conduct the hearing.
- (3) The Board shall attempt to notify the victim, if the victim requests notification and furnishes the Board a current address, and the District Attorney of the committing county at least thirty (30) days before all hearings by sending written notice to the current addresses of both parties.

Statutory Authority: ORS 144.120(7), 144.130

History: (12/2/86, temporary; 4/28/87; 5/19/88; 4/5/90; 10/9/92, 03/14/97)

255-030-0015

When Full Board is Required; Procedures for Board Decision

- (1) Except as otherwise provided in this rule, a panel of two voting members of the Board shall conduct all prison term hearings and shall make the final decision.
- (2) A majority of the Board may conduct the following hearings; a majority of the Board shall make the final decision in cases in which:
 - (a) the court sentenced the inmate under ORS 161.725 and 161.735 as a dangerous offender;
 - (b) the Department of Corrections recommends an extension of more than two years in the prison term for misconduct;
 - (c) the court ordered a minimum sentence pursuant to ORS 144.110 and the minimum exceeds the matrix range and the variations permitted a panel;
 - (d) a panel recommends a decision to set the prison term below a judicially set minimum sentence (A panel may uphold a judicial minimum.);
 - (e) a panel recommends unsumming a unified range.
- (3) A majority of the Board may conduct the following hearings; the full Board shall make the final decision:
 - (a) cases involving a prisoner sentenced to [death for aggravated murder or] life imprisonment for murder or aggravated murder;
 - (b) cases where the inmate was convicted of a crime involving the death of a victim, whether or not the prosecution directly charged the prisoner with causing the death of the victim.

- (4) If a Board member is not present at a hearing, and statute or rule compels review, or the vote may affect the outcome of the hearing, the Board member may vote administratively after reviewing the Board Review Packet and the handwritten Board Action Form with attached exhibits, or may request that a hearing be rescheduled. The Board's action shall be considered final if the absent member's vote is not required for a final decision.
- (5) A panel of one Board member or of one Board member and one hearings officer may conduct prison term hearings for inmates convicted of non-person-to-person crimes. In cases of a panel consisting of one Board member, another member shall vote after review of the record as provided in section 4 of this rule. A hearings officer may not participate on a panel in cases in which, pursuant to ORS 144.110, a court imposed a minimum sentence that exceeds the matrix range and variations permitted a panel.
- (6) (a) If there is a division in a panel so that a decision is not unanimous, another Board member shall vote after review of the record as provided in section 4 of this rule.
- (b) If the original panel was made up of one Board member, and the member voting after administrative review of the record disagrees with the decision, the chairperson shall reassign the case to a panel made up of the remaining Board members. If this second panel agrees with neither member of the original panel, the chairperson will refer the case for hearing and decision before the full Board.
- (c) When a panel recommends a decision to exceed the allowable variation from the matrix permitted to the panel and a third vote, the chairperson shall reassign the case for hearing and decision before the full Board.
- (d) When a panel recommends denying parole, the chairperson shall reassign the case for hearing before the full Board, and three members must affirmatively agree to deny parole, except that if the result is life imprisonment, the vote must be unanimous.

Statutory Authority: ORS 144.035, 144.054

History: (2/1/79; 5/31/85; 11/13/86, temporary; 12/2/86, temporary; 3/25/88, temporary; 5/19/88; 12/6/88; 11/1/89; 5/1/91, temporary; 10/15/91, 03/14/97, 06-09-00)

255-030-0020

Procedures for Full Board Decisions

History: (2/1/79; 5/31/85; 11/13/86, temporary; 12/2/86, temporary; 3/25/88, temporary; 5/19/88, repealed)

255-030-0021

Teleconference Hearing

At the chairperson's discretion, the Board or its designated representative may conduct any hearing by teleconference call.

Statutory Authority: ORS 144.035(5)

History: (5/31/85; 12/2/86, temporary; 4/28/87; 5/19/88; 11/1/89; 10/9/92)

06-09-00

Prison Term Hearing

255-030-0023

Prisoner Appearance at Board Hearing

- (1) The inmate shall be present in person or by telephone at the Parole Board hearing.
- (2) The Board may compel an inmate's appearance when a inmate refuses to appear.
- (3) The Board may elect not to compel the inmate to attend the hearing. In this instance, the Board may reschedule the hearing, or set the prison term in the inmate's absence.

Statutory Authority: ORS 144.035(5), 144.120

History: (5/19/88; 11/1/89; 2/20/90, temporary; 7/1/90; 10/9/92, 03/14/97)

255-030-0024

Prison Term Hearing Waiver

- (1) Notwithstanding OAR 255-030-0023, an inmate may waive his/her right to a prison term hearing based on the following criteria:
 - (a) Sentence of less than 15 years; and
 - (b) Non-person felony (The non-person felonies are designated on Exhibit A1 of these rules.); and
 - (c) Matrix range of up to 14 - 20 months; and
 - (d) Completed Prison Term Hearing Packet.
- (2) Within the time limits provided by OAR 255-030-0010, the Board, at its discretion, may notify the inmate in writing of:
 - (a) his/her eligibility to waive the prison term hearing; and
 - (b) the proposed prison term and conditions of parole.
- (3) A Department of Corrections counselor will review the Prison Term Hearing Packet and the waiver form with the inmate.
- (4) Upon receipt of a signed waiver, the Board shall make the findings required by OAR 255-035-0013 or 255-035-0014 and shall send the final Board order to the inmate.
- (5) If the Board is not satisfied that the waiver was made knowingly and intelligently or if it needs more information before making its decision, the Board may deny the waiver and order a hearing.

Statutory Authority: ORS 144.120(1)(b)

History: (2/20/90, temporary; 7/1/90; 10/15/91, 03/14/97, **06-09-00**)

255-030-0025

Who May Appear at a Board Hearing

- (1) This is a joint rule with the Department of Corrections.
- (2) The inmate may be accompanied at a Board of Parole and Post-Prison Supervision hearing by a person of the inmate's choice, however, the accompanist must be:
 - (a) approved for visiting according to Department of Corrections rules on visiting (OAR 291-127[-005 to 045]); or
 - (b) an assigned inmate legal assistant, selected pursuant to Department of Corrections rules (OAR 291-139[-005 to 045]), from the institution where the inmate is in custody.
- (3) In addition to a person of the prisoner's choice, an assistant shall be provided by the Department of Corrections or the Board for inmates incapable of presenting their position due to a foreign language barrier, or a documented physical, mental or emotional incapacity.
- (4) The victim, personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction, parole officer and institution counselor shall have the right to appear at hearings.
- (5) Any member of the public, including the media, may attend Board hearings, but may not participate. The Board may eject any disruptive person from a hearing. The Board may require all parties other than the Board and its staff to leave the hearing during deliberations. All parties shall abide by Department of Corrections' rules while attending hearings within Department of Corrections' facilities.

Statutory Authority: ORS 144.123, 144.120(7)

History: (2/1/79; 11/4/81, temporary; 5/19/82; 12/2/86, temporary; 4/28/87; 5/19/88; 4/5/90; 10/9/92, 03/14/97, **06-09-00**)

255-030-0027

Victim, District Attorney and Inmate Statements

- (1) During the hearing, the victim, personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction, parole officer and institution counselor may make statements not to exceed three minutes.
- (2) Following the victim and the District Attorney statements, the person accompanying the inmate may make a statement not to exceed three minutes.

Statutory Authority: ORS 144.120(7)

History: (12/2/86, temporary; 4/28/87; 5/19/88; 1/13/92, 03/14/97, **06-09-00**)

255-030-0030

Panel Decision: Use of Guidelines; Unanimity Requirement

History: (2/1/79; 5/31/85; 5/19/88, repealed)

255-030-0032

Evidence

- (1) The presiding chairperson at a Board hearing shall explain the issues for decision, which, in the case of a prison term hearing, are those issues set forth in OAR 255-035-0013.
- (2) Evidence of a type that reasonably prudent persons would commonly rely upon in the conduct of their serious affairs shall be admissible in Board hearings, including:
 - (a) The information set forth in OAR 255-030-0035;
 - (b) Other relevant evidence concerning the inmate if reasonably available.
- (3) Reliable, probative and substantial evidence shall support Board orders. Substantial evidence is found when the record, viewed as a whole, would permit a reasonable person to make a particular finding.
- (4) The Board may exclude evidence if it is:
 - (a) unduly repetitious;
 - (b) not of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs;
 - (c) provided by a person, other than a justice system official, without first hand knowledge of the circumstances of the crime;
 - (d) provided by a person, other than a justice system official, without first hand knowledge of the character of the inmate;
 - (e) addressing only guilt or innocence; or
 - (f) irrelevant or immaterial to the findings being made at that particular hearing.
- (5) The Board may receive evidence to which the inmate objects. If the presiding chairperson does not make rulings on its admissibility or exclusion during the hearing, the Board shall make findings on the record at the time a final order is issued.
- (6) Erroneous rulings on evidence shall not preclude Board action on the record unless shown to have substantially prejudiced the rights of the inmate.

Statutory Authority: ORS 144.050, 144.140

History: (11/1/89; 10/5/90; 1/13/92, 03/14/97, **06-09-00**)

255-030-0035

Information the Board Shall Consider

- (1) The Board Review Packet shall contain:
 - (a) inmate's notice of rights and notice of administrative appeal;
 - (b) PSI, PAR, PSR or report of similar content;
 - (c) sentencing/judgement orders;
 - (d) facesheet;
 - (e) certification of time served credits;
 - (f) Board Action Forms;
 - (g) information pursuant to Ballot Measure 10;
 - (h) material submitted by the inmate or representative relating to the calculation of the prison term;
 - (i) current psychological/psychiatric evaluations;
 - (j) other relevant material selected at the Board's discretion.

- (2) The Board may consider additional information and recommendations from those with a special interest in the case. If considered, the Board Review Packet shall include the information. The Board must receive any information submitted pursuant to this section at least seven (7) days prior to the hearing. The Board may waive the seven day requirement.

Statutory Authority: ORS 144.185, 144.223

History: (2/1/79; 11/25/81, temporary; 5/19/82; 5/31/85; 12/2/86, temporary; 4/28/87; 5/19/88; 11/1/89; 1/13/92)

255-030-0040

Inmate's Access to Written Materials

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

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

- (3) If the victim, his/her representative, or the District Attorney wishes to rebut any of the material in the Board Review Packet, the Board must receive the response seven (7) days prior to the hearing. The Board shall notify the victim that the Board will include the response in the Board Review Packet sent to the inmate unless the victim requests confidentiality.

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

Statutory Authority: ORS 144.130

History: (2/1/79; 5/31/85; 12/2/86, temporary; 4/28/87; 5/19/88; 11/1/89; 10/9/92, 03/14/97, 06-09-00)

06-09-00

Prison Term Hearing

255-030-0045

Exemptions from Disclosure

History: (2/1/79; 5/31/85; 5/19/88, repealed)

255-030-0050

Record of Hearing: Content; Time to be Maintained

History: (2/1/79; 5/31/85; 5/19/88, repealed)

255-030-0055

Notice of Decision

- (1) Following a Board decision concerning the prison term of an inmate, the Board shall send written notice of the Board's final order to the inmate, District Attorney, sheriff or arresting agency, the Department of Corrections, and upon request, the victim, the sentencing judge and the trial counsel.
- (2) The Board's final order shall contain the following applicable findings:
 - (a) the prison term commencement date;
 - (b) the history/risk assessment score;
 - (c) the crime category with the subcategory rationale;
 - (d) the matrix range;
 - (e) when there are consecutive sentences, whether the range is unsummed and the reason for unsumming;
 - (f) when there is a variation from the range, the reason for the variation;
 - (g) aggravation;
 - (h) mitigation;
 - (i) the votes on minimum sentences;
 - (j) the prison term set;
 - (k) the votes of the Board members;
 - (l) the parole release date;
 - (m) when there are conditions of parole or post-prison supervision set, findings concerning the waiver of the residency condition, if any; and
 - (n) sentencing guidelines range, if applicable.

Statutory Authority: ORS 144.120, 144.260, 144.135

History: (2/1/79; 5/31/85; 12/2/86, temporary; 4/28/87; 5/19/88; 11/1/89; 10/9/92; 10/29/93, 03/14/97)

255-030-0056

Notification of Release; Parties Notified

History: (12/2/86, temporary; 4/28/87; 5/19/88, repealed)

JUN 09 2000

PERMANENT ADMINISTRATIVE RULES

ARCHIVES DIVISION
SECRETARY OF STATE

certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 06-07-00 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 06-09-00 Rulemaking Notice was published in the 05-01-2000 Oregon Bulletin**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

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

AMEND: 255-080-0001
255-080-0005 (Exhibit O), 255-080-0011, 255-080-0012

REPEAL:
number: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing
Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.335, 144.130, 144.482
Stat. Auth.: ORS

None
Other Authority

None
Stats. Implemented ORS

RULE SUMMARY

The amendments of the proposed rules establishes consistency between the Board's Exhibits and its rules. The amendment of Exhibit O allows offenders to provide the Board with additional information regarding the disposition of their appeal requests.

Michael R. Washington Date 06-09-00
Authorized Signer

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form

Oregon Board of Parole & Post-Prison Supervision
Agency and Division
Number

Chapter 255
Administrative Rules Chapter

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority ORS 144 130, 144 335, 183 482

Other Authority None

Statutes Implemented ORS None

Need for the Rule(s): These amendments are necessary to establish consistency between the Board's rules and its exhibits. The amendment of Exhibit O is necessary to allow the offender to provide the Board with additional information as to how they would like their appeal request to be processed.

Documents Relied Upon None

Fiscal and Economic Impact We are not aware of any fiscal or economic effect this amendment will have on the Board, other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted? No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washburn

4-14-00

Authorized Signer and Date

DIVISION 80

ADMINISTRATIVE APPEAL

255-080-0001

Exhaustion of Remedies

- (1) A Board order is final and effective the date it is signed, however it is not final for purposes of the time period within which to appeal to the Court of Appeals until the inmate/offender exhausts his or her administrative review remedies.
- (2) An inmate/offender has exhausted his or her administrative remedies after complying with OAR 255-080-0005, and after the Board denies review, or grants review and either denies or grants relief. The Board shall notify the inmate/offender that exhaustion has occurred and the time for judicial appeal of appealable orders shall run from the mailing date of the notice.

Statutory Authority: ORS 144.335

History: (2/20/91; 10/9/92, 03/14/97, 06-09-00)

255-080-0005

Procedure for Administrative Review

- (1) An inmate/offender may request an administrative review by sending Exhibit O, Administrative Review Request Form, to the Board concisely explaining how his or her case fits the criteria for review listed in rule 255-080-0010.
- (2) The Board must receive requests for administrative review within forty-five (45) days after the mailing date on the Board's final action on the reviewed issue.
- (3) If the Board or its designee determines that the request is consistent with the criteria as defined in rules 255-080-0010 and 255-080-0011, and meets the deadline requirements, the Board will resolve the matter using the procedures outlined in OAR 255-080-0012.
- (4) When the Board or its designee denies review, the Board shall send the inmate/offender written notice of the specific reasons for denial.
- (5) When review is denied, the prior decision is re-affirmed.

Statutory Authority: ORS 144.335

History: (2/1/79; 11/25/81, temporary; 5/19/82; 5/31/85; 5/19/88; 12/6/88; 11/1/89; 2/20/91; 10/9/92, 03/14/97, 06-09-00)

255-080-0010

Criteria for Granting a Review

The criteria for granting a review are:

- (1) The Board action is not supported by evidence in the record; or
- (2) Pertinent information was available at the time of the hearing which, through no fault of the inmate/offender, was not considered; or

06-09-00

Administrative Review

- (3) Pertinent information was not available at the time of the hearing, e.g., information concerning convictions from other jurisdictions; or
- (4) The action of the Board is inconsistent with its rules or policies and the inconsistency is not explained; or
- (5) The action of the Board is in violation of constitutional or statutory provisions or is a misinterpretation of those provisions.
- (6) The action of the Board is outside its statutory grant of discretion.

Statutory Authority: ORS 144.335, 183.482(8)

History: (2/1/79; 5/19/88; 12/6/88; 2/20/91; 10/9/92, 03/14/97)

255-080-0011

Limitations on Requests for Administrative Review

All administrative review requests will be screened by a Board member or a Board designee who may deny further review of the following matters:

- (1) Findings of aggravation when the Board has set the prison term within or below the matrix range;
- (2) Findings of aggravation when the Board has not overridden a judicial minimum and the prison term has been set equal to the judicial minimum;
- (3) Matters which have previously been appealed and decided on the merits by either the Board or the appellate court(s);
- (4) Board orders that were mailed more than 45 days prior to the request for review;
- (5) Subject matter of a hearing or review and/or Board order other than the Board order being appealed;
- (6) Matters that will not change the parole release date or conditions or length of supervision;
- (7) Board orders that are not final;
- (8) Errors previously corrected;
- (9) Order which sustains a minimum term and the inmate/offender does not contest the crime severity rating and history risk score;
- (10) Order which denies, grants or grants in part an inmate/offender's request for a prison term reduction based upon outstanding reformation under ORS 144.122;
- (11) Order which refers an inmate/offender for psychological evaluation;
- (12) Order which postpones an inmate/offender's release date because of:

- (a) a Board finding of dangerousness under ORS 144.125(3) and OAR 255-060-0012
 - (b) an inmate/offender's refusal to submit to a psychological evaluation;
- (13) Order which postpones an inmate/offender's release date because of serious misconduct during confinement; or
 - (14) Order which denies an inmate/offender's request under ORS 144.228(1) for an early parole consideration hearing.
 - (15) Order which sets an initial release date under ORS 144.120, except if inmate/offender contests the crime severity rating, the history risk score or aggravating factors found by the Board under Board rules;
 - (16) Order which sets a date for a parole consideration hearing under ORS 144.228;
 - (17) Order which sets a release date or declines to set a release date after a parole consideration hearing under ORS 144.228.

Statutory Authority: ORS 144.335
History: (2/20/91; 10/29/93, 06-09-00)

255-080-0012
Administrative Review Hearing Procedure

- (1) If the Board or its designee determines that the request for review is consistent with the criteria in OAR 255-080-0010 and the limits of 255-080-0011, the Board may open the case for review.
 - (2) The Board may open a case for reconsideration of a finding without receiving a request, without regard to time limits, and without opening all findings for review and appeal.
 - (3) The Board may conduct the review using the following methods:
 - (a) administrative file pass, with the number of concurring votes required by OAR 255-030-0015; or
 - (b) other administrative action by the Board or its designee, e.g., to correct errors in the history risk score, crime category, credit for time served, inoperative time or adjusted commitment dates; or
 - (c) administrative hearing, in cases where review would cause an adverse result for the prisoner.
 - (4) When the Board schedules an inmate/offender for an administrative review hearing and the inmate/offender has not received the Hearing Packet, the Board may proceed with the hearing, if the inmate/offender waives the right to adequate notice of the hearing and receipt of the Board Review Packet.
 - (5) The Board shall send the inmate/offender written notice of the Board decision and findings.
- 06-09-00 Administrative Review

Statutory Authority: ORS 144.335
History: (12/6/88; 2/20/91; 10/9/92, 06-09-00)

255-080-0015
Administrative Review Hearing Packet

The Administrative Review Hearing Packet shall contain:

- (1) institution face sheet;
- (2) Board Action Form granting administrative review;
- (3) all information attached to the Board Action Form granting review;
- (4) administrative review request;
- (5) all Board Action Forms since the prison term hearing;
- (6) psychological evaluations (last 6 months);
- (7) correspondence;
- (8) field parole analysis report or comparable report;
- (9) court orders; and
- (10) Inmate's Rights and Board of Parole and Post-Prison Supervision Procedures.

Statutory History: ORS 144.130; 144.335
History: (5/19/88; 7/1/88; 12/6/88; 11/1/89; 10/9/92)

**EXHIBIT O
ADMINISTRATIVE REVIEW REQUEST FORM**

**BOARD OF PAROLE AND POST-PRISON SUPERVISION
OREGON ADMINISTRATIVE RULES CHAPTER 255, DIVISION 80**

Name: _____ SID# _____

Request for Review of BAF #/Order _____ dated _____

Requests will be most effective if short and to the point.

Your request must be made within 45 days of the mailing date on the Board Action Form (BAF) and must meet at least one of the criteria listed below:

1. There is no substantial evidence to support a finding of: _____
because: _____

2. Pertinent information was available at the time of the original hearing which, through no fault of the [prisoner] inmate/offender, was not considered.

3. Pertinent information was not available at the time of the original hearing which would have had an effect on the Board action.

Explain what information was or was not available, how it is relevant, and how it would have had an effect on the Board action. Attach documentary evidence, such as court orders.

4. The Board action is inconsistent with its rules or policies and the inconsistency was not adequately explained in that: _____

5. [] The Board action is in violation of statutes and/or constitutions because: _____

6. [] I have requested review of the same issue(s) on _____
_____ dates

7. [] I have sought judicial review of the same issue(s) on _____
_____ dates

Prepared by _____
(if other than self)

Signed by _____ Date _____
(inmate/offender requesting review)

INMATE/OFFENDER MUST INDICATE WHERE RESPONSE IS TO BE SENT

Please send response to: _____
(name)

(address)

Attorney if any: _____

If no address is indicates, response will be sent to last institution of record or parole officer only.

off

11-15-00

Secretary of State
Certificate Order for Filing

PERMANENT ADMINISTRATIVE RULES

certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 11-06-00 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 11-15-00 Rulemaking Notice was published in the 10-01-2000 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

FILED

NOV 15 2000

ARCHIVES DIVISION
SECRETARY OF STATE

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

AMEND:
255-025-0005, 255-025-0010

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 137.320, 137.370, 144.050, 144.079, 144.783
Stat. Auth.: ORS

None
Other Authority

None
Stats. Implemented: ORS

RULE SUMMARY

These rules are being amended to be consistent with other Divisions of Chapter 255 to change "prisoner" to "inmate".

Michael R. Washington 11-15-00
Authorized Signer Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 137.320, 137.370, 144.050, 144.079, 144.783

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): These rules are being amended to be consistent with other Divisions of Chapter 255 to change "prisoner" to "inmate"

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael Washington

Authorized Signer and Date

09-15-20

DIVISION 25

ADJUSTED COMMITMENT DATE

ORS 137.320, 137.370, 144.050, 144.079, 144.140, 144.783

255-025-0005

Date Prison Term Starts to Run

- (1) Generally, the date on which the [prisoner] inmate is delivered to custody of the Department of Corrections for the purpose of serving the sentence is the commencement date for the prison term.
- (2) In the case of additional consecutive sentences, the board shall rescind the existing parole release date which shall become the commencement date for the new prison term unless the board unsums the consecutive ranges pursuant to OAR 255-035-0022. Upon unsumming the ranges, the board shall apply section three of this rule.
- (3) In the case of additional concurrent sentences, the sentencing date shall be the commencement date for the new prison term.

Statutory Authority: (ORS 137.320, 137.370, 144.050, 144.079, 144.783)

History: (5/31/85; 5/19/88; 10/15/91; 10/9/92, 11/15/00)

255-025-0010

Credit for Time Served

- (1) Upon certification of the credit for time served by the Department of Corrections, the board shall grant time served credit towards the prison term for the following time periods:
 - (a) the actual, non-overlapping, certified time served in the county jail after arrest until the prison term begins; or
 - (b) the actual, non-overlapping, certified time served in the county jail as a condition of probation.
- (2) When the board grants credit towards the initial prison term under subsection (1) of this section, the board shall deduct the time served credits from the commencement date as defined in OAR 255-025-0005(1).
- (3) When the board grants credit towards the prison term on a sentence consecutive to one being served, the adjusted commitment date shall be the prior parole release date. The board shall deduct the time served credits from the newly established parole release date after establishment of a prison term on the new consecutive sentence.
- (4) When the board grants credit towards the prison term on a sentence concurrent to one being served, the board shall deduct time served credits from the sentencing date on the new concurrent sentence.

- (5) If the board receives additional time served credits after establishment of the prison term, the board or its designee may administratively correct the parole release date. The board shall send written notice of the correction to the [prisoner] inmate.

Statutory Authority: (ORS 137.320, 137.370, 144.050, 144.079, 144.783)
History: (5/31/85; 5/19/88; 7/20/88, temporary; 12/6/88; 10/15/91,
11/15/00)

Calculation of Adjusted Commitment Date
255-25-015

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

Method of Certification/Disagreement with Time Served Calculation
255-25-020

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

Adjustment of Adjusted Commitment Date
255-25-025

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

255-025-0030
Effect of Inoperative Time on Prison Terms

Inoperative time shall not count towards the completion of a prison term or an incarceration term for violation of parole or post-prison supervision conditions. In resetting the release date, the inoperative time shall be added to the term as provided in OAR 255-050-0015. The board shall notify the inmate of its action.

Statutory Authority: ORS 144.050, 144.140
History: (5/19/88; 10/9/92)

255-025-0035
Adjusted Commitment Date for Parole Violations

The adjusted commitment date for parole violators with new convictions or new commitments shall be calculated as outlined in OAR 255-075-0078.

Statutory Authority: ORS 144.050
History: (12/6/88)

PERMANENT ADMINISTRATIVE RULES

certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 11-06-00 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 11-15-00 Rulemaking Notice was published in the 10-01-2000 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

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

AMEND: 255-035-0006, 255-035-0013, 255.035-0014, 255.035-0018, 255-035-0023, 255-035-0025, 255,025-0030 *035 MPW*

FILED

NOV 15 2000

ARCHIVES DIVISION
SECRETARY OF STATE

REPEAL:
Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.
Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 137.122, 137.551, 144.035(4), 144.050, 144.110, 144.120, 144.129(2), 144.245, 144.780-787
Stat. Auth.: ORS

None
Other Authority

ORS 137.122, 137.551, 144.035(4), 144.050, 144.110, 144.120, 144.129(2), 144.245, 144.780-787
Stats. Implemented: ORS

RULE SUMMARY

These rules are being amended to be consistent with other Divisions of Chapter 255 to change "prisoner" to "inmate".
255-035-0006: Delete reference to Exhibit M of the board's administrative rules. Exhibit M was repealed 03/14/97.
255-035-0014: Change the reference to OAR Chapter 253 to Chapter 213 (Sentencing Guidelines Rules changed their Chapter number)

Michael R. Washington 11-15-00
Authorized Signer Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 137.122, 137.551, 144.035(4), 144.050, 144.110, 144.120, 144.129(2), 144.245, 144.780-78

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s):

These rules are being amended to be consistent with other Divisions of Chapter 255 to change "prisoner" to "inmate"

255-035-0006: Delete reference to Exhibit M of the board's administrative rules. Exhibit M was repealed 03/14/97.

255-035-0014: Change the reference to OAR Chapter 253 to Chapter 213 (Sentencing Guidelines Rules changed their Chapter number)

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

Authorized Signer and Date

09-15-0

DIVISION 35

APPLICATIONS OF THE GUIDELINES TO ESTABLISH A PRISON TERM

Definitions

255-35-005

History: (2/1/79; 11/25/81, temporary; 5/19/82; 5/31/85; 6/8/87, temporary; 6/18/87, temporary; 6/21/87, temporary; 5/19/88, repealed)

255-035-0006

Exhibits

Exhibits AI, AII, AIII, BI, BII, C, D, EI, EII, EIII, and F [and M] are essential components of the parole matrix guidelines and are hereby incorporated by reference.

Statutory Authority: ORS 144.050, 144.120, 144.780-787

History: (10/9/92 **11-15-00**)

Rating Crime Severity: Generally, Multiple Concurrent Convictions

255-35-010

History: (2/1/79; 5/20/80; 2/15/81; 4/1/81; 11/4/81, temporary; 11/25/81, temporary; 5/19/82; 5/31/85; 4/4/88, temporary; 5/19/88, repealed)

Board to Make Findings of Fact Regarding Offense Severity; Waiver of Exit Interview; Establishing Conditions of Parole

255-35-012

History: (11/4/81, temporary; 5/19/82; 5/31/85, repealed)

255-035-0013

Factors Which Determine an Initial Parole Release Date

During the prison term hearing the board shall make findings of fact concerning:

- (1) the prison term commencement date;
- (2) the crime severity rating and subcategory rationale (Exhibit A);
- (3) the [prisoner's] inmate's history/risk assessment score (Exhibit B);
- (4) the matrix range;
- (5) when there is a variation from the range, the reason for the variation;
- (6) aggravation (Exhibit E-1);
- (7) mitigation (Exhibit E-2); and
- (8) minimum sentences.

Statutory Authority: ORS 144.129(2), 144.110, 144.780-787

History: (5/31/85; 5/19/88, **11-15-00**)

11-15-00

Prison Term Guidelines

255-035-0014

Initial Parole Release Date for Offenders Whose Probations are Revoked November 1, 1989 or Later

- (1) To the extent permissible under law, for those offenders who committed crimes prior to November 1, 1989 and the court revoked the previously ordered probation November 1, 1989 or later, the board shall:
 - (a) make the findings of fact listed in OAR 255-035-0013 pursuant to Divisions 30 and 35 of the Board of Parole and Post-Prison Supervision rules; and
 - (b) make findings of fact pursuant to the Sentencing Guidelines Grid and applicable rules found in OAR Chapter [253] 213 and herein incorporated by reference including:
 - (A) crime category ([253] 213-04-002, [253] 213-04-003, [253] 213-04-004, [253] 213-04-005, [Appendices 2, 3, 4 to] Divisions 17, 18, 19 of OAR [253] 213);
 - (B) criminal history as established by the post-sentence report ([253] 213-04-006, [253] 213-04-007, [253] 213-04-008, [253] 213-04-009, [253] 213-04-010, [253] 213-04-011);
 - (C) guideline ranges (Appendix 1 to OAR [253] 213);
 - (D) aggravating or mitigating factors, if any ([253] 213-05-001);
 - (E) upholding or overriding minimum sentences;
 - (F) summing of consecutive ranges (OAR [253-12-010 to 040] 213-012-001 to 004); and
 - (c) except when the board upholds a minimum sentence or denies parole, set the prison term pursuant to:
 - (A) the Sentencing Guidelines Grid ([253] 213-10-002, [253] 213-05-006, Appendix 1) to the extent permissible under law, if the resultant prison term would be shorter than it would be under the Board of Parole Matrix Guideline and applicable rules;
 - (B) the Matrix Guidelines (255-035-0013) if the resultant prison term would be shorter than it would be under the Sentencing Guidelines Grid and applicable rules.
- (2) When the board upholds a judicially or statutorily set minimum sentence which is longer than the prison term would otherwise be under the Sentencing Guidelines Grid, the board shall set the prison term at minimum sentence.
- (3) When the court orders a sentence shorter than the applicable prison term, the board shall apply OAR 255-035-0025.
- (4) Notwithstanding OAR 255-035-0025, the board may order a prison term of less than (6) months when the crime severity and criminal history fall below the Sentencing Guidelines dispositional line.

Statutory Authority: ORS 137.551
History: (11/1/89; 7/1/90; 1/13/92; 10/9/92, 11-15-00)

Criminal History/Risk Assessment
255-35-015

History: (2/1/79; 5/1/80, temporary; 12/8/80, temporary; 11/25/81, temporary; 5/19/82;
5/31/85; 5/19/88, repealed)

255-035-0016
Variations From the Ranges for Aggravation or Mitigation

- (1) The board may depart from the appropriate parole matrix range only upon making a specific finding that there is aggravation or mitigation which justifies departure from the range pursuant to Exhibit 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.
- (2) If a panel finds that the matrix range and the variations permitted a panel are inadequate to establish a prison term because of the panel's findings of aggravation or mitigation, it shall secure a third vote for an additional variation or refer the matter to the full board.
- (3) Exhibit D shows the maximum allowable variation from a range. The board may apply a portion or all of the variation allowed.
- (4) The board shall also apply these provisions to unified ranges.

Statutory Authority: ORS 144.120(2), 144.785-787
History: (5/31/85; 5/19/89; 11/1/89; 1/13/92)

255-035-0018
Multiple Concurrent Convictions

When concurrent sentences exist, the [prisoner] inmate shall be given a prison term based on the crime that provides for the longest prison term.

Statutory Authority: ORS 137.122
History: (5/19/88; 11/1/89, 11-15-00)

255-035-0020
Board Bound by Court Order

- (1) The Board of Parole and Post-Prison Supervision does not have the authority to run a sentence concurrently or consecutively to an out-of-state jurisdiction, but is bound by the final judgement order issued by the Oregon courts.

- (2) The board does not have the authority to convert a court ordered indeterminate sentence for a crime committed prior to November 1, 1989, to a Sentencing Guidelines determinate sentence.

Statutory Authority: ORS 137.122, 137.123, 144.079, 144.783

History: (2/1/79; 5/19/82; 5/31/85; 5/19/88; 4/5/90; 10/9/92)

255-035-0021

Consecutive Sentences: Creating a Unified Matrix Range

- (1) Notwithstanding subsection (4) of this section, the board shall establish the principal range for the most serious of the felonies committed during the time period under consideration. If two or more felonies are determined to be equally the most serious, the board shall establish a principal range for only one of those felonies.
- (2) The board shall then establish a range for each of the remaining felonies committed during the same period using the appropriate base range for the crime pursuant to Exhibit C.
- (3) The unified range for crimes committed during the same period shall be determined by summing the range established under section (1) of this rule with the ranges established under section (2) of this rule.
- (4) The method established by sections (1) to (3) of this rule for determining the unified range shall not apply if any of the crimes involved is:
- (a) murder, as defined in ORS 163.115 or any aggravated form thereof;
 - (b) assault in the first degree, as defined in ORS 163.185;
 - (c) kidnapping in the first degree, as defined in ORS 163.235;
 - (d) rape in the first degree, as defined in ORS 163.375;
 - (e) sodomy in the first degree, as defined in ORS 163.405;
 - (f) sexual penetration with a foreign object, as defined in ORS 163.411;
 - (g) arson in the first degree, as defined in ORS 164.325; or
 - (h) treason, as defined in ORS 166.005.
- (5) To determine the unified range for inmates with consecutive sentences which involve a crime listed in section (4) of this rule, the board shall establish the matrix range for each crime by using the inmate's history/risk score pursuant to Exhibit B and the applicable crime category rationale. The unified range shall be the sum of the ranges established under this section.
- (6) The unified range may be subject to the variations established in accordance with OAR 255-035-0016 and Exhibit D.

Statutory Authority: ORS 144.079, 144.783

History: (5/19/88)

255-035-0022

Consecutive Sentences: Referring a Case to the Full Board; Going Below the Range; Additional Consecutive Sentences

- (1) When a panel recommends that a range be less than the sum of the terms under OAR 255-035-0021, the panel shall refer the case to a majority of the board.
- (2) The duration of imprisonment for consecutive sentences may be less than the sum of the terms under OAR 255-035-0021, if the board finds by a majority vote that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect the community security.
- (3) When additional sentences are imposed for crimes which took place during the period under consideration at a prior prison term hearing and the additional sentences are consecutive to the sentences already considered, the board shall:
 - (a) conduct a de novo prison term hearing pursuant to the provisions of Division 30 for all the crimes. The board shall compute the unified range for the additional sentences and the sentences which were already considered under the provisions of OAR 255-035-0021;
 - (b) conduct a hearing to consider only the additional consecutive sentences using base ranges for the additional sentences. The commencement date for the new prison term under this subsection shall be the parole release date set at the previous prison term hearing; or
 - (c) conduct a hearing to consider whether to unsum the additional consecutive ranges.
- (4) The provisions of section (3) of this rule apply only to crimes which occurred on or after July 11, 1987, unless one of the crimes involved is listed in OAR 255-035-0021(4).
- (5) If one of the crimes involved is listed in OAR 255-035-0021(4) and the sentence is consecutive, the board shall conduct a de novo hearing under subsection (3)(a) of this rule.
- (6) If a new sentence is consecutive to sentences already considered, and is the most serious offense with the highest crime severity rating and/or longest sentence, the board shall conduct a de novo hearing under subsection (3)(a) of this rule.
- (7) When additional sentences are imposed for crimes which took place after the period considered at a prior prison term hearing and the additional sentences are consecutive to the sentences already considered, the board shall establish the matrix range for the additional sentences as if they were new sentences. If the inmate has not yet been released on parole, the commencement date for the new prison term shall be the parole release date established at the previous prison term hearing.

Statutory Authority: ORS 144.079, 144.783

History: (11/25/81, temporary; 5/19/82; 5/31/85; 6/8/87, temporary; 6/18/87, temporary; 7/21/87, temporary; 12/16/87; 5/19/88; 7/1/90; 5/1/91, temporary; 10/15/91)

255-035-0023

Effect of Minimum Sentences on Prison Terms; Consecutive Minimum Sentences

- (1) The board shall not release a [prisoner] inmate on parole until the [prisoner] inmate has served a judicially imposed minimum prison term, except upon the affirmative majority vote of members who have found that:
 - (a) the minimum term is not an appropriate penalty for the criminal offense; and
 - (b) the minimum term is not necessary to protect the public.
- (2) If at least a majority of the board members have made the findings listed in section (1) of this rule, the board shall establish a prison term using the guidelines range and the standard variations allowed, unless there are remaining judicial minimums above the guidelines range in length, which the board has upheld.
- (3) When the court has ordered consecutive minimum sentences and the board finds that the combined minimums are not appropriate penalties for the criminal offenses involved and are not necessary to protect community security, the board, by a majority of concurring votes, may override one or more of the judicially imposed minimums and set a prison term which is less than the sum of the minimum terms.
- (4) The Board shall set a parole release date in accordance with OAR 255-035-0013 or 255-035-0014, and shall state the facts and reasons for its actions.
- (5) Notwithstanding subsection (3) of this rule, when the board overrides an ORS 163.115 murder minimum, the vote must be unanimous.
- (6) The board shall not override ORS 161.610 gun minimums except as provided by ORS 144.122, ORS 144.126 and OAR 255-040-0028.
- (7) The board shall not override ORS 163.105 aggravated murder minimums.

Statutory Authority: ORS 144.035(4), 144.110, 144.245, 144.783

History: (5/31/85; 7/7/87, temporary; 12/14/87; 5/19/88; 4/5/90; 5/1/91, temporary; 10/15/91, 11-15-00)

Effect of Judicial Mandatory Minimum Sentences on Prison Terms Under 161.610

255-35-024

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

255-035-0025

Setting a Parole Release Date: When Matrix Range Exceeds Good Time Date

- (1) When the board chooses to set a parole release date on a sentence with a statutory good time date which calls for an earlier release than the guideline range indicates (due to a short sentence), the minimum initial prison term shall be 6 months and the maximum shall be as follows:

- (a) Six months from the statutory good time date on a sentence of at least one year and less than three years;
 - (b) Nine months from the statutory good time date on a sentence of three years and less than six years;
 - (c) Twelve months from the statutory good time date on a sentence of six or more years.
- (2) On short sentences which call for an earlier release date than the guideline range indicates, the following shall apply:
- (a) Use the correct crime category for the principal crime and apply the closest range within which the statutory good time date minus the times found in section (1)(a), (b) or (c) falls and which provides a fully applicable range.
 - (b) For subsequent consecutive sentences use the base range unless the principal crime is one of those listed in OAR 255-035-0021(4).
 - (c) For example:

	<u>Sent.</u>	<u>GTD</u>	<u>(1)(c)</u>	<u>H/R</u>	<u>CC</u>	<u>Range</u>	<u>Use</u>
Robbery I	10 yr.	80 mo.-12 mos. = 68		2	6	90-130	44-56
Theft I	5 yr.			2	1	6 - 6	6- 6 50-62

- (3) On sentences which are too short to fit within the matrix range for the correct crime category, the board shall set the maximum prison term at two days prior to the good time date.
- (4) When a [prisoner] inmate earns good time which causes the good time date to fall earlier than the current parole release date, the board shall reset the parole release date to two days prior to the good time date to ensure that all [prisoners] inmates serve a period of parole supervision in accordance with the intent of ORS 144.245.

Statutory Authority: ORS 144.780-787
 History: (2/1/79; 5/1/80, temporary; 11/25/81, temporary; 5/19/82; 5/31/85; 5/19/88; 7/1/88; 4/5/90; 10/5/90, temporary; 1/16/91; 10/15/91, 11-15-00)

255-035-0030
Parole Denial

- (1) Except when the result is life imprisonment, the board, with a majority vote of members, may deny parole pursuant to ORS 144.120(4) when:
 - (a) the commitment offense included particularly violent or otherwise dangerous criminal conduct as defined by section 255-005-0005(30); or
 - (b) two (2) or more Class A or Class B felony convictions preceded the commitment offense; or

- (c) the [prisoner's] inmate's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance such as to constitute a danger to the health and safety of the community.
- (2) When the result of parole denial is life in prison, the board shall agree unanimously.
- (3) A panel may refer the matter to the full board with the recommendation that the board deny parole based on the criteria listed in subsection (1) of this section.
- (4) When the board chooses not to set a parole release date, it shall clearly state on the record the facts and specific reasons for that decision.

Statutory Authority: ORS 144.120(4)

History: (2/1/79; 5/31/85; 5/19/88; 12/6/88; 5/1/91, temporary; 10/15/91, 11-15-00)

Variations From the Ranges for Aggravation or Mitigation: Statements for Record, Prior Disclosure to Prisoners
255-35-035

History: (2/1/79; 5/1/80, temporary; 8/15/80; 11/4/81, temporary; 5/19/82; 5/31/85; 5/19/88, repealed)

Resetting Pre-Guideline Parole Hearing Dates for Category 7 Offenders
255-35-040

History: (2/1/79; 5/31/85, repealed)

10-21-1

AK

Secretary of State
Certificate Order for Filing

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 01-12-01 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 01-12-01 Rulemaking Notice was published in the 12-01-00 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

FILED

JAN 12 2001

ARCHIVES DIVISION
SECRETARY OF STATE

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

AMEND:
Exhibit K (OAR 255-075-0070(1))

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.040, 144.050, 144.102, 144.103, 144.104, 144.106, 144.270, 144.085, 144.331, 144.108, 144.343, 144.345

Stat. Auth.: ORS

None
Other Authority

ORS NONE
Stats. Implemented: ORS

RULE SUMMARY

Amend Exhibit K to conform with the current practice of the Board.

RECEIVED
01 JAN 19 AM 11 41
BOARD OF PAROLE

Michael R. Washington

Authorized Signer

Date

01-12-01

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative
Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.040, 144.050, 144.085, 144.102, 144.103, 144.104, 144.106, 144.108, 144.270, 144.331, 144.343, 144.345.

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): To make the Exhibit that is being amended conform with the current practice of the Board.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. Also, we are not aware of any fiscal or economic impact on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington 11-15-00
Authorized Signer and Date

- 3) After a hearing, or waiver, the Board may order administrative sanctions for offenders originally sentenced to more than 12 months, and a Local Supervisory Authority designee may order administrative sanctions for offenders originally sentenced to 12 months or less. The Board or a Local Supervisory Authority designee ordered local administrative confinement sanction may not exceed ninety (90) days.
- 4) The Board (for offenders originally sentenced to more than 12 months) or the Local Supervisory Authority designee (for offenders originally sentenced to 12 months or less) may override any sanction ordered by a supervising officer, agency designee or Hearings Officer.
- 5) Administrative Sanctions, including local confinement shall be applied in accordance with the Department of Corrections rules for structured, intermediate sanctions, OAR 291-58-010 et al., subject to jointly drafted revisions by the Department of Corrections and the Board.
- 6) If an administrative sanction is not sufficient to address the violation or to protect the public, the Sanction Authority may revoke supervision for a period(s) as set out in OAR 255-075-0079, or deny re-release for offenders on parole.
- 7) Conditions of supervision may be modified at any time by the Sanction Authority when necessary for the offender or public safety. If an offender objects to the modification, administrative review must be made within 45 days of the mailing date on the Board order or receipt of a written order by the Local Supervisory Authority.

Statutory Authority: ORS 144.106, 144.343

History: (4/30/92, temporary; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98)

255-075-0070

Final Action: Procedure

- (1) When a case comes before the Board or Supervisory Authority or designee for decision, the Board or Supervisory Authority shall consider the Hearings Officer's report, and the offender's evidence and exceptions. The Board or Supervisory Authority or designee shall enter a decision, and shall record the decision in accordance with the sanction/intervention guidelines, OAR 291-58-010 et al. The Board shall vote in accordance with Exhibit K.
- (2) The Board or Supervisory Authority may adopt or reject any or all the Hearings Officer's findings and recommendations. The Board or Supervisory Authority may find a violation of conditions not alleged, if the evidence admitted at the hearing supports the finding and the evidence is uncontroverted. The final order shall indicate the findings adopted by the Board or Supervisory Authority.
- (3) A copy of the final order shall be forwarded to the offender with notice of the right to administrative and judicial review.
- (4) All final orders of the Board are subject to Administrative Review by the Board prior to seeking judicial review.

Statutory Authority: 144.125, 144.343

History: 2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/1/88; 10/18/88; 4/19/89, temporary; 10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98, 01-12-01)

EXHIBIT K

VOTING REQUIREMENTS FOR PAROLE REVOCATION CASES
(5/1/91, temporary; 10/15/91, 01-12-01)

Board actions require the number of concurring votes set forth in 1-17 below.

VOTES:

- | | | |
|-----|-----|---|
| 1 | 1. | Suspend and Detain (abscond, major technical, new crime, persistent misbehavior, etc.) (ORS 144.050, 144.331, 144.370). |
| 1 | 2. | Cite to Appear at violation hearing (ORS 144.040, 144.331(2)). |
| 1 | 3. | Withdraw Suspend and Detain Order. |
| 1 | 4. | Return to Oregon (absconder, new crime, no basis to continue) (ORS 144.050, 144.331(1), 144.108). |
| 1 | 5. | Adopt findings and recommendations of hearings officer (ORS 144.040, 144.343). |
| 1 | 6. | Continue on parole and/or post-prison supervision (ORS 144.343). |
| 1 | 7. | Defer final decision. |
| 1 | 8. | Adopt findings of hearings officer; reject recommendations (ORS 144.040, 144.343). |
| 2 | 9. | Revoke parole or return offender to custody (ORS 144.343, 144.345). |
| | 10. | |
| 1 | 11. | Issue Reprimand (ORS 144.343). |
| 1 | 12. | Modify Conditions of supervision (state reasons) (ORS 144.102-106, 144.270, 144.343). |
| 1 | 13. | Extend supervision period (ORS 144.305, 144.310). |
| 1 | 14. | No action, report noted. |
| 1 | 15. | Discharge parole (ORS 144.305, 144.310). |
| n/a | 16. | Close Interest, sentence or post-prison supervision expired. |
| | 17. | |
| n/a | 18. | Order Inactive Supervision (ORS 144.305). |
| 1 | 19. | Reinstate Active Supervision (ORS 144.305). |

Secretary of State
Certificate Order for Filing

PERMANENT ADMINISTRATIVE RULES

certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 01-12-01 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 01-12-01 Rulemaking Notice was published in the 12-01-00 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

FILED

JAN 12 2001

ARCHIVES DIVISION
SECRETARY OF STATE

RECEIVED
JAN 19 AM 10 40
BOARD OF PAROLE

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

AMEND:
255-094-0000, 255-094-0015

REPEAL:
Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.
Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.085, SB 1145 (passed in 1995 Legislative Session), Chapters 163 & 924 (1999 OR Laws)
Stat. Auth.: ORS

None
Other Authority

ORS 144.085, SB 1145 (passed in 1995 Legislative Session), Chapters 163 & 924 (1999 OR Laws)
Stats. Implemented: ORS

RULE SUMMARY

These rules are being amended to clarify the time frame for which offenders sentenced for Robbery in the First Degree under ORS 164.415 and Arson in the First Degree under ORS 164.325 should have 36 months of active supervision.

Based on recent advice from the Attorney General's Office, the board found it does not have the authority to automatically extend the supervision length without first having received notification from the supervising agency.

Michael R. Washington 01-12-01
Authorized Signer Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division
Number

Chapter 255
Administrative Rules Chapter

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.085, SB 1145 (passed in 1995 Legislative Session), Chapters 163 & 924 (1999 OR Laws)

Other Authority: None

Statutes Implemented: ORS 144.085, SB 1145 (passed in 1995 Legislative Session), Chapters 163 & 924 (1999 OR Laws)

Need for the Rule(s): These rules are being amended to clarify the time frame for which offenders sentenced for Robbery in the First Degree under ORS 164.415 and Arson in the First Degree under ORS 164.325 should have 36 months of active supervision.

Based on recent advice from the Attorney General's Office, the board found it does not have the authority to automatically extend the supervision length without first having received notification from the supervising agency.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington
Authorized Signer and Date

11-15-00

DIVISION 94

**ACTIVE AND INACTIVE PAROLE
AND POST-PRISON SUPERVISION
(ORS 144.085 AS AMENDED BY SB1145 §22, EFFECTIVE DATE 7/1/95)**

255-094-0000

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 Board 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 Board 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 255-094-0000(1 & 2) or to the expiration of the sentence, whichever is longer.
 - (5) After a rereleased offender has completed the minimum active supervision period as provided in OAR 255-94-000 (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.

Statutory Authority: ORS 144.085, SB 1145 (passed in 1995 Legislative session), Chapters 163 & 924 (1999 OR Laws)

History: (09/01/95, 03/14/97, 12-15-99, 02-15-00, 01-12-01)

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 Board 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 Board extend the active supervision period or return the offender to active supervision.
- (2) After reviewing the report, if the Board or it's 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 Board 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 Board 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 is on inactive supervision the general and special conditions of supervision shall remain in effect with the following exceptions:
 - (a) General condition #1: Pay supervision fees (fines, restitution or other fees previously ordered by the Board remain in effect);
 - (b) General condition #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.;
 - (c) General condition #7: Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency;
 - (d) Special Conditions specifically deleted by the Board.

Statutory Authority: ORS 144.085, SB1145 (passed during 1995 Legislative session).
History: (09/01/95- Notice, 03/14/97)

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 Board 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 Board 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 Board.
- (4) When an offender is returned to active supervision status, all general conditions plus all previously imposed special conditions shall be in effect.

Statutory Authority: ORS 144.085, SB1145 (passed during 1995 Legislative session).

History: (09/01/95 - Notice, 03/14/97, 12/15/99, 01-12-01)

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 Board retains jurisdiction over the offender until the proceedings are resolved. The Board 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 Board 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 Board shall send written notice of the termination of post-prison supervision to the offender and supervisory authority.

Statutory Authority: ORS 144.085, SB1145 (passed during 1995 Legislative session), Chapter 163 (1999 OR Laws).

History: (09/01/95 - Notice, 03/14/97, 12/15/99)

26

26-01

Secretary of State
Certificate Order for Filing

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 02-05-2001 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 02-06-01 Rulemaking Notice was published in the 01-01-01 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

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

AMEND:
OAR 255-032-0025; 255-075-0035

REPEAL:
Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.
Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

FILED
FEB 06 2001
ARCHIVES DIVISION
SECRETARY OF STATE
BOARD OF PAROLE
RECEIVED
01 FEB 9 AM 10 46

ORS 144.120, 144.343, 163.105, 163.115, 183.310-550
Stat. Auth.: ORS

None
Other Authority

ORS None
Stats. Implemented: ORS

RULE SUMMARY

These rules are being amended to increase the hourly rate from \$60 to \$75 for attorneys appointed to represent offenders in Murder Review Hearings. Also, to increase the hourly rate from \$40 to \$60 for attorneys appointed to represent offenders in parole violation hearings. The maximum payment for these appointments was increased from \$200 to \$300 for Parole Violation Hearings and from \$300 to \$750 for Murder Review Hearings.

Michael R. Washington 02-06-2001
Authorized Signer Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption
of Rules of the Board of Parole and
Post-Prison Supervision

)
)
)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon,
Statement of Fiscal Impact

Statutory Authority: ORS 144.120, 144.343, 163.105, 163.115, 183.310-550

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The amendment is necessary to assure that there are attorneys available for appointment to represent offenders in Murder Review Hearings and Parole Violation Hearings.

Documents Relied Upon: None

Fiscal and Economic Impact: There will be a minimal fiscal and economic effect on the board by this amendment. There may be a positive economic impact on attorneys who are appointed to represent offenders for Murder Review Hearings and Parole Violation Hearings.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

12-15-00

Authorized Signer and Date

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 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, 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)

DIVISION 75

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

255-075-0001

Definitions

- (1) Administrative Sanction means local, structured, or intermediate sanctions as those terms are used in OAR 291-58-010 etal, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.
- (2) Sanction Authority means:
 - (a) The Board or its designee for:
 - (1) Any felony offender who received a sentence of more than twelve (12) months in the custody of the Department of Corrections; or
 - (2) 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.
 - (A) If an offender is on post-prison supervision for multiple sentences which include a sentence that exceeds twelve (12) months ("Board case") and a less than twelve (12)-month sentence ("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.
 - (B) 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.

Statutory Authority: ORS 144.140

History: (2/28/85; 3/14/88, temporary; 5/19/88, repealed, temporary 11/14/97;
05/11/98; temporary 07/13/98, 08/27/98

255-075-0002

Suspension of Parole or Post-Prison Supervision; Citation to Appear

- (1) When the supervising officer or other person informs the Sanction Authority of reasonable grounds to believe that a person has violated the conditions of parole or post-prison supervision, or that supervision is no longer in the best interests of the offender or the community, and that the revocation of parole or post-prison supervision may be justified or, in the case of parole only, an extension of parole may be justified, the Sanction Authority may:
 - (a) suspend the running of the sentence and the parole or post-prison supervision term and order the offender arrested and detained pending a violation hearing; or
 - (b) issue a citation to appear at a violation hearing without first suspending parole or the post-prison supervision term or ordering detention.
- (2) The Sanction Authority may issue a suspend and detain warrant or a citation to appear at a violation hearing.
- (3) The Sanction Authority may authorize, in writing, that its designated representative may issue citations to appear at a violation hearing.

Statutory Authority: ORS 144.025(3), 144.106, 144.331, 144.334
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary; 6/24/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0003

Criteria for Allowing Offender to Remain in Community Pending Hearing

In determining whether to allow an offender to remain in the community pending the violation hearing and final order, the Sanction Authority may consider:

- (1) the seriousness of the allegations and the risk to the offender or the community;
- (2) the likelihood of the offender absconding or failing to appear at the hearing;
- (3) the availability of resources in the community such as residence or employment;
- (4) any recommendation by the parole and post-prison supervision officer.
- (5) The Sanction Authority may release offenders detained under a Sanction Authority warrant, after the violation hearing, when recommending local sanctions or intervention and continuance of parole or post-prison supervision.

Statutory Authority: ORS 144.331(2)
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary, 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98)

255-075-0004

Guidelines for "Best Interest" Return

When the Sanction Authority determines that an offender's release on parole or post-prison supervision is not in the best interest of the offender or in the best interest of society, the Sanction Authority may return the offender to custody. This type of return to custody may apply when:

- (1) The offender is suffering from an emotional or psychological disturbance which makes the offender dangerous to self or others if left in the community. The following behavior may indicate a dangerous emotional or psychological disturbance:
 - (a) showing a present capacity to carry out any statements or threats of violence against the offender or the community; or
 - (b) circumstances and conduct similar to that which led to the initial incarceration; or
- (2) The offender's behavior cannot be adequately controlled if left in the community.
- (3) Best interest returns for offenders on post-prison supervision shall not exceed 90 days, and must be approved by the Sanction Authority.

Statutory Authority: ORS 144.270(2)(g), 144.350(2)

History: (3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0005

Hearing Requirement: Procedure

- (1) Except as otherwise provided by these rules, before the Board can revoke parole or extend active parole supervision for offenders whose crimes occurred on or after December 4, 1986, and before November 1, 1989 (BM10), the Board or Hearings Officer shall conduct a hearing.
- (2) When the offender waives the hearing and/or consents to the order, the Board need not conduct a hearing when the Board extends supervision for offenders whose crimes occurred on or after December 4, 1986 and before November 1, 1989 (BM10).
- (3) Except in the cases set forth in OAR 255-075-0015 and section (6) of this rule, the Sanction Authority shall impose administrative sanctions or shall initiate a hearing within fifteen (15) days of arrest or detention for the violation of parole or post-prison supervision conditions.
- (4) If an in-custody violation hearing and a final order cannot be accomplished within fifteen (15) days, a supervising officer or Hearings Officer shall request a non-bailable suspend and detain warrant from the Sanction Authority

- (5) Before a Hearings Officer can order more than sixty (60) days of local confinement without the offender's consent, the Hearings Officer shall conduct a violation hearing. Unless the Hearings Officer recommends a sanction, which is beyond his or her authority to order, the Hearings Officer may issue a final order subject to approval of the Sanction Authority, but immediately effective. If the recommended sanction exceeds sixty (60) days, it must be approved by the Supervisory Authority.
- (6) A hearing is not required when an administrative sanction or intervention involves local confinement of ninety (90) days or less when the offender consents to the sanctions or interventions. If the offender contests the allegations, the offender may request a hearing.

Statutory Authority: ORS 144.106(3), 144.108, 144.331(2), 144.343, 144.350, 144.370
 History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92 temporary 11/14/97; **05/11/98**)

255-075-0006
Method of Hearing

The Hearing Officer may conduct hearings by teleconference or video conference. The Hearing Officer shall conduct hearings in person or by video conference in the following situations:

- (1) the alleged violations are contested and the offender or the offender's attorney shows that the witness's credibility, including observation of the witness's demeanor is necessary;
- (2) physical exhibits may be part of the record and viewing the exhibits is essential, and the exhibits can not be viewed in some other manner;
- (3) there are unusual circumstances not covered by this section, determined at the Hearing Officer's discretion.

Statutory Authority: ORS 144.035(5), 144.343(1)
 History: (11/4/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0007
Designated Representative Conducts Hearing

- (1) The Sanction Authority or its designated representative shall conduct the probable cause and violation hearing.
- (2) "Designated representative" shall include those persons designated by the Sanction Authority, and trained and certified as Hearings Officers.

Statutory Authority: ORS 144.104(1), 144.331, 144.343
 History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0008

Locations of Hearing

History: (11/19/84, temporary, expired)

255-075-0010

**Board Action Upon Notification of Alleged Parole Violation:
Criteria for; Release of Parolee Pending Hearing**

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0015

When Offender in Another Jurisdiction: Return

- (1) The Sanction Authority may suspend parole or post-prison supervision and may order the offender's return to custody in Oregon without first conducting a hearing when:
 - (a) the offender has, without permission, left the state to which the Sanction Authority released the offender on parole or post-prison supervision, and is in custody in another jurisdiction;
 - (b) the offender is in custody in another correctional facility;
 - (c) the offender has absconded from supervision and the offender's whereabouts are unknown; or
 - (d) the offender has been convicted of a new crime.
- (2) Except as provided in ORS 144.345(2) and OAR 255-075-0005(6), the Sanction Authority or the Hearings Officer shall conduct a violation hearing after the offender returns to custody in Oregon. For purposes of these rules, the arrest date is the date the offender is returned to custody in Oregon.
- (3) Persons retaken and returned to this state from outside the state upon order or warrant of the Department of Corrections, the State Board of Parole & Post-Prison Supervision or the Governor, for violation of conditions of parole or post-prison supervision, shall be detained in a Department of Corrections facility or a local correctional facility pending any hearing concerning the alleged violation and ultimate disposition by the State Board of Parole & Post-Prison Supervision.
- (4) Persons retaken and returned to this state from outside the state upon order or warrant of a local supervisory authority for violation of conditions of post-prison supervision may be detained in a local correctional facility pending a hearing concerning the alleged violation and ultimate disposition by the local supervisory authority.

Statutory Authority: ORS 144.340, 144.345(2), 144.349

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/15/92, temporary; 4/15/92, temporary 11/14/97; 05/11/98, 01-25-00)

255-075-0020

Rights of a Parolee at a Formal Hearing

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0025

Rights at Hearing

- (1) The designee of the Sanction Authority (eg. Hearings Officer) shall provide the offender a written notice of the hearing at least three (3) working days prior to the hearing.
- (2) The hearing notice shall include:
 - (a) a Notice of Rights as provided in ORS 144.343(3);
 - (b) a written statement of alleged violations; [and]
 - (c) any documents or evidence which form the basis of the alleged violations; and
 - (d) the date and location of the hearing.
- (3) The offender may elect to waive the three working day notification period prior to the hearing and begin the hearing immediately.
- (4) If the offender elects to waive the three working day notification period, the Hearings Officer shall obtain a written waiver or tape record the offender's verbal statement waiving the three working day notification period.
- (5) The Hearings Officer shall ascertain whether the offender has understood the allegations and the offender's rights and whether the offender can read, hear and understand the language of the proceedings. The Hearings Officer shall postpone the hearing if needed assistance is not readily available.

Statutory Authority: ORS 144.343(3)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0026

Waiver of Hearing

- (1) In all cases, the offender may waive the right to a hearing by signing a Notice of Rights form. A refusal to participate in the hearings process shall also constitute a waiver of the right to a hearing.
- (2) When the purpose of a hearing is to consider a parole or post-prison supervision violation, the waiver of the right to a hearing acknowledges that the offender violated the conditions in whole or in part and that the Sanction Authority may order local sanctions, may modify conditions of supervision, may extend active supervision or that the Board may order return to prison, without further hearing.

- (3) When the purpose of the hearing is to modify parole or post-prison supervision conditions or, in the case of parole, to consider extending active supervision, the waiver of the hearing indicates acceptance of the modifications.
- (4) If the offender waives the right to a hearing, the offender may offer a written or verbal statement pertaining to the dispositional phase of the violation hearing.
- (5) If the hearing is conducted via teleconference or video conference, the offender shall submit written waiver of the right to a hearing to the Hearings Officer within five (5) days after the waiver.
- (6) The person delivering the Notice of Rights shall tape record or document in writing any statement made at the time of waiver.
- (7) If the offender waives the right to a hearing, the Hearings Officer or Supervising Officer shall submit to the Sanction Authority the following:
 - (a) a Notice of Rights form;
 - (b) any written offender statements and/or a summary of oral statements;
 - (c) the Hearing Summary, including a history of local interventions and sanctions ordered and a recommendation regarding disposition;
 - (d) any supporting information, including the supervising officer's report and other documentary evidence submitted.

Statutory Authority: ORS 144.050, 144.140; 144.343
 History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 4/15/92, temporary 11/14/97; **05/11/98**)

255-075-0030
Rejection of Waiver

If the Sanction Authority is not satisfied that the offender knowingly and intelligently waived his or her hearing rights or if it needs more information before making its decision, it may order a new hearing, to be conducted by the Hearings Officer or the Sanction Authority.

Statutory Authority: ORS 144.050, 144.140, 144.343
 History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0031
Hearings Process

- (1) The Hearings Officer shall conduct the violation hearing reasonably near the place of the alleged violation or the place of confinement or may conduct the hearing by teleconference or video conference.

- (2) Unless the Hearings Officer finds good cause on the record, the parole and post-prison supervision officer shall present information and evidence at the hearing and arrange for the presence of witnesses for the state. The parole and post-prison supervision officer shall make dispositional recommendations.
- (3) The Hearings Officer shall make a tape recording of the hearing.

Statutory Authority: ORS 144.050, 144.106, 144.140, 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary, 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0035

Representation/Ability to Pay Attorney Fees

- (1) In all cases, the offender is entitled to representation by an attorney at the offender's own expense.
- (2) For Board cases only, if the Hearings Officer or the Board deems the offender indigent, and unable to pay for an attorney, the offender is entitled to a Board appointed attorney if the Board or Hearings Officer further finds that the offender has made a timely and colorable claim that:
 - (a) the offender has not committed the alleged violation;
 - (b) there are substantial or complex mitigating circumstances which make revocation inappropriate even if the offender admits violation or it is a matter of record; or
 - (c) the offender appears incapable or representing himself/herself.
- (3) For Board cases only, if the Hearings Officer appoints an attorney, the Hearings Officer shall notify the Board of payment to be made to the appointed attorney. When the Board approves payment for a Board appointed attorney, it shall not exceed \$60 per hour and \$300 per case. The attorney shall send the Board a billing within 90 days of the violation hearing.
- (4) When the Hearings Officer or Board refuses to appoint an attorney, the Hearings Officer or Board shall state the grounds for refusal in the record.
- (5) For Local Supervisory Authority cases, the Local Supervisory Authority may set its own criteria for appointment of an attorney and shall set its own standards for payment of appointed attorneys.

Statutory Authority: ORS 144.343

History: (2/1/79; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 10/15/91; 10/9/92, temporary 11/14/97; 02-06-01)

255-075-0036

Subpoenas; Witnesses

- (1) Offenders shall make their own arrangements for calling and presenting witnesses. However, upon the request of any party to the hearing, and upon a proper showing of the relevance and reasonable scope of the testimony to be offered, the Sanction Authority or Hearings Officer shall issue subpoenas requiring the attendance and testimony of witnesses. In addition, the Sanction Authority or the Hearings Officer may subpoena documents when relevant.
- (2) The Board shall reimburse fees and mileage as prescribed by law to witnesses appearing under subpoena, other than the parties, state officers or employees, provided the Hearing Officer or Sanction Authority certifies that the witness's testimony was relevant and material to the hearing.
- (3) The offender may present witnesses who have relevant information, and has the right to confront the persons or witnesses who have presented information against the offender.
- (4) The Hearings Officer or Sanction Authority may deny confrontation of witnesses by the offender if that confrontation would subject the witness to the risk of harm.
- (5) If the Hearings Officer or Sanction Authority denies confrontation of witnesses, the Hearings Officer or Sanction Authority shall state the reason(s) for the decision and conduct an independent examination of the witness on the record.

Statutory Authority: ORS 144.347

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98)

255-075-0040

Compelling of Witnesses: Contempt

The Sanction Authority or Hearings Officer or party requesting a subpoena, may seek contempt proceedings in the circuit court of any county against any person refusing to honor the subpoena.

Statutory Authority: ORS 144.347(4)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 10/9/92; 05/11/98)

255-075-0042

Probable Cause; Preliminary Hearing; Deferral of Revocation Hearing

- (1) The Sanction Authority or Hearings Officer may use evidence received and the order of a court at a preliminary hearing or a conviction or other reliable, relevant information to establish that probable cause exists to believe that the offender has committed a violation of a condition of parole or post-prison supervision.
- (2) Should the offender waive the right to a preliminary hearing, the waiver shall constitute a waiver of a probable cause hearing.

- (3) When the Sanction Authority or Hearings Officer defers completion of a violation hearing until a trial is over and until the court or the parole and post-prison supervision officer notifies the Sanction Authority or Hearings Officer of the final disposition of the case, the Sanction Authority or Hearings Officer shall use a finding of probable cause to support the decision to suspend and detain an offender charged with the commission of a new crime.
- (4) Notwithstanding subsection (3) of this section, the Sanction Authority or Hearings Officer shall not extend a deferral following a finding of probable cause for a period greater than 120 days from the date of the preliminary hearing or waiver, unless the offender is released from jail pending final disposition of the case, or waives in writing further delay. Subsequent waivers shall not extend beyond 120 days.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (11/25/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98)

255-075-0045

Evidence; Subpoena of Documents

- (1) The Sanction Authority or Hearings Officer may receive the following as evidence at a violation hearing:
 - (a) oral testimony under oath;
 - (b) affidavits or other sworn statements;
 - (c) letters;
 - (d) documents;
 - (e) reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole and post-prison supervision officers, doctors, psychologists, attorneys);
 - (f) uncertified copies of letters, documents, or reports shall be admissible in a revocation hearing if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable;
 - (g) evidence of criminal activity even when charges have been dismissed, not brought, or the offender has been acquitted at trial;
 - (h) reliable hearsay evidence; or
 - (i) any evidence determined to be material, relevant, and reliable, regardless of its nature.
- (2) Upon the request of any party to the hearing, the Sanction Authority, or Hearings Officer, may issue a subpoena duces tecum upon a proper showing of relevant and reasonable scope of the documentary or physical evidence being sought. Otherwise, the offender shall make the offender's own arrangements for presenting evidence.

- (3) The Sanction Authority or Hearings Officer may exclude documents or physical evidence upon making a finding that such evidence would pose a hazard to facility security or would not assist in the resolution of the allegation(s). The reason for exclusion shall be made part of the record.
- (4) The Sanction Authority or Hearings Officer may classify documents or physical evidence as confidential upon making a finding that revealing such evidence would pose a threat to the safety of the person providing the evidence.
- (5) The Sanction Authority or Hearings Officer shall make evidence received without disclosing the identity of the witness a sealed part of the record.
- (6) When a witness is unavailable, the Sanction Authority or Hearings Officer may receive statements in the form of documentary evidence. The Sanction Authority or Hearings Officer shall determine at an in-camera hearing the reliability and relevance of the absent witness's statement.

Statutory Authority: ORS 144.343, 144.347

History: (2/1/79; 11/25/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92; 05/11/98)

255-075-0046

Postponement

- (1) The Sanction Authority or Hearings Officer with Sanction Authority approval, may postpone a hearing for good cause and for a reasonable period of time, which shall not exceed 120 days.
- (2) The criteria for "good cause" includes, but is not limited to:
 - (a) the preparation of defense;
 - (b) illness or unavailability of the offender or other persons;
 - (c) gathering of additional evidence; or
 - (d) avoiding interference with an ongoing police investigation or pending prosecution.
- (3) The Sanction Authority, or Hearings Officer with Sanction Authority approval, may make a finding of a violation and defer disposition for a reasonable time which may exceed 120 days if such delay is reasonably necessary for the offender, the Sanction Authority or Hearings Officer to obtain information relevant to disposition decision.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/18/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0050

Procedure for Receiving Evidence if Good Cause Exists Not to Require Confrontation or Disclosure of an Informant's Identity

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

02-06-01

Conditions Violations

255-075-0055

Reopening Hearings: Criteria; Procedure

- (1) After the completion of a violation hearing, the Sanction Authority or Hearings Officer may reopen a hearing if substantial new information is discovered which was not known or could not be anticipated at the time of the hearing and which would significantly affect the outcome of the hearing.
- (2) The Sanction Authority or Hearings Officer shall send the offender notice of the decision to reopen the hearing and the new information to be considered. The re-opened hearing shall conform to the procedures of this Division.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (2/1/79; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0056

Hearings Record

- (1) The hearings record shall include:
 - (a) a Hearings Report Summary;
 - (b) a written statement of alleged violations;
 - (c) supporting materials, including documentary evidence admitted;
 - (d) a signed Notice of Rights;
 - (e) the Order of Parole or Post-Prison Supervision;
 - (f) a notice of time and place of hearing;
 - (g) a tape recording of the advice of rights and the hearing;
 - (h) the supervising officer's report, including recommended dispositions; [and]
 - (i) the history of supervision, local sanctions and modifications; and
 - (j) if any, the written waiver of the offender's right to three working days notice of the hearing.
- (2) The Hearings Officer shall retain the tape recording used in subsection (1)(g) of this rule for two (2) years.

Statutory Authority: ORS 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0060

Record of Parole Revocation Hearing

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0065

Ten Day Period for Offender's Evidence and Exceptions

- (1) Within a reasonable time after the hearing, the Hearings Officer shall provide his or her report to the offender.
- (2) Unless the offender waives the right to respond, the offender shall have 10 days from the date the Hearings Officer mails the report to the offender to submit evidence and make written exceptions to the report for the Sanction Authority's consideration.
- (3) If the offender waives the right to respond, the Hearings Officer shall include the waiver in the Hearings Officer's report to the Sanction Authority.
- (4) When a Hearings Officer makes a final order pursuant to Board authority granted in writing, the offender shall not have a ten day period within which to submit evidence and written exceptions. The offender may appeal a Hearings Officer's order under Division 80 of these rules.

Statutory Authority: ORS 144.343(7)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0067

Final Action: Authority to Impose Administrative (Local) Sanctions, Revoke Supervision or Modify Conditions of Supervision

- 1) If an offender waives a hearing after receipt and review of the notice of rights, as provided in OAR 255-075-0005(6) a supervising officer may order administrative sanctions, including a local confinement sanction not exceeding thirty (30) days. The Local Supervisory Authority's designee may review the decision to order a local confinement sanction if the offender's underlying sentence was for 12 months or less. The Board may review the decision if the underlying sentence was more than 12 months.
- 2) After a hearing, or if an offender waives a hearing after receipt of the notice of rights, as provided in OAR 255-075-0005(6), a Hearings Officer or agency designee may order administrative sanctions, including a local confinement sanction not exceeding sixty (60) days. The Hearings Officer or agency designee shall send a copy of the final order and report to the Sanction Authority and, upon request, shall send the record of the hearing as described in OAR 255-075-0056. The Hearings Officer or agency designee shall retain the record for two (2) years.

- 3) After a hearing, or waiver, the Board may order administrative sanctions for offenders originally sentenced to more than 12 months, and a Local Supervisory Authority designee may order administrative sanctions for offenders originally sentenced to 12 months or less. The Board or a Local Supervisory Authority designee ordered local administrative confinement sanction may not exceed ninety (90) days.
- 4) The Board (for offenders originally sentenced to more than 12 months) or the Local Supervisory Authority designee (for offenders originally sentenced to 12 months or less) may override any sanction ordered by a supervising officer, agency designee or Hearings Officer.
- 5) Administrative Sanctions, including local confinement shall be applied in accordance with the Department of Corrections rules for structured, intermediate sanctions, OAR 291-58-010 et al., subject to jointly drafted revisions by the Department of Corrections and the Board.
- 6) If an administrative sanction is not sufficient to address the violation or to protect the public, the Sanction Authority may revoke supervision for a period(s) as set out in OAR 255-075-0079, or deny re-release for offenders on parole.
- 7) Conditions of supervision may be modified at any time by the Sanction Authority when necessary for the offender or public safety. If an offender objects to the modification, administrative review must be made within 45 days of the mailing date on the Board order or receipt of a written order by the Local Supervisory Authority.

Statutory Authority: ORS 144.106, 144.343

History: (4/30/92, temporary; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98)

255-075-0070

Final Action: Procedure

- (1) When a case comes before the Board or Supervisory Authority or designee for decision, the Board or Supervisory Authority shall consider the Hearings Officer's report, and the offender's evidence and exceptions. The Board or Supervisory Authority or designee shall enter a decision, and shall record the decision in accordance with the sanction/intervention guidelines, OAR 291-58-010 et al. The Board shall vote in accordance with Exhibit K.
- (2) The Board or Supervisory Authority may adopt or reject any or all the Hearings Officer's findings and recommendations. The Board or Supervisory Authority may find a violation of conditions not alleged, if the evidence admitted at the hearing supports the finding and the evidence is uncontroverted. The final order shall indicate the findings adopted by the Board or Supervisory Authority.
- (3) A copy of the final order shall be forwarded to the offender with notice of the right to administrative and judicial review.
- (4) All final orders of the Board are subject to Administrative Review by the Board prior to seeking judicial review.

Statutory Authority: 144.125, 144.343

History: 2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/1/88; 10/18/88; 4/19/89, temporary; 10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98, 01-12-01)

255-075-0072

Re-release Order After Revocation

- (1) At the time of a revocation decision, the Sanction Authority shall make an order concerning re-release.
- (2) In the re-release order, the Sanction Authority may:
 - (a) continue parole or post-prison supervision pursuant to 255-075-0075 or 255-075-0080; or
 - (b) set the re-release date in accordance with rule 255-075-0079; or
 - (c) The Board may defer the re-release decision pending a future disposition hearing for offenders on parole.
- (3) Upon notification that parole or post-prison supervision has terminated by operation of ORS 144.345(2), the Board shall apply subsection (2) of this rule.
- (4) Revocation of post-prison supervision stops the period of post-prison supervision from running while the offender is serving time in custody for a revocation sanction. The re-release order following a revocation sanction shall include a re-calculation of the post-prison supervision expiration date to account for the time the offender was in custody serving the revocation sanction.
- (5) The sum of the time actually served on the original incarceration sentence, all days served as a revocation sanction, and the time served in the community on post-prison supervision cannot exceed the maximum indeterminate sentence for the offense(s) for which the offender is on post-prison supervision.

Statutory Authority: ORS 144.346, 144.395

History: (4/19/89, temporary; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98 9-22-99)

255-075-0075

Offenders Convicted of New Crime in This or Another Jurisdiction

- (1) If an offender has violated parole or post-prison supervision as a result of a conviction of a new crime and the court has ordered a prison term to the Department of Corrections, parole or post-prison supervision terminates without a violation hearing by operation of ORS 144.345(2).
- (2) Upon release from custody, if the Oregon sentence has not expired, Oregon supervision shall resume either in another jurisdiction under Interstate Compact or in Oregon. If, in preparing the re-release plan, the Department of Corrections cannot arrange supervision under Interstate Compact, the offender shall report to the appropriate Supervisory Authority for supervision.
- (3) The Sanction Authority shall make extradition decisions on a case-by-case basis in cooperation with the holding jurisdiction.

- (4) If the offender absconded supervision, the Sanction Authority shall count the inoperative time from the date the Sanction Authority issued its arrest and detention warrant to the arrest date in Oregon or if arrested out of state, upon return to Oregon custody. The Board shall forward the dates to the Department of Corrections for use in recalculating the sentence good time and expiration dates for those offenders under the Board's jurisdiction. For those not under the Board's authority, the inoperative time shall be calculated by the Supervisory Authority's designee.

Statutory Authority: ORS 144.345, 144.380, 144.610-.622

History: (2/1/79; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98)

255-075-0076

Designation of Parole Failure

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88, repealed)

255-075-0078

Commencement Date for Prison Term Following a Violation

- (1) The commencement date for a new commitment which is concurrent to an incarceration sanction for a violation of parole or post-prison supervision shall be the sentencing date for the new crime.
- (2) The commencement date for a new commitment which is consecutive to an incarceration sanction for a violation of parole or post-prison supervision shall be either the release date established for the violation or the sentencing date for the new crime, whichever is later.
- (3) Notwithstanding subsection (2) of this rule, when the new commitment is consecutive to a sanction for a violation, the Sanction Authority may treat the violation and the new commitment as if they were concurrent. If treated as concurrent, the commencement date for the new commitment shall be the sentencing date for the new crime plus adjustment for credit for time served.
- (4) If the offender is returned with a parole or post-prison supervision violation and a new sentence which is consecutive to the sentence for which the offender was on parole, the commencement date for the new conviction shall be the date parole was revoked, if so stated on the court order.

Statutory Authority: ORS 144.346, 144.395, 144.780, 144.783

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0079

Guidelines for Re-release

- (1) For technical violation(s):
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-11-004.
- (2) For conduct constituting a crime:
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.
- (3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.
- (4) Offenders sentenced to life imprisonment for murder or aggravated murder may serve further incarceration to the sentence expiration date.
- (5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.
- (7)
 - (a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.
 - (b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.
 - (c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.
- (8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.

- (9) Notwithstanding subsections 1-7 of this rule, the Board may choose to postpone re-release on parole pursuant to Divisions 50 and 60 of this chapter.
- (10) Notwithstanding subsections 1-8 of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.
- (11) Administrative sanctions do not count toward the revocation sanction limits.

Statutory Authority: ORS 135, 055, 144.103, 144.107, 144.108, 144.120(4), 144.125, 144.232, 144.345, 144.346, 144.395, 161.735

History: (4/19/89, temporary; 11/1/89; 10/15/90, temporary; 1/16/91; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98, 01-25-00)

255-075-0080

Continuance on Parole or Supervision

- (1) The Sanction Authority may continue an offender on parole or post-prison supervision and order modification of conditions and/or sanction to time served.
- (2) The Sanction Authority may continue an offender on parole or post-prison supervision and order administrative sanctions as limited by OAR 255-075-0067

Statutory Authority: ORS 144.106, 144.343, 144.345(1)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0082

Authority of Revocation Panel to Set New Parole Release Date for Parole Violators

History: (11/4/81 - 5/2/82, temporary; 11/19/84, suspended; 2/28/85, repealed)

255-075-0085

Parole Violators with No New Commitment; Action Required

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, suspended; 10/16/89, repealed)

255-075-0090

Guidelines for Reparole

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 11/1/89, repealed)

255-075-0095

Variation From Guidelines for Aggravation/Mitigation Permitted

History: (11/19/84, temporary; 2/28/85; 5/19/88; 7/1/88; 4/19/89, suspended; 10/16/89, repealed)

255-075-0096

Denial of Re-release Consideration

- (1) Upon a finding of aggravation pursuant to Exhibit E or Exhibit H, the Board may deny re-release on parole and set the parole release date up to two (2) days before the statutory good time date, or, in the case of murder or aggravated murder, require the parole violator to serve for life. This action requires the affirmative vote of a majority of members, except that if the result is life imprisonment, the full Board must vote unanimously.
- (2) Denial of re-release on parole requires a future disposition hearing.
- (3) Cases in which the Board sets a parole violator within the guidelines set forth in rule 255-075-0079 and the result requires the parole violator to serve to the end of the sentence, do not require a majority vote of all members.
- (4) At any time after denial of re-release, the Board may adjust the parole release date to accommodate changes in the good time date.

Statutory Authority: ORS 144.085, 144.120(4), 144.245, 144.395, 144.780, 144.783-787
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 5/1/91, temporary; 10/15/91, 03/14/97)

255-075-0097

Time for Future Disposition Hearing

When the Board holds a future disposition hearing pursuant to 255-075-0072(2) or 255-075-0096, the following timelines shall apply:

- (1) If the offender has a new conviction, the Board may schedule the future disposition hearing at the same time as the new prison term hearing.
- (2) If the offender has no new conviction or has no prison term hearing, the Board shall schedule the future disposition hearing within 60 days of return to the institution.

Statutory Authority: ORS 144.050, 144.140, 144.395
History: (4/19/89, temporary; 10/16/89; 10/9/92)

255-075-0098

Restoration of Statutory and Meritorious Goodtime

Upon recommendation of the superintendent of the institution, the Board may restore part or all of forfeited statutory and meritorious goodtime when:

- (1) there is no violation of parole; or
- (2) parole is revoked on a best interest basis and there is no actual parole violation; or
- (3) parole is revoked on a technical violation; or
- (4) parolee is within 180 days of discharge; or
- (5) parole is revoked for new criminal activity which is a misdemeanor or non person-to-person class C felony and:
 - (a) the new criminal activity was already sanctioned at the local level;
or
 - (b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.
- (6) An offender ordered to serve a term of incarceration as a Revocation sanction for a post-prison supervision violation is not eligible for goodtime, earned-credit time, work release, transitional or temporary leave.

Statutory Authority: ORS 421.120, 144.108(3)

History: (3/14/88, temporary; 5/19/88; 12/6/88; 10/16/89; 10/9/92, 03/14/97, temporary 11/14/97; 05/11/98)

255-075-0100

Future Disposition Hearing Packet

The Future Disposition Hearing Packet shall contain:

- (1) institution face sheet;
- (2) revocation recommendation;
- (3) final order of revocation;
- (4) administrative action sheet;
- (5) revocation hearing findings;
- (6) Board Action Form ordering parole or Board Action Form ordering post-prison supervision conditions;
- (7) disciplinary report, when extension is recommended;
- (8) recommendation regarding statutory and meritorious goodtime;
- (9) correspondence;
- (10) statements of imprisonment for violation; and
- (11) face sheet from old parole analysis report or comparable report.
- (12) Inmate's Notice of Rights and Board of Parole & Post-Prison Supervision Procedures.

Statutory Authority: ORS 144.185, 144.395

History: (5/19/88; 12/6/88; 10/16/89, 03/14/97)

AM

3-12-01

Secretary of State
Certificate Order for Filing

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 03-08-2001 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 03-12-01 Rulemaking Notice was published in the 02-01-01 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

ADOPT: 255-075-0073 & Exhibit R

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

AMEND:

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.107
Stat. Auth.: ORS
None
Other Authority
ORS None
Stats. Implemented: ORS

RULE SUMMARY

This rule and exhibit are being adopted to comply with the implementation of ORS 144.107. They will allow certain offenders being supervised on post-prison supervision to receive a sanction of imprisonment in a correctional facility for a period of time that exceeds 12 months.

Michael R. Washington 03-12-01
Authorized Signer Date

Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action. The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

FILED
MAR 12 2001
ARCHIVES DIVISION
SECRETARY OF STATE

RECEIVED
01 MAR 15 AM 9 54
BOARD OF PAROLE

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption
of Rules of the Board of Parole and
Post-Prison Supervision

)
)
)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon,
Statement of Fiscal Impact

Statutory Authority: ORS 137.700, 137.707, 137.765, 144.103, 144.107, 144.108, 161.725, 161.737

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The implementation of ORS 144.107 established that the board shall adopt rules that address a sanction of imprisonment for certain offenders being supervised under post-prison supervision in a correctional facility that exceeds 12 months.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

Authorized Signer and Date

01-12-01

DIVISION 75

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

255-075-0001

Definitions

- (1) Administrative Sanction means local, structured, or intermediate sanctions as those terms are used in OAR 291-58-010 etal, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.
- (2) Sanction Authority means:
- (a) The Board or its designee for:
- (1) Any felony offender who received a sentence of more than twelve (12) months in the custody of the Department of Corrections; or
- (2) 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.
- (A) If an offender is on post-prison supervision for multiple sentences which include a sentence that exceeds twelve (12) months ("Board case") and a less than twelve (12)-month sentence ("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.
- (B) 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.

Statutory Authority: ORS 144.140

History: (2/28/85; 3/14/88, temporary; 5/19/88, repealed, temporary 11/14/97; 05/11/98; temporary 07/13/98, 08/27/98

255-075-0002

Suspension of Parole or Post-Prison Supervision; Citation to Appear

- (1) When the supervising officer or other person informs the Sanction Authority of reasonable grounds to believe that a person has violated the conditions of parole or post-prison supervision, or that supervision is no longer in the best interests of the offender or the community, and that the revocation of parole or post-prison supervision may be justified or, in the case of parole only, an extension of parole may be justified, the Sanction Authority may:
 - (a) suspend the running of the sentence and the parole or post-prison supervision term and order the offender arrested and detained pending a violation hearing; or
 - (b) issue a citation to appear at a violation hearing without first suspending parole or the post-prison supervision term or ordering detention.
- (2) The Sanction Authority may issue a suspend and detain warrant or a citation to appear at a violation hearing.
- (3) The Sanction Authority may authorize, in writing, that its designated representative may issue citations to appear at a violation hearing.

Statutory Authority: ORS 144.025(3), 144.106, 144.331, 144.334
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary; 6/24/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0003

Criteria for Allowing Offender to Remain in Community Pending Hearing

In determining whether to allow an offender to remain in the community pending the violation hearing and final order, the Sanction Authority may consider:

- (1) the seriousness of the allegations and the risk to the offender or the community;
- (2) the likelihood of the offender absconding or failing to appear at the hearing;
- (3) the availability of resources in the community such as residence or employment;
- (4) any recommendation by the parole and post-prison supervision officer.
- (5) The Sanction Authority may release offenders detained under a Sanction Authority warrant, after the violation hearing, when recommending local sanctions or intervention and continuance of parole or post-prison supervision.

Statutory Authority: ORS 144.331(2)
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary, 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98)

255-075-0004

Guidelines for "Best Interest" Return

When the Sanction Authority determines that an offender's release on parole or post-prison supervision is not in the best interest of the offender or in the best interest of society, the Sanction Authority may return the offender to custody. This type of return to custody may apply when:

- (1) The offender is suffering from an emotional or psychological disturbance which makes the offender dangerous to self or others if left in the community. The following behavior may indicate a dangerous emotional or psychological disturbance:
 - (a) showing a present capacity to carry out any statements or threats of violence against the offender or the community; or
 - (b) circumstances and conduct similar to that which led to the initial incarceration; or
- (2) The offender's behavior cannot be adequately controlled if left in the community.
- (3) Best interest returns for offenders on post-prison supervision shall not exceed 90 days, and must be approved by the Sanction Authority.

Statutory Authority: ORS 144.270(2)(g), 144.350(2)

History: (3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97;
05/11/98)

255-075-0005

Hearing Requirement: Procedure

- (1) Except as otherwise provided by these rules, before the Board can revoke parole or extend active parole supervision for offenders whose crimes occurred on or after December 4, 1986, and before November 1, 1989 (BM10), the Board or Hearings Officer shall conduct a hearing.
- (2) When the offender waives the hearing and/or consents to the order, the Board need not conduct a hearing when the Board extends supervision for offenders whose crimes occurred on or after December 4, 1986 and before November 1, 1989 (BM10).
- (3) Except in the cases set forth in OAR 255-075-0015 and section (6) of this rule, the Sanction Authority shall impose administrative sanctions or shall initiate a hearing within fifteen (15) days of arrest or detention for the violation of parole or post-prison supervision conditions.
- (4) If an in-custody violation hearing and a final order cannot be accomplished within fifteen (15) days, a supervising officer or Hearings Officer shall request a non-bailable suspend and detain warrant from the Sanction Authority

- (5) Before a Hearings Officer can order more than sixty (60) days of local confinement without the offender's consent, the Hearings Officer shall conduct a violation hearing. Unless the Hearings Officer recommends a sanction, which is beyond his or her authority to order, the Hearings Officer may issue a final order subject to approval of the Sanction Authority, but immediately effective. If the recommended sanction exceeds sixty (60) days, it must be approved by the Supervisory Authority.
- (6) A hearing is not required when an administrative sanction or intervention involves local confinement of ninety (90) days or less when the offender consents to the sanctions or interventions. If the offender contests the allegations, the offender may request a hearing.

Statutory Authority: ORS 144.106(3), 144.108, 144.331(2), 144.343, 144.350, 144.370
 History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92 temporary 11/14/97; 05/11/98)

255-075-0006
Method of Hearing

The Hearing Officer may conduct hearings by teleconference or video conference. The Hearing Officer shall conduct hearings in person or by video conference in the following situations:

- (1) the alleged violations are contested and the offender or the offender's attorney shows that the witness's credibility, including observation of the witness's demeanor is necessary;
- (2) physical exhibits may be part of the record and viewing the exhibits is essential, and the exhibits can not be viewed in some other manner;
- (3) there are unusual circumstances not covered by this section, determined at the Hearing Officer's discretion.

Statutory Authority: ORS 144.035(5), 144.343(1)
 History: (11/4/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0007
Designated Representative Conducts Hearing

- (1) The Sanction Authority or its designated representative shall conduct the probable cause and violation hearing.
- (2) "Designated representative" shall include those persons designated by the Sanction Authority, and trained and certified as Hearings Officers.

Statutory Authority: ORS 144.104(1), 144.331, 144.343
 History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0008

Locations of Hearing

History: (11/19/84, temporary, expired)

255-075-0010

Board Action Upon Notification of Alleged Parole Violation:

Criteria for; Release of Parolee Pending Hearing

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0015

When Offender in Another Jurisdiction: Return

- (1) The Sanction Authority may suspend parole or post-prison supervision and may order the offender's return to custody in Oregon without first conducting a hearing when:
 - (a) the offender has, without permission, left the state to which the Sanction Authority released the offender on parole or post-prison supervision, and is in custody in another jurisdiction;
 - (b) the offender is in custody in another correctional facility;
 - (c) the offender has absconded from supervision and the offender's whereabouts are unknown; or
 - (d) the offender has been convicted of a new crime.
- (2) Except as provided in ORS 144.345(2) and OAR 255-075-0005(6), the Sanction Authority or the Hearings Officer shall conduct a violation hearing after the offender returns to custody in Oregon. For purposes of these rules, the arrest date is the date the offender is returned to custody in Oregon.
- (3) Persons retaken and returned to this state from outside the state upon order or warrant of the Department of Corrections, the State Board of Parole & Post-Prison Supervision or the Governor, for violation of conditions of parole or post-prison supervision, shall be detained in a Department of Corrections facility or a local correctional facility pending any hearing concerning the alleged violation and ultimate disposition by the State Board of Parole & Post-Prison Supervision.
- (4) Persons retaken and returned to this state from outside the state upon order or warrant of a local supervisory authority for violation of conditions of post-prison supervision may be detained in a local correctional facility pending a hearing concerning the alleged violation and ultimate disposition by the local supervisory authority.

Statutory Authority: ORS 144.340, 144.345(2), 144.349

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/15/92, temporary; 4/15/92, temporary 11/14/97; 05/11/98, 01-25-00)

255-075-0020

Rights of a Parolee at a Formal Hearing

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0025

Rights at Hearing

- (1) The designee of the Sanction Authority (eg. Hearings Officer) shall provide the offender a written notice of the hearing at least three (3) working days prior to the hearing.
- (2) The hearing notice shall include:
 - (a) a Notice of Rights as provided in ORS 144.343(3);
 - (b) a written statement of alleged violations; [and]
 - (c) any documents or evidence which form the basis of the alleged violations; and
 - (d) the date and location of the hearing.
- (3) The offender may elect to waive the three working day notification period prior to the hearing and begin the hearing immediately.
- (4) If the offender elects to waive the three working day notification period, the Hearings Officer shall obtain a written waiver or tape record the offender's verbal statement waiving the three working day notification period.
- (5) The Hearings Officer shall ascertain whether the offender has understood the allegations and the offender's rights and whether the offender can read, hear and understand the language of the proceedings. The Hearings Officer shall postpone the hearing if needed assistance is not readily available.

Statutory Authority: ORS 144.343(3)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0026

Waiver of Hearing

- (1) In all cases, the offender may waive the right to a hearing by signing a Notice of Rights form. A refusal to participate in the hearings process shall also constitute a waiver of the right to a hearing.
- (2) When the purpose of a hearing is to consider a parole or post-prison supervision violation, the waiver of the right to a hearing acknowledges that the offender violated the conditions in whole or in part and that the Sanction Authority may order local sanctions, may modify conditions of supervision, may extend active supervision or that the Board may order return to prison, without further hearing.

- (3) When the purpose of the hearing is to modify parole or post-prison supervision conditions or, in the case of parole, to consider extending active supervision, the waiver of the hearing indicates acceptance of the modifications.
- (4) If the offender waives the right to a hearing, the offender may offer a written or verbal statement pertaining to the dispositional phase of the violation hearing.
- (5) If the hearing is conducted via teleconference or video conference, the offender shall submit written waiver of the right to a hearing to the Hearings Officer within five (5) days after the waiver.
- (6) The person delivering the Notice of Rights shall tape record or document in writing any statement made at the time of waiver.
- (7) If the offender waives the right to a hearing, the Hearings Officer or Supervising Officer shall submit to the Sanction Authority the following:
 - (a) a Notice of Rights form;
 - (b) any written offender statements and/or a summary of oral statements;
 - (c) the Hearing Summary, including a history of local interventions and sanctions ordered and a recommendation regarding disposition;
 - (d) any supporting information, including the supervising officer's report and other documentary evidence submitted.

Statutory Authority: ORS 144.050, 144.140; 144.343
 History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98)

255-075-0030
Rejection of Waiver

If the Sanction Authority is not satisfied that the offender knowingly and intelligently waived his or her hearing rights or if it needs more information before making its decision, it may order a new hearing, to be conducted by the Hearings Officer or the Sanction Authority.

Statutory Authority: ORS 144.050, 144.140, 144.343
 History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0031
Hearings Process

- (1) The Hearings Officer shall conduct the violation hearing reasonably near the place of the alleged violation or the place of confinement or may conduct the hearing by teleconference or video conference.

- (2) Unless the Hearings Officer finds good cause on the record, the parole and post-prison supervision officer shall present information and evidence at the hearing and arrange for the presence of witnesses for the state. The parole and post-prison supervision officer shall make dispositional recommendations.
- (3) The Hearings Officer shall make a tape recording of the hearing.

Statutory Authority: ORS 144.050, 144.106, 144.140, 144.343
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary, 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0035

Representation/Ability to Pay Attorney Fees

- (1) In all cases, the offender is entitled to representation by an attorney at the offender's own expense.
- (2) For Board cases only, if the Hearings Officer or the Board deems the offender indigent, and unable to pay for an attorney, the offender is entitled to a Board appointed attorney if the Board or Hearings Officer further finds that the offender has made a timely and colorable claim that:
 - (a) the offender has not committed the alleged violation;
 - (b) there are substantial or complex mitigating circumstances which make revocation inappropriate even if the offender admits violation or it is a matter of record; or
 - (c) the offender appears incapable or representing himself/herself.
- (3) For Board cases only, if the Hearings Officer appoints an attorney, the Hearings Officer shall notify the Board of payment to be made to the appointed attorney. When the Board approves payment for a Board appointed attorney, it shall not exceed \$60 per hour and \$300 per case. The attorney shall send the Board a billing within 90 days of the violation hearing.
- (4) When the Hearings Officer or Board refuses to appoint an attorney, the Hearings Officer or Board shall state the grounds for refusal in the record.
- (5) For Local Supervisory Authority cases, the Local Supervisory Authority may set its own criteria for appointment of an attorney and shall set its own standards for payment of appointed attorneys.

Statutory Authority: ORS 144.343
History: (2/1/79; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 10/15/91; 10/9/92, temporary 11/14/97; 02-06-01)

255-075-0036

Subpoenas; Witnesses

- (1) Offenders shall make their own arrangements for calling and presenting witnesses. However, upon the request of any party to the hearing, and upon a proper showing of the relevance and reasonable scope of the testimony to be offered, the Sanction Authority or Hearings Officer shall issue subpoenas requiring the attendance and testimony of witnesses. In addition, the Sanction Authority or the Hearings Officer may subpoena documents when relevant.
- (2) The Board shall reimburse fees and mileage as prescribed by law to witnesses appearing under subpoena, other than the parties, state officers or employees, provided the Hearing Officer or Sanction Authority certifies that the witness's testimony was relevant and material to the hearing.
- (3) The offender may present witnesses who have relevant information, and has the right to confront the persons or witnesses who have presented information against the offender.
- (4) The Hearings Officer or Sanction Authority may deny confrontation of witnesses by the offender if that confrontation would subject the witness to the risk of harm.
- (5) If the Hearings Officer or Sanction Authority denies confrontation of witnesses, the Hearings Officer or Sanction Authority shall state the reason(s) for the decision and conduct an independent examination of the witness on the record.

Statutory Authority: ORS 144.347

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98)

255-075-0040

Compelling of Witnesses: Contempt

The Sanction Authority or Hearings Officer or party requesting a subpoena, may seek contempt proceedings in the circuit court of any county against any person refusing to honor the subpoena.

Statutory Authority: ORS 144.347(4)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 10/9/92; 05/11/98)

255-075-0042

Probable Cause; Preliminary Hearing; Deferral of Revocation Hearing

- (1) The Sanction Authority or Hearings Officer may use evidence received and the order of a court at a preliminary hearing or a conviction or other reliable, relevant information to establish that probable cause exists to believe that the offender has committed a violation of a condition of parole or post-prison supervision.
- (2) Should the offender waive the right to a preliminary hearing, the waiver shall constitute a waiver of a probable cause hearing.

- (3) When the Sanction Authority or Hearings Officer defers completion of a violation hearing until a trial is over and until the court or the parole and post-prison supervision officer notifies the Sanction Authority or Hearings Officer of the final disposition of the case, the Sanction Authority or Hearings Officer shall use a finding of probable cause to support the decision to suspend and detain an offender charged with the commission of a new crime.
- (4) Notwithstanding subsection (3) of this section, the Sanction Authority or Hearings Officer shall not extend a deferral following a finding of probable cause for a period greater than 120 days from the date of the preliminary hearing or waiver, unless the offender is released from jail pending final disposition of the case, or waives in writing further delay. Subsequent waivers shall not extend beyond 120 days.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (11/25/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98)

255-075-0045

Evidence; Subpoena of Documents

- (1) The Sanction Authority or Hearings Officer may receive the following as evidence at a violation hearing:
 - (a) oral testimony under oath;
 - (b) affidavits or other sworn statements;
 - (c) letters;
 - (d) documents;
 - (e) reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole and post-prison supervision officers, doctors, psychologists, attorneys);
 - (f) uncertified copies of letters, documents, or reports shall be admissible in a revocation hearing if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable;
 - (g) evidence of criminal activity even when charges have been dismissed, not brought, or the offender has been acquitted at trial;
 - (h) reliable hearsay evidence; or
 - (i) any evidence determined to be material, relevant, and reliable, regardless of its nature.
- (2) Upon the request of any party to the hearing, the Sanction Authority, or Hearings Officer, may issue a subpoena duces tecum upon a proper showing of relevant and reasonable scope of the documentary or physical evidence being sought. Otherwise, the offender shall make the offender's own arrangements for presenting evidence.

- (3) The Sanction Authority or Hearings Officer may exclude documents or physical evidence upon making a finding that such evidence would pose a hazard to facility security or would not assist in the resolution of the allegation(s). The reason for exclusion shall be made part of the record.
- (4) The Sanction Authority or Hearings Officer may classify documents or physical evidence as confidential upon making a finding that revealing such evidence would pose a threat to the safety of the person providing the evidence.
- (5) The Sanction Authority or Hearings Officer shall make evidence received without disclosing the identity of the witness a sealed part of the record.
- (6) When a witness is unavailable, the Sanction Authority or Hearings Officer may receive statements in the form of documentary evidence. The Sanction Authority or Hearings Officer shall determine at an in-camera hearing the reliability and relevance of the absent witness's statement.

Statutory Authority: ORS 144.343, 144.347

History: (2/1/79; 11/25/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92; 05/11/98)

255-075-0046

Postponement

- (1) The Sanction Authority or Hearings Officer with Sanction Authority approval, may postpone a hearing for good cause and for a reasonable period of time, which shall not exceed 120 days.
- (2) The criteria for "good cause" includes, but is not limited to:
 - (a) the preparation of defense;
 - (b) illness or unavailability of the offender or other persons;
 - (c) gathering of additional evidence; or
 - (d) avoiding interference with an ongoing police investigation or pending prosecution.
- (3) The Sanction Authority, or Hearings Officer with Sanction Authority approval, may make a finding of a violation and defer disposition for a reasonable time which may exceed 120 days if such delay is reasonably necessary for the offender, the Sanction Authority or Hearings Officer to obtain information relevant to disposition decision.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/18/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0050

Procedure for Receiving Evidence if Good Cause Exists Not to Require Confrontation or Disclosure of an Informant's Identity

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0055

Reopening Hearings: Criteria; Procedure

- (1) After the completion of a violation hearing, the Sanction Authority or Hearings Officer may reopen a hearing if substantial new information is discovered which was not known or could not be anticipated at the time of the hearing and which would significantly affect the outcome of the hearing.
- (2) The Sanction Authority or Hearings Officer shall send the offender notice of the decision to reopen the hearing and the new information to be considered. The re-opened hearing shall conform to the procedures of this Division.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (2/1/79; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0056

Hearings Record

- (1) The hearings record shall include:
 - (a) a Hearings Report Summary;
 - (b) a written statement of alleged violations;
 - (c) supporting materials, including documentary evidence admitted;
 - (d) a signed Notice of Rights;
 - (e) the Order of Parole or Post-Prison Supervision;
 - (f) a notice of time and place of hearing;
 - (g) a tape recording of the advice of rights and the hearing;
 - (h) the supervising officer's report, including recommended dispositions; [and]
 - (i) the history of supervision, local sanctions and modifications; and
 - (j) if any, the written waiver of the offender's right to three working days notice of the hearing.
- (2) The Hearings Officer shall retain the tape recording used in subsection (1)(g) of this rule for two (2) years.

Statutory Authority: ORS 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0060

Record of Parole Revocation Hearing

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0065

Ten Day Period for Offender's Evidence and Exceptions

- (1) Within a reasonable time after the hearing, the Hearings Officer shall provide his or her report to the offender.
- (2) Unless the offender waives the right to respond, the offender shall have 10 days from the date the Hearings Officer mails the report to the offender to submit evidence and make written exceptions to the report for the Sanction Authority's consideration.
- (3) If the offender waives the right to respond, the Hearings Officer shall include the waiver in the Hearings Officer's report to the Sanction Authority.
- (4) When a Hearings Officer makes a final order pursuant to Board authority granted in writing, the offender shall not have a ten day period within which to submit evidence and written exceptions. The offender may appeal a Hearings Officer's order under Division 80 of these rules.

Statutory Authority: ORS 144.343(7)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0067

Final Action: Authority to Impose Administrative (Local) Sanctions, Revoke Supervision or Modify Conditions of Supervision

- 1) If an offender waives a hearing after receipt and review of the notice of rights, as provided in OAR 255-075-0005(6) a supervising officer may order administrative sanctions, including a local confinement sanction not exceeding thirty (30) days. The Local Supervisory Authority's designee may review the decision to order a local confinement sanction if the offender's underlying sentence was for 12 months or less. The Board may review the decision if the underlying sentence was more than 12 months.
- 2) After a hearing, or if an offender waives a hearing after receipt of the notice of rights, as provided in OAR 255-075-0005(6), a Hearings Officer or agency designee may order administrative sanctions, including a local confinement sanction not exceeding sixty (60) days. The Hearings Officer or agency designee shall send a copy of the final order and report to the Sanction Authority and, upon request, shall send the record of the hearing as described in OAR 255-075-0056. The Hearings Officer or agency designee shall retain the record for two (2) years.

- 3) After a hearing, or waiver, the Board may order administrative sanctions for offenders originally sentenced to more than 12 months, and a Local Supervisory Authority designee may order administrative sanctions for offenders originally sentenced to 12 months or less. The Board or a Local Supervisory Authority designee ordered local administrative confinement sanction may not exceed ninety (90) days.
- 4) The Board (for offenders originally sentenced to more than 12 months) or the Local Supervisory Authority designee (for offenders originally sentenced to 12 months or less) may override any sanction ordered by a supervising officer, agency designee or Hearings Officer.
- 5) Administrative Sanctions, including local confinement shall be applied in accordance with the Department of Corrections rules for structured, intermediate sanctions, OAR 291-58-010 et al., subject to jointly drafted revisions by the Department of Corrections and the Board.
- 6) If an administrative sanction is not sufficient to address the violation or to protect the public, the Sanction Authority may revoke supervision for a period(s) as set out in OAR 255-075-0079, or deny re-release for offenders on parole.
- 7) Conditions of supervision may be modified at any time by the Sanction Authority when necessary for the offender or public safety. If an offender objects to the modification, administrative review must be made within 45 days of the mailing date on the Board order or receipt of a written order by the Local Supervisory Authority.

Statutory Authority: ORS 144.106, 144.343

History: (4/30/92, temporary; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98)

255-075-0070

Final Action: Procedure

- (1) When a case comes before the Board or Supervisory Authority or designee for decision, the Board or Supervisory Authority shall consider the Hearings Officer's report, and the offender's evidence and exceptions. The Board or Supervisory Authority or designee shall enter a decision, and shall record the decision in accordance with the sanction/intervention guidelines, OAR 291-58-010 et al. The Board shall vote in accordance with Exhibit K.
- (2) The Board or Supervisory Authority may adopt or reject any or all the Hearings Officer's findings and recommendations. The Board or Supervisory Authority may find a violation of conditions not alleged, if the evidence admitted at the hearing supports the finding and the evidence is uncontroverted. The final order shall indicate the findings adopted by the Board or Supervisory Authority.
- (3) A copy of the final order shall be forwarded to the offender with notice of the right to administrative and judicial review.
- (4) All final orders of the Board are subject to Administrative Review by the Board prior to seeking judicial review.

Statutory Authority: 144.125, 144.343

History: 2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/1/88; 10/18/88; 4/19/89, temporary; 10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98, 01-12-01)

255-075-0072

Re-release Order After Revocation

- (1) At the time of a revocation decision, the Sanction Authority shall make an order concerning re-release.
- (2) In the re-release order, the Sanction Authority may:
 - (a) continue parole or post-prison supervision pursuant to 255-075-0075 or 255-075-0080; or
 - (b) set the re-release date in accordance with rule 255-075-0079; or
 - (c) The Board may defer the re-release decision pending a future disposition hearing for offenders on parole.
- (3) Upon notification that parole or post-prison supervision has terminated by operation of ORS 144.345(2), the Board shall apply subsection (2) of this rule.
- (4) Revocation of post-prison supervision stops the period of post-prison supervision from running while the offender is serving time in custody for a revocation sanction. The re-release order following a revocation sanction shall include a re-calculation of the post-prison supervision expiration date to account for the time the offender was in custody serving the revocation sanction.
- (5) The sum of the time actually served on the original incarceration sentence, all days served as a revocation sanction, and the time served in the community on post-prison supervision cannot exceed the maximum indeterminate sentence for the offense(s) for which the offender is on post-prison supervision.

Statutory Authority: ORS 144.346, 144.395

History: (4/19/89, temporary; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98 9-22-99)

Return to DOC for a Period of Greater than 12 months

255-075-0073

- (1) Post-prison supervision may be revoked and an offender returned to the custody of the Department of Corrections for a sanction that exceeds 12 months when:
 - (a) The offender is currently in violation of a condition of supervision; and
 - (b) The offender scores at least a total of 44 points on the scale in Exhibit R of these rules; and
 - (c) The community corrections agency supervising the offender and/or a hearings officer recommend a return to the Department of Corrections for a sanction exceeding 12 months; and
 - (d) The Board finds that a sanction exceeding 12 months is appropriate.

- (2) This rule may only be applied to offenders serving a term of post-prison supervision for a felony crime committed on or after July 14, 1997, and the term of post-prison supervision:
- (a) follows completion of a sentence to a term of imprisonment that exceeds 12 months, or
 - (b) was imposed for a felony classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid, or
 - (c) was imposed as part of a sentence under ORS 137.700 or 137.707, or
 - (d) was imposed as part of a sentence as a dangerous offender under ORS 161.725 and 161.737, or
 - (e) is subject to ORS 144.103 (length of post-prison supervision for certain sex offenses).
- (3) A revocation hearing as described in OAR 255-075-0005 must be held when there is a recommendation under this rule.
- (4) A community corrections agency and/or hearing officer recommending a sanction under this rule must specifically state how the offender fits the requirements of this rule (including the score on the scale), what efforts have been made to manage the offender in the community and why the offender cannot be safely managed in the community. The recommendation may also contain any other information that may assist the board.
- (5) If a community corrections agency and/or hearing officer recommends a sanction under this rule, the board shall hold a hearing as described in OAR 255-075-0097 to determine whether a sanction exceeding 12 months is appropriate. After a hearing, the board can order a sanction of up to 24 months incarceration. The board must hold a subsequent hearing before it can order continued incarceration exceeding 24 months. The length of sanction imposed under this rule is determined by the board.
- (6) Subject to the requirements of this rule, an offender may be required to serve a sanction under this rule up to the post-prison supervision expiration date for any offense for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule. When an offender is released from a sanction imposed under this rule, the offender must serve the balance, if any, of any post-prison supervision remaining up to the post-prison supervision expiration date. If the offender is not released prior to the post-prison supervision expiration date, the post-prison supervision will expire. The periods of post-prison supervision for all offenses for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule continue to run while an offender is serving a sanction under this rule.
- (7) Board hearings under this rule will be conducted in the same manner that the board conducts future disposition hearings. The board may order a psychological evaluation for a hearing under this rule. The procedures for records, disclosure and notice outlined in Divisions 15 and 30 shall govern these hearings. A panel may conduct the hearing and the board shall make decisions pursuant to OAR 255-030-0015.

- (8) In determining whether a sanction exceeding 12 months is appropriate or whether continued incarceration exceeding 24 months is appropriate, the board must consider the recommendation by the community corrections agency or hearing officer and may also consider the following:
- (a) the nature of the underlying conviction(s);
 - (b) the offender's criminal history;
 - (c) the history and nature of violations of post-prison supervision or parole;
 - (d) findings made by a psychologist in a psychological evaluation;
 - (e) conduct in institutions or jails;
 - (f) programs completed in custody and/or in the community;
 - (g) treatment available in the community;
 - (h) release plans;
 - (i) victim's statements, if any; and
 - (j) any indications of reformation and rehabilitation.

Statutory Authority: (ORS 144.107)

History: (03/12/01)

255-075-0075

Offenders Convicted of New Crime in This or Another Jurisdiction

- (1) If an offender has violated parole or post-prison supervision as a result of a conviction of a new crime and the court has ordered a prison term to the Department of Corrections, parole or post-prison supervision terminates without a violation hearing by operation of ORS 144.345(2).
- (2) Upon release from custody, if the Oregon sentence has not expired, Oregon supervision shall resume either in another jurisdiction under Interstate Compact or in Oregon. If, in preparing the re-release plan, the Department of Corrections cannot arrange supervision under Interstate Compact, the offender shall report to the appropriate Supervisory Authority for supervision.
- (3) The Sanction Authority shall make extradition decisions on a case-by-case basis in cooperation with the holding jurisdiction.
- (4) If the offender absconded supervision, the Sanction Authority shall count the inoperative time from the date the Sanction Authority issued its arrest and detention warrant to the arrest date in Oregon or if arrested out of state, upon return to Oregon custody. The Board shall forward the dates to the Department of Corrections for use in recalculating the sentence good time and expiration dates for those offenders under the Board's jurisdiction. For those not under the Board's authority, the inoperative time shall be calculated by the Supervisory Authority's designee.

Statutory Authority: ORS 144.345, 144.380, 144.610-.622
History: (2/1/79; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89;
4/15/92, temporary 11/14/97; 05/11/98)

255-075-0076

Designation of Parole Failure

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88, repealed)

255-075-0078

Commencement Date for Prison Term Following a Violation

- (1) The commencement date for a new commitment which is concurrent to an incarceration sanction for a violation of parole or post-prison supervision shall be the sentencing date for the new crime.
- (2) The commencement date for a new commitment which is consecutive to an incarceration sanction for a violation of parole or post-prison supervision shall be either the release date established for the violation or the sentencing date for the new crime, whichever is later.
- (3) Notwithstanding subsection (2) of this rule, when the new commitment is consecutive to a sanction for a violation, the Sanction Authority may treat the violation and the new commitment as if they were concurrent. If treated as concurrent, the commencement date for the new commitment shall be the sentencing date for the new crime plus adjustment for credit for time served.
- (4) If the offender is returned with a parole or post-prison supervision violation and a new sentence which is consecutive to the sentence for which the offender was on parole, the commencement date for the new conviction shall be the date parole was revoked, if so stated on the court order.

Statutory Authority: ORS 144.346, 144.395, 144.780, 144.783
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89,
temporary; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0079

Guidelines for Re-release

- (1) For technical violation(s):
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-11-004.

- (2) For conduct constituting a crime:
- (a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.
- (3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.
- (4) Offenders sentenced to life imprisonment for murder or aggravated murder may serve further incarceration to the sentence expiration date.
- (5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.
- (7) (a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.
- (b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.
- (c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.
- (8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.
- (9) Notwithstanding subsections 1-7 of this rule, the Board may choose to postpone re-release on parole pursuant to Divisions 50 and 60 of this chapter.
- (10) Notwithstanding subsections 1-8 of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.
- (11) Administrative sanctions do not count toward the revocation sanction limits.

Statutory Authority: ORS 135, 055, 144.103, 144.107, 144.108, 144.120(4), 144.125, 144.232, 144.345, 144.346, 144.395, 161.735

History: (4/19/89, temporary; 11/1/89; 10/15/90, temporary; 1/16/91; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98, 01-25-00)

255-075-0080

Continuance on Parole or Supervision

- (1) The Sanction Authority may continue an offender on parole or post-prison supervision and order modification of conditions and/or sanction to time served.
- (2) The Sanction Authority may continue an offender on parole or post-prison supervision and order administrative sanctions as limited by OAR 255-075-0067

Statutory Authority: ORS 144.106, 144.343, 144.345(1)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88;
10/16/89; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0082

Authority of Revocation Panel to Set New Parole Release Date for Parole Violators

History: (11/4/81 - 5/2/82, temporary; 11/19/84, suspended; 2/28/85, repealed)

255-075-0085

Parole Violators with No New Commitment; Action Required

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89,
suspended; 10/16/89, repealed)

255-075-0090

Guidelines for Reparole

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89,
temporary; 11/1/89, repealed)

255-075-0095

Variation From Guidelines for Aggravation/Mitigation Permitted

History: (11/19/84, temporary; 2/28/85; 5/19/88; 7/1/88; 4/19/89, suspended; 10/16/89,
repealed)

255-075-0096

Denial of Re-release Consideration

- (1) Upon a finding of aggravation pursuant to Exhibit E or Exhibit H, the Board may deny re-release on parole and set the parole release date up to two (2) days before the statutory good time date, or, in the case of murder or aggravated murder, require the parole violator to serve for life. This action requires the affirmative vote of a majority of members, except that if the result is life imprisonment, the full Board must vote unanimously.
- (2) Denial of re-release on parole requires a future disposition hearing.

- (3) Cases in which the Board sets a parole violator within the guidelines set forth in rule 255-075-0079 and the result requires the parole violator to serve to the end of the sentence, do not require a majority vote of all members.
- (4) At any time after denial of re-release, the Board may adjust the parole release date to accommodate changes in the good time date.

Statutory Authority: ORS 144.085, 144.120(4), 144.245, 144.395, 144.780, 144.783-787
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 5/1/91, temporary; 10/15/91, 03/14/97)

255-075-0097

Time for Future Disposition Hearing

When the Board holds a future disposition hearing pursuant to 255-075-0072(2) or 255-075-0096, the following timelines shall apply:

- (1) If the offender has a new conviction, the Board may schedule the future disposition hearing at the same time as the new prison term hearing.
- (2) If the offender has no new conviction or has no prison term hearing, the Board shall schedule the future disposition hearing within 60 days of return to the institution.

Statutory Authority: ORS 144.050, 144.140, 144.395
History: (4/19/89, temporary; 10/16/89; 10/9/92)

255-075-0098

Restoration of Statutory and Meritorious Goodtime

Upon recommendation of the superintendent of the institution, the Board may restore part or all of forfeited statutory and meritorious goodtime when:

- (1) there is no violation of parole; or
- (2) parole is revoked on a best interest basis and there is no actual parole violation; or
- (3) parole is revoked on a technical violation; or
- (4) parolee is within 180 days of discharge; or
- (5) parole is revoked for new criminal activity which is a misdemeanor or non person-to-person class C felony and:
 - (a) the new criminal activity was already sanctioned at the local level;
or
 - (b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.
- (6) An offender ordered to serve a term of incarceration as a Revocation sanction for a post-prison supervision violation is not eligible for goodtime, earned-credit time, work release, transitional or temporary leave.

Statutory Authority: ORS 421.120, 144.108(3)
History: (3/14/88, temporary; 5/19/88; 12/6/88; 10/16/89; 10/9/92, 03/14/97,
temporary 11/14/97; 05/11/98)

255-075-0100
Future Disposition Hearing Packet

The Future Disposition Hearing Packet shall contain:

- (1) institution face sheet;
- (2) revocation recommendation;
- (3) final order of revocation;
- (4) administrative action sheet;
- (5) revocation hearing findings;
- (6) Board Action Form ordering parole or Board Action Form ordering post-prison supervision conditions;
- (7) disciplinary report, when extension is recommended;
- (8) recommendation regarding statutory and meritorious goodtime;
- (9) correspondence;
- (10) statements of imprisonment for violation; and
- (11) face sheet from old parole analysis report or comparable report.
- (12) Inmate's Notice of Rights and Board of Parole & Post-Prison Supervision Procedures.

Statutory Authority: ORS 144.185, 144.395
History: (5/19/88; 12/6/88; 10/16/89, 03/14/97)

Exhibit R
(of OAR 255-075-0073)
Return to DOC for a Period of Greater than 12 months

Assessment Scale

1. The following point scale corresponds with the highest sentencing guidelines grid classification for any felony for which the offender is on post-prison supervision at the time a sanction is sought under this rule.

Sentencing Guidelines Grid	Points for this Scale
11A	20
11B	20
11C	20
11D	20
10A	20
10B	18
10C	16
10D	14
9A	18
9B	16
9C	14
9D	12
8A	16
8B	14
8C	12
8D	10

Points _____

If the offense(s) for which the offender is on post-prison supervision is below an 8-D, score zero points for this item and move on to the next items on the scale.

2. Since initial release from a DOC institution to the current post-prison supervision, the offender threatens physical harm to another person and has some ability or capacity to carry out the threat.
Score 10 points

Points _____

3. Since initial release from a DOC institution to the current post-prison supervision, the offender fails to comply with a condition of supervision requiring participation in a psychiatric or psychotropic medication program.
Score 10 points

Points _____

4. Since initial release from a DOC institution to the current post-prison supervision, the offender engaged in conduct constituting a crime that has a crime seriousness rating of 4 or higher on the sentencing guidelines grid, or the offender engaged in conduct constituting a person-to-person crime as defined by the sentencing guidelines rule, or the offender engaged in any type of sexual crime.

Score 10 points

Points _____

5. Since initial release from a DOC institution to the current post-prison supervision, the offender had unauthorized contact with a minor, victim or survivor in violation of a condition of the post-prison supervision.

Score 10 points

Points _____

6. Since initial release from a DOC institution to the current post-prison supervision, the offender failed to comply with the conditions of a treatment program ordered as a general or special condition of post-prison supervision.

Score 10 points

Points _____

7. Since initial release from a DOC institution to the current post-prison supervision, the offender has received any type of sanction for supervision violations on eight or more occasions. This is not limited to revocation sanctions but does not include interventions.

Score 10 points

Points _____

Total number of points for this offender _____

***Note:** Do not score both #2 and #4 for the same conduct. Do not score both #3 and #6 unless the offender is required to be engaged in regular mental health treatment beyond merely taking prescription medications (e.g., attending counseling sessions).

12-4-01

TEMP

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 12-03-2001 by the

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter Number

Michael R. Washington 503-945-9009
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, Oregon 97301-4621
Address

to become effective 01-01-2002 through 06-29-2002
Date upon filing or later A maximum of 180 days including the effective date

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

FILED

ADOPT: 255-060-0009
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

DEC 10 2001

ARCHIVES DIVISION
SECRETARY OF STATE

AMEND:

SUSPEND:

ORS ORS 137.765, 144.096, 144.102, 144.270, 144.125, 181.585, 181.594
Stat. Auth: ORS
SB 444 (Oregon Legislative Session 2002)
Other Authority
NONE
Stats. Implemented: ORS

RULE SUMMARY

The adoption of the proposed rule establishes the criteria for residential placement of certain sex offenders upon release from custody on parole or post-prison supervision. This adoption is necessary to bring the board's rules into conformity with Senate Bill 444 passed into law by the 2001 Oregon Legislature.

Michael R. Washington 12-04-2001
Authorized Signer Date

*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and	)	Statutory Authority,
Adoption of Rules of the Board of Parole	)	Statutes Implemented,
and Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon
)	

Statutory Authority: ORS 137.765, 144.096, 144.102, 144.125, 144.270, 181.585, 181.594

Other Authority: Senate Bill 444 (Oregon Legislative Assembly – 2001 Regular Session)

Statutes Implemented: ORS None.

Need for the Temporary Rule(s): To establish criteria for residential placement of certain sex offenders upon release from custody on parole or post-prison supervision. Also, to bring the board's rules into conformity with Senate Bill 444 passed into law by the 2001 Oregon Legislature.

Documents Relied Upon: Senate Bill 444 (Oregon Legislative Assembly – 2001 Regular Session)

Justification of Temporary Rule(s): To ensure safety of the public as well as the offenders convicted of certain sex offenses upon their release on parole or post-prison supervision.

Michael R. Washington 12-04-01
Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules – Board\Statement of Need & Justification.doc

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

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter
Number
Michael R. Washington 503-945-9009
Rules Coordinator Telephone
2575 Center Street NE, Ste 100 Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

ADOPT: **255-060-0009**
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND:

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 137.765, 144.096, 144.102, 144.270, 144.125, 181.585, 181.594
Stat. Auth.: ORS
SB 444 (2001 Oregon Legislative Session)
Other Authority
NONE
Stats. Implemented: ORS

RULE SUMMARY

The adoption of the proposed rule establishes the criteria for residential placement of certain sex offenders upon release from custody on parole or post-prison supervision. This adoption is necessary to bring the board's rules into conformity with Senate Bill 444 passed into law by the 2001 Oregon Legislature.

A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

01-21-2002
Last Day for Public Comment

Michael R. Washington 12-04-01
Authorized Signer and Date

The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

FILED
DEC 10 2001
ARCHIVES DIVISION
SECRETARY OF STATE

RECEIVED
DEC 12 AM 9 03
OFFICE OF PAROLE

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 137.765, 144.096, 144.102, 144.125, 144.270, 181.585, 181.594.

Other Authority: Senate Bill 444 (Oregon Legislative Assembly – 2001 Regular Session).

Statutes Implemented: ORS None

Need for the Rule(s): To establish criteria for residential placement of certain sex offenders upon release from custody on parole or post-prison supervision. Also, to bring the board's rules into conformity with Senate Bill 444 passed into law by the 2001 Oregon Legislature.

Documents Relied Upon: Senate Bill 444 (Oregon Legislative Assembly – 2001 Regular Session).

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this adoption will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this adoption and change during a business meeting and due to the nature of the adoption, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington 12-04-01
 Authorized Signer and Date

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

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

Statutory Authority: ORS 144.096, 144.125, 144.185, Chapter 924 (1999 OR Laws)
History: (4/5/90; 5/1/91, temporary; 10/15/91; 1992 proposed change, 03/14/97, 9-22-99, 02-15-00)

255-060-0009

**Residence Requirements for Certain Sex Offenders
Upon Release from Custody**

- (1) A sex offender classified as a sexually violent dangerous offender (ORS 137.765) or a predatory sex offender (ORS 181.765) may not reside near locations where children are the primary occupants or users.
- (2) This prohibition applies to permanent housing and not to transitional housing. For purposes of this rule, transitional housing means housing intended to be occupied by a sexually violent dangerous offender or a predatory sex offender for 45 days or less immediately after release from custody.
- (3) Exceptions to this prohibition may be made by the supervising parole/probation officer if it is determined that there is sufficient information to support this placement in terms of public safety and the rehabilitation of the offender. In making this determination, the following factors must be considered:
- a. Other residential placement options pose a higher risk to the community, or
 - b. An enhanced support system that endorses supervision goals and community safety efforts is available at this residence, or
 - c. Enhanced supervision monitoring will be in place (e.g. electronic supervision, curfew, live-in-care provider, along with community notification), or
 - d. This residence includes 24-hour case management, or
 - e. The offender is being released from prison unexpectedly and more suitable housing will be arranged as soon as possible.

If any of these factors apply to the offender and the residence under review, an exception to the permanent residence prohibition may be allowed.

4. If a supervising officer makes an exception under this rule, the supervising officer must inform the community affected by this decision about the reasons for the decision prior to the offender's release from custody.

Statutory Authority:

History: (Temp/Notice 12-15-01)

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 12-03-2001 by the

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter Number

Michael R. Washington 503-945-9009
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, Oregon 97301-4621
Address

to become effective 01-01-2002 through 06-29-2002
Date upon filing or later A maximum of 180 days including the effective date

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

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

AMEND: 255-070-0001 (Exhibit J)

SUSPEND:

ORS 137.540, 137.595, 144.096, 144.102, 144.270, 163.305, 163.315, 163.325, 163.345,
163.355, 163.365, 163.375, 163.385, 163.395, 153.405, 164.408, 164.411, 163.412, 163.415, 163.425,
163.427, 163.435, 163.445, 163.465, 163.467, 181.594, 181.595, 662.010

Stat. Auth: ORS

HB 2503 & HB 2092 (Oregon Legislative Session 2002)
Other Authority

None
Stats. Implemented: ORS

RULE SUMMARY

The amendment of the proposed rule establishes mandatory conditions of parole and post-prison supervision for certain sex offenders. The amendment also clarifies the scope of home visits conducted by parole and post-prison supervision officers making it consistent with the scope pertaining to probationers. Finally, the amendment is necessary to bring the board's rules into conformity with House Bill 2092 and House Bill 2503 passed into law by the 2001 Oregon Legislature.

Michael R. Washington
Authorized Signer

12-04-2001
Date

*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.

FILED

DEC 12 2001

ARCHIVES DIVISION
SECRETARY OF STATE

RECEIVED
01 DEC 12 AM 9:05
SECRETARY OF STATE

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and	)	Statutory Authority,
Adoption of Rules of the Board of Parole	)	Statutes Implemented,
and Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon
)	

Statutory Authority: ORS 137.540, 137.595, 144.096, 144.102, 144.270, 163.305, 163.315, 163.325, 163.345, 163.355, 163.365, 163.375, 163.385, 163.395, 153.405, 164.408, 164.411, 163.412, 163.415, 163.425, 163.427, 163.435, 163.445, 163.465, 163.467, 181.594, 181.595, 662.010

Other Authority: HB 2503 & HB 2092 (2001 Oregon Legislative Session)

Statutes Implemented: None

Need for the Temporary Rule(s): To establish mandatory conditions of parole and post-prison supervision for certain sex offenders and to clarify the scope of home visits conducted by parole and post-prison supervision officers making it consistent with the scope pertaining to probationers. Also, to bring the board's rules into conformity with House Bill 2092 and House Bill 2503 passed into law by the 2001 Oregon Legislature.

Documents Relied Upon: HB 2503 & HB 2092 (2001 Oregon Legislative Session)

Justification of Temporary Rule(s): To ensure safety of the public as well as the offenders convicted of certain sex offenses upon their release on parole or post-prison supervision. Also, to better assist parole and post-prison supervision officers in their supervision of all offenders.

Michael R. Washington 12-04-01
Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules - Board\Statement of Need & Justification.doc

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

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter
Number
Michael R. Washington 503-945-9009
Rules Coordinator Telephone
2575 Center Street NE, Ste 100 Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

ADOPT:

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

FILED

DEC 10 2001

ARCHIVES DIVISION
SECRETARIAT OF STATE

AMEND:

255-070-0001 (Exhibit J)

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 137.540, 137.595, 144.096, 144.102, 144.270, 163.305, 163.315, 163.325, 163.345, 163.355, 163.365,
163.375, 163.385, 163.395, 153.405, 164.408, 164.411, 163.412, 163.415, 163.425, 163.427, 163.435, 163.445, 163.465,
163.467, 181.594, 181.595, 662.010

Stat. Auth.: ORS

HB 2503 & HB 2092 (2001 Oregon Legislative Session)

Other Authority

None

Stats. Implemented: ORS

RULE SUMMARY

The amendment of the proposed rule establishes mandatory conditions of parole and post-prison supervision for certain sex offenders. The amendment also clarifies the scope of home visits conducted by parole and post-prison supervision officers making it consistent with the scope pertaining to probationers. Finally, the amendment is necessary to bring the board's rules into conformity with House Bill 2092 and House Bill 2503 passed into law by the 2001 Oregon Legislature.

A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

01-21-2002

Last Day for Public Comment

Michael R. Washington

Authorized Signer and Date

12-04-01

The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 137.540, 137.595, 144.096, 144.102, 144.270, 163.305, 163.315, 163.325, 163.345, 163.355, 163.365, 163.375, 163.385, 163.395, 153.405, 164.408, 164.411, 163.412, 163.415, 163.425, 163.427, 163.435, 163.445, 163.465, 163.467, 181.594, 181.595, 662.010

Other Authority: HB 2503 & HB 2092 (2001 Oregon Legislative Session)

Statutes Implemented: ORS None

Need for the Rule(s): To establish mandatory conditions of parole and post-prison supervision for certain sex offenders and to clarify the scope of home visits conducted by parole and post-prison supervision officers making it consistent with the scope pertaining to probationers. Also, to bring the board's rules into conformity with House Bill 2092 and House Bill 2503 passed into law by the 2001 Oregon Legislature.

Documents Relied Upon: HB 2503 & HB 2092 (2001 Oregon Legislative Session)

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect these amendments will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted these amendments and changes during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

Authorized Signer and Date

12-04-01

DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions Not Limited by Exhibit J
255-070-0001

- (1) The Board may order parole conditions pursuant to OAR 255-070-0015.
- (2) The Board shall approve post-prison supervision conditions pursuant to OAR 213-11-001.
- (3) Conditions of parole and post-prison supervision are not limited to those shown in Exhibit J.

Statutory Authority: (ORS 144.096, 144.102, 144.270)

History: (5/31/85; 11/3/86, temporary; 4/1/87; 4/15/88, temporary; 5/19/88; 7/1/88; 10/18/88; 4/5/90; 4/30/92, temporary; 10/9/92; 10/15/93, 11/09/98, 9-15-99 Notice/Temp, 11-15-99, 05-22-00, 12/15/01-Notice/Temp)

Offender Return to County of Residence
255-070-0003

- (1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the first six months in the county where the offender resided on the date of the last arrest for a crime resulting in imprisonment.
 - (2) (a) The Board or the Department of Corrections may establish the county of residency by obtaining the last address of record at the time of the offense from all of the available information in the following records:
 - (A) An Oregon driver's license, regardless of its validity;
 - (B) The Department of Revenue;
 - (C) The Department of State Police, Bureau of Criminal Identification;
 - (D) The Department of Human Resources; or
 - (E) The Department of Corrections.
 - (b) If the records do not disclose the county of residency, the Board or the Department shall find the offender resided in the county where she or he committed the crime.
 - (c) If the offender is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.
 - (d) In determining the offender's county of residence for purposes of this rule, the Board may not consider offenses committed by the offender while the offender was incarcerated in a Department of Corrections facility.
- (3) Upon motion of the Board, an offender, a victim, or a district attorney, the Board may waive the residency requirement after finding:

- (a) the offender provided proof of a job with no set ending date in a county other than the established county of residence;
- (b) the offender poses a significant danger to the victim;
- (c) the victim or victim's family poses a significant danger to the offender residing in the county of residence.
- (d) the offender has a spouse or biological or adoptive family, residing in other than the county of residence, who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole or post-prison supervision period;
- (e) the Board requires that the offender participate in a treatment program which is not available in the county of residence;
- (f) the offender desires release to another state or another state has a detainer; or
- (g) other good cause.

Statutory Authority: (ORS 144.270(5))

History: (11/1/89; 10/15/91; 10/9/92, 9-15-99 – NOTICE/TEMP, 11-15-99)

Parolee Placement in Community Corrections Centers; Standards; Limitations
255-070-0005

History: (2/1/79; 5/31/85, repealed)

Guidelines on General Condition Relating to "Best Interest" Return
255-070-0010

History: (2/1/79; 5/31/85; 11/3/86, temporary; 4/1/87; 5/19/88, repealed)

Establishing Conditions
255-070-0015

- (1) The Board may order an exit interview prior to the inmate's release date to review the inmate's case and set or approve conditions. See Division 60 for exit interview procedures.
- (2) If the Board decides to waive an exit interview, it shall specify the parole condition(s) prior to release and shall include the conditions on an order of supervision.
- (3) If the Board decides to waive an exit interview, it shall specify, in an order given to the offender upon release from incarceration, the post-prison supervision condition(s).
- (4) Once the Board establishes the conditions, the Board may amend the conditions and issue an amended order by:

- (a) considering a requested modification administratively, if the amendment is requested before the inmate's release on parole or post-prison supervision or if a condition is deleted after release; and
 - (b) citing to a hearing, if the amendment is requested after release and the offender does not consent in writing to the addition of conditions.
- (5) The Hearings Officer may amend the conditions, after a hearing, unless the offender waives the hearing. The Hearings Officer shall send notice of the amendment to the Board.
 - (6) If the offender waives the right to a hearing and consents in writing to the addition of conditions, the supervising officer may amend the conditions. The officer shall send notice of the amendment to the Board.
 - (7) If the Board does not override the Hearings Officer or supervising officer amended conditions, the Board shall issue an amended order of conditions, however, the condition is in effect from the date the supervising officer or Hearings Officer orders it.
 - (8) The Board or the Hearings Officer shall conduct a hearing under section (4) and (5) of this rule applying rules governing violation hearings in Division 75.
 - (9) When a supervisory authority requests amended conditions before the inmate is released on parole or post-prison supervision, the supervisory authority shall submit the request in writing or by teletype to the Board prior to the release date.
 - (10) An offender may appeal the conditions of parole or post-prison supervision pursuant to the procedures of Division 80.

Statutory Authority: (ORS 144.096, 144.098, 144.102, 144.106, 144.125, 144.185, 144.270, 144.343)

History: (5/19/88, 4/5/90; 4/30/92, temporary, 10/9/92, 11/09/98)

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 may be revoked for violation of any of these conditions and/or you may be returned when parole is not in your best interest or the best interest of society.

The Board may, at its discretion, sanction violations of 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 Board.
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 illegally used controlled substances.
4. 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. [r]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.

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. Offender shall have no contact with minor females and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
4. Offender shall have no contact with minor males and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
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 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 frequenting, 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) 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.
 - (e) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board, supervisory authority or supervising officer. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.
 - (f) 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.
 - (g) Unless otherwise indicated for the treatment required under subparagraph (E) 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.
 - (h) 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.
 - (i) 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.
 - (j) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.
 - (k) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.

1-15-02

TEMP

FILED

JAN 15 2002

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

**ARCHIVES DIVISION
SECRETARY OF STATE**

I certify that the attached copies* are true, full and correct copies of the TEMPORARY RULE(s) adopted on 01-08-02 by the

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter Number

Michael R. Washington 503-945-9009
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, Oregon 97301-4621
Address

to become effective 01-15-2002 through 07-13-2002
Date upon filing or later A maximum of 180 days including the effective date

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

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

AMEND: 255-060-0011 (Exhibit Q-II)

SUSPEND:

ORS 163.355 through 163.427, 181.585, 181.586, 181.587, 181.594
Stat. Auth: ORS
None
Other Authority
None
Stats. Implemented: ORS

RECEIVED
JAN 15 2002
ARCHIVES DIVISION
SECRETARY OF STATE

RULE SUMMARY

The Amendment of the board's exhibit is necessary to bring it into conformity with changes made to the definitions for the categories on the sex offender risk assessment scale. The changes in the definitions were made and approved by the Department of Corrections.

Michael R. Washington 01-15-2002
Authorized Signer Date

*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and	)	Statutory Authority,
Adoption of Rules of the Board of Parole	)	Statutes Implemented,
and Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon
)	

Statutory Authority: ORS 163.355 through 163.427, 181.585, 181.586, 181.587, and 181.594.

Other Authority: None..

Statutes Implemented: None.

Need for the Temporary Rule(s): The immediate amendment of the board's exhibit is necessary for protection of the public by allowing the board to accurately determine which offenders should be designated as predatory sex offenders. This designation will allow for more intensive supervision of the offenders on parole or post-prison supervision, which may include community notification.

Documents Relied Upon: None.

Justification of Temporary Rule(s): The immediate amendment of the board's exhibit is necessary for protection of the public by allowing the board to accurately determine which offenders should be designated as predatory sex offenders.

Michael R. Washington

01-15-2002

Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules - Board\Statement of Need & Justification.doc

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

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter
Number
Michael R. Washington 503-945-9009
Rules Coordinator Telephone
2575 Center Street NE, Ste 100 Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

FILED

JAN 15 2002

**ARCHIVES DIVISION
SECRETARY OF STATE**

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

AMEND: 255-060-0011 (Exhibit Q-II)

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 163.355 through 163.427, 181.585, 181.586, 181.587, and 181.594
Stat. Auth.: ORS

None
Other Authority

None
Stats. Implemented: ORS

RULE SUMMARY

The Amendment of the board's exhibit is necessary to bring it into conformity with changes made to the definitions for the categories on the sex offender risk assessment scale. The changes in the definitions were made and approved by the Department of Corrections.

A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the Notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

03-05-2002
Last Day for Public Comment

Michael R. Washington 01-15-2002
Authorized Signer and Date

The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 163.355 through 163.427, 181.585, 181.586, 181.587, and 181.594.

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The immediate amendment of the board's exhibit is necessary for protection of the public by allowing the board to accurately determine which offenders should be designated as predatory sex offenders. This designation will allow for more intensive supervision of the offenders on parole or post-prison supervision, which may include community notification

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendment, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

01-15-2002

Authorized Signer and Date

255-060-0011

Procedures for Predatory Sex Offender

- (1) For purposes of this rule, a person is a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use only the Sex Offender Risk Assessment Scale (Exhibit Q-I) and definitions (Exhibit Q-II) which have been approved by the Department of Corrections as required by ORS 181.585(2).
- (2) The procedures set forth in this rule only apply to inmates or offenders whose original order of supervision is issued by the Board on or after January 1, 1999.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale. The Board may make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores less than three or more starred (*) items and has no automatic override item(s) but scores at least -50 on the Sex Offender Risk Assessment Scale.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.
- (5) Inmates or offenders who score three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) A Board Member must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before a predatory sex offender finding is made.
 - (c) A Board Member must consider any written objections to the score on the Sex Offender Risk Assessment Score timely submitted by the inmate or offender before making a predatory sex offender finding. A Board Member shall make the predatory sex offender finding if there is evidence to support a score on the Sex Offender Risk Assessment Scale (Exhibit Q-I) of three or more starred (*) items or one or more automatic override item(s) using the definitions for the Sex Offender Risk Assessment Scale (Exhibit Q-I).
- (6) The Board may also make a predatory finding for inmates or offenders with a total score of at least -50 on the Sex Offender Risk Assessment Scale but fewer than three starred (*) items and no automatic override items.

- (a) Inmates or offenders referred to in section (6) of this rule are entitled to a Morrissey-type hearing prior to the Board making a predatory sex offender finding. This hearing must be held in accordance with the rules governing supervision violations as set forth in OAR 255-075-0031 through 255-075-0056. OAR 255-075-0065 does not apply to this rule.
- (b) Following the hearing, the hearing officer shall submit written findings to the Board. A Board Member must review these written findings prior to making a predatory sex offender finding. A Board Member shall make a predatory sex offender finding if the Board Member determines that the evidence presented at the hearing supports a score of at least -50 on the Sex Offender Risk Assessment Scale.
- (7) Inmates or offenders may elect to waive their right to submit written objections or waive their right participate in a hearing as set forth in this rule. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections or to participate in a hearing, the Board may make the predatory sex offender finding if the inmate's or offender's score on the Sex Offender Risk Assessment Scale is at least -50, or there are at least three starred (*) items or there is at least one automatic override item.
- (8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: Chapter 163 (1999 OR Laws)
History: (Notice 02-15-00, Temp/Notice 01-15-2002)

EXHIBIT Q-II

SEX OFFENDER ASSESSMENT

If more than one sex offense, you must choose a case and score that as the "current" offense. PO interviews with offender, victims, or others can provide additional information.

NEGATIVE SCALE

- *1. **History of Sexual Crime(s):** Offender has committed one or more sex crimes which have not resulted in conviction/adjudication. Includes adult and juvenile admissions, reported or known offenses. Does not include instant offense or any crimes subsequent to instant offense. Does not include additional offenses against victim in instant case. *Information sources* used to establish this criterion may include, but are not limited to, Pre-Sentence Investigations (PSI's), offender statements or disclosures and other reliable sources.

~~Offender has committed one or more sex crimes which have not resulted in conviction/adjudication. Includes adult and juvenile admissions, reported or known offenses. Does not include instant offense or any crimes subsequent to instant offense. Does not include additional offenses against victim in instant case.~~

~~Information sources used to establish this criterion may include, but are not limited to, Pre-Sentence Investigations (PSI's), offender statements or disclosures and other reliable sources.~~

- *2. **History of Sex Offense Conviction(s):** The offender has a documented criminal history that includes one or more criminal convictions or juvenile adjudications for sex crimes in any jurisdiction. Does not include instant offense or any subsequent crimes. *Information sources* may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.

~~The offender has a documented criminal history that includes one or more criminal convictions or juvenile adjudications for sex crimes in any jurisdiction. Does not include instant offense or any subsequent crimes.~~

~~Information sources may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.~~

- *3. **Stranger-to-Victim:** In regard to the current offense only, the offender-to-victim relationship was stranger-to-victim or the relationship was established for the purpose of victimization. For the purpose of this item, the victim or victims were not personal friends, family or household members, or children of family or household members. Victims of this class of crime may be total strangers, persons who are stalked, or casual acquaintances including persons approached in bars or other social gathering places. In the case of a child victim, the offender would be someone the child would consider a stranger. *Information sources* may include, but are not limited to, PSI's, victims statements, police reports, offender disclosures or statements, and other documentation.

~~In regard to the current offense only, the offender to victim relationship was stranger to victim or the relationship was established for the purpose of victimization.~~

~~For the purpose of this item, the victim or victims were not personal friends, family or household members, or children of family or household members. Victims of this class of crime may be total strangers, persons who are stalked, or casual acquaintances including persons approached in bars or other social gathering places. In the case of a child victim, the offender would be someone a child would consider a stranger.~~

~~Information sources may include, but are not limited to, PSI's, victim statements, police reports, offender disclosures or statements, and other documentation.~~

- *4. **Multiple Victims:** There were more than one victim in the current criminal episode. *Information Sources* which can be used to establish this include, but are not limited to, PSI scope of crime or victim statement, police report, indictment, or any other documented information that is relevant to proving multiple victims or the current criminal episode.

~~There were more than one victim in the current criminal episode.~~

~~Information sources which can be used to establish this include, but are not limited to, PSI scope of crime or victim statement, police report, indictment, or any other documented information that is relevant to proving multiple victims of the current criminal episode.~~

- *5. **Use of Weapons or Threats:** Prior to or during the commission of the current offense, the offender threatened to use, simulated the use of, or displayed a weapon (as defined in the Oregon Revised Statutes); threatened to use or used physical force to harm the victim, other persons or property closely associated with the victim; used age-related coercion or intimidation (such as, "If you tell, we will get into trouble") or used threats of abandonment in order to gain the victim's compliance. This would include the offender establishing a pattern of control over the victim during the grooming process by using threats, intimidation or weapons. *Information sources* may include, but are not limited to, police reports, PSI's, court records and transcripts, offender statements and disclosures and victim/witness statements.

~~Prior to or during the commission of the current offense, the offender threatened to use, simulated the use of, or displayed a weapon (as defined in Oregon Revised Statutes); threatened to use or used physical force to harm the victim, other persons or property closely associated with the victim; used age-related coercion or intimidation (such as, "If you tell, we will get into trouble") or used threats of abandonment in order to gain the victim's compliance. This would include the offender establishing a pattern of control over the victim during the grooming process by using threats, intimidation or weapons.~~

~~Information sources may include, but are not limited to, police reports, PSI's, court records and transcripts, offender statements and disclosures and victim/witness statements.~~

6. **Victim Under 14 years of age or Mentally/Physically Disabled:**

Current offense victim was under 14 years at time of offense, or mentally or physically incapacitated regardless of age. Victim may have been drunk or asleep. Obtain info: PSI scope of crime or victim's statement, police report, etc.

7. **Not in Treatment:** Offender has a condition of sex offender treatment and is not actively involved in an approved sex offender treatment program, or has not previously completed a sex offender treatment program on this supervision. **Obtain info:** Parole or probation order, S.O. eval and progress reports, etc. ****Cannot score this item if #9 is scored.***
8. **Shows no Empathy for Victim(s):** Cannot articulate or demonstrate the negative impact of crime on the victim of current offense. **Obtain info:** PSI scope of crime or offender's statement, psychosexual eval, full-disclosure polygraph, Tx progress reports, etc.
9. **Not Progressing in Treatment:** Tx provider reports that offender is not working to make changes to achieve Tx goals and reduce his risk in the community. **Obtain info:** Tx progress reports, etc. ****Cannot score this item if #7 is scored.***
10. **New Crime During Supervision:** Any new misdemeanor or felony crimes committed during re-class period, whether convicted or not. **Obtain info:** Polygraphs, police reports, offender admissions, observed behavior, search, etc. ***(Score drug usage on #18, not here.)***
11. **Technical Violation Related to Sexual Assault Cycle:** Violation during re-class cycle consisting of a trigger(s) to sexual assault cycle (i.e., contact with minors, use of pornography, cruising, gambling, piercing, etc.) **Obtain info:** Violation reports, maintenance polygraph, etc.
12. **Multiple Paraphilia:** More than one admitted or known sexual deviancy, i.e., frottage, bondage, group sex, bestiality, voyeurism, necrophilia, urophilia, masochism, pedophilia, hebophilia, exhibitionism, fetishes, partialism, coprophilia, sadism, auto-erotic asphyxiation, transvestic fetishism, etc. **Obtain info:** Full disclosure polygraph, psychosexual eval, criminal history, police reports, etc.
13. **Impulsive or Compulsive Behavior:** Admitted or diagnosed behavior. Behavior patterns which indicate compulsiveness or lack of forethought (i.e., overeating, gambling, substance abuse, shoplifting, exposing, etc.) **Obtain info:** MH and/or psychosexual eval, full-disclosure polygraph, etc.
14. **Primary Sexual Preference is Children:** Primary arousal to minors. **Obtain info:** Plethysmograph, psychosexual eval, admissions, etc.
15. **Community Instability:** Multiple moves, sporadic job history, no family/friend ties to area, subsidy housing, financial dependence and/or irresponsibility. **Obtain info:** Monthly reports, chrono history, PSI background and employment info, etc.
- *16. **Prior Non-Sexual Criminal History:** The offender has one or more convictions, adjudications or diversions for a non-sexual criminal offense(s) in any jurisdiction. ***Information sources may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.***

~~The offender has one or more convictions, adjudications or diversions for a non-sexual criminal offense(s) in any jurisdiction.~~

~~Information sources may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.~~

17. **Substance Abuse Involved in Sexual Offending Behavior:** Current sex offense involved offender under the influence of drugs and/or alcohol. Obtain info: PSI scope of crime or alcohol/drug section, police reports, full disclosure polygraph, A & D eval, psychosexual eval, etc.
18. **Substance Abuse Problems:** During re-class period, offender used drugs and/or abused alcohol. Obtain info: UA results, A & D eval, A & D Tx progress reports, maintenance polygraph, admissions, observed behavior, etc.
19. **Anger Problems:** Offender has difficulty managing or controlling anger. Obtain info: PSI, MH eval, psychosexual eval, observed behavior, admissions, etc.
20. **Technical Violation Not Related to Sexual Assault Cycle:** Any violation of general or special conditions. **Not scored in #11.* Obtain Info: Violation reports, polygraphs, admissions, etc.
21. **Use of Sexually Arousing Materials:** Any material that reinforces deviant sexual arousal. Initial assessment: Covers any history of using written, printed, video, computer, or any other media porn. Reassessment: Use of this material within last 6 months. Obtain info: Full disclosure or maintenance polygraphs, psychosexual evals, etc.
22. **Mental Status Inhibits Responsible Functioning:** Offender has been diagnosed with a major mental illness, is mentally impaired or has organic brain damage which interferes with offender's decision-making process and makes it unrealistic for offender to be able to use cognitive interventions. Obtain info: MH eval, PSI, SSI/SSD info, IQ testing, etc.
23. **No Support System or Support System Tolerates/Supports Denial:** No family, friends, or other support system available. Friends and/or family support offender's claim of innocence, justify or enable his behavior and minimize offender's need for treatment. Obtain info: S.O. tx eval and progress reports, direct contact with family or friends, etc.

POSITIVE SCALE

1. **Takes Full Responsibility for Offending Behavior:** Acknowledges complete responsibility for sex offending behavior without using cognitive distortions to minimize behavior and its impact on the victim. Does not excuse behavior by saying they were under the influence of alcohol or drugs. Obtain info: PSI defendant's version section, full-disclosure polygraph, S.O. treatment progress reports, staffings with treatment provider, etc.
2. **Clear Identification and Understanding of Sexual Assault Cycle:** Offender understands the concept of a sexual assault cycle and can apply the concept to their own triggers and sexual offending behavior, as demonstrated in the treatment process. Obtain info: Treatment progress report, staffings with treatment provider, etc.
3. **Passes Full Disclosure Polygraph:** Has disclosed all past sexual abuse victims, including instant offense victims, as verified by testing truthful on polygraph when asked sexual history questions. Obtain info: Full disclosure polygraph.
4. **Clarification to Victims Completed:** Minimum requirement-offender writes letter of responsibility addressed to the victim, which is approved by treatment. The letter may or may not actually be delivered to the victim. Clarification may involve the offender reading the letter to the victim in a therapeutic setting. Obtain info: Treatment progress report, copy of clarification letter, staffings with treatment provider, etc.
5. **Successful Completion of Approved Treatment Program:** Offender must have completed written assignments and demonstrated an understanding of treatment concepts by changing thinking patterns and lifestyle. Certificate or letter of successful completion must be in file. Obtain info: Treatment completion summary and/or certificate.
6. **Passes Compliance (Maintenance) Polygraph:** Offender deemed truthful on all exam questions pertaining to compliance with conditions of supervision and treatment. Obtain info: Most recent maintenance polygraph.
7. **Completed Substance Abuse Treatment and Maintains Abstinence:** Offender successfully completed an approved in-patient or outpatient A & D treatment program while incarcerated or while on supervision. Offender shows no signs of alcohol or drug use since completion of program. Obtain info: Institution file, A & D treatment program completion summary and/or certificate, U/As, offender behavior, polygraphs, etc.
8. **Demonstrated Understanding of Thinking Errors:** Offender has identified thinking errors in treatment and how they're used in his sexual assault cycle. Can recognize ongoing thinking errors and can take steps to correct these. Obtain info: Treatment progress reports, staffings with treatment providers.
9. **Support System Reinforces Compliance and Treatment:** Offender's family, friends, employer, etc., encourage attendance and participation in treatment and adherence to supervision conditions. Support persons are willing to learn offender's sexual assault cycle and thinking errors, and may even participate in non-offending partner groups or couples counseling. Obtain info: Treatment progress reports, staffings with treatment provider, contact with family, friends, employer, etc.
10. **Special Conditions Compliance:** Adhering to sex offender conditions and all other special and general conditions. Follows PO directives. Obtain info: Violation reports, contacts with offender in office or home, maintenance polygraph, U/As, etc.

AUTOMATIC OVERRIDE CHARACTERISTICS

- *1. **Forcible Rape:** In regard to the current offense only, offender must have been convicted of forcible rape (involving force or intimidation). *Information sources* may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.

~~In regard to the current offense only, offender must have been convicted of forcible rape (involving force or intimidation).~~

~~Information sources may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.~~

- *2. **Use of a Weapon During Commission of Offense:** In regard to the current offense only, offender must have actually used the weapon (as defined in Oregon Revised Statutes) during the crime to harm or threaten to harm the victim. *Information sources* may include, but are not limited to, PSI's, victim statements, police reports, offender disclosures or statements, and other documentation.

~~In regard to the current offense only, offender must have actually used the weapon (as defined in Oregon Revised Statutes) during the crime to harm or threaten to harm the victim.~~

~~Information sources may include, but are not limited to, PSI's, victim statements, police reports, offender disclosures or statements, and other documentation.~~

- *3. **Men Who Molest Boys (Multiple Male Victims):** Males whose criminal sexual history includes multiple male victims, although not all may have led to conviction. *Information sources* used to establish this criterion may include, but are not limited to, PSI's, offender statements or disclosures and other reliable sources. Boys are minor males under the age of 18 years.

~~Males whose criminal sexual history includes multiple male victims, although not all may have led to conviction.~~

~~Information sources used to establish this criterion may include, but are not limited to, PSI's offender statements or disclosures and other reliable sources. Boys are minor males under the age of 18 years.~~

1-29-02

EFF

PERMANENT ADMINISTRATIVE RULES

certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 01-28-2002 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 01-29-2002 Rulemaking Notice was published in the 01-02-02 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

ADOPT:

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

AMEND: **255-070-0001 (Exhibit J)**

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

FILED

JAN 29 2002

ARCHIVES DIVISION
SECRETARY OF STATE

RECEIVED
FEB 04 2002

BOARD OF PAROLE

ORS 137.540, 137.595, 144.096, 144.102, 144.270, 163.305, 163.315, 163.325, 163.345, 163.355, 163.365,
163.375, 163.385, 163.395, 153.405, 164.408, 164.411, 163.412, 163.415, 163.425, 163.427, 163.435, 163.445, 163.465,
163.467, 181.594, 181.595, 662.010

Stat. Auth.: ORS

HB 2503 & HB 2092 (Oregon Legislative Session 2002)
Other Authority

ORS None
Stats. Implemented: ORS

RULE SUMMARY

The amendment of the proposed rule establishes mandatory conditions of parole and post-prison supervision for certain sex offenders. The amendment also clarifies the scope of home visits conducted by parole and post-prison supervision officers making it consistent with the scope pertaining to probationers. Finally, the amendment is necessary to bring the board's rules into conformity with House Bill 2092 and House Bill 2503 passed into law by the 2001 Oregon Legislature.

Michael R. Washington 01-29-2002
Authorized Signer Date

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 137.540, 137.595, 144.096, 144.102, 144.270, 163.305, 163.315, 163.325, 163.345, 163.355, 163.365, 163.375, 163.385, 163.395, 153.405, 164.408, 164.411, 163.412, 163.415, 163.425, 163.427, 163.435, 163.445, 163.465, 163.467, 181.594, 181.595, 662.010

Other Authority: HB 2503 & HB 2092 (2001 Oregon Legislative Session)

Statutes Implemented: ORS None

Need for the Rule(s): To establish mandatory conditions of parole and post-prison supervision for certain sex offenders and to clarify the scope of home visits conducted by parole and post-prison supervision officers making it consistent with the scope pertaining to probationers. Also, to bring the board's rules into conformity with House Bill 2092 and House Bill 2503 passed into law by the 2001 Oregon Legislature.

Documents Relied Upon: HB 2503 & HB 2092 (2001 Oregon Legislative Session)

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect these amendments will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted these amendments and changes during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

12-04-01

Authorized Signer and Date

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and	)	Statutory Authority,
Adoption of Rules of the Board of Parole	)	Statutes Implemented,
and Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon
)	

Statutory Authority: ORS 137.540, 137.595, 144.096, 144.102, 144.270, 163.305, 163.315, 163.325, 163.345, 163.355, 163.365, 163.375, 163.385, 163.395, 153.405, 164.408, 164.411, 163.412, 163.415, 163.425, 163.427, 163.435, 163.445, 163.465, 163.467, 181.594, 181.595, 662.010

Other Authority: HB 2503 & HB 2092 (2001 Oregon Legislative Session)

Statutes Implemented: None

Need for the Temporary Rule(s): To establish mandatory conditions of parole and post-prison supervision for certain sex offenders and to clarify the scope of home visits conducted by parole and post-prison supervision officers making it consistent with the scope pertaining to probationers. Also, to bring the board's rules into conformity with House Bill 2092 and House Bill 2503 passed into law by the 2001 Oregon Legislature.

Documents Relied Upon: HB 2503 & HB 2092 (2001 Oregon Legislative Session)

Justification of Temporary Rule(s): To ensure safety of the public as well as the offenders convicted of certain sex offenses upon their release on parole or post-prison supervision. Also, to better assist parole and post-prison supervision officers in their supervision of all offenders.

Michael R. Washington 12-04-01
Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules - Board\Statement of Need & Justification.doc

DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions Not Limited by Exhibit J
255-070-0001

- (1) The Board may order parole conditions pursuant to OAR 255-070-0015.
- (2) The Board shall approve post-prison supervision conditions pursuant to OAR 213-11-001.
- (3) Conditions of parole and post-prison supervision are not limited to those shown in Exhibit J.

Statutory Authority: (ORS 144.096, 144.102, 144.270)

History: (5/31/85; 11/3/86, temporary; 4/1/87; 4/15/88, temporary; 5/19/88;7/1/88;
10/18/88; 4/5/90; 4/30/92, temporary; 10/9/92; 10/15/93, 11/09/98,
9-15-99 Notice/Temp, 11-15-99, 05-22-00, 12/15/01-Notice/Temp,
01-29-02)

Offender Return to County of Residence
255-070-0003

- (1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the first six months in the county where the offender resided on the date of the last arrest for a crime resulting in imprisonment.
 - (2) (a) The Board or the Department of Corrections may establish the county of residency by obtaining the last address of record at the time of the offense from all of the available information in the following records:
 - (A) An Oregon driver's license, regardless of its validity;
 - (B) The Department of Revenue;
 - (C) The Department of State Police, Bureau of Criminal Identification;
 - (D) The Department of Human Resources; or
 - (E) The Department of Corrections.
 - (b) If the records do not disclose the county of residency, the Board or the Department shall find the offender resided in the county where she or he committed the crime.
 - (c) If the offender is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.
 - (d) In determining the offender's county of residence for purposes of this rule, the Board may not consider offenses committed by the offender while the offender was incarcerated in a Department of Corrections facility.
- (3) Upon motion of the Board, an offender, a victim, or a district attorney, the Board may waive the residency requirement after finding:

- (a) the offender provided proof of a job with no set ending date in a county other than the established county of residence;
- (b) the offender poses a significant danger to the victim;
- (c) the victim or victim's family poses a significant danger to the offender residing in the county of residence.
- (d) the offender has a spouse or biological or adoptive family, residing in other than the county of residence, who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole or post-prison supervision period;
- (e) the Board requires that the offender participate in a treatment program which is not available in the county of residence;
- (f) the offender desires release to another state or another state has a detainer; or
- (g) other good cause.

Statutory Authority: (ORS 144.270(5))

History: (11/1/89; 10/15/91; 10/9/92, 9-15-99 – NOTICE/TEMP, 11-15-99)

Parolee Placement in Community Corrections Centers; Standards; Limitations
255-070-0005

History: (2/1/79; 5/31/85, repealed)

Guidelines on General Condition Relating to "Best Interest" Return
255-070-0010

History: (2/1/79; 5/31/85; 11/3/86, temporary; 4/1/87; 5/19/88, repealed)

Establishing Conditions
255-070-0015

- (1) The Board may order an exit interview prior to the inmate's release date to review the inmate's case and set or approve conditions. See Division 60 for exit interview procedures.
- (2) If the Board decides to waive an exit interview, it shall specify the parole condition(s) prior to release and shall include the conditions on an order of supervision.
- (3) If the Board decides to waive an exit interview, it shall specify, in an order given to the offender upon release from incarceration, the post-prison supervision condition(s).
- (4) Once the Board establishes the conditions, the Board may amend the conditions and issue an amended order by:

- (a) considering a requested modification administratively, if the amendment is requested before the inmate's release on parole or post-prison supervision or if a condition is deleted after release; and
 - (b) citing to a hearing, if the amendment is requested after release and the offender does not consent in writing to the addition of conditions.
- (5) The Hearings Officer may amend the conditions, after a hearing, unless the offender waives the hearing. The Hearings Officer shall send notice of the amendment to the Board.
 - (6) If the offender waives the right to a hearing and consents in writing to the addition of conditions, the supervising officer may amend the conditions. The officer shall send notice of the amendment to the Board.
 - (7) If the Board does not override the Hearings Officer or supervising officer amended conditions, the Board shall issue an amended order of conditions, however, the condition is in effect from the date the supervising officer or Hearings Officer orders it.
 - (8) The Board or the Hearings Officer shall conduct a hearing under section (4) and (5) of this rule applying rules governing violation hearings in Division 75.
 - (9) When a supervisory authority requests amended conditions before the inmate is released on parole or post-prison supervision, the supervisory authority shall submit the request in writing or by teletype to the Board prior to the release date.
 - (10) An offender may appeal the conditions of parole or post-prison supervision pursuant to the procedures of Division 80.

Statutory Authority: (ORS 144.096, 144.098, 144.102, 144.106, 144.125, 144.185, 144.270, 144.343)

History: (5/19/88, 4/5/90; 4/30/92, temporary, 10/9/92, 11/09/98)

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 may be revoked for violation of any of these conditions and/or you may be returned when parole is not in your best interest or the best interest of society.

The Board may, at its discretion, sanction violations of 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 Board.
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 illegally used controlled substances.
4. 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.

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. Offender shall have no contact with minor females and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
4. Offender shall have no contact with minor males and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
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 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 frequenting, 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) 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.
 - (e) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board, supervisory authority or supervising officer. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.
 - (f) 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.
 - (g) Unless otherwise indicated for the treatment required under subparagraph (E) 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.
 - (h) 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.
 - (i) 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.
 - (j) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.
 - (k) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.

Secretary of State
Certificate Order for Filing

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 01-28-2002 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 01-29-2002 Rulemaking Notice was published in the 01-02-02 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

ADOPT: **255-060-0009**

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

AMEND:

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

FILED

JAN 29 2002

ARCHIVES DIVISION
SECRETARY OF STATE
RECEIVED
FEB 04 2002

BOARD OF PAROLE

ORS 137.765, 144.096, 144.102, 144.270, 144.125, 181.585, 181.594
Stat. Auth.: ORS

SB 444 (Oregon Legislative Session 2002)
Other Authority

ORS None
Stats. Implemented: ORS

RULE SUMMARY

The adoption of the proposed rule establishes the criteria for residential placement of certain sex offenders upon release from custody on parole or post-prison supervision. This adoption is necessary to bring the board's rules into conformity with Senate Bill 444 passed into law by the 2001 Oregon Legislature.

Michael R. Washington 01-29-2002
Authorized Signer Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 137.765, 144.096, 144.102, 144.125, 144.270, 181.585, 181.594.

Other Authority: Senate Bill 444 (Oregon Legislative Assembly – 2001 Regular Session).

Statutes Implemented: ORS None

Need for the Rule(s): To establish criteria for residential placement of certain sex offenders upon release from custody on parole or post-prison supervision. Also, to bring the board's rules into conformity with Senate Bill 444 passed into law by the 2001 Oregon Legislature.

Documents Relied Upon: Senate Bill 444 (Oregon Legislative Assembly – 2001 Regular Session).

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this adoption will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this adoption and change during a business meeting and due to the nature of the adoption, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

12-04-01

Authorized Signer and Date

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and	)	Statutory Authority,
Adoption of Rules of the Board of Parole	)	Statutes Implemented,
and Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon
)	

Statutory Authority: ORS 137.765, 144.096, 144.102, 144.125, 144.270, 181.585, 181.594

Other Authority: Senate Bill 444 (Oregon Legislative Assembly – 2001 Regular Session)

Statutes Implemented: ORS None.

Need for the Temporary Rule(s): To establish criteria for residential placement of certain sex offenders upon release from custody on parole or post-prison supervision. Also, to bring the board's rules into conformity with Senate Bill 444 passed into law by the 2001 Oregon Legislature.

Documents Relied Upon: Senate Bill 444 (Oregon Legislative Assembly – 2001 Regular Session)

Justification of Temporary Rule(s): To ensure safety of the public as well as the offenders convicted of certain sex offenses upon their release on parole or post-prison supervision.

Michael R. Washington 12-04-01
Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules – Board\Statement of Need & Justification.doc

DIVISION 60

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

255-060-0006

Exit Interviews: Parole Plan; and Psychiatric Records

- (1) At any time prior to an inmate's scheduled release to post-prison supervision or parole, the Board on its own initiative or at the request of the Department of Corrections, may conduct an exit interview to review the inmate's:
 - (a) release plan;
 - (b) victim's statements, if any;
 - (c) PSR or similar report;
 - (d) psychiatric/psychological reports, if any;
 - (e) conduct while in confinement; and
 - (f) any other information relevant to the inmate's reintegration into the community that the inmate, the inmate's attorney, the Department of Corrections or any other person submits.
- (2) The procedures for records, disclosure and notice outlined in Division 15 and 30 shall govern exit interviews.
- (3) A panel shall conduct the interview and the Board shall make decisions pursuant to OAR 255-030-0015.

Statutory Authority: ORS 144.098, 144.125, 144.800
History: (2/1/79; 5/20/80; 2/15/81; 11/4/81, temporary; 5/19/82; 5/31/85; 5/19/88;
11/1/89; 4/5/90; 5/1/91, temporary; 10/15/91; 2/12/92, temporary;
4/15/92; 10/9/92, 03/14/97 11/09/98)

255-060-0008

Release Plans

- (1) At any time prior to release on parole or post-prison supervision, the Board shall examine the inmate's plans for residence, employment, or other situation in the community to determine whether the release plan is adequate. The plan may include, but is not limited to:
 - (a) employment;
 - (b) school, or other situation (e.g., retirement income);
 - (c) verifiable residence;
 - (d) a description of support services, program opportunities and treatment programs;

01-29-2002

Parole Release & Exit Interview

- (e) prescribed medication;
 - (f) recommended conditions of supervision for the purpose of reformation and public safety, including a recommendation for waiver of the condition of supervision that the inmate reside for the first six months in the county where the inmate resided at the time of the offense that resulted in imprisonment;
 - (g) level of supervision consistent with the prisoner's risk assessment classification; and
 - (h) a restitution and compensatory fine payment schedule.
- (2) The Board may defer parole release up to ninety (90) days from the parole release date when a plan is deficient or unverified in order to obtain verification or a satisfactory plan from the Department of Corrections.
- (3) An inmate requesting an out-of-state parole waives the ninety (90) days limitation on deferral of release. Such waiver is for the purpose of an adequate parole plan in the accepting state.
- (4) Except as provided in OAR 255-060-0014, the Board shall not defer release to post-prison supervision. The following procedure shall apply:
- (a) If the release plan the Department of Corrections or designee of Local Supervisory Authority submits at least 60 days prior to release is deficient, the Board will return it to the submitting agency with the Board's recommended modifications.
 - (b) The Department or designee of Local Supervisory Authority shall submit a revised plan to the Board not less than ten days prior to the inmate's release.
 - (c) If the Board does not accept the revised plan, the Board shall determine the provisions of the final plan prior to the prisoner's release.
- (5) One Board member shall review and approve the release plan.
- (6) When an offender is released from the custody of the Department of Corrections or Local Supervisory Authority, after serving a sentence of incarceration as a result of a conviction for an offense listed in subsection (a) of this section, the Board or Local Supervisory Authority shall subject the inmate/offender to intensive supervision as defined in OAR 255-005, for the full period of the offender's parole or post-prison supervision if the inmate/offender was eighteen (18) years of age or older at the time the inmate/offender committed the offense and the Board or Local Supervisory Authority finds that the inmate/offender is a sexually violent dangerous offender, as defined in OAR 255-005..
- (a) The crimes to which section (6) of this rule apply are:
 - (1) Rape in the First Degree and Sodomy in the First Degree if the victim was subject to forcible compulsion or under 12 years of old or was incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; and
 - (2) Unlawful Sexual Penetration in the First Degree; and

- (3) An Attempt to commit a crime listed in this subsection.
- (b) When the Board or Local Supervisory Authority makes a finding that an inmate/offender is a sexually violent dangerous offender under this section, the Board or Local Supervisory Authority shall make this finding in the Order of Supervision.

Statutory Authority: ORS 144.096, 144.125, 144.185, Chapter 924 (1999 OR Laws)
History: (4/5/90; 5/1/91, temporary; 10/15/91; 1992 proposed change, 03/14/97, 9-22-99, 02-15-00)

255-060-0009

**Residence Requirements for Certain Sex Offenders
Upon Release from Custody**

- (1) A sex offender classified as a sexually violent dangerous offender (ORS 137.765) or a predatory sex offender (ORS 181.765) may not reside near locations where children are the primary occupants or users.
- (2) This prohibition applies to permanent housing and not to transitional housing. For purposes of this rule, transitional housing means housing intended to be occupied by a sexually violent dangerous offender or a predatory sex offender for 45 days or less immediately after release from custody.
- (3) Exceptions to this prohibition may be made by the supervising parole/probation officer if it is determined that there is sufficient information to support this placement in terms of public safety and the rehabilitation of the offender. In making this determination, the following factors must be considered:
 - a. Other residential placement options pose a higher risk to the community, or
 - b. An enhanced support system that endorses supervision goals and community safety efforts is available at this residence, or
 - c. Enhanced supervision monitoring will be in place (e.g. electronic supervision, curfew, live-in-care provider, along with community notification), or
 - d. This residence includes 24-hour case management, or
 - e. The offender is being released from prison unexpectedly and more suitable housing will be arranged as soon as possible.

If any of these factors apply to the offender and the residence under review, an exception to the permanent residence prohibition may be allowed.

- 4. If a supervising officer makes an exception under this rule, the supervising officer must inform the community affected by this decision about the reasons for the decision prior to the offender's release from custody.

Statutory Authority:
History: (Temp/Notice 12-15-01, 01-29-02)

255-060-0010

Waiver of the 90-Day Limitation; Deferral for Serious Misconduct

History: (2/1/79; 5/20/80; 2/15/81; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

255-060-0011

Procedures for Predatory Sex Offender

- (1) For purposes of this rule, a person is a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use only the Sex Offender Risk Assessment Scale (Exhibit Q-I) and definitions (Exhibit Q-II) which have been approved by the Department of Corrections as required by ORS 181.585(2).
- (2) The procedures set forth in this rule only apply to inmates or offenders whose original order of supervision is issued by the Board on or after January 1, 1999.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale. The Board may make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores less than three or more starred (*) items and has no automatic override item(s) but scores at least -50 on the Sex Offender Risk Assessment Scale.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.
- (5) Inmates or offenders who score three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) A Board Member must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before a predatory sex offender finding is made.
 - (c) A Board Member must consider any written objections to the score on the Sex Offender Risk Assessment Score timely submitted by the inmate or offender before making a predatory sex offender finding. A Board Member shall make the predatory sex offender finding if there is evidence to support a score on the Sex Offender Risk Assessment Scale (Exhibit Q-I) of three or more starred (*) items or one or more automatic override

item(s) using the definitions for the Sex Offender Risk Assessment Scale (Exhibit Q-I).

- (6) The Board may also make a predatory finding for inmates or offenders with a total score of at least -50 on the Sex Offender Risk Assessment Scale but fewer than three starred (*) items and no automatic override items.
- (a) Inmates or offenders referred to in section (6) of this rule are entitled to a Morrissey-type hearing prior to the Board making a predatory sex offender finding. This hearing must be held in accordance with the rules governing supervision violations as set forth in OAR 255-075-0031 through 255-075-0056. OAR 255-075-0065 does not apply to this rule.
- (b) Following the hearing, the hearing officer shall submit written findings to the Board. A Board Member must review these written findings prior to making a predatory sex offender finding. A Board Member shall make a predatory sex offender finding if the Board Member determines that the evidence presented at the hearing supports a score of at least -50 on the Sex Offender Risk Assessment Scale.
- (7) Inmates or offenders may elect to waive their right to submit written objections or waive their right participate in a hearing as set forth in this rule. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections or to participate in a hearing, the Board may make the predatory sex offender finding if the inmate's or offender's score on the Sex Offender Risk Assessment Scale is at least -50, or there are at least three starred (*) items or there is at least one automatic override item.
- (8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: Chapter 163 (1999 OR Laws)
History: (Notice 02-15-00)

255-060-0012

Psychological or Psychiatric Reports

Sections 1-6 of this rule do not apply to inmates whose only crimes are committed on or after November 1, 1989.

- (1) Pursuant to ORS 144.125, the Board may order any available psychiatric/psychological report(s) from the Department of Corrections.
- (2) Pursuant to ORS 144.223, the Board may postpone the parole release date administratively and order a psychiatric/psychological evaluation of any inmate anytime prior to release.
- (3) After review of the psychiatric/psychological reports, and all other information or documents presented during the hearing the Board may defer parole release until a specified future date upon finding:
 - (a) the inmate has a present severe emotional disturbance, such as to constitute a danger to the health or safety of the community.
- (4) The Board shall not deny release on parole solely because of an inmate's present severe emotional disturbance. The Board must also find the condition constitutes a danger to the health or safety of the community.
- (5) The majority of the Board may defer a scheduled parole release date up to two years. A panel may defer a scheduled parole release date up to 18 months.
- (6) If the Board finds the inmate does not have a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, the Board shall affirm the parole release date and set parole conditions.
- (7) For purposes of the Board finding that an inmate/offender is a sexually violent dangerous offender pursuant to OAR 255-060-0008, the Board may order a psychological or psychiatric evaluation.

Statutory Authority: ORS 144.125, 144.223, Chapter 924 (1999 OR Laws)
History: (4/5/90; 1/13/92; 7/26/93, temporary; 10/29/93, 03/14/97,
11/09/98, 02-15-00)

255-060-0013

Postponement Order

Any order regarding the postponement of parole release shall be sent to the inmate and shall set forth:

- (1) the facts and specific reasons for the decision and the votes of the Board members;
- (2) notice of the right to administrative appeal pursuant to the procedures of Division 80.

Statutory Authority: ORS 144.125, 144.135, 144.335
History: (4/5/90, 03/14/97)
01-29-2002

Parole Release & Exit Interview

255-060-0014

Detainers

- (1) When an inmate has a detainer from another jurisdiction, the Department of Corrections will release the inmate to the detainer and Oregon active community supervision shall begin upon the inmate's release into the community from the holding jurisdiction, if the Oregon sentences have not expired while the inmate is incarcerated in another jurisdiction.
- (2) If a parolee is released by the Department of Corrections to a detainer from another jurisdiction and is recommitted to the Oregon Department of Corrections, the previous parole order shall be voided.
- (3) When an inmate has a new Sentencing Guidelines commitment to the Department of Corrections' custody, the Oregon active community supervision shall begin upon the inmate's release into the community, if the sentences have not expired while the inmate is incarcerated.
- (4) For Sentencing Guidelines inmates released from a Department of Corrections Institution directly to a hold or sentence that results in the offender remaining in jail or prison for more than 30 days continuously, the post-prison supervision start date will be calculated from the date the offender is released from that hold or sentence. The following procedure shall apply:
 - (a) The Board will issue an order of supervision when the offender is released from a Department of Corrections institution to the hold or sentence. The Order shall state that post-prison supervision has started on the date the offender left the Department of Corrections institution.
 - (b) The supervising officer must inform the Board in writing of the date the offender was or will be released from the hold or sentence that kept the offender in jail or prison for more than 30 continuous days. If the supervising officer knows the exact length of the hold or sentence, the supervising officer shall inform the Board in writing of the date the offender will be released from the hold or sentence. The supervising officer shall submit a written, updated release planning form to include the new release date, any changes in conditions, and the offender's new address, if any.
 - (c) The Board shall issue an amended order calculating the start of post-prison supervision based on the date provided by the supervising officer pursuant to subsection (b) or this rule.

Statutory Authority: ORS 144.305, 144.310

History: (4/5/90; 10/9/92, 03/14/97, 11/09/98, 9-22-99)

255-060-0015

Instate Parole Release Interview Procedures

History: (2/1/79; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

01-29-2002

Parole Release & Exit Interview

255-060-0020

Out-of-State Parole Release Hearing Procedures

An inmate in the Department of Corrections' custody who is housed in an out-of-state facility may receive a teleconference exit interview in conformance with rule 255-060-0006.

Statutory Authority: ORS 144.098, 144.125

History: (2/1/79; 5/31/85; 5/19/88; 10/9/92, 03/14/97, 11/09/98)

255-060-0025

Parole Consideration for Prisoners in a Local Jail

History: (2/1/79; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

255-060-0030

Exit Interview Board Review Packet

The exit interview Board Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing, if any;
- (3) psychiatric and/or psychological evaluations (previous 6 months);
- (4) correspondence;
- (5) field parole analysis report, a pre-sentence investigation report or comparable report;
- (6) court orders;
- (7) misconduct reports; and
- (8) release plan.
- (9) Inmate's Notice of Rights and Board of Parole & Post-Prison Supervision Procedures.

Statutory Authority: ORS 144.096, 144.098, 144.185

History: (5/19/88; 4/5/90, 03/14/97)

3-12-02

eff

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 03-08-2001 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 03-12-02 Rulemaking Notice was published in the 02-01-02 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

ADOPT:

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

AMEND:

255-060-0011 (Exhibit Q-2)

FILED

MAR 12 2002

ARCHIVES DIVISION
SECRETARY OF STATE

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 163.355 through 163.427, 181.585, 181.586, 181.587, and 181.594
Stat. Auth.: ORS

None
Other Authority

ORS None
Stats. Implemented: ORS

RECEIVED
02 MAR 14 PM 2 37
BOARD OF PAROLE

RULE SUMMARY

The Amendment of the board's exhibit is necessary to bring it into conformity with changes made to the definitions for the categories on the sex offender risk assessment scale. The changes in the definitions were made and approved by the Department of Corrections.

Michael R. Washington

03-12-2002

Authorized Signer

Date

Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 163.355 through 163.427, 181.585, 181.586, 181.587, and 181.594.

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The immediate amendment of the board's exhibit is necessary for protection of the public by allowing the board to accurately determine which offenders should be designated as predatory sex offenders. This designation will allow for more intensive supervision of the offenders on parole or post-prison supervision, which may include community notification

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendment, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

01-15-2002

Authorized Signer and Date

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and	)	Statutory Authority,
Adoption of Rules of the Board of Parole	)	Statutes Implemented,
and Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon
)	

Statutory Authority: ORS 163.355 through 163.427, 181.585, 181.586, 181.587, and 181.594.

Other Authority: None..

Statutes Implemented: None.

Need for the Temporary Rule(s): The immediate amendment of the board's exhibit is necessary for protection of the public by allowing the board to accurately determine which offenders should be designated as predatory sex offenders. This designation will allow for more intensive supervision of the offenders on parole or post-prison supervision, which may include community notification.

Documents Relied Upon: None.

Justification of Temporary Rule(s): The immediate amendment of the board's exhibit is necessary for protection of the public by allowing the board to accurately determine which offenders should be designated as predatory sex offenders.

Michael R. Washington 01-15-2002
Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules - Board\Statement of Need & Justification.doc

EXHIBIT Q-II

SEX OFFENDER ASSESSMENT

If more than one sex offense, you must choose a case and score that as the "current" offense. PO interviews with offender, victims, or others can provide additional information.

NEGATIVE SCALE

- *1. **History of Sexual Crime(s):** Offender has committed one or more sex crimes which have not resulted in conviction/adjudication. Includes adult and juvenile admissions, reported or known offenses. Does not include instant offense or any crimes subsequent to instant offense. Does not include additional offenses against victim in instant case. *Information sources* used to establish this criterion may include, but are not limited to, Pre-Sentence Investigations (PSI's), offender statements or disclosures and other reliable sources.

~~Offender has committed one or more sex crimes which have not resulted in conviction/adjudication. Includes adult and juvenile admissions, reported or known offenses. Does not include instant offense or any crimes subsequent to instant offense. Does not include additional offenses against victim in instant case.~~

~~Information sources used to establish this criterion may include, but are not limited to, Pre-Sentence Investigations (PSI's), offender statements or disclosures and other reliable sources.~~

- *2. **History of Sex Offense Conviction(s):** The offender has a documented criminal history that includes one or more criminal convictions or juvenile adjudications for sex crimes in any jurisdiction. Does not include instant offense or any subsequent crimes. *Information sources* may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.

~~The offender has a documented criminal history that includes one or more criminal convictions or juvenile adjudications for sex crimes in any jurisdiction. Does not include instant offense or any subsequent crimes.~~

~~Information sources may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.~~

- *3. **Stranger-to-Victim:** In regard to the current offense only, the offender-to-victim relationship was stranger-to-victim or the relationship was established for the purpose of victimization. For the purpose of this item, the victim or victims were not personal friends, family or household members, or children of family or household members. Victims of this class of crime may be total strangers, persons who are stalked, or casual acquaintances including persons approached in bars or other social gathering places. In the case of a child victim, the offender would be someone the child would consider a stranger. *Information sources* may include, but are not limited to, PSI's, victims statements, police reports, offender disclosures or statements, and other documentation.

~~In regard to the current offense only, the offender to victim relationship was stranger to victim or the relationship was established for the purpose of victimization.~~

~~For the purpose of this item, the victim or victims were not personal friends, family or household members, or children of family or household members. Victims of this class of crime may be total strangers, persons who are stalked, or casual acquaintances including persons approached in bars or other social gathering places. In the case of a child victim, the offender would be someone a child would consider a stranger.~~

~~Information sources may include, but are not limited to, PSI's, victim statements, police reports, offender disclosures or statements, and other documentation.~~

- *4. **Multiple Victims:** There were more than one victim in the current criminal episode. *Information Sources* which can be used to establish this include, but are not limited to, PSI scope of crime or victim statement, police report, indictment, or any other documented information that is relevant to proving multiple victims or the current criminal episode.

~~There were more than one victim in the current criminal episode.~~

~~Information sources which can be used to establish this include, but are not limited to, PSI scope of crime or victim statement, police report, indictment, or any other documented information that is relevant to proving multiple victims of the current criminal episode.~~

- *5. **Use of Weapons or Threats:** Prior to or during the commission of the current offense, the offender threatened to use, simulated the use of, or displayed a weapon (as defined in the Oregon Revised Statutes); threatened to use or used physical force to harm the victim, other persons or property closely associated with the victim; used age-related coercion or intimidation (such as, "If you tell, we will get into trouble") or used threats of abandonment in order to gain the victim's compliance. This would include the offender establishing a pattern of control over the victim during the grooming process by using threats, intimidation or weapons. *Information sources* may include, but are not limited to, police reports, PSI's, court records and transcripts, offender statements and disclosures and victim/witness statements.

~~Prior to or during the commission of the current offense, the offender threatened to use, simulated the use of, or displayed a weapon (as defined in Oregon Revised Statutes); threatened to use or used physical force to harm the victim, other persons or property closely associated with the victim; used age-related coercion or intimidation (such as, "If you tell, we will get into trouble") or used threats of abandonment in order to gain the victim's compliance. This would include the offender establishing a pattern of control over the victim during the grooming process by using threats, intimidation or weapons.~~

~~Information sources may include, but are not limited to, police reports, PSI's, court records and transcripts, offender statements and disclosures and victim/witness statements.~~

6. **Victim Under 14 years of age or Mentally/Physically Disabled:**

Current offense victim was under 14 years at time of offense, or mentally or physically incapacitated regardless of age. Victim may have been drunk or asleep. Obtain info: PSI scope of crime or victim's statement, police report, etc.

7. **Not in Treatment:** Offender has a condition of sex offender treatment and is not actively involved in an approved sex offender treatment program, or has not previously completed a sex offender treatment program on this supervision. **Obtain info:** Parole or probation order, S.O. eval and progress reports, etc. ****Cannot score this item if #9 is scored.***
8. **Shows no Empathy for Victim(s):** Cannot articulate or demonstrate the negative impact of crime on the victim of current offense. **Obtain info:** PSI scope of crime or offender's statement, psychosexual eval, full-disclosure polygraph, Tx progress reports, etc.
9. **Not Progressing in Treatment:** Tx provider reports that offender is not working to make changes to achieve Tx goals and reduce his risk in the community. **Obtain info:** Tx progress reports, etc. ****Cannot score this item if #7 is scored.***
10. **New Crime During Supervision:** Any new misdemeanor or felony crimes committed during re-class period, whether convicted or not. **Obtain info:** Polygraphs, police reports, offender admissions, observed behavior, search, etc. ***(Score drug usage on #18, not here.)***
11. **Technical Violation Related to Sexual Assault Cycle:** Violation during re-class cycle consisting of a trigger(s) to sexual assault cycle (i.e., contact with minors, use of pornography, cruising, gambling, piercing, etc.) **Obtain info:** Violation reports, maintenance polygraph, etc.
12. **Multiple Paraphilia:** More than one admitted or known sexual deviancy, i.e., frottage, bondage, group sex, bestiality, voyeurism, necrophilia, urophilia, masochism, pedophilia, hebophilia, exhibitionism, fetishes, partialism, coprophilia, sadism, auto-erotic asphyxiation, transvestic fetishism, etc. **Obtain info:** Full disclosure polygraph, psychosexual eval, criminal history, police reports, etc.
13. **Impulsive or Compulsive Behavior:** Admitted or diagnosed behavior. Behavior patterns which indicate compulsiveness or lack of forethought (i.e., overeating, gambling, substance abuse, shoplifting, exposing, etc.) **Obtain info:** MH- and/or psychosexual eval, full-disclosure polygraph, etc.
14. **Primary Sexual Preference is Children:** Primary arousal to minors. **Obtain info:** Plethysmograph, psychosexual eval, admissions, etc.
15. **Community Instability:** Multiple moves, sporadic job history, no family/friend ties to area, subsidy housing, financial dependence and/or irresponsibility. **Obtain info:** Monthly reports, chrono history, PSI background and employment info, etc.
- *16. **Prior Non-Sexual Criminal History:** The offender has one or more convictions, adjudications or diversions for a non-sexual criminal offense(s) in any jurisdiction. ***Information sources*** may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.

~~The offender has one or more convictions, adjudications or diversions for a non-sexual criminal offense(s) in any jurisdiction.~~

~~Information sources may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.~~

17. **Substance Abuse Involved in Sexual Offending Behavior:** Current sex offense involved offender under the influence of drugs and/or alcohol. Obtain info: PSI scope of crime or alcohol/drug section, police reports, full disclosure polygraph, A & D eval, psychosexual eval, etc.
18. **Substance Abuse Problems:** During re-class period, offender used drugs and/or abused alcohol. Obtain info: UA results, A & D eval, A & D Tx progress reports, maintenance polygraph, admissions, observed behavior, etc.
19. **Anger Problems:** Offender has difficulty managing or controlling anger. Obtain info: PSI, MH eval, psychosexual eval, observed behavior, admissions, etc.
20. **Technical Violation Not Related to Sexual Assault Cycle:** Any violation of general or special conditions. ****Not scored in #11.*** Obtain Info: Violation reports, polygraphs, admissions, etc.
21. **Use of Sexually Arousing Materials:** Any material that reinforces deviant sexual arousal. Initial assessment: Covers any history of using written, printed, video, computer, or any other media porn. Reassessment: Use of this material within last 6 months. Obtain info: Full disclosure or maintenance polygraphs, psychosexual evals, etc.
22. **Mental Status Inhibits Responsible Functioning:** Offender has been diagnosed with a major mental illness, is mentally impaired or has organic brain damage which interferes with offender's decision-making process and makes it unrealistic for offender to be able to use cognitive interventions. Obtain info: MH eval, PSI, SSI/SSD info, IQ testing, etc.
23. **No Support System or Support System Tolerates/Supports Denial:** No family, friends, or other support system available. Friends and/or family support offender's claim of innocence, justify or enable his behavior and minimize offender's need for treatment. Obtain info: S.O. tx eval and progress reports, direct contact with family or friends, etc.

POSITIVE SCALE

1. **Takes Full Responsibility for Offending Behavior:** Acknowledges complete responsibility for sex offending behavior without using cognitive distortions to minimize behavior and its impact on the victim. Does not excuse behavior by saying they were under the influence of alcohol or drugs. Obtain info: PSI defendant's version section, full-disclosure polygraph, S.O. treatment progress reports, staffings with treatment provider, etc.
2. **Clear Identification and Understanding of Sexual Assault Cycle:** Offender understands the concept of a sexual assault cycle and can apply the concept to their own triggers and sexual offending behavior, as demonstrated in the treatment process. Obtain info: Treatment progress report, staffings with treatment provider, etc.
3. **Passes Full Disclosure Polygraph:** Has disclosed all past sexual abuse victims, including instant offense victims, as verified by testing truthful on polygraph when asked sexual history questions. Obtain info: Full disclosure polygraph.
4. **Clarification to Victims Completed:** Minimum requirement-offender writes letter of responsibility addressed to the victim, which is approved by treatment. The letter may or may not actually be delivered to the victim. Clarification may involve the offender reading the letter to the victim in a therapeutic setting. Obtain info: Treatment progress report, copy of clarification letter, staffings with treatment provider, etc.
5. **Successful Completion of Approved Treatment Program:** Offender must have completed written assignments and demonstrated an understanding of treatment concepts by changing thinking patterns and lifestyle. Certificate or letter of successful completion must be in file. Obtain info: Treatment completion summary and/or certificate.
6. **Passes Compliance (Maintenance) Polygraph:** Offender deemed truthful on all exam questions pertaining to compliance with conditions of supervision and treatment. Obtain info: Most recent maintenance polygraph.
7. **Completed Substance Abuse Treatment and Maintains Abstinence:** Offender successfully completed an approved in-patient or outpatient A & D treatment program while incarcerated or while on supervision. Offender shows no signs of alcohol or drug use since completion of program. Obtain info: Institution file, A & D treatment program completion summary and/or certificate, U/As, offender behavior, polygraphs, etc.
8. **Demonstrated Understanding of Thinking Errors:** Offender has identified thinking errors in treatment and how they're used in his sexual assault cycle. Can recognize ongoing thinking errors and can take steps to correct these. Obtain info: Treatment progress reports, staffings with treatment providers.
9. **Support System Reinforces Compliance and Treatment:** Offender's family, friends, employer, etc., encourage attendance and participation in treatment and adherence to supervision conditions. Support persons are willing to learn offender's sexual assault cycle and thinking errors, and may even participate in non-offending partner groups or couples counseling. Obtain info: Treatment progress reports, staffings with treatment provider, contact with family, friends, employer, etc.
10. **Special Conditions Compliance:** Adhering to sex offender conditions and all other special and general conditions. Follows PO directives. Obtain info: Violation reports, contacts with offender in office or home, maintenance polygraph, U/As, etc.

AUTOMATIC OVERRIDE CHARACTERISTICS

- *1. **Forcible Rape:** In regard to the current offense only, offender must have been convicted of forcible rape (involving force or intimidation). *Information sources* may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.

~~In regard to the current offense only, offender must have been convicted of forcible rape (involving force or intimidation).~~

~~Information sources may include, but are not limited to, PSI's, criminal history records, FBI records, court documents or similar records obtained from any jurisdiction's criminal adjudication records system.~~

- *2. **Use of a Weapon During Commission of Offense:** In regard to the current offense only, offender must have actually used the weapon (as defined in Oregon Revised Statutes) during the crime to harm or threaten to harm the victim. *Information sources* may include, but are not limited to, PSI's, victim statements, police reports, offender disclosures or statements, and other documentation.

~~In regard to the current offense only, offender must have actually used the weapon (as defined in Oregon Revised Statutes) during the crime to harm or threaten to harm the victim.~~

~~Information sources may include, but are not limited to, PSI's, victim statements, police reports, offender disclosures or statements, and other documentation.~~

- *3. **Men Who Molest Boys (Multiple Male Victims):** Males whose criminal sexual history includes multiple male victims, although not all may have led to conviction. *Information sources* used to establish this criterion may include, but are not limited to, PSI's, offender statements or disclosures and other reliable sources. Boys are minor males under the age of 18 years.

~~Males whose criminal sexual history includes multiple male victims, although not all may have led to conviction.~~

~~Information sources used to establish this criterion may include, but are not limited to, PSI's offender statements or disclosures and other reliable sources. Boys are minor males under the age of 18 years.~~

4-15-02

Notice

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

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter
Number
Michael R. Washington 503-945-9009
Rules Coordinator Telephone
2575 Center Street NE, Ste 100 Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

FILED

APR 15 2002

**ARCHIVES DIVISION
SECRETARY OF STATE**

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

AMEND: 255-060-0009

REPEAL:

RECEIVED

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

APR 17 2002

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

BOARD OF PAROLE

ORS 144.644
Stat. Auth.: ORS
None
Other Authority
NONE
Stats. Implemented: ORS

RULE SUMMARY

The amendment is necessary so that the rule would fall within the intent and scope of the enabling statute.

A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

June 3, 2003
Last Day for Public Comment

Michael R. Washington 04-15-02
Authorized Signer and Date

The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption)
of Rules of the Board of Parole and)
Post-Prison Supervision)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon,
Statement of Fiscal Impact

Statutory Authority: ORS 144.644

Other Authority: None

Statutes Implemented: NONE

Need for the Rule(s): The rule is necessary to allow the board to impose the authority granted by the statute which was effective January 1, 2002.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

04-15-02

Authorized Signer and Date

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 04-15-02 by the

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter Number

Michael R. Washington 503-945-9009
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, Oregon 97301-4621
Address

to become effective 04-15-02 through 10-11-2002
Date upon filing or later A maximum of 180 days including the effective date

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

FILED

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

APR 15 2002

AMEND: 255-060-0009

ARCHIVES DIVISION
SECRETARY OF STATE

SUSPEND:

ORS 144.644
Stat. Auth: ORS

None
Other Authority

NONE
Stats. Implemented: ORS

RULE SUMMARY

The amendment is necessary so that the rule would fall within the intent and scope of the enabling statute.

Michael R. Washington 04-15-02
Authorized Signer Date

*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and
Adoption of Rules of the Board of Parole
and Post-Prison Supervision

)
)
)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon

Statutory Authority: ORS 144.644

Other Authority: None

Statutes Implemented: NONE

Need for the Temporary Rule(s): The rule is necessary to allow the board to impose the authority granted by the statute which was effective January 1, 2002.

Documents Relied Upon: None.

Justification of Temporary Rule(s): The rule was enacted as a result of the statute – ORS 144.644 – being implemented and made effective January 1, 2002.

Michael R. Washington 04-15-02
Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules – Board\Statement of Need & Justification.doc

255-060-0009

Residence Requirements for Certain Sex Offenders
Upon Release from Custody

- (1) A sex offender classified as a sexually violent dangerous offender (ORS 137.765) or a predatory sex offender (ORS 181.585) may not reside near locations where children are the primary occupants or users.
- (2) This prohibition applies to permanent housing and not to transitional housing. For purposes of this rule, transitional housing means housing intended to be occupied by a sexually violent dangerous offender or a predatory sex offender for 45 days or less immediately after release from custody.
- (3) Exceptions to this prohibition may be made by the supervising parole/probation officer if it is determined that there is sufficient information to support this placement in terms of public safety and the rehabilitation of the offender. In making this determination, the following factors must be considered:
 - a. Other residential placement options pose a higher risk to the community, or
 - b. An enhanced support system that endorses supervision goals and community safety efforts is available at this residence, or
 - c. Enhanced supervision monitoring will be in place (e.g. electronic supervision, curfew, live-in-care provider, along with community notification), or
 - d. This residence includes 24-hour case management, or
 - e. The offender is being released from prison unexpectedly and more suitable housing will be arranged as soon as possible.

If any of these factors apply to the offender and the residence under review, an exception to the permanent residence prohibition may be allowed.

4. [If a supervising officer makes an exception under this rule, t]The supervising officer must inform the community affected by this decision about the reasons for the decision prior to the offender's release from custody.

Statutory Authority: 144.644

History: (Temp/Notice 12-15-01, 01-29-02, 04-15-02- Temp/Notice)

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

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter
Number
Michael R. Washington 503-945-9009
Rules Coordinator Telephone
2575 Center Street NE, Ste 100 Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

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

FILED

AMEND: 255-070-0001 (Exhibit J)

APR 15 2002

**ARCHIVES DIVISION
SECRETARY OF STATE**

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.102, 144.270.
Stat. Auth.: ORS
None
Other Authority
None
Stats. Implemented: ORS

RECEIVED

APR 17 2002

RULE SUMMARY

BOARD OF PAROLE

The amendment is necessary to clarify the rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

June 3, 2002
Last Day for Public Comment

Michael R. Washington 04-15-02
Authorized Signer and Date

The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption of Rules of the Board of Parole and Post-Prison Supervision)))))	Statutory Authority, Statutes Implemented, Statement of Need, Principal Documents Relied Upon, Statement of Fiscal Impact
--	-----------------------	---

Statutory Authority: ORS 144.102, 144.270

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The rule is necessary to clarify the rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Documents Relied Upon:

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

04-15-02

Authorized Signer and Date

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 04-15-02 by the

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter Number

Michael R. Washington 503-945-9009
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, Oregon 97301-4621
Address

to become effective 04-15-2002 through 10-11-2002
Date upon filing or later A maximum of 180 days including the effective date

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

FILED

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

APR 15 2002

AMEND: **255-070-0001 (Exhibit J)**

ARCHIVES DIVISION
SECRETARY OF STATE

SUSPEND:

ORS 144.102, 144.270
Stat. Auth: ORS

None
Other Authority

None
Stats. Implemented: ORS

RULE SUMMARY

The amendment is necessary to clarify the rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Michael R. Washington

Authorized Signer

04-15-02

Date

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and)
Adoption of Rules of the Board of Parole)
and Post-Prison Supervision)

) Statutory Authority,
) Statutes Implemented,
) Statement of Need,
) Principal Documents Relied Upon

Statutory Authority: ORS 144.102, 144.270

Other Authority: None

Statutes Implemented: None

Need for the Temporary Rule(s): The amendment is necessary to clarify the rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Documents Relied Upon: None

Justification of Temporary Rule(s): To allow the board to immediately impose special conditions that pertain to sex offenders to allow better supervision of those offenders on parole and post-prison supervision.

Michael R. Washington 04-15-02

Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules - Board\Statement of Need & Justification.doc

DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions Not Limited by Exhibit J
255-070-0001

- (1) The Board may order parole conditions pursuant to OAR 255-070-0015.
- (2) The Board shall approve post-prison supervision conditions pursuant to OAR 213-11-001.
- (3) Conditions of parole and post-prison supervision are not limited to those shown in Exhibit J.

Statutory Authority: (ORS 144.096, 144.102, 144.270)

History: (5/31/85; 11/3/86, temporary; 4/1/87; 4/15/88, temporary; 5/19/88;7/1/88;
10/18/88; 4/5/90; 4/30/92, temporary; 10/9/92; 10/15/93, 11/09/98,
9-15-99 Notice/Temp, 11-15-99, 05-22-00, 12/15/01-Notice/Temp,
01-29-02, 04-15-02 – Notice/Temp)

Offender Return to County of Residence
255-070-0003

- (1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the first six months in the county where the offender resided on the date of the last arrest for a crime resulting in imprisonment.
 - (2) (a) The Board or the Department of Corrections may establish the county of residency by obtaining the last address of record at the time of the offense from all of the available information in the following records:
 - (A) An Oregon driver's license, regardless of its validity;
 - (B) The Department of Revenue;
 - (C) The Department of State Police, Bureau of Criminal Identification;
 - (D) The Department of Human Resources; or
 - (E) The Department of Corrections.
 - (b) If the records do not disclose the county of residency, the Board or the Department shall find the offender resided in the county where she or he committed the crime.
 - (c) If the offender is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.
 - (d) In determining the offender's county of residence for purposes of this rule, the Board may not consider offenses committed by the offender while the offender was incarcerated in a Department of Corrections facility.
- (3) Upon motion of the Board, an offender, a victim, or a district attorney, the Board may waive the residency requirement after finding:

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 may be revoked for violation of any of these conditions and/or you may be returned when parole is not in your best interest or the best interest of society.

The Board may, at it's 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 Board.
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 illegally used controlled substances.
4. 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. Offender shall have no contact with minor females and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
4. Offender shall have no contact with minor males and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
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 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 frequenting, 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) 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.
 - (e) 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.
 - (f) 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.
 - (g) Unless otherwise indicated for the treatment required under subparagraph (E) 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.
 - (h) 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.
 - (i) 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.
 - (j) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.
 - (k) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.

6-17-02

Eff

Secretary of State
Certificate Order for Filing

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on May 27, 2002 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 06-17-02 Rulemaking Notice was published in the 04-01-02 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

ADOPT:

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

AMEND: **255-075-0056**

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.343
Stat. Auth.: ORS
None
Other Authority
ORS None
Stats. Implemented: ORS

FILED
JUN 17 2002
ARCHIVES DIVISION
SECRETARY OF STATE
RECEIVED
02 JUN 25 AM 9 17
BOARD OF PAROLE

RULE SUMMARY

The amendment of the proposed rule allows for retention of the tape recording of the Advice of Rights and Morrissey hearing for four years instead of two years. This is necessary to preserve the record for purposes of protecting the rights of the offender and the board in the appellate process.

Michael R. Washington 06-17-02
Authorized Signer Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.343

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The amendment is necessary to extend the period of time a hearings officer retains tape recordings of the Advice of Rights and Morrissey hearing from two years to four years. The additional retention period is needed to adequately preserve and protect the rights of the offender and the board in the appellate process.

Documents Relied Upon: None

Fiscal and Economic Impact: There may be some effect on other agencies, local government, or identified public. There will be a minor fiscal and economic impact on the board.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

03-12-02

Authorized Signer and Date

DIVISION 75

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

255-075-0001

Definitions

- (1) Administrative Sanction means local, structured, or intermediate sanctions as those terms are used in OAR 291-58-010 etal, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.

- (2) Sanction Authority means:
 - (a) The Board or its designee for:
 - (1) Any felony offender who received a sentence of more than twelve (12) months in the custody of the Department of Corrections; or
 - (2) 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.

 - (A) If an offender is on post-prison supervision for multiple sentences which include a sentence that exceeds twelve (12) months ("Board case") and a less than twelve (12)-month sentence ("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.

 - (B) 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.

Statutory Authority: ORS 144.140

History: (2/28/85; 3/14/88, temporary; 5/19/88, repealed, temporary 11/14/97;
05/11/98; temporary 07/13/98, **08/27/98**

255-075-0002

Suspension of Parole or Post-Prison Supervision; Citation to Appear

- (1) When the supervising officer or other person informs the Sanction Authority of reasonable grounds to believe that a person has violated the conditions of parole or post-prison supervision, or that supervision is no longer in the best interests of the offender or the community, and that the revocation of parole or post-prison supervision may be justified or, in the case of parole only, an extension of parole may be justified, the Sanction Authority may:
 - (a) suspend the running of the sentence and the parole or post-prison supervision term and order the offender arrested and detained pending a violation hearing; or
 - (b) issue a citation to appear at a violation hearing without first suspending parole or the post-prison supervision term or ordering detention.
- (2) The Sanction Authority may issue a suspend and detain warrant or a citation to appear at a violation hearing.
- (3) The Sanction Authority may authorize, in writing, that its designated representative may issue citations to appear at a violation hearing.

Statutory Authority: ORS 144.025(3), 144.106, 144.331, 144.334

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary; 6/24/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0003

Criteria for Allowing Offender to Remain in Community Pending Hearing

In determining whether to allow an offender to remain in the community pending the violation hearing and final order, the Sanction Authority may consider:

- (1) the seriousness of the allegations and the risk to the offender or the community;
- (2) the likelihood of the offender absconding or failing to appear at the hearing;
- (3) the availability of resources in the community such as residence or employment;
- (4) any recommendation by the parole and post-prison supervision officer.
- (5) The Sanction Authority may release offenders detained under a Sanction Authority warrant, after the violation hearing, when recommending local sanctions or intervention and continuance of parole or post-prison supervision.

Statutory Authority: ORS 144.331(2)

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary, 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98)

255-075-0004

Guidelines for "Best Interest" Return

When the Sanction Authority determines that an offender's release on parole or post-prison supervision is not in the best interest of the offender or in the best interest of society, the Sanction Authority may return the offender to custody. This type of return to custody may apply when:

- (1) The offender is suffering from an emotional or psychological disturbance which makes the offender dangerous to self or others if left in the community. The following behavior may indicate a dangerous emotional or psychological disturbance:
 - (a) showing a present capacity to carry out any statements or threats of violence against the offender or the community; or
 - (b) circumstances and conduct similar to that which led to the initial incarceration; or
- (2) The offender's behavior cannot be adequately controlled if left in the community.
- (3) Best interest returns for offenders on post-prison supervision shall not exceed 90 days, and must be approved by the Sanction Authority.

Statutory Authority: ORS 144.270(2)(g), 144.350(2)

History: (3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0005

Hearing Requirement: Procedure

- (1) Except as otherwise provided by these rules, before the Board can revoke parole or extend active parole supervision for offenders whose crimes occurred on or after December 4, 1986, and before November 1, 1989 (BM10), the Board or Hearings Officer shall conduct a hearing.
- (2) When the offender waives the hearing and/or consents to the order, the Board need not conduct a hearing when the Board extends supervision for offenders whose crimes occurred on or after December 4, 1986 and before November 1, 1989 (BM10).
- (3) Except in the cases set forth in OAR 255-075-0015 and section (6) of this rule, the Sanction Authority shall impose administrative sanctions or shall initiate a hearing within fifteen (15) days of arrest or detention for the violation of parole or post-prison supervision conditions.
- (4) If an in-custody violation hearing and a final order cannot be accomplished within fifteen (15) days, a supervising officer or Hearings Officer shall request a non-bailable suspend and detain warrant from the Sanction Authority.
- (5) Before a Hearings Officer can order more than sixty (60) days of local confinement without the offender's consent, the Hearings Officer shall conduct a violation hearing. Unless the Hearings Officer recommends a sanction, which is beyond his or her authority to order, the Hearings Officer may issue a final order subject to approval of the Sanction Authority, but immediately effective. If the recommended sanction exceeds sixty (60) days, it must be approved by the Supervisory Authority.
- (6) A hearing is not required when an administrative sanction or intervention involves local confinement of ninety (90) days or less when the offender consents to the sanctions or interventions. If the offender contests the allegations, the offender may request a hearing.

Statutory Authority: ORS 144.106(3), 144.108, 144.331(2), 144.343, 144.350, 144.370
History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 5/1/91,
temporary; 10/15/91; 4/30/92, temporary; 10/9/92 temporary 11/14/97; 05/11/98)

255-075-0006

Method of Hearing

The Hearing Officer may conduct hearings by teleconference or video conference. The Hearing Officer shall conduct hearings in person or by video conference in the following situations:

- (1) the alleged violations are contested and the offender or the offender's attorney shows that the witness's credibility, including observation of the witness's demeanor is necessary;
- (2) physical exhibits may be part of the record and viewing the exhibits is essential, and the exhibits can not be viewed in some other manner;
- (3) there are unusual circumstances not covered by this section, determined at the Hearing Officer's discretion.

Statutory Authority: ORS 144.035(5), 144.343(1)
History: (11/4/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88;
10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0007

Designated Representative Conducts Hearing

- (1) The Sanction Authority or its designated representative shall conduct the probable cause and violation hearing.
- (2) "Designated representative" shall include those persons designated by the Sanction Authority, and trained and certified as Hearings Officers.

Statutory Authority: ORS 144.104(1), 144.331, 144.343
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92,
temporary 11/14/97; 05/11/98)

255-075-0008

Locations of Hearing

History: (11/19/84, temporary, expired)

255-075-0010

**Board Action Upon Notification of Alleged Parole Violation:
Criteria for; Release of Parolee Pending Hearing**

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0015

When Offender in Another Jurisdiction: Return

- (1) The Sanction Authority may suspend parole or post-prison supervision and may order the offender's return to custody in Oregon without first conducting a hearing when:
 - (a) the offender has, without permission, left the state to which the Sanction Authority released the offender on parole or post-prison supervision, and is in custody in another jurisdiction;
 - (b) the offender is in custody in another correctional facility;
 - (c) the offender has absconded from supervision and the offender's whereabouts are unknown; or
 - (d) the offender has been convicted of a new crime.
- (2) Except as provided in ORS 144.345(2) and OAR 255-075-0005(6), the Sanction Authority or the Hearings Officer shall conduct a violation hearing after the offender returns to custody in Oregon. For purposes of these rules, the arrest date is the date the offender is returned to custody in Oregon.
- (3) Persons retaken and returned to this state from outside the state upon order or warrant of the Department of Corrections, the State Board of Parole & Post-Prison Supervision or the Governor, for violation of conditions of parole or post-prison supervision, shall be detained in a Department of Corrections facility or a local correctional facility pending any hearing concerning the alleged violation and ultimate disposition by the State Board of Parole & Post-Prison Supervision.
- (3) Persons retaken and returned to this state from outside the state upon order or warrant of a local supervisory authority for violation of conditions of post-prison supervision may be detained in a local correctional facility pending a hearing concerning the alleged violation and ultimate disposition by the local supervisory authority.

Statutory Authority: ORS 144.340, 144.345(2), 144.349

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/15/92, temporary; 4/15/92, temporary 11/14/97; 05/11/98, **01-25-00**)

255-075-0020

Rights of a Parolee at a Formal Hearing

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0025

Rights at Hearing

- (1) The designee of the Sanction Authority (eg. Hearings Officer) shall provide the offender a written notice of the hearing at least three (3) working days prior to the hearing.
- (2) The hearing notice shall include:
 - (a) a Notice of Rights as provided in ORS 144.343(3);

- (b) a written statement of alleged violations; [and]
 - (c) any documents or evidence which form the basis of the alleged violations; and
 - (d) the date and location of the hearing.
- (3) The offender may elect to waive the three working day notification period prior to the hearing and begin the hearing immediately.
 - (4) If the offender elects to waive the three working day notification period, the Hearings Officer shall obtain a written waiver or tape record the offender's verbal statement waiving the three working day notification period.
 - (5) The Hearings Officer shall ascertain whether the offender has understood the allegations and the offender's rights and whether the offender can read, hear and understand the language of the proceedings. The Hearings Officer shall postpone the hearing if needed assistance is not readily available.

Statutory Authority: ORS 144.343(3)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0026

Waiver of Hearing

- (1) In all cases, the offender may waive the right to a hearing by signing a Notice of Rights form. A refusal to participate in the hearings process shall also constitute a waiver of the right to a hearing.
- (2) When the purpose of a hearing is to consider a parole or post-prison supervision violation, the waiver of the right to a hearing acknowledges that the offender violated the conditions in whole or in part and that the Sanction Authority may order local sanctions, may modify conditions of supervision, may extend active supervision or that the Board may order return to prison, without further hearing.
- (3) When the purpose of the hearing is to modify parole or post-prison supervision conditions or, in the case of parole, to consider extending active supervision, the waiver of the hearing indicates acceptance of the modifications.
- (4) If the offender waives the right to a hearing, the offender may offer a written or verbal statement pertaining to the dispositional phase of the violation hearing.
- (5) If the hearing is conducted via teleconference or video conference, the offender shall submit written waiver of the right to a hearing to the Hearings Officer within five (5) days after the waiver.
- (6) The person delivering the Notice of Rights shall tape record or document in writing any statement made at the time of waiver.
- (7) If the offender waives the right to a hearing, the Hearings Officer or Supervising Officer shall submit to the Sanction Authority the following:
 - (a) a Notice of Rights form;

- (b) any written offender statements and/or a summary of oral statements;
- (c) the Hearing Summary, including a history of local interventions and sanctions ordered and a recommendation regarding disposition;
- (d) any supporting information, including the supervising officer's report and other documentary evidence submitted.

Statutory Authority: ORS 144.050, 144.140; 144.343
 History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 4/15/92, temporary 11/14/97; **05/11/98**)

255-075-0030
Rejection of Waiver

If the Sanction Authority is not satisfied that the offender knowingly and intelligently waived his or her hearing rights or if it needs more information before making its decision, it may order a new hearing, to be conducted by the Hearings Officer or the Sanction Authority.

Statutory Authority: ORS 144.050, 144.140, 144.343
 History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0031
Hearings Process

- (1) The Hearings Officer shall conduct the violation hearing reasonably near the place of the alleged violation or the place of confinement or may conduct the hearing by teleconference or video conference.
- (2) Unless the Hearings Officer finds good cause on the record, the parole and post-prison supervision officer shall present information and evidence at the hearing and arrange for the presence of witnesses for the state. The parole and post-prison supervision officer shall make dispositional recommendations.
- (3) The Hearings Officer shall make a tape recording of the hearing.

Statutory Authority: ORS 144.050, 144.106, 144.140, 144.343
 History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary, 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0035
Representation/Ability to Pay Attorney Fees

- (1) In all cases, the offender is entitled to representation by an attorney at the offender's own expense.
- (2) For Board cases only, if the Hearings Officer or the Board deems the offender indigent, and unable to pay for an attorney, the offender is entitled to a Board appointed attorney if the Board or Hearings Officer further finds that the offender has made a timely and colorable claim that:

- (a) the offender has not committed the alleged violation;
 - (b) there are substantial or complex mitigating circumstances which make revocation inappropriate even if the offender admits violation or it is a matter of record; or
 - (c) the offender appears incapable or representing himself/herself.
- (3) For Board cases only, if the Hearings Officer appoints an attorney, the Hearings Officer shall notify the Board of payment to be made to the appointed attorney. When the Board approves payment for a Board appointed attorney, it shall not exceed \$60 per hour and \$300 per case. The attorney shall send the Board a billing within 90 days of the violation hearing.
 - (4) When the Hearings Officer or Board refuses to appoint an attorney, the Hearings Officer or Board shall state the grounds for refusal in the record.
 - (5) For Local Supervisory Authority cases, the Local Supervisory Authority may set its own criteria for appointment of an attorney and shall set its own standards for payment of appointed attorneys.

Statutory Authority: ORS 144.343

History: (2/1/79; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 10/15/91; 10/9/92, temporary 11/14/97; **02-06-01**)

255-075-0036

Subpoenas; Witnesses

- (1) Offenders shall make their own arrangements for calling and presenting witnesses. However, upon the request of any party to the hearing, and upon a proper showing of the relevance and reasonable scope of the testimony to be offered, the Sanction Authority or Hearings Officer shall issue subpoenas requiring the attendance and testimony of witnesses. In addition, the Sanction Authority or the Hearings Officer may subpoena documents when relevant.
- (2) The Board shall reimburse fees and mileage as prescribed by law to witnesses appearing under subpoena, other than the parties, state officers or employees, provided the Hearing Officer or Sanction Authority certifies that the witness's testimony was relevant and material to the hearing.
- (3) The offender may present witnesses who have relevant information, and has the right to confront the persons or witnesses who have presented information against the offender.
- (4) The Hearings Officer or Sanction Authority may deny confrontation of witnesses by the offender if that confrontation would subject the witness to the risk of harm.
- (5) If the Hearings Officer or Sanction Authority denies confrontation of witnesses, the Hearings Officer or Sanction Authority shall state the reason(s) for the decision and conduct an independent examination of the witness on the record.

Statutory Authority: ORS 144.347

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/15/92, temporary 11/14/97; **05/11/98**)

255-075-0040

Compelling of Witnesses: Contempt

The Sanction Authority or Hearings Officer or party requesting a subpoena, may seek contempt proceedings in the circuit court of any county against any person refusing to honor the subpoena.

Statutory Authority: ORS 144.347(4)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 10/9/92; **05/11/98**)

255-075-0042

Probable Cause; Preliminary Hearing; Deferral of Revocation Hearing

- (1) The Sanction Authority or Hearings Officer may use evidence received and the order of a court at a preliminary hearing or a conviction or other reliable, relevant information to establish that probable cause exists to believe that the offender has committed a violation of a condition of parole or post-prison supervision.
- (2) Should the offender waive the right to a preliminary hearing, the waiver shall constitute a waiver of a probable cause hearing.
- (3) When the Sanction Authority or Hearings Officer defers completion of a violation hearing until a trial is over and until the court or the parole and post-prison supervision officer notifies the Sanction Authority or Hearings Officer of the final disposition of the case, the Sanction Authority or Hearings Officer shall use a finding of probable cause to support the decision to suspend and detain an offender charged with the commission of a new crime.
- (4) Notwithstanding subsection (3) of this section, the Sanction Authority or Hearings Officer shall not extend a deferral following a finding of probable cause for a period greater than 120 days from the date of the preliminary hearing or waiver, unless the offender is released from jail pending final disposition of the case, or waives in writing further delay. Subsequent waivers shall not extend beyond 120 days.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (11/25/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/15/92, temporary 11/14/97; **05/11/98**)

255-075-0045

Evidence; Subpoena of Documents

- (1) The Sanction Authority or Hearings Officer may receive the following as evidence at a violation hearing:
 - (a) oral testimony under oath;
 - (b) affidavits or other sworn statements;
 - (c) letters;
 - (d) documents;
 - (e) reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole and post-prison supervision officers, doctors, psychologists, attorneys);

- (f) uncertified copies of letters, documents, or reports shall be admissible in a revocation hearing if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable;
 - (g) evidence of criminal activity even when charges have been dismissed, not brought, or the offender has been acquitted at trial;
 - (h) reliable hearsay evidence; or
 - (i) any evidence determined to be material, relevant, and reliable, regardless of its nature.
- (2) Upon the request of any party to the hearing, the Sanction Authority, or Hearings Officer, may issue a subpoena duces tecum upon a proper showing of relevant and reasonable scope of the documentary or physical evidence being sought. Otherwise, the offender shall make the offender's own arrangements for presenting evidence.
 - (3) The Sanction Authority or Hearings Officer may exclude documents or physical evidence upon making a finding that such evidence would pose a hazard to facility security or would not assist in the resolution of the allegation(s). The reason for exclusion shall be made part of the record.
 - (4) The Sanction Authority or Hearings Officer may classify documents or physical evidence as confidential upon making a finding that revealing such evidence would pose a threat to the safety of the person providing the evidence.
 - (5) The Sanction Authority or Hearings Officer shall make evidence received without disclosing the identity of the witness a sealed part of the record.
 - (6) When a witness is unavailable, the Sanction Authority or Hearings Officer may receive statements in the form of documentary evidence. The Sanction Authority or Hearings Officer shall determine at an in-camera hearing the reliability and relevance of the absent witness's statement.

Statutory Authority: ORS 144.343, 144.347

History: (2/1/79; 11/25/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92; **05/11/98**)

255-075-0046

Postponement

- (1) The Sanction Authority or Hearings Officer with Sanction Authority approval, may postpone a hearing for good cause and for a reasonable period of time, which shall not exceed 120 days.
- (2) The criteria for "good cause" includes, but is not limited to:
 - (a) the preparation of defense;
 - (b) illness or unavailability of the offender or other persons;
 - (c) gathering of additional evidence; or
 - (d) avoiding interference with an ongoing police investigation or pending prosecution.

- (3) The Sanction Authority, or Hearings Officer with Sanction Authority approval, may make a finding of a violation and defer disposition for a reasonable time which may exceed 120 days if such delay is reasonably necessary for the offender, the Sanction Authority or Hearings Officer to obtain information relevant to disposition decision.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/18/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0050

Procedure for Receiving Evidence if Good Cause Exists Not to Require Confrontation or Disclosure of an Informant's Identity

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0055

Reopening Hearings: Criteria; Procedure

- (1) After the completion of a violation hearing, the Sanction Authority or Hearings Officer may reopen a hearing if substantial new information is discovered which was not known or could not be anticipated at the time of the hearing and which would significantly affect the outcome of the hearing.
- (2) The Sanction Authority or Hearings Officer shall send the offender notice of the decision to reopen the hearing and the new information to be considered. The re-opened hearing shall conform to the procedures of this Division.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (2/1/79; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0056

Hearings Record

- (1) The hearings record shall include:
- (a) a Hearings Report Summary;
 - (b) a written statement of alleged violations;
 - (c) supporting materials, including documentary evidence admitted;
 - (d) a signed Notice of Rights;
 - (e) the Order of Parole or Post-Prison Supervision;
 - (f) a notice of time and place of hearing;
 - (g) a tape recording of the advice of rights and the hearing;
 - (h) the supervising officer's report, including recommended dispositions; [and]

- (i) the history of supervision, local sanctions and modifications; and
 - (j) if any, the written waiver of the offender's right to three working days notice of the hearing.
- (2) The Hearings Officer shall retain the tape recording used in subsection (1)(g) of this rule for [two] (~~2~~) 4 four years.

Statutory Authority: ORS 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98, PERM 06-17-02)

255-075-0060

Record of Parole Revocation Hearing

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0065

Ten Day Period for Offender's Evidence and Exceptions

- (1) Within a reasonable time after the hearing, the Hearings Officer shall provide his or her report to the offender.
- (2) Unless the offender waives the right to respond, the offender shall have 10 days from the date the Hearings Officer mails the report to the offender to submit evidence and make written exceptions to the report for the Sanction Authority's consideration.
- (3) If the offender waives the right to respond, the Hearings Officer shall include the waiver in the Hearings Officer's report to the Sanction Authority.
- (4) When a Hearings Officer makes a final order pursuant to Board authority granted in writing, the offender shall not have a ten day period within which to submit evidence and written exceptions. The offender may appeal a Hearings Officer's order under Division 80 of these rules.

Statutory Authority: ORS 144.343(7)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0067

Final Action: Authority to Impose Administrative (Local) Sanctions, Revoke Supervision or Modify Conditions of Supervision

- 1) If an offender waives a hearing after receipt and review of the notice of rights, as provided in OAR 255-075-0005(6) a supervising officer may order administrative sanctions, including a local confinement sanction not exceeding thirty (30) days. The Local Supervisory Authority's designee may review the decision to order a local confinement sanction if the offender's underlying sentence was for 12 months or less. The Board may review the decision if the underlying sentence was more than 12 months.

- 2) After a hearing, or if an offender waives a hearing after receipt of the notice of rights, as provided in OAR 255-075-0005(6), a Hearings Officer or agency designee may order administrative sanctions, including a local confinement sanction not exceeding sixty (60) days. The Hearings Officer or agency designee shall send a copy of the final order and report to the Sanction Authority and, upon request, shall send the record of the hearing as described in OAR 255-075-0056. The Hearings Officer or agency designee shall retain the record for two (2) years.
- 3) After a hearing, or waiver, the Board may order administrative sanctions for offenders originally sentenced to more than 12 months, and a Local Supervisory Authority designee may order administrative sanctions for offenders originally sentenced to 12 months or less. The Board or a Local Supervisory Authority designee ordered local administrative confinement sanction may not exceed ninety (90) days.
- 4) The Board (for offenders originally sentenced to more than 12 months) or the Local Supervisory Authority designee (for offenders originally sentenced to 12 months or less) may override any sanction ordered by a supervising officer, agency designee or Hearings Officer.
- 5) Administrative Sanctions, including local confinement shall be applied in accordance with the Department of Corrections rules for structured, intermediate sanctions, OAR 291-58-010 et al., subject to jointly drafted revisions by the Department of Corrections and the Board.
- 6) If an administrative sanction is not sufficient to address the violation or to protect the public, the Sanction Authority may revoke supervision for a period(s) as set out in OAR 255-075-0079, or deny re-release for offenders on parole.
- 7) Conditions of supervision may be modified at any time by the Sanction Authority when necessary for the offender or public safety. If an offender objects to the modification, administrative review must be made within 45 days of the mailing date on the Board order or receipt of a written order by the Local Supervisory Authority.

Statutory Authority: ORS 144.106, 144.343

History: (4/30/92, temporary; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98)

255-075-0070

Final Action: Procedure

- (1) When a case comes before the Board or Supervisory Authority or designee for decision, the Board or Supervisory Authority shall consider the Hearings Officer's report, and the offender's evidence and exceptions. The Board or Supervisory Authority or designee shall enter a decision, and shall record the decision in accordance with the sanction/intervention guidelines, OAR 291-58-010 et al. The Board shall vote in accordance with Exhibit K.
- (2) The Board or Supervisory Authority may adopt or reject any or all the Hearings Officer's findings and recommendations. The Board or Supervisory Authority may find a violation of conditions not alleged, if the evidence admitted at the hearing supports the finding and the evidence is uncontroverted. The final order shall indicate the findings adopted by the Board or Supervisory Authority.
- (3) A copy of the final order shall be forwarded to the offender with notice of the right to administrative and judicial review.
- (4) All final orders of the Board are subject to Administrative Review by the Board prior to seeking judicial review.

Statutory Authority: 144.125, 144.343

History: 2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/1/88; 10/18/88; 4/19/89, temporary; 10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98, 01-12-01)

255-075-0072

Re-release Order After Revocation

- (1) At the time of a revocation decision, the Sanction Authority shall make an order concerning re-release.
- (2) In the re-release order, the Sanction Authority may:
 - (a) continue parole or post-prison supervision pursuant to 255-075-0075 or 255-075-0080; or
 - (b) set the re-release date in accordance with rule 255-075-0079; or
 - (c) The Board may defer the re-release decision pending a future disposition hearing for offenders on parole.
- (3) Upon notification that parole or post-prison supervision has terminated by operation of ORS 144.345(2), the Board shall apply subsection (2) of this rule.
- (4) Revocation of post-prison supervision stops the period of post-prison supervision from running while the offender is serving time in custody for a revocation sanction. The re-release order following a revocation sanction shall include a re-calculation of the post-prison supervision expiration date to account for the time the offender was in custody serving the revocation sanction.
- (5) The sum of the time actually served on the original incarceration sentence, all days served as a revocation sanction, and the time served in the community on post-prison supervision cannot exceed the maximum indeterminate sentence for the offense(s) for which the offender is on post-prison supervision.

Statutory Authority: ORS 144.346, 144.395

History: (4/19/89, temporary; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98 9-22-99)

Return to DOC for a Period of Greater than 12 months

255-075-0073

- (1) Post-prison supervision may be revoked and an offender returned to the custody of the Department of Corrections for a sanction that exceeds 12 months when:
 - (a) The offender is currently in violation of a condition of supervision; and
 - (b) The offender scores at least a total of 44 points on the scale in Exhibit R of these rules; and

- (c) The community corrections agency supervising the offender and/or a hearings officer recommend a return to the Department of Corrections for a sanction exceeding 12 months; and
 - (d) The Board finds that a sanction exceeding 12 months is appropriate.
- (2) This rule may only be applied to offenders serving a term of post-prison supervision for a felony crime committed on or after July 14, 1997, and the term of post-prison supervision:
 - (a) follows completion of a sentence to a term of imprisonment that exceeds 12 months, or
 - (b) was imposed for a felony classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid, or
 - (c) was imposed as part of a sentence under ORS 137.700 or 137.707, or
 - (d) was imposed as part of a sentence as a dangerous offender under ORS 161.725 and 161.737, or
 - (e) is subject to ORS 144.103 (length of post-prison supervision for certain sex offenses).
- (3) A revocation hearing as described in OAR 255-075-0005 must be held when there is a recommendation under this rule.
- (4) A community corrections agency and/or hearing officer recommending a sanction under this rule must specifically state how the offender fits the requirements of this rule (including the score on the scale), what efforts have been made to manage the offender in the community and why the offender cannot be safely managed in the community. The recommendation may also contain any other information that may assist the board.
- (5) If a community corrections agency and/or hearing officer recommends a sanction under this rule, the board shall hold a hearing as described in OAR 255-075-0097 to determine whether a sanction exceeding 12 months is appropriate. After a hearing, the board can order a sanction of up to 24 months incarceration. The board must hold a subsequent hearing before it can order continued incarceration exceeding 24 months. The length of sanction imposed under this rule is determined by the board.
- (6) Subject to the requirements of this rule, an offender may be required to serve a sanction under this rule up to the post-prison supervision expiration date for any offense for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule. When an offender is released from a sanction imposed under this rule, the offender must serve the balance, if any, of any post-prison supervision remaining up to the post-prison supervision expiration date. If the offender is not released prior to the post-prison supervision expiration date, the post-prison supervision will expire. The periods of post-prison supervision for all offenses for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule continue to run while an offender is serving a sanction under this rule.
- (7) Board hearings under this rule will be conducted in the same manner that the board conducts future disposition hearings. The board may order a psychological evaluation for a hearing under this rule. The procedures for records, disclosure and notice outlined in Divisions 15 and 30 shall govern these hearings. A panel may conduct the hearing and the board shall make decisions pursuant to OAR 255-030-0015.

- (8) In determining whether a sanction exceeding 12 months is appropriate or whether continued incarceration exceeding 24 months is appropriate, the board must consider the recommendation by the community corrections agency or hearing officer and may also consider the following:
- (a) the nature of the underlying conviction(s);
 - (b) the offender's criminal history;
 - (c) the history and nature of violations of post-prison supervision or parole;
 - (d) findings made by a psychologist in a psychological evaluation;
 - (e) conduct in institutions or jails;
 - (f) programs completed in custody and/or in the community;
 - (g) treatment available in the community;
 - (h) release plans;
 - (i) victim's statements, if any; and
 - (j) any indications of reformation and rehabilitation.

Statutory Authority: (ORS 144.107)

History: (03/12/01)

255-075-0075

Offenders Convicted of New Crime in This or Another Jurisdiction

- (1) If an offender has violated parole or post-prison supervision as a result of a conviction of a new crime and the court has ordered a prison term to the Department of Corrections, parole or post-prison supervision terminates without a violation hearing by operation of ORS 144.345(2).
- (2) Upon release from custody, if the Oregon sentence has not expired, Oregon supervision shall resume either in another jurisdiction under Interstate Compact or in Oregon. If, in preparing the re-release plan, the Department of Corrections cannot arrange supervision under Interstate Compact, the offender shall report to the appropriate Supervisory Authority for supervision.
- (3) The Sanction Authority shall make extradition decisions on a case-by-case basis in cooperation with the holding jurisdiction.
- (4) If the offender absconded supervision, the Sanction Authority shall count the inoperative time from the date the Sanction Authority issued its arrest and detention warrant to the arrest date in Oregon or if arrested out of state, upon return to Oregon custody. The Board shall forward the dates to the Department of Corrections for use in recalculating the sentence good time and expiration dates for those offenders under the Board's jurisdiction. For those not under the Board's authority, the inoperative time shall be calculated by the Supervisory Authority's designee.

Statutory Authority: ORS 144.345, 144.380, 144.610-622

History: (2/1/79; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 4/15/92, temporary
11/14/97; 05/11/98)

255-075-0076

Designation of Parole Failure

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88, repealed)

255-075-0078

Commencement Date for Prison Term Following a Violation

- (1) The commencement date for a new commitment which is concurrent to an incarceration sanction for a violation of parole or post-prison supervision shall be the sentencing date for the new crime.
- (2) The commencement date for a new commitment which is consecutive to an incarceration sanction for a violation of parole or post-prison supervision shall be either the release date established for the violation or the sentencing date for the new crime, whichever is later.
- (3) Notwithstanding subsection (2) of this rule, when the new commitment is consecutive to a sanction for a violation, the Sanction Authority may treat the violation and the new commitment as if they were concurrent. If treated as concurrent, the commencement date for the new commitment shall be the sentencing date for the new crime plus adjustment for credit for time served.
- (4) If the offender is returned with a parole or post-prison supervision violation and a new sentence which is consecutive to the sentence for which the offender was on parole, the commencement date for the new conviction shall be the date parole was revoked, if so stated on the court order.

Statutory Authority: ORS 144.346, 144.395, 144.780, 144.783

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0079

Guidelines for Re-release

- (1) For technical violation(s):
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-11-004.
- (2) For conduct constituting a crime:
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.

- (3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.
- (4) Offenders sentenced to life imprisonment for murder or aggravated murder may serve further incarceration to the sentence expiration date.
- (5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.
- (7)
 - (a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.
 - (b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.
 - (c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.
- (8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.
- (9) Notwithstanding subsections 1-7 of this rule, the Board may choose to postpone re-release on parole pursuant to Divisions 50 and 60 of this chapter.
- (10) Notwithstanding subsections 1-8 of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.
- (11) Administrative sanctions do not count toward the revocation sanction limits.

Statutory Authority: ORS 135, 055, 144.103, 144.107, 144.108, 144.120(4), 144.125, 144.232, 144.345, 144.346, 144.395, 161.735

History: (4/19/89, temporary; 11/1/89; 10/15/90, temporary; 1/16/91; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98, 01-25-00)

255-075-0080

Continuance on Parole or Supervision

- (1) The Sanction Authority may continue an offender on parole or post-prison supervision and order modification of conditions and/or sanction to time served.
- (2) The Sanction Authority may continue an offender on parole or post-prison supervision and order administrative sanctions as limited by OAR 255-075-0067

Statutory Authority: ORS 144.106, 144.343, 144.345(1)
History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0082

Authority of Revocation Panel to Set New Parole Release Date for Parole Violators

History: (11/4/81 - 5/2/82, temporary; 11/19/84, suspended; 2/28/85, repealed)

255-075-0085

Parole Violators with No New Commitment; Action Required

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, suspended; 10/16/89, repealed)

255-075-0090

Guidelines for Reparole

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 11/1/89, repealed)

255-075-0095

Variation From Guidelines for Aggravation/Mitigation Permitted

History: (11/19/84, temporary; 2/28/85; 5/19/88; 7/1/88; 4/19/89, suspended; 10/16/89, repealed)

255-075-0096

Denial of Re-release Consideration

- (1) Upon a finding of aggravation pursuant to Exhibit E or Exhibit H, the Board may deny re-release on parole and set the parole release date up to two (2) days before the statutory good time date, or, in the case of murder or aggravated murder, require the parole violator to serve for life. This action requires the affirmative vote of a majority of members, except that if the result is life imprisonment, the full Board must vote unanimously.
- (2) Denial of re-release on parole requires a future disposition hearing.
- (3) Cases in which the Board sets a parole violator within the guidelines set forth in rule 255-075-0079 and the result requires the parole violator to serve to the end of the sentence, do not require a majority vote of all members.
- (4) At any time after denial of re-release, the Board may adjust the parole release date to accommodate changes in the good time date.

Statutory Authority: ORS 144.085, 144.120(4), 144.245, 144.395, 144.780, 144.783-787
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 5/1/91, temporary; 10/15/91, 03/14/97)

255-075-0097

Time for Future Disposition Hearing

When the Board holds a future disposition hearing pursuant to 255-075-0072(2) or 255-075-0096, the following timelines shall apply:

- (1) If the offender has a new conviction, the Board may schedule the future disposition hearing at the same time as the new prison term hearing.
- (2) If the offender has no new conviction or has no prison term hearing, the Board shall schedule the future disposition hearing within 60 days of return to the institution.

Statutory Authority: ORS 144.050, 144.140, 144.395

History: (4/19/89, temporary; 10/16/89; 10/9/92)

255-075-0098

Restoration of Statutory and Meritorious Goodtime

Upon recommendation of the superintendent of the institution, the Board may restore part or all of forfeited statutory and meritorious goodtime when:

- (1) there is no violation of parole; or
- (2) parole is revoked on a best interest basis and there is no actual parole violation; or
- (3) parole is revoked on a technical violation; or
- (4) parolee is within 180 days of discharge; or
- (5) parole is revoked for new criminal activity which is a misdemeanor or non person-to-person class C felony and:
 - (a) the new criminal activity was already sanctioned at the local level;
or
 - (b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.
- (6) An offender ordered to serve a term of incarceration as a Revocation sanction for a post-prison supervision violation is not eligible for goodtime, earned-credit time, work release, transitional or temporary leave.

Statutory Authority: ORS 421.120, 144.108(3)

History: (3/14/88, temporary; 5/19/88; 12/6/88; 10/16/89; 10/9/92, 03/14/97, temporary 11/14/97;
05/11/98)

255-075-0100

Future Disposition Hearing Packet

The Future Disposition Hearing Packet shall contain:

- (1) institution face sheet;
- (2) revocation recommendation;
- (3) final order of revocation;
- (4) administrative action sheet;
- (5) revocation hearing findings;
- (6) Board Action Form ordering parole or Board Action Form ordering post-prison supervision conditions;
- (7) disciplinary report, when extension is recommended;
- (8) recommendation regarding statutory and meritorious goodtime;
- (9) correspondence;
- (10) statements of imprisonment for violation; and
- (11) face sheet from old parole analysis report or comparable report.
- (12) Inmate's Notice of Rights and Board of Parole & Post-Prison Supervision Procedures.

Statutory Authority: ORS 144.185, 144.395

History: (5/19/88; 12/6/88; 10/16/89, 03/14/97)

Secretary of State
Certificate Order for Filing

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on June 17, 2002 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 06-17-02 Rulemaking Notice was published in the 05-01-02 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

~~ADOPT~~ 255-060-0009
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: (RS)

REPEAL:
Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.
Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.644
Stat. Auth.: ORS
None
Other Authority
ORS None
Stats. Implemented: ORS

RULE SUMMARY

The amendment is necessary so that the rule would fall within the intent and scope of the enabling statute.

Michael R. Washington

06-17-02

Authorized Signer Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

FILED
JUN 17 2002
ARCHIVES DIVISION
RECEIVED
02 JUN 25 AM 9 17
BOARD OF PAROLE

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and)
Adoption of Rules of the Board of Parole)
and Post-Prison Supervision)

) Statutory Authority,
) Statutes Implemented,
) Statement of Need,
) Principal Documents Relied Upon

Statutory Authority: ORS 144.644

Other Authority: None

Statutes Implemented: NONE

Need for the Temporary Rule(s): The rule is necessary to allow the board to impose the authority granted by the statute which was effective January 1, 2002.

Documents Relied Upon: None.

Justification of Temporary Rule(s): The rule was enacted as a result of the statute – ORS 144.644 – being implemented and made effective January 1, 2002.

Michael R. Washington 04-15-02

Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules – Board\Statement of Need & Justification.doc

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.644

Other Authority: None

Statutes Implemented: NONE

Need for the Rule(s): The rule is necessary to allow the board to impose the authority granted by the statute which was effective January 1, 2002.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

04-15-02

Authorized Signer and Date

DIVISION 60

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

255-060-0006

Exit Interviews: Parole Plan; and Psychiatric Records

- (1) At any time prior to an inmate's scheduled release to post-prison supervision or parole, the Board on its own initiative or at the request of the Department of Corrections, may conduct an exit interview to review the inmate's:
 - (a) release plan;
 - (b) victim's statements, if any;
 - (c) PSR or similar report;
 - (d) psychiatric/psychological reports, if any;
 - (e) conduct while in confinement; and
 - (f) any other information relevant to the inmate's reintegration into the community that the inmate, the inmate's attorney, the Department of Corrections or any other person submits.
- (2) The procedures for records, disclosure and notice outlined in Division 15 and 30 shall govern exit interviews.
- (3) A panel shall conduct the interview and the Board shall make decisions pursuant to OAR 255-030-0015.

Statutory Authority: ORS 144.098, 144.125, 144.800

History: (2/1/79; 5/20/80; 2/15/81; 11/4/81, temporary; 5/19/82; 5/31/85; 5/19/88; 11/1/89; 4/5/90; 5/1/91, temporary; 10/15/91; 2/12/92, temporary; 4/15/92; 10/9/92, 03/14/97 11/09/98)

255-060-0008

Release Plans

- (1) At any time prior to release on parole or post-prison supervision, the Board shall examine the inmate's plans for residence, employment, or other situation in the community to determine whether the release plan is adequate. The plan may include, but is not limited to:
 - (a) employment;
 - (b) school, or other situation (e.g., retirement income);
 - (c) verifiable residence;
 - (d) a description of support services, program opportunities and treatment programs;
 - (e) prescribed medication;

- (f) recommended conditions of supervision for the purpose of reformation and public safety, including a recommendation for waiver of the condition of supervision that the inmate reside for the first six months in the county where the inmate resided at the time of the offense that resulted in imprisonment;
 - (g) level of supervision consistent with the prisoner's risk assessment classification; and
 - (h) a restitution and compensatory fine payment schedule.
- (2) The Board may defer parole release up to ninety (90) days from the parole release date when a plan is deficient or unverified in order to obtain verification or a satisfactory plan from the Department of Corrections.
 - (3) An inmate requesting an out-of-state parole waives the ninety (90) days limitation on deferral of release. Such waiver is for the purpose of an adequate parole plan in the accepting state.
 - (4) Except as provided in OAR 255-060-0014, the Board shall not defer release to post-prison supervision. The following procedure shall apply:
 - (a) If the release plan the Department of Corrections or designee of Local Supervisory Authority submits at least 60 days prior to release is deficient, the Board will return it to the submitting agency with the Board's recommended modifications.
 - (b) The Department or designee of Local Supervisory Authority shall submit a revised plan to the Board not less than ten days prior to the inmate's release.
 - (c) If the Board does not accept the revised plan, the Board shall determine the provisions of the final plan prior to the prisoner's release.
 - (5) One Board member shall review and approve the release plan.
 - (6) When an offender is released from the custody of the Department of Corrections or Local Supervisory Authority, after serving a sentence of incarceration as a result of a conviction for an offense listed in subsection (a) of this section, the Board or Local Supervisory Authority shall subject the inmate/offender to intensive supervision as defined in OAR 255-005, for the full period of the offender's parole or post-prison supervision if the inmate/offender was eighteen (18) years of age or older at the time the inmate/offender committed the offense and the Board or Local Supervisory Authority finds that the inmate/offender is a sexually violent dangerous offender, as defined in OAR 255-005..
 - (a) The crimes to which section (6) of this rule apply are:
 - (1) Rape in the First Degree and Sodomy in the First Degree if the victim was subject to forcible compulsion or under 12 years of old or was incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; and
 - (2) Unlawful Sexual Penetration in the First Degree; and
 - (3) An Attempt to commit a crime listed in this subsection.

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

Statutory Authority: ORS 144.096, 144.125, 144.185, Chapter 924 (1999 OR Laws)
History: (4/5/90; 5/1/91, temporary; 10/15/91; 1992 proposed change, 03/14/97, 9-22-99, **02-15-00**)

255-060-0009

**Residence Requirements for Certain Sex Offenders
Upon Release from Custody**

- (1) A sex offender classified as a sexually violent dangerous offender (ORS 137.765) or a predatory sex offender (ORS 181.765) may not reside near locations where children are the primary occupants or users.
- (2) This prohibition applies to permanent housing and not to transitional housing. For purposes of this rule, transitional housing means housing intended to be occupied by a sexually violent dangerous offender or a predatory sex offender for 45 days or less immediately after release from custody.
- (3) Exceptions to this prohibition may be made by the supervising parole/probation officer if it is determined that there is sufficient information to support this placement in terms of public safety and the rehabilitation of the offender. In making this determination, the following factors must be considered:
 - a. Other residential placement options pose a higher risk to the community, or
 - b. An enhanced support system that endorses supervision goals and community safety efforts is available at this residence, or
 - c. Enhanced supervision monitoring will be in place (e.g. electronic supervision, curfew, live-in-care provider, along with community notification), or
 - d. This residence includes 24-hour case management, or
 - e. The offender is being released from prison unexpectedly and more suitable housing will be arranged as soon as possible.

If any of these factors apply to the offender and the residence under review, an exception to the permanent residence prohibition may be allowed.

4. [If a supervising officer makes an exception under this rule, t]The supervising officer must inform the community affected by this decision about the reasons for the decision prior to the offender's release from custody.

Statutory Authority:

History: (Temp/Notice 12-15-01, 01-29-02, 04-15-02-Temp/Notice, **06-17-02**)

255-060-0010

Waiver of the 90-Day Limitation; Deferral for Serious Misconduct

History: (2/1/79; 5/20/80; 2/15/81; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

255-060-0011

Procedures for Predatory Sex Offender

- (1) For purposes of this rule, a person is a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use only the Sex Offender Risk Assessment Scale (Exhibit Q-I) and definitions (Exhibit Q-II) which have been approved by the Department of Corrections as required by ORS 181.585(2).
- (2) The procedures set forth in this rule only apply to inmates or offenders whose original order of supervision is issued by the Board on or after January 1, 1999.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale. The Board may make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores less than three or more starred (*) items and has no automatic override item(s) but scores at least -50 on the Sex Offender Risk Assessment Scale.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.
- (5) Inmates or offenders who score three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) A Board Member must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before a predatory sex offender finding is made.
 - (c) A Board Member must consider any written objections to the score on the Sex Offender Risk Assessment Score timely submitted by the inmate or offender before making a predatory sex offender finding. A Board Member shall make the predatory sex offender finding if there is evidence to support a score on the Sex Offender Risk Assessment Scale (Exhibit Q-I) of three or more starred (*) items or one or more automatic override item(s) using the definitions for the Sex Offender Risk Assessment Scale (Exhibit Q-I).

- (6) The Board may also make a predatory finding for inmates or offenders with a total score of at least -50 on the Sex Offender Risk Assessment Scale but fewer than three starred (*) items and no automatic override items.
- (a) Inmates or offenders referred to in section (6) of this rule are entitled to a Morrissey-type hearing prior to the Board making a predatory sex offender finding. This hearing must be held in accordance with the rules governing supervision violations as set forth in OAR 255-075-0031 through 255-075-0056. OAR 255-075-0065 does not apply to this rule.
- (b) Following the hearing, the hearing officer shall submit written findings to the Board. A Board Member must review these written findings prior to making a predatory sex offender finding. A Board Member shall make a predatory sex offender finding if the Board Member determines that the evidence presented at the hearing supports a score of at least -50 on the Sex Offender Risk Assessment Scale.
- (7) Inmates or offenders may elect to waive their right to submit written objections or waive their right participate in a hearing as set forth in this rule. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections or to participate in a hearing, the Board may make the predatory sex offender finding if the inmate's or offender's score on the Sex Offender Risk Assessment Scale is at least -50, or there are at least three starred (*) items or there is at least one automatic override item.
- (8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: Chapter 163 (1999 OR Laws)

History: (02-15-00, 03-12-02)

255-060-0012

Psychological or Psychiatric Reports

Sections 1-6 of this rule do not apply to inmates whose only crimes are committed on or after November 1, 1989.

- (1) Pursuant to ORS 144.125, the Board may order any available psychiatric/psychological report(s) from the Department of Corrections.
- (2) Pursuant to ORS 144.223, the Board may postpone the parole release date administratively and order a psychiatric/psychological evaluation of any inmate anytime prior to release.
- (3) After review of the psychiatric/psychological reports, and all other information or documents presented during the hearing the Board may defer parole release until a specified future date upon finding:
 - (a) the inmate has a present severe emotional disturbance, such as to constitute a danger to the health or safety of the community.
- (4) The Board shall not deny release on parole solely because of an inmate's present severe emotional disturbance. The Board must also find the condition constitutes a danger to the health or safety of the community.
- (5) The majority of the Board may defer a scheduled parole release date up to two years. A panel may defer a scheduled parole release date up to 18 months.
- (6) If the Board finds the inmate does not have a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, the Board shall affirm the parole release date and set parole conditions.
- (7) For purposes of the Board finding that an inmate/offender is a sexually violent dangerous offender pursuant to OAR 255-060-0008, the Board may order a psychological or psychiatric evaluation.

Statutory Authority: ORS 144.125, 144.223, Chapter 924 (1999 OR Laws)
History: (4/5/90; 1/13/92; 7/26/93, temporary; 10/29/93, 03/14/97,
11/09/98, **02-15-00**)

255-060-0013

Postponement Order

Any order regarding the postponement of parole release shall be sent to the inmate and shall set forth:

- (1) the facts and specific reasons for the decision and the votes of the Board members;
- (2) notice of the right to administrative appeal pursuant to the procedures of Division 80.

Statutory Authority: ORS 144.125, 144.135, 144.335
History: (4/5/90, 03/14/97)

255-060-0014

Detainers

03-12-2002

Parole Release & Exit Interview

- (1) When an inmate has a detainer from another jurisdiction, the Department of Corrections will release the inmate to the detainer and Oregon active community supervision shall begin upon the inmate's release into the community from the holding jurisdiction, if the Oregon sentences have not expired while the inmate is incarcerated in another jurisdiction.
- (2) If a parolee is released by the Department of Corrections to a detainer from another jurisdiction and is recommitted to the Oregon Department of Corrections, the previous parole order shall be voided.
- (3) When an inmate has a new Sentencing Guidelines commitment to the Department of Corrections' custody, the Oregon active community supervision shall begin upon the inmate's release into the community, if the sentences have not expired while the inmate is incarcerated.
- (4) For Sentencing Guidelines inmates released from a Department of Corrections Institution directly to a hold or sentence that results in the offender remaining in jail or prison for more than 30 days continuously, the post-prison supervision start date will be calculated from the date the offender is released from that hold or sentence. The following procedure shall apply:
 - (a) The Board will issue an order of supervision when the offender is released from a Department of Corrections institution to the hold or sentence. The Order shall state that post-prison supervision has started on the date the offender left the Department of Corrections institution.
 - (b) The supervising officer must inform the Board in writing of the date the offender was or will be released from the hold or sentence that kept the offender in jail or prison for more than 30 continuous days. If the supervising officer knows the exact length of the hold or sentence, the supervising officer shall inform the Board in writing of the date the offender will be released from the hold or sentence. The supervising officer shall submit a written, updated release planning form to include the new release date, any changes in conditions, and the offender's new address, if any.
 - (c) The Board shall issue an amended order calculating the start of post-prison supervision based on the date provided by the supervising officer pursuant to subsection (b) or this rule.

Statutory Authority: ORS 144.305, 144.310
History: (4/5/90; 10/9/92, 03/14/97, 11/09/98, 9-22-99)

255-060-0015
Instate Parole Release Interview Procedures

History: (2/1/79; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

255-060-0020
Out-of-State Parole Release Hearing Procedures

An inmate in the Department of Corrections' custody who is housed in an out-of-state facility may receive a teleconference exit interview in conformance with rule 255-060-0006.

Statutory Authority: ORS 144.098, 144.125
History: (2/1/79; 5/31/85; 5/19/88; 10/9/92, 03/14/97, 11/09/98)

255-060-0025

Parole Consideration for Prisoners in a Local Jail

History: (2/1/79; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

255-060-0030

Exit Interview Board Review Packet

The exit interview Board Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing, if any;
- (3) psychiatric and/or psychological evaluations (previous 6 months);
- (4) correspondence;
- (5) field parole analysis report, a pre-sentence investigation report or comparable report;
- (6) court orders;
- (7) misconduct reports; and
- (8) release plan.
- (9) Inmate's Notice of Rights and Board of Parole & Post-Prison Supervision Procedures.

Statutory Authority: ORS 144.096, 144.098, 144.185
History: (5/19/88; 4/5/90, 03/14/97)

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on June 17, 2002 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 06-17-02 Rulemaking Notice was published in the 05-01-02 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION

List each rule number separately, 000-000-0000

~~ADOPT:~~ 255-070-0001 (Exhibit J)
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 

FILED

JUN 17 2002

ARCHIVES DIVISION

REPEAL:
Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.
Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.102, 144.270
Stat. Auth.: ORS
None
Other Authority
ORS None
Stats. Implemented: ORS

RECEIVED
02 JUN 25 AM 9 17
BOARD OF PAROLE

RULE SUMMARY

The amendment is necessary to clarify the rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Michael R. Washington Date 06-17-02
Authorized Signer

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and	)	Statutory Authority,
Adoption of Rules of the Board of Parole	)	Statutes Implemented,
and Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon
)	

Statutory Authority: ORS 144.102, 144.270

Other Authority: None

Statutes Implemented: None

Need for the Temporary Rule(s): The amendment is necessary to clarify the rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Documents Relied Upon: None

Justification of Temporary Rule(s): To allow the board to immediately impose special conditions that pertain to sex offenders to allow better supervision of those offenders on parole and post-prison supervision.

Michael R. Washington 04-15-02

Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules - Board\Statement of Need & Justification.doc

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.102, 144.270

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The rule is necessary to clarify the rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Documents Relied Upon:

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

Authorized Signer and Date

04-15-02

DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions Not Limited by Exhibit J
255-070-0001

- (1) The Board may order parole conditions pursuant to OAR 255-070-0015.
- (2) The Board shall approve post-prison supervision conditions pursuant to OAR 213-11-001.
- (3) Conditions of parole and post-prison supervision are not limited to those shown in Exhibit J.

Statutory Authority: (ORS 144.096, 144.102, 144.270)

History: (5/31/85; 11/3/86, temporary; 4/1/87; 4/15/88, temporary; 5/19/88; 7/1/88; 10/18/88; 4/5/90; 4/30/92, temporary; 10/9/92; 10/15/93, 11/09/98, 9-15-99 Notice/Temp, 11-15-99, 05-22-00, 12/15/01-Notice/Temp, 01-29-02, 04-15-02 – Notice/Temp, **06-17-02**)

Offender Return to County of Residence
255-070-0003

- (1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the first six months in the county where the offender resided on the date of the last arrest for a crime resulting in imprisonment.
 - (2) (a) The Board or the Department of Corrections may establish the county of residency by obtaining the last address of record at the time of the offense from all of the available information in the following records:
 - (A) An Oregon driver's license, regardless of its validity;
 - (B) The Department of Revenue;
 - (C) The Department of State Police, Bureau of Criminal Identification;
 - (D) The Department of Human Resources; or
 - (E) The Department of Corrections.
 - (b) If the records do not disclose the county of residency, the Board or the Department shall find the offender resided in the county where she or he committed the crime.
 - (c) If the offender is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.
 - (d) In determining the offender's county of residence for purposes of this rule, the Board may not consider offenses committed by the offender while the offender was incarcerated in a Department of Corrections facility.
- (3) Upon motion of the Board, an offender, a victim, or a district attorney, the Board may waive the residency requirement after finding:

- (a) the offender provided proof of a job with no set ending date in a county other than the established county of residence;
- (b) the offender poses a significant danger to the victim;
- (c) the victim or victim's family poses a significant danger to the offender residing in the county of residence.
- (d) the offender has a spouse or biological or adoptive family, residing in other than the county of residence, who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole or post-prison supervision period;
- (e) the Board requires that the offender participate in a treatment program which is not available in the county of residence;
- (f) the offender desires release to another state or another state has a detainer; or
- (g) other good cause.

Statutory Authority: (ORS 144.270(5))

History: (11/1/89; 10/15/91; 10/9/92, 9-15-99 – NOTICE/TEMP, 11-15-99)

Parolee Placement in Community Corrections Centers; Standards; Limitations
255-070-0005

History: (2/1/79; 5/31/85, repealed)

Guidelines on General Condition Relating to "Best Interest" Return
255-070-0010

History: (2/1/79; 5/31/85; 11/3/86, temporary; 4/1/87; 5/19/88, repealed)

Establishing Conditions
255-070-0015

- (1) The Board may order an exit interview prior to the inmate's release date to review the inmate's case and set or approve conditions. See Division 60 for exit interview procedures.
- (2) If the Board decides to waive an exit interview, it shall specify the parole condition(s) prior to release and shall include the conditions on an order of supervision.
- (3) If the Board decides to waive an exit interview, it shall specify, in an order given to the offender upon release from incarceration, the post-prison supervision condition(s).
- (4) Once the Board establishes the conditions, the Board may amend the conditions and issue an amended order by:

- (a) considering a requested modification administratively, if the amendment is requested before the inmate's release on parole or post-prison supervision or if a condition is deleted after release; and
 - (b) citing to a hearing, if the amendment is requested after release and the offender does not consent in writing to the addition of conditions.
- (5) The Hearings Officer may amend the conditions, after a hearing, unless the offender waives the hearing. The Hearings Officer shall send notice of the amendment to the Board.
- (6) If the offender waives the right to a hearing and consents in writing to the addition of conditions, the supervising officer may amend the conditions. The officer shall send notice of the amendment to the Board.
- (7) If the Board does not override the Hearings Officer or supervising officer amended conditions, the Board shall issue an amended order of conditions, however, the condition is in effect from the date the supervising officer or Hearings Officer orders it.
- (8) The Board or the Hearings Officer shall conduct a hearing under section (4) and (5) of this rule applying rules governing violation hearings in Division 75.
- (9) When a supervisory authority requests amended conditions before the inmate is released on parole or post-prison supervision, the supervisory authority shall submit the request in writing or by teletype to the Board prior to the release date.
- (10) An offender may appeal the conditions of parole or post-prison supervision pursuant to the procedures of Division 80.

Statutory Authority: (ORS 144.096, 144.098, 144.102, 144.106, 144.125, 144.185, 144.270, 144.343)

History: (5/19/88, 4/5/90; 4/30/92, temporary, 10/9/92, 11/09/98)

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 Board.
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 illegally used controlled substances.
4. 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. Offender shall have no contact with minor females and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
4. Offender shall have no contact with minor males and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
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 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 frequenting, 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) 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.
 - (e) 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.
 - (f) 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.
 - (g) Unless otherwise indicated for the treatment required under subparagraph (E) 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.
 - (h) 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.
 - (i) 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.
 - (j) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.
 - (k) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.

2-4-03

Notice

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

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter
Number
Michael R. Washington 503-945-9009
Rules Coordinator Telephone
2575 Center Street NE, Ste 100 Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

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

AMEND: 255-075-0067; 255-075-0079

FILED
FEB 14 2003
ARCHIVES DIVISION
SECRETARY OF STATE

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.343, 163.105, 163.115
Stat. Auth.: ORS
OAR 213-005-0004 & OAR 213-011-0004
Other Authority
None
Stats. Implemented: ORS

RECEIVED
FEB 24 PM 3 36
OFFICE OF PAROLE & POST-PRISON SUPERVISION

RULE SUMMARY

The amendment of the proposed rules brings the rules into conformity with other board rules regarding the period for retention of the records by hearing officers or the agency designee. The amendment also brings the board's rules into conformity with the administrative rules for sentencing guidelines regarding the sanction and revocation authority for offenders convicted of murder and aggravated murder.

A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

April 3, 2003
Last Day for Public Comment

Michael R. Washington 02-14-03
Authorized Signer and Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.343, 163.105 & 163.115

Other Authority: OAR 213-005-0004 & OAR 213-011-0004

Statutes Implemented: ORS None

Need for the Rule(s): These rules are necessary to bring them into conformity with other board rules regarding the period for retention of the record by hearing officers or an agency designee. Also, these rules are necessary to bring the board's rules into conformity with the administrative rules for sentencing guidelines regarding the sanction and revocation authority for offenders convicted of murder and aggravated murder.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

02-14-03

Authorized Signer and Date

255-075-0067

**Final Action: Authority to Impose Administrative (Local) Sanctions,
Revoke Supervision or Modify Conditions of Supervision**

- 1) If an offender waives a hearing after receipt and review of the notice of rights, as provided in OAR 255-075-0005(6) a supervising officer may order administrative sanctions, including a local confinement sanction not exceeding thirty (30) days. The Local Supervisory Authority's designee may review the decision to order a local confinement sanction if the offender's underlying sentence was for 12 months or less. The Board may review the decision if the underlying sentence was more than 12 months.
- 2) After a hearing, or if an offender waives a hearing after receipt of the notice of rights, as provided in OAR 255-075-0005(6), a Hearings Officer or agency designee may order administrative sanctions, including a local confinement sanction not exceeding sixty (60) days. The Hearings Officer or agency designee shall send a copy of the final order and report to the Sanction Authority and, upon request, shall send the record of the hearing as described in OAR 255-075-0056. The Hearings Officer or agency designee shall retain the record for two (2) four (4) years.
- 3) After a hearing, or waiver, the Board may order administrative sanctions for offenders originally sentenced to more than 12 months, and a Local Supervisory Authority designee may order administrative sanctions for offenders originally sentenced to 12 months or less. The Board or a Local Supervisory Authority designee ordered local administrative confinement sanction may not exceed ninety (90) days.
- 4) The Board (for offenders originally sentenced to more than 12 months) or the Local Supervisory Authority designee (for offenders originally sentenced to 12 months or less) may override any sanction ordered by a supervising officer, agency designee or Hearings Officer.
- 5) Administrative Sanctions, including local confinement shall be applied in accordance with the Department of Corrections rules for structured, intermediate sanctions, OAR 291-58-010 et al., subject to jointly drafted revisions by the Department of Corrections and the Board.
- 6) If an administrative sanction is not sufficient to address the violation or to protect the public, the Sanction Authority may revoke supervision for a period(s) as set out in OAR 255-075-0079, or deny re-release for offenders on parole.
- 7) Conditions of supervision may be modified at any time by the Sanction Authority when necessary for the offender or public safety. If an offender objects to the modification, administrative review must be made within 45 days of the mailing date on the Board order or receipt of a written order by the Local Supervisory Authority.

Statutory Authority: ORS 144.106, 144.343

History: (4/30/92, temporary; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98,
02-14-03 - Notice)

255-075-0079

Guidelines for Re-release

- (1) For technical violation(s):
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-11-004.
- (2) For conduct constituting a crime:
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.
- (3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.
- (4) June 30, 1995 to present, [O]offenders sentenced to life imprisonment for murder or aggravated murder may serve further incarceration to the sentence expiration date.
- (5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.
- (7)
 - (a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.
 - (b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.
 - (c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.
- (8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.
- (9) Notwithstanding subsections 1-7 of this rule, the Board may choose to postpone re-release on parole pursuant to Divisions 50 and 60 of this chapter.

(10) Notwithstanding subsections 1-8 of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.

(11) Administrative sanctions do not count toward the revocation sanction limits.

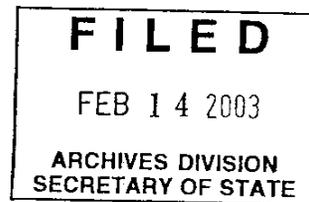
Statutory Authority: ORS 135, 055, 144.103, 144.107, 144.108, 144.120(4), 144.125, 144.232, 144.345, 144.346, 144.395, 161.735

History: (4/19/89, temporary; 11/1/89; 10/15/90, temporary; 1/16/91; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98, 01-25-00, **02-14-03 – Notice**)

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

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter
Number
Michael R. Washington 503-945-9009
Rules Coordinator Telephone
2575 Center Street NE, Ste 100 Salem, Oregon 97301-4621
Address

RULEMAKING ACTION



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

AMEND: 255-032-0005, 255-032-0010, 255-032-0015

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 163.095, 163.105, 163.115
Stat. Auth.: ORS
None
Other Authority
None
Stats. Implemented: ORS

RECEIVED
FEB 24 PM 5 30
BOARD OF PAROLE

RULE SUMMARY

The amendment of the proposed rules are needed to bring the dates within the rules into conformity with the effective date of House Bill 3586 passed into law by the 1999 Oregon Legislature.

A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

April 3, 2003
Last Day for Public Comment

Michael R. Washington 02-14-03
Authorized Signer and Date

The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption)
of Rules of the Board of Parole and)
Post-Prison Supervision)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon,
Statement of Fiscal Impact

Statutory Authority: ORS 163.095, 163.105, 163.115

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The amendment of these rules is necessary to bring the dates within the rules into conformity with the effective date of House Bill 3586 passed into law by the 1999 Oregon Legislature.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board, other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

02-14-03

Authorized Signer and Date

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; 1/15/99, 01-04-00,
02-14-03- Notice)

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, 1/15/99, 01-04-00, **02-14-03 - Notice**)

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] 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, 1/15/99, 01-04-00,
02-14-03- Notice)

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.

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 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, 02-06-01)

02-14-03 - Notice

Aggravated Murder

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)

5-13-03
perm

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 05-12-03 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 05-13-03 Rulemaking Notice was published in the 03-01-03 Oregon Bulletin,**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

ADOPT:

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

AMEND:

255-075-0067, 255-075-0079

REPEAL:

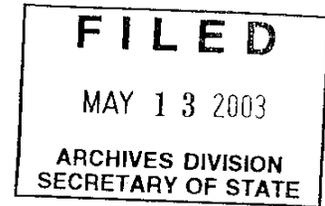
Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.343, 163105, 163.115
Stat. Auth.: ORS

OAR 213-005-0004 & OAR 213-011-0004
Other Authority

ORS None
Stats. Implemented: ORS



RECEIVED
03 MAY 15 PM 3 22
BOARD OF PAROLE

RULE SUMMARY

The amendment of the proposed rules brings the rules into conformity with other board rules regarding the period for retention of the records by hearing officers or the agency designee. The amendment also brings the board's rules into conformity with the administrative rules for sentencing guidelines regarding the sanction and revocation authority for offenders convicted of murder and aggravated murder.

Michael R. Washington

5-13-03

Authorized Signer

Date

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 144.343, 163.105 & 163.115

Other Authority: OAR 213-005-0004 & OAR 213-011-0004

Statutes Implemented: ORS None

Need for the Rule(s): These rules are necessary to bring them into conformity with other board rules regarding the period for retention of the record by hearing officers or an agency designee. Also, these rules are necessary to bring the board's rules into conformity with the administrative rules for sentencing guidelines regarding the sanction and revocation authority for offenders convicted of murder and aggravated murder.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

02-19-03

Authorized Signer and Date

255-075-0067

Final Action: Authority to Impose Administrative (Local) Sanctions,
Revoke Supervision or Modify Conditions of Supervision

- 1) If an offender waives a hearing after receipt and review of the notice of rights, as provided in OAR 255-075-0005(6) a supervising officer may order administrative sanctions, including a local confinement sanction not exceeding thirty (30) days. The Local Supervisory Authority's designee may review the decision to order a local confinement sanction if the offender's underlying sentence was for 12 months or less. The Board may review the decision if the underlying sentence was more than 12 months.
- 2) After a hearing, or if an offender waives a hearing after receipt of the notice of rights, as provided in OAR 255-075-0005(6), a Hearings Officer or agency designee may order administrative sanctions, including a local confinement sanction not exceeding sixty (60) days. The Hearings Officer or agency designee shall send a copy of the final order and report to the Sanction Authority and, upon request, shall send the record of the hearing as described in OAR 255-075-0056. The Hearings Officer or agency designee shall retain the record for two (2) four (4) years.
- 3) After a hearing, or waiver, the Board may order administrative sanctions for offenders originally sentenced to more than 12 months, and a Local Supervisory Authority designee may order administrative sanctions for offenders originally sentenced to 12 months or less. The Board or a Local Supervisory Authority designee ordered local administrative confinement sanction may not exceed ninety (90) days.
- 4) The Board (for offenders originally sentenced to more than 12 months) or the Local Supervisory Authority designee (for offenders originally sentenced to 12 months or less) may override any sanction ordered by a supervising officer, agency designee or Hearings Officer.
- 5) Administrative Sanctions, including local confinement shall be applied in accordance with the Department of Corrections rules for structured, intermediate sanctions, OAR 291-58-010 et al., subject to jointly drafted revisions by the Department of Corrections and the Board.
- 6) If an administrative sanction is not sufficient to address the violation or to protect the public, the Sanction Authority may revoke supervision for a period(s) as set out in OAR 255-075-0079, or deny re-release for offenders on parole.
- 7) Conditions of supervision may be modified at any time by the Sanction Authority when necessary for the offender or public safety. If an offender objects to the modification, administrative review must be made within 45 days of the mailing date on the Board order or receipt of a written order by the Local Supervisory Authority.

Statutory Authority: ORS 144.106, 144.343
History: (4/30/92, temporary; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98,
5-13-03)

255-075-0079

Guidelines for Re-release

- (1) For technical violation(s):
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-11-004.
- (2) For conduct constituting a crime:
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.
- (3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.
- (4) Offenders sentenced to life imprisonment for murder committed on or after 06-30-95 may serve further incarceration to the sentence expiration date. [or] Offenders sentenced to life imprisonment for aggravated murder may serve further incarceration to the sentence expiration date.
- (5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.
- (7)
 - (a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.
 - (b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.
 - (c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.
- (8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.

- (9) Notwithstanding subsections 1-7 of this rule, the Board may choose to postpone re-release on parole pursuant to Divisions 50 and 60 of this chapter.
- (10) Notwithstanding subsections 1-8 of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.
- (11) Administrative sanctions do not count toward the revocation sanction limits.

Statutory Authority: ORS 135, 055, 144.103, 144.107, 144.108, 144.120(4), 144.125, 144.232, 144.345, 144.346, 144.395, 161.735

History: (4/19/89, temporary; 11/1/89; 10/15/90, temporary; 1/16/91; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98, 01-25-00, **05-13-03**)

PERMANENT ADMINISTRATIVE RULES

certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 05-12-03 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 05-13-03 Rulemaking Notice was published in the 03-01-03 Oregon Bulletin.**
Date upon filing or later Month and Year

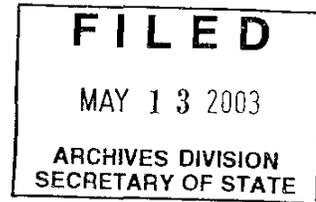
RULEMAKING ACTION
List each rule number separately, 000-000-0000

ADOPT:

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

AMEND:

255-032-0005, 255-032-0010, 255-032-0015



RECEIVED
03 MAY 15 PM 3 22
BOARD OF PAROLE

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 163.095, 163.105, 163.115
Stat. Auth.: ORS
None
Other Authority
ORS None
Stats. Implemented: ORS

RULE SUMMARY

The amendment of the proposed rules are needed to bring the dates within the rules into conformity with the effective date of House Bill 3586 passed into law by the 1999 Oregon Legislature.

Michael R. Washington

5-13-03

Authorized Signer

Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 163.095, 163.105, 163.115

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The amendment of these rules is necessary to bring the dates within the rules into conformity with the effective date of House Bill 3586 passed into law by the 1999 Oregon Legislature.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board, other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

02-14-03

Authorized Signer and Date

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)

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)

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: (5/18/99)

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] 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**)

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;

~~02-14-03~~ Notice,

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; 5/18/99)

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)

6-13-03

Temp

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 04-15-02 by the

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter Number

Michael R. Washington 503-945-9009
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, Oregon 97301-4621
Address

to become effective 06-13-03 through 12-09-2003
Date upon filing or later A maximum of 180 days including the effective date

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

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

AMEND: 255-070-0001 (Exhibit J)

SUSPEND:

ORS 144.102, 144.270
Stat. Auth: ORS

None
Other Authority

None
Stats. Implemented: ORS

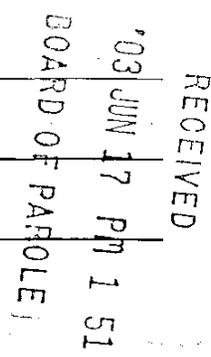
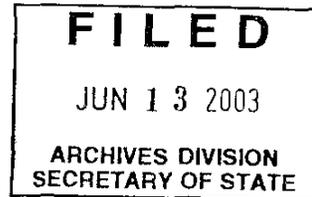
RULE SUMMARY

The amendment is necessary to clarify rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Michael R. Washington
Authorized Signer

06-13-03
Date

*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.



Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and)
Adoption of Rules of the Board of Parole)
and Post-Prison Supervision)

) Statutory Authority,
) Statutes Implemented,
) Statement of Need,
) Principal Documents Relied Upon
)

Statutory Authority: ORS 144.102, 144.270

Other Authority: None

Statutes Implemented: None

Need for the Temporary Rule(s): The amendment is necessary to clarify the rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Documents Relied Upon: None

Justification of Temporary Rule(s): To allow the board to immediately impose special conditions that pertain to sex offenders to allow better supervision of those offenders on parole and post-prison supervision.

Michael R. Washington 06-13-03

Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules - Board\Statement of Need & Justification.doc

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

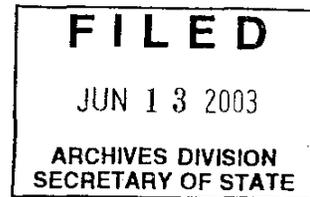
Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter
Number
Michael R. Washington 503-945-9009
Rules Coordinator Telephone
2575 Center Street NE, Ste 100 Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

ADOPT:

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

AMEND: 255-070-0001 (Exhibit J)



REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.102, 144.270
Stat. Auth.: ORS
None
Other Authority
None
Stats. Implemented: ORS

RULE SUMMARY

The amendment is necessary to clarify rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

08-01-2003
Last Day for Public Comment

Michael R. Washington 06-13-03
Authorized Signer and Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption
of Rules of the Board of Parole and
Post-Prison Supervision

)
)
)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon,
Statement of Fiscal Impact

Statutory Authority: ORS 144.102, 144.270

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The rule is necessary to clarify the rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Documents Relied Upon:

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

Authorized Signer and Date

06-13-03

DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions Not Limited by Exhibit J
255-070-0001

- (1) The Board may order parole conditions pursuant to OAR 255-070-0015.
- (2) The Board shall approve post-prison supervision conditions pursuant to OAR 213-11-001.
- (3) Conditions of parole and post-prison supervision are not limited to those shown in Exhibit J.

Statutory Authority: (ORS 144.096, 144.102, 144.270)

History: (5/31/85; 11/3/86, temporary; 4/1/87; 4/15/88, temporary; 5/19/88;7/1/88;
10/18/88; 4/5/90; 4/30/92, temporary; 10/9/92; 10/15/93, 11/09/98,
9-15-99 Notice/Temp, 11-15-99, 05-22-00, 12/15/01-Notice/Temp,
01-29-02, 04-15-02 – Notice/Temp, 06-17-02, **06-13-03 – NOTICE/TEMP**)

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 Board.
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 illegally used controlled substances.
4. 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. Offender shall have no contact with minor females and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
4. Offender shall have no contact with minor males and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
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 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 frequenting, 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) 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.
 - (e) 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.
 - (f) 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.
 - (g) Unless otherwise indicated for the treatment required under subparagraph (E) 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.
 - (h) 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.
 - (i) 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.
 - (j) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.
 - (k) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.

6-13

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 04/15/02 by the

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter Number

Michael R. Washington 503-945-9009
Rules Coordinator Telephone

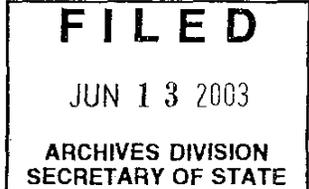
2575 Center Street NE, Suite 100 Salem, Oregon 97301-4621
Address

to become effective 06-13-2003 through 12-09-2003
Date upon filing or later A maximum of 180 days including the effective date

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

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

AMEND: 255-060-0009



SUSPEND:

ORS 144.644
Stat. Auth: ORS

NONE
Other Authority

NONE
Stats. Implemented: ORS

RULE SUMMARY

The amendment is necessary so that the rule would fall within the intent and scope of the enabling statute.

Michael R. Washington 06-13-03
Authorized Signer Date

*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.

RECEIVED
'03 JUN 17 PM 1 51
BOARD OF PAROLE

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and	)	Statutory Authority,
Adoption of Rules of the Board of Parole	)	Statutes Implemented,
and Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon
)	

Statutory Authority: **ORS 144.644**

Other Authority: None

Statutes Implemented: None

Need for the Temporary Rule(s): The rule is necessary to allow the board to impose the authority granted by the statute which was effective January 1, 2002.

Documents Relied Upon: None

Justification of Temporary Rule(s): The rule was enacted as a result of the statute – ORS 144.644 – being implemented and made effective January 1, 2002.

Michael R. Washington 06-13-03

Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules – Board\Statement of Need & Justification.doc

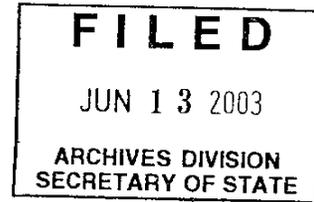
Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter
Number
Michael R. Washington 503-945-9009
Rules Coordinator Telephone
2575 Center Street NE, Ste 100 Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

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

AMEND: 255-060-0009, 255-060-0011 (Exhibit Q-1)



REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.644, 181.585
Stat. Auth.: ORS
None
Other Authority
None
Stats. Implemented: ORS

RULE SUMMARY

These amendments are necessary in order that the rule be consistent with the sex offender risk assessment scale approved by the Department of Corrections. Also, in order that the rule fall within the intent and scope of the enabling statute.

A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

08-01-03 Last Day for Public Comment
Michael R. Washington 06-13-03 Authorized Signer and Date

The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption
of Rules of the Board of Parole and
Post-Prison Supervision

)
)
)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon,
Statement of Fiscal Impact

Statutory Authority: **ORS 144.644, 181.585**

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): These amendments are necessary in order that the rule be consistent with the sex offender risk assessment scale approved by the Department of Corrections. Also, in order that the board be allowed to impose the authority granted by the statute which is in effect 01-01-2002.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect these amendments will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted these amendments and changes during a business meeting and due to the nature of these amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

06-13-03

Authorized Signer and Date

255-060-0009

Residence Requirements for Certain Sex Offenders
Upon Release from Custody

- (1) A sex offender classified as a sexually violent dangerous offender (ORS 137.765) or a predatory sex offender (ORS 181.765) may not reside near locations where children are the primary occupants or users.
- (2) This prohibition applies to permanent housing and not to transitional housing. For purposes of this rule, transitional housing means housing intended to be occupied by a sexually violent dangerous offender or a predatory sex offender for 45 days or less immediately after release from custody.
- (3) Exceptions to this prohibition may be made by the supervising parole/probation officer if it is determined that there is sufficient information to support this placement in terms of public safety and the rehabilitation of the offender. In making this determination, the following factors must be considered:
 - a. Other residential placement options pose a higher risk to the community, or
 - b. An enhanced support system that endorses supervision goals and community safety efforts is available at this residence, or
 - c. Enhanced supervision monitoring will be in place (e.g. electronic supervision, curfew, live-in-care provider, along with community notification), or
 - d. This residence includes 24-hour case management, or
 - e. The offender is being released from prison unexpectedly and more suitable housing will be arranged as soon as possible.

If any of these factors apply to the offender and the residence under review, an exception to the permanent residence prohibition may be allowed.

4. [If a supervising officer makes an exception under this rule, t]The supervising officer must inform the community affected by this decision about the reasons for the decision prior to the offender's release from custody.

Statutory Authority:

History: (Temp/Notice 12-15-01, 01-29-02, 04-15-02-Temp/Notice, 06-17-02,
06-13-03 – NOTICE/TEM P)

255-060-0011

Procedures for Predatory Sex Offender

- (1) For purposes of this rule, a person is a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use only the Sex Offender Risk Assessment Scale (Exhibit Q-I) and definitions (Exhibit Q-II) which have been approved by the Department of Corrections as required by ORS 181.585(2).
- (2) The procedures set forth in this rule only apply to inmates or offenders whose original order of supervision is issued by the Board on or after January 1, 1999.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale. The Board may make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores less than three or more starred (*) items and has no automatic override item(s) but scores at least -50 on the Sex Offender Risk Assessment Scale.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.
- (5) Inmates or offenders who score three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) A Board Member must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before a predatory sex offender finding is made.
 - (c) A Board Member must consider any written objections to the score on the Sex Offender Risk Assessment Score timely submitted by the inmate or offender before making a predatory sex offender finding. A Board Member shall make the predatory sex offender finding if there is evidence to support a score on the Sex Offender Risk Assessment Scale (Exhibit Q-I) of three or more starred (*) items or one or more automatic override item(s) using the definitions for the Sex Offender Risk Assessment Scale (Exhibit Q-I).
- (6) The Board may also make a predatory finding for inmates or offenders with a total score of at least -50 on the Sex Offender Risk Assessment Scale but fewer than three starred (*) items and no automatic override items.

- (a) Inmates or offenders referred to in section (6) of this rule are entitled to a Morrissey-type hearing prior to the Board making a predatory sex offender finding. This hearing must be held in accordance with the rules governing supervision violations as set forth in OAR 255-075-0031 through 255-075-0056. OAR 255-075-0065 does not apply to this rule.
 - (b) Following the hearing, the hearing officer shall submit written findings to the Board. A Board Member must review these written findings prior to making a predatory sex offender finding. A Board Member shall make a predatory sex offender finding if the Board Member determines that the evidence presented at the hearing supports a score of at least -5 0 on the Sex Offender Risk Assessment Scale.
- (7) Inmates or offenders may elect to waive their right to submit written objections or waive their right participate in a hearing as set forth in this rule. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections or to participate in a hearing, the Board may make the predatory sex offender finding if the inmate's or offender's score on the Sex Offender Risk Assessment Scale is at least -50, or there are at least three starred (*) items or there is at least one automatic override item.
- (8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: Chapter 163 (1999 OR Laws)
History: (02-15-00, 03-12-02 – 06/13/03 - NOTICE)

EXHIBIT Q-1

RISK ASSESSMENT SCALE

<u>CATEGORY</u>	<u>SCORE</u>
Negative Scale (increase risk)	
*History of sexual crimes	<u>10-</u>
*History of sex offense convictions	<u>10-</u>
*Stranger to victim	<u>10-</u>
*Multiple victims – On current sex offense conviction	<u>10-</u>
*Use of weapons or threats	<u>10-</u>
Victim under 14 years of age or mentally/physically disabled	<u>10-</u>
Not in "treatment"	<u>10-</u>
Shows no empathy for victim(s)	<u>10-</u>
Not progressing in treatment	<u>10-</u>
New crime during supervision	<u>10-</u>
[*]Technical violation related to sexual assault cycle	<u>10-</u>
Multiple paraphilia	<u>10-</u>
Impulsive or compulsive behavior	<u>10-</u>
Primary sexual preference is children	<u>10-</u>
Community instability	<u>10-</u>
*Prior non-sexual criminal history	<u>10-</u>
Substance abuse involved in sexual offending behavior	<u>10-</u>
Substance abuse problems	<u>10-</u>
Anger problems	<u>5-</u>
Technical violation during supervision	<u>5-</u>
Use of sexually arousing materials	<u>5-</u>
Mental status inhibits responsible functioning	<u>5-</u>
No support system or support system tolerates/supports denial	<u>5-</u>
Positive Scale (reduce risk)	
Takes full responsibility for offending behavior	<u>10</u>
Clear identification and understanding of sexual assault cycle	<u>10</u>
Passes disclosure polygraph	<u>10</u>
Clarification to victims completed	<u>10</u>
Successful completion of approved treatment program	<u>10</u>
Passed compliance (maintenance) polygraph	<u>10</u>
Completed substance abuse treatment and maintains abstinence	<u>10</u>
Demonstrated understanding of thinking errors	<u>5</u>
Support system reinforces compliance and treatment	<u>5</u>
Special conditions compliance	<u>5</u>
Automatic Override to Level 1	
*Forcible Rape	<u>X</u>
*Use of weapon during commission of offense	<u>X</u>
*Men who molest boys (multiple male victims)	<u>X</u>

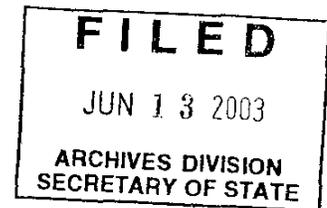
Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter
Number
Michael R. Washington 503-945-9009
Rules Coordinator Telephone
2575 Center Street NE, Ste 100 Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

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

AMEND: 255-075-0056



REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.343
Stat. Auth.: ORS
None
Other Authority
None
Stats. Implemented: ORS

RECEIVED
'03 JUN 17 PM 1 51
BOARD OF PAROLE

RULE SUMMARY

The amendment of the proposed rule allows for retention of the tape recording of the Advice of Rights and Morrissey hearing for four years instead of two years. This is necessary to preserve the record for purposes of protecting the rights of the offender and the board in the appellate process.

A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

08-01-2003
Last Day for Public Comment

Michael R. Washington 06-13-03
Authorized Signer and Date

The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption
of Rules of the Board of Parole and
Post-Prison Supervision

)
)
)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon,
Statement of Fiscal Impact

Statutory Authority: ORS 144.343

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The amendment is necessary to extend the period of time a hearings officer retains tape recordings of the Advice of Rights and Morrissey hearing from two years to four years. The additional retention period is needed to adequately preserve and protect the rights of the offender and the board in the appellate process.

Documents Relied Upon: None

Fiscal and Economic Impact: There may be some effect on other agencies, local government, or identified public. There will be a minor fiscal and economic impact on the board.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

06-13-03

Authorized Signer and Date

255-075-0056
Hearings Record

- (1) The hearings record shall include:
 - (a) a Hearings Report Summary;
 - (b) a written statement of alleged violations;
 - (c) supporting materials, including documentary evidence admitted;
 - (d) a signed Notice of Rights;
 - (e) the Order of Parole or Post-Prison Supervision;
 - (f) a notice of time and place of hearing;
 - (g) a tape recording of the advice of rights and the hearing;
 - (h) the supervising officer's report, including recommended dispositions; [and]
 - (i) the history of supervision, local sanctions and modifications; and
 - (j) if any, the written waiver of the offender's right to three working days notice of the hearing.

- (2) The Hearings Officer shall retain the tape recording used in subsection (1)(g) of this rule for ~~(2)4~~ [two] four years.

Statutory Authority: ORS 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89;
10/9/92, temporary 11/14/97; 05/11/98, 06-17-02,
06-13-03 – TEMP/NOT ICE)

10-10-03

PERM

Notice

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 09-22-03 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 10-10-03 Rulemaking Notice was published in the 07-01-03 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000

ADOPT:

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

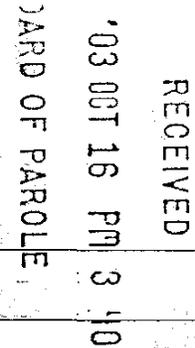
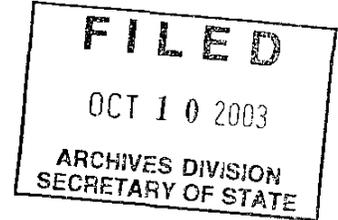
AMEND:

255-060-0009, 255-060-0011 (Exhibit Q-1)

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.



ORS 144.644, 181.585
Stat. Auth.: ORS

None
Other Authority

ORS None
Stats. Implemented: ORS

RULE SUMMARY

These amendments are necessary in order that the rule be consistent with the sex offender risk assessment scale approved by the Department of Corrections. Also, in order that the rule fall within the intent and scope of the enabling statute.

Michael R. Washington

10-10-03

Authorized Signer

Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and	)	Statutory Authority,
Adoption of Rules of the Board of Parole	)	Statutes Implemented,
and Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon
)	

Statutory Authority: **ORS 144.644**

Other Authority: None

Statutes Implemented: None

Need for the Temporary Rule(s): The rule is necessary to allow the board to impose the authority granted by the statute which was effective January 1, 2002.

Documents Relied Upon: None

Justification of Temporary Rule(s): The rule was enacted as a result of the statute – ORS 144.644 – being implemented and made effective January 1, 2002.

Michael R. Washington 06-13-03
Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules – Board\Statement of Need & Justification.doc

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption)
of Rules of the Board of Parole and)
Post-Prison Supervision)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon,
Statement of Fiscal Impact

Statutory Authority: **ORS 144.644, 181.585**

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): These amendments are necessary in order that the rule be consistent with the sex offender risk assessment scale approved by the Department of Corrections. Also, in order that the board be allowed to impose the authority granted by the statute which is in effect 01-01-2002.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect these amendments will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted these amendments and changes during a business meeting and due to the nature of these amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

06-13-03

Authorized Signer and Date

DIVISION 60

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

255-060-0006

Exit Interviews: Parole Plan; and Psychiatric Records

- (1) At any time prior to an inmate's scheduled release to post-prison supervision or parole, the Board on its own initiative or at the request of the Department of Corrections, may conduct an exit interview to review the inmate's:
 - (a) release plan;
 - (b) victim's statements, if any;
 - (c) PSR or similar report;
 - (d) psychiatric/psychological reports, if any;
 - (e) conduct while in confinement; and
 - (f) any other information relevant to the inmate's reintegration into the community that the inmate, the inmate's attorney, the Department of Corrections or any other person submits.
- (2) The procedures for records, disclosure and notice outlined in Division 15 and 30 shall govern exit interviews.
- (3) A panel shall conduct the interview and the Board shall make decisions pursuant to OAR 255-030-0015.

Statutory Authority: ORS 144.098, 144.125, 144.800

History: (2/1/79; 5/20/80; 2/15/81; 11/4/81, temporary; 5/19/82; 5/31/85; 5/19/88; 11/1/89; 4/5/90; 5/1/91, temporary; 10/15/91; 2/12/92, temporary; 4/15/92; 10/9/92, 03/14/97 11/09/98)

255-060-0008

Release Plans

- (1) At any time prior to release on parole or post-prison supervision, the Board shall examine the inmate's plans for residence, employment, or other situation in the community to determine whether the release plan is adequate. The plan may include, but is not limited to:
 - (a) employment;
 - (b) school, or other situation (e.g., retirement income);
 - (c) verifiable residence;
 - (d) a description of support services, program opportunities and treatment programs;
 - (e) prescribed medication;

10-10-03

Parole Release & Exit Interview

- (f) recommended conditions of supervision for the purpose of reformation and public safety, including a recommendation for waiver of the condition of supervision that the inmate reside for the first six months in the county where the inmate resided at the time of the offense that resulted in imprisonment;
 - (g) level of supervision consistent with the prisoner's risk assessment classification; and
 - (h) a restitution and compensatory fine payment schedule.
- (2) The Board may defer parole release up to ninety (90) days from the parole release date when a plan is deficient or unverified in order to obtain verification or a satisfactory plan from the Department of Corrections.
 - (3) An inmate requesting an out-of-state parole waives the ninety (90) days limitation on deferral of release. Such waiver is for the purpose of an adequate parole plan in the accepting state.
 - (4) Except as provided in OAR 255-060-0014, the Board shall not defer release to post-prison supervision. The following procedure shall apply:
 - (a) If the release plan the Department of Corrections or designee of Local Supervisory Authority submits at least 60 days prior to release is deficient, the Board will return it to the submitting agency with the Board's recommended modifications.
 - (b) The Department or designee of Local Supervisory Authority shall submit a revised plan to the Board not less than ten days prior to the inmate's release.
 - (c) If the Board does not accept the revised plan, the Board shall determine the provisions of the final plan prior to the prisoner's release.
 - (5) One Board member shall review and approve the release plan.
 - (6) When an offender is released from the custody of the Department of Corrections or Local Supervisory Authority, after serving a sentence of incarceration as a result of a conviction for an offense listed in subsection (a) of this section, the Board or Local Supervisory Authority shall subject the inmate/offender to intensive supervision as defined in OAR 255-005, for the full period of the offender's parole or post-prison supervision if the inmate/offender was eighteen (18) years of age or older at the time the inmate/offender committed the offense and the Board or Local Supervisory Authority finds that the inmate/offender is a sexually violent dangerous offender, as defined in OAR 255-005..
 - (a) The crimes to which section (6) of this rule apply are:
 - (1) Rape in the First Degree and Sodomy in the First Degree if the victim was subject to forcible compulsion or under 12 years of old or was incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; and
 - (2) Unlawful Sexual Penetration in the First Degree; and
 - (3) An Attempt to commit a crime listed in this subsection.

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

Statutory Authority: ORS 144.096, 144.125, 144.185, Chapter 924 (1999 OR Laws)
History: (4/5/90; 5/1/91, temporary; 10/15/91; 1992 proposed change, 03/14/97, 9-22-99, 02-15-00)

255-060-0009

**Residence Requirements for Certain Sex Offenders
Upon Release from Custody**

- (1) A sex offender classified as a sexually violent dangerous offender (ORS 137.765) or a predatory sex offender (ORS 181.765) may not reside near locations where children are the primary occupants or users.
- (2) This prohibition applies to permanent housing and not to transitional housing. For purposes of this rule, transitional housing means housing intended to be occupied by a sexually violent dangerous offender or a predatory sex offender for 45 days or less immediately after release from custody.
- (3) Exceptions to this prohibition may be made by the supervising parole/probation officer if it is determined that there is sufficient information to support this placement in terms of public safety and the rehabilitation of the offender. In making this determination, the following factors must be considered:
 - a. Other residential placement options pose a higher risk to the community, or
 - b. An enhanced support system that endorses supervision goals and community safety efforts is available at this residence, or
 - c. Enhanced supervision monitoring will be in place (e.g. electronic supervision, curfew, live-in-care provider, along with community notification), or
 - d. This residence includes 24-hour case management, or
 - e. The offender is being released from prison unexpectedly and more suitable housing will be arranged as soon as possible.

If any of these factors apply to the offender and the residence under review, an exception to the permanent residence prohibition may be allowed.

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

Statutory Authority:

History: (Temp/Notice 12-15-01, 01-29-02, 04-15-02-Temp/Notice, 06-17-02, 10-10-03)

255-060-0010

Waiver of the 90-Day Limitation; Deferral for Serious Misconduct

History: (2/1/79; 5/20/80; 2/15/81; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

255-060-0011

Procedures for Predatory Sex Offender

- (1) For purposes of this rule, a person is a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use only the Sex Offender Risk Assessment Scale (Exhibit Q-I) and definitions (Exhibit Q-II) which have been approved by the Department of Corrections as required by ORS 181.585(2).
- (2) The procedures set forth in this rule only apply to inmates or offenders whose original order of supervision is issued by the Board on or after January 1, 1999.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale. The Board may make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores less than three or more starred (*) items and has no automatic override item(s) but scores at least -50 on the Sex Offender Risk Assessment Scale.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.
- (5) Inmates or offenders who score three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) A Board Member must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before a predatory sex offender finding is made.
 - (c) A Board Member must consider any written objections to the score on the Sex Offender Risk Assessment Score timely submitted by the inmate or offender before making a predatory sex offender finding. A Board Member shall make the predatory sex offender finding if there is evidence to support a score on the Sex Offender Risk Assessment Scale (Exhibit Q-I) of three or more starred (*) items or one or more automatic override item(s) using the definitions for the Sex Offender Risk Assessment Scale (Exhibit Q-I).

- (6) The Board may also make a predatory finding for inmates or offenders with a total score of at least -50 on the Sex Offender Risk Assessment Scale but fewer than three starred (*) items and no automatic override items.
- (a) Inmates or offenders referred to in section (6) of this rule are entitled to a Morrissey-type hearing prior to the Board making a predatory sex offender finding. This hearing must be held in accordance with the rules governing supervision violations as set forth in OAR 255-075-0031 through 255-075-0056. OAR 255-075-0065 does not apply to this rule.
- (b) Following the hearing, the hearing officer shall submit written findings to the Board. A Board Member must review these written findings prior to making a predatory sex offender finding. A Board Member shall make a predatory sex offender finding if the Board Member determines that the evidence presented at the hearing supports a score of at least -50 on the Sex Offender Risk Assessment Scale.
- (7) Inmates or offenders may elect to waive their right to submit written objections or waive their right participate in a hearing as set forth in this rule. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections or to participate in a hearing, the Board may make the predatory sex offender finding if the inmate's or offender's score on the Sex Offender Risk Assessment Scale is at least -50, or there are at least three starred (*) items or there is at least one automatic override item.
- (8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: Chapter 163 (1999 OR Laws)
History: (02-15-00, 03-12-02, 10-10-03)

255-060-0012

Psychological or Psychiatric Reports

Sections 1-6 of this rule do not apply to inmates whose only crimes are committed on or after November 1, 1989.

- (1) Pursuant to ORS 144.125, the Board may order any available psychiatric/psychological report(s) from the Department of Corrections.
- (2) Pursuant to ORS 144.223, the Board may postpone the parole release date administratively and order a psychiatric/psychological evaluation of any inmate anytime prior to release.
- (3) After review of the psychiatric/psychological reports, and all other information or documents presented during the hearing the Board may defer parole release until a specified future date upon finding:
 - (a) the inmate has a present severe emotional disturbance, such as to constitute a danger to the health or safety of the community.
- (4) The Board shall not deny release on parole solely because of an inmate's present severe emotional disturbance. The Board must also find the condition constitutes a danger to the health or safety of the community.
- (5) The majority of the Board may defer a scheduled parole release date up to two years. A panel may defer a scheduled parole release date up to 18 months.
- (6) If the Board finds the inmate does not have a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, the Board shall affirm the parole release date and set parole conditions.
- (7) For purposes of the Board finding that an inmate/offender is a sexually violent dangerous offender pursuant to OAR 255-060-0008, the Board may order a psychological or psychiatric evaluation.

Statutory Authority: ORS 144.125, 144.223, Chapter 924 (1999 OR Laws)
History: (4/5/90; 1/13/92; 7/26/93, temporary; 10/29/93, 03/14/97, 11/09/98, 02-15-00)

255-060-0013

Postponement Order

Any order regarding the postponement of parole release shall be sent to the inmate and shall set forth:

- (1) the facts and specific reasons for the decision and the votes of the Board members;
- (2) notice of the right to administrative appeal pursuant to the procedures of Division 80.

Statutory Authority: ORS 144.125, 144.135, 144.335
History: (4/5/90, 03/14/97)

255-060-0014

Detainers

- (1) When an inmate has a detainer from another jurisdiction, the Department of Corrections will release the inmate to the detainer and Oregon active community supervision shall begin upon the inmate's release into the community from the holding jurisdiction, if the Oregon sentences have not expired while the inmate is incarcerated in another jurisdiction.
- (2) If a parolee is released by the Department of Corrections to a detainer from another jurisdiction and is recommitted to the Oregon Department of Corrections, the previous parole order shall be voided.
- (3) When an inmate has a new Sentencing Guidelines commitment to the Department of Corrections' custody, the Oregon active community supervision shall begin upon the inmate's release into the community, if the sentences have not expired while the inmate is incarcerated.
- (4) For Sentencing Guidelines inmates released from a Department of Corrections Institution directly to a hold or sentence that results in the offender remaining in jail or prison for more than 30 days continuously, the post-prison supervision start date will be calculated from the date the offender is released from that hold or sentence. The following procedure shall apply:
 - (a) The Board will issue an order of supervision when the offender is released from a Department of Corrections institution to the hold or sentence. The Order shall state that post-prison supervision has started on the date the offender left the Department of Corrections institution.
 - (b) The supervising officer must inform the Board in writing of the date the offender was or will be released from the hold or sentence that kept the offender in jail or prison for more than 30 continuous days. If the supervising officer knows the exact length of the hold or sentence, the supervising officer shall inform the Board in writing of the date the offender will be released from the hold or sentence. The supervising officer shall submit a written, updated release planning form to include the new release date, any changes in conditions, and the offender's new address, if any.
 - (c) The Board shall issue an amended order calculating the start of post-prison supervision based on the date provided by the supervising officer pursuant to subsection (b) or this rule.

Statutory Authority: ORS 144.305, 144.310

History: (4/5/90; 10/9/92, 03/14/97, 11/09/98, 9-22-99)

255-060-0015

Instate Parole Release Interview Procedures

History: (2/1/79; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

255-060-0020

Out-of-State Parole Release Hearing Procedures

An inmate in the Department of Corrections' custody who is housed in an out-of-state facility may receive a teleconference exit interview in conformance with rule 255-060-0006.

Statutory Authority: ORS 144.098, 144.125

History: (2/1/79; 5/31/85; 5/19/88; 10/9/92, 03/14/97, 11/09/98)

255-060-0025

Parole Consideration for Prisoners in a Local Jail

History: (2/1/79; 11/4/81, temporary; 5/19/82; 5/31/85, repealed)

255-060-0030

Exit Interview Board Review Packet

The exit interview Board Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing, if any;
- (3) psychiatric and/or psychological evaluations (previous 6 months);
- (4) correspondence;
- (5) field parole analysis report, a pre-sentence investigation report or comparable report;
- (6) court orders;
- (7) misconduct reports; and
- (8) release plan.
- (9) Inmate's Notice of Rights and Board of Parole & Post-Prison Supervision Procedures.

Statutory Authority: ORS 144.096, 144.098, 144.185

History: (5/19/88; 4/5/90, 03/14/97)

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 09-22-03 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 10-10-03 Rulemaking Notice was published in the 07-01-03 Oregon Bulletin.**
Date upon filing or later Month and Year

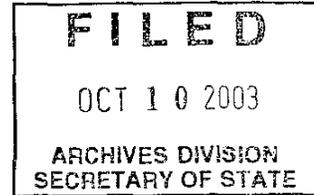
RULEMAKING ACTION
List each rule number separately, 000-000-0000

ADOPT:

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

AMEND:

255-070-0001 (Exhibit J)



REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.102, 144.270
Stat. Auth.: ORS

None
Other Authority

ORS None
Stats. Implemented: ORS

RULE SUMMARY

The amendment is necessary to clarify rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Michael R. Washington

10-10-03

Authorized Signer

Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amendments and)
Adoption of Rules of the Board of Parole)
and Post-Prison Supervision)

) Statutory Authority,
) Statutes Implemented,
) Statement of Need,
) Principal Documents Relied Upon

Statutory Authority: ORS 144.102, 144.270

Other Authority: None

Statutes Implemented: None

Need for the Temporary Rule(s): The amendment is necessary to clarify the rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Documents Relied Upon: None

Justification of Temporary Rule(s): To allow the board to immediately impose special conditions that pertain to sex offenders to allow better supervision of those offenders on parole and post-prison supervision.

Michael R. Washington 06-13-03
Authorized Signer and Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310

P:\Peggy\Rules -- Board\Statement of Need & Justification.doc

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption
of Rules of the Board of Parole and
Post-Prison Supervision

)
)
)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon,
Statement of Fiscal Impact

Statutory Authority: ORS 144.102, 144.270

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The rule is necessary to clarify the rules and conditions an offender must comply with while participating in a sex offender treatment program and to make the general conditions of supervision consistent with the general conditions of probation.

Documents Relied Upon:

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

Authorized Signer and Date

06-13-03

DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions Not Limited by Exhibit J
255-070-0001

- (1) The Board may order parole conditions pursuant to OAR 255-070-0015.
- (2) The Board shall approve post-prison supervision conditions pursuant to OAR 213-11-001.
- (3) Conditions of parole and post-prison supervision are not limited to those shown in Exhibit J.

Statutory Authority: (ORS 144.096, 144.102, 144.270)

History: (5/31/85; 11/3/86, temporary; 4/1/87; 4/15/88, temporary; 5/19/88;7/1/88;
10/18/88; 4/5/90; 4/30/92, temporary; 10/9/92; 10/15/93, 11/09/98,
9-15-99 Notice/Temp, 11-15-99, 05-22-00, 12/15/01-Notice/Temp,
01-29-02, 04-15-02 – Notice/Temp, 06-17-02, 06-13-03–notice/temp,
10-10-03)

Offender Return to County of Residence
255-070-0003

- (1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the first six months in the county where the offender resided on the date of the last arrest for a crime resulting in imprisonment.
 - (2) (a) The Board or the Department of Corrections may establish the county of residency by obtaining the last address of record at the time of the offense from all of the available information in the following records:
 - (A) An Oregon driver's license, regardless of its validity;
 - (B) The Department of Revenue;
 - (C) The Department of State Police, Bureau of Criminal Identification;
 - (D) The Department of Human Resources; or
 - (E) The Department of Corrections.
 - (b) If the records do not disclose the county of residency, the Board or the Department shall find the offender resided in the county where she or he committed the crime.
 - (c) If the offender is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.
 - (d) In determining the offender's county of residence for purposes of this rule, the Board may not consider offenses committed by the offender while the offender was incarcerated in a Department of Corrections facility.
- (3) Upon motion of the Board, an offender, a victim, or a district attorney, the Board may waive the residency requirement after finding:

- (a) the offender provided proof of a job with no set ending date in a county other than the established county of residence;
- (b) the offender poses a significant danger to the victim;
- (c) the victim or victim's family poses a significant danger to the offender residing in the county of residence.
- (d) the offender has a spouse or biological or adoptive family, residing in other than the county of residence, who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole or post-prison supervision period;
- (e) the Board requires that the offender participate in a treatment program which is not available in the county of residence;
- (f) the offender desires release to another state or another state has a detainer; or
- (g) other good cause.

Statutory Authority: (ORS 144.270(5))

History: (11/1/89; 10/15/91; 10/9/92, 9-15-99 – NOTICE/TEMP, 11-15-99)

Parolee Placement in Community Corrections Centers; Standards; Limitations

255-070-0005

History: (2/1/79; 5/31/85, repealed)

Guidelines on General Condition Relating to "Best Interest" Return

255-070-0010

History: (2/1/79; 5/31/85; 11/3/86, temporary; 4/1/87; 5/19/88, repealed)

Establishing Conditions

255-070-0015

- (1) The Board may order an exit interview prior to the inmate's release date to review the inmate's case and set or approve conditions. See Division 60 for exit interview procedures.
- (2) If the Board decides to waive an exit interview, it shall specify the parole condition(s) prior to release and shall include the conditions on an order of supervision.
- (3) If the Board decides to waive an exit interview, it shall specify, in an order given to the offender upon release from incarceration, the post-prison supervision condition(s).
- (4) Once the Board establishes the conditions, the Board may amend the conditions and issue an amended order by:

- (a) considering a requested modification administratively, if the amendment is requested before the inmate's release on parole or post-prison supervision or if a condition is deleted after release; and
 - (b) citing to a hearing, if the amendment is requested after release and the offender does not consent in writing to the addition of conditions.
- (5) The Hearings Officer may amend the conditions, after a hearing, unless the offender waives the hearing. The Hearings Officer shall send notice of the amendment to the Board.
 - (6) If the offender waives the right to a hearing and consents in writing to the addition of conditions, the supervising officer may amend the conditions. The officer shall send notice of the amendment to the Board.
 - (7) If the Board does not override the Hearings Officer or supervising officer amended conditions, the Board shall issue an amended order of conditions, however, the condition is in effect from the date the supervising officer or Hearings Officer orders it.
 - (8) The Board or the Hearings Officer shall conduct a hearing under section (4) and (5) of this rule applying rules governing violation hearings in Division 75.
 - (9) When a supervisory authority requests amended conditions before the inmate is released on parole or post-prison supervision, the supervisory authority shall submit the request in writing or by teletype to the Board prior to the release date.
 - (10) An offender may appeal the conditions of parole or post-prison supervision pursuant to the procedures of Division 80.

Statutory Authority: (ORS 144.096, 144.098, 144.102, 144.106, 144.125, 144.185, 144.270, 144.343)

History: (5/19/88, 4/5/90; 4/30/92, temporary, 10/9/92, 11/09/98)

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 09-22-03 by the
Date prior to or same as filing date

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

Michael R. Washington (503) 945-0900
Rules Coordinator Telephone

2575 Center Street NE, Suite 100 Salem, OR 97301-4621
Address

to become effective 10-10-03 Rulemaking Notice was published in the 07-01-03 Oregon Bulletin.**
Date upon filing or later Month and Year

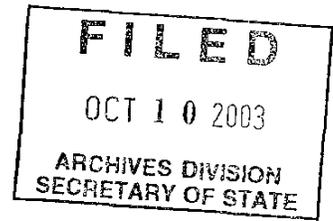
RULEMAKING ACTION
List each rule number separately, 000-000-0000

ADOPT:

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

AMEND:

255-075-0056



REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.343
Stat. Auth.: ORS

None
Other Authority

ORS None
Stats. Implemented: ORS

RULE SUMMARY

The amendment of the proposed rule allows for retention of the tape recording of the Advice of Rights and Morrissey hearing for four years instead of two years. This is necessary to preserve the record for purposes of protecting the rights of the offender and the board in the appellate process.

Michael R. Washington

10-10-03

Authorized Signer

Date

* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 PM on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 PM on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption
of Rules of the Board of Parole and
Post-Prison Supervision

)
)
)
)
)

Statutory Authority,
Statutes Implemented,
Statement of Need,
Principal Documents Relied Upon,
Statement of Fiscal Impact

Statutory Authority: ORS 144.343

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): The amendment is necessary to extend the period of time a hearings officer retains tape recordings of the Advice of Rights and Morrissey hearing from two years to four years. The additional retention period is needed to adequately preserve and protect the rights of the offender and the board in the appellate process.

Documents Relied Upon: None

Fiscal and Economic Impact: There may be some effect on other agencies, local government, or identified public. There will be a minor fiscal and economic impact on the board.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

06-13-03

Authorized Signer and Date

DIVISION 75

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

255-075-0001

Definitions

- (1) Administrative Sanction means local, structured, or intermediate sanctions as those terms are used in OAR 291-58-010 etal, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.
- (2) Sanction Authority means:
 - (a) The Board or its designee for:
 - (1) Any felony offender who received a sentence of more than twelve (12) months in the custody of the Department of Corrections; or
 - (2) 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.
 - (A) If an offender is on post-prison supervision for multiple sentences which include a sentence that exceeds twelve (12) months ("Board case") and a less than twelve (12)-month sentence ("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.
 - (B) 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.

Statutory Authority: ORS 144.140
History: (2/28/85; 3/14/88, temporary; 5/19/88, repealed, temporary 11/14/97;
05/11/98; temporary 07/13/98, **08/27/98**

255-075-0002

Suspension of Parole or Post-Prison Supervision; Citation to Appear

- (1) When the supervising officer or other person informs the Sanction Authority of reasonable grounds to believe that a person has violated the conditions of parole or post-prison supervision, or that supervision is no longer in the best interests of the offender or the community, and that the revocation of parole or post-prison supervision may be justified or, in the case of parole only, an extension of parole may be justified, the Sanction Authority may:
 - (a) suspend the running of the sentence and the parole or post-prison supervision term and order the offender arrested and detained pending a violation hearing; or
 - (b) issue a citation to appear at a violation hearing without first suspending parole or the post-prison supervision term or ordering detention.
- (2) The Sanction Authority may issue a suspend and detain warrant or a citation to appear at a violation hearing.
- (3) The Sanction Authority may authorize, in writing, that its designated representative may issue citations to appear at a violation hearing.

Statutory Authority: ORS 144.025(3), 144.106, 144.331, 144.334
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89;
4/30/92, temporary; 6/24/92, temporary; 10/9/92, temporary 11/14/97;
05/11/98)

255-075-0003

Criteria for Allowing Offender to Remain in Community Pending Hearing

In determining whether to allow an offender to remain in the community pending the violation hearing and final order, the Sanction Authority may consider:

- (1) the seriousness of the allegations and the risk to the offender or the community;
- (2) the likelihood of the offender absconding or failing to appear at the hearing;
- (3) the availability of resources in the community such as residence or employment;
- (4) any recommendation by the parole and post-prison supervision officer.
- (5) The Sanction Authority may release offenders detained under a Sanction Authority warrant, after the violation hearing, when recommending local sanctions or intervention and continuance of parole or post-prison supervision.

Statutory Authority: ORS 144.331(2)
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89;
4/30/92, temporary, 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98)

255-075-0004

Guidelines for "Best Interest" Return

When the Sanction Authority determines that an offender's release on parole or post-prison supervision is not in the best interest of the offender or in the best interest of society, the Sanction Authority may return the offender to custody. This type of return to custody may apply when:

- (1) The offender is suffering from an emotional or psychological disturbance which makes the offender dangerous to self or others if left in the community. The following behavior may indicate a dangerous emotional or psychological disturbance:
 - (a) showing a present capacity to carry out any statements or threats of violence against the offender or the community; or
 - (b) circumstances and conduct similar to that which led to the initial incarceration; or
- (2) The offender's behavior cannot be adequately controlled if left in the community.
- (3) Best interest returns for offenders on post-prison supervision shall not exceed 90 days, and must be approved by the Sanction Authority.

Statutory Authority: ORS 144.270(2)(g), 144.350(2)

History: (3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97;
05/11/98)

255-075-0005

Hearing Requirement: Procedure

- (1) Except as otherwise provided by these rules, before the Board can revoke parole or extend active parole supervision for offenders whose crimes occurred on or after December 4, 1986, and before November 1, 1989 (BM10), the Board or Hearings Officer shall conduct a hearing.
- (2) When the offender waives the hearing and/or consents to the order, the Board need not conduct a hearing when the Board extends supervision for offenders whose crimes occurred on or after December 4, 1986 and before November 1, 1989 (BM10).
- (3) Except in the cases set forth in OAR 255-075-0015 and section (6) of this rule, the Sanction Authority shall impose administrative sanctions or shall initiate a hearing within fifteen (15) days of arrest or detention for the violation of parole or post-prison supervision conditions.
- (4) If an in-custody violation hearing and a final order cannot be accomplished within fifteen (15) days, a supervising officer or Hearings Officer shall request a non-bailable suspend and detain warrant from the Sanction Authority
- (5) Before a Hearings Officer can order more than sixty (60) days of local confinement without the offender's consent, the Hearings Officer shall conduct a violation hearing. Unless the Hearings Officer recommends a sanction, which is beyond his or her authority to order, the Hearings Officer may issue a final order subject to approval of the Sanction Authority, but

immediately effective. If the recommended sanction exceeds sixty (60) days, it must be approved by the Supervisory Authority.

- (6) A hearing is not required when an administrative sanction or intervention involves local confinement of ninety (90) days or less when the offender consents to the sanctions or interventions. If the offender contests the allegations, the offender may request a hearing.

Statutory Authority: ORS 144.106(3), 144.108, 144.331(2), 144.343, 144.350, 144.370
History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92 temporary 11/14/97; 05/11/98)

255-075-0006

Method of Hearing

The Hearing Officer may conduct hearings by teleconference or video conference. The Hearing Officer shall conduct hearings in person or by video conference in the following situations:

- (1) the alleged violations are contested and the offender or the offender's attorney shows that the witness's credibility, including observation of the witness's demeanor is necessary;
- (2) physical exhibits may be part of the record and viewing the exhibits is essential, and the exhibits can not be viewed in some other manner;
- (3) there are unusual circumstances not covered by this section, determined at the Hearing Officer's discretion.

Statutory Authority: ORS 144.035(5), 144.343(1)
History: (11/4/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0007

Designated Representative Conducts Hearing

- (1) The Sanction Authority or its designated representative shall conduct the probable cause and violation hearing.
- (2) "Designated representative" shall include those persons designated by the Sanction Authority, and trained and certified as Hearings Officers.

Statutory Authority: ORS 144.104(1), 144.331, 144.343
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0008

Locations of Hearing

History: (11/19/84, temporary, expired)

255-075-0010

**Board Action Upon Notification of Alleged Parole Violation:
Criteria for; Release of Parolee Pending Hearing**

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0015

When Offender in Another Jurisdiction: Return

- (1) The Sanction Authority may suspend parole or post-prison supervision and may order the offender's return to custody in Oregon without first conducting a hearing when:
 - (a) the offender has, without permission, left the state to which the Sanction Authority released the offender on parole or post-prison supervision, and is in custody in another jurisdiction;
 - (b) the offender is in custody in another correctional facility;
 - (c) the offender has absconded from supervision and the offender's whereabouts are unknown; or
 - (d) the offender has been convicted of a new crime.
- (2) Except as provided in ORS 144.345(2) and OAR 255-075-0005(6), the Sanction Authority or the Hearings Officer shall conduct a violation hearing after the offender returns to custody in Oregon. For purposes of these rules, the arrest date is the date the offender is returned to custody in Oregon.
- (3) Persons retaken and returned to this state from outside the state upon order or warrant of the Department of Corrections, the State Board of Parole & Post-Prison Supervision or the Governor, for violation of conditions of parole or post-prison supervision, shall be detained in a Department of Corrections facility or a local correctional facility pending any hearing concerning the alleged violation and ultimate disposition by the State Board of Parole & Post-Prison Supervision.
- (3) Persons retaken and returned to this state from outside the state upon order or warrant of a local supervisory authority for violation of conditions of post-prison supervision may be detained in a local correctional facility pending a hearing concerning the alleged violation and ultimate disposition by the local supervisory authority.

Statutory Authority: ORS 144.340, 144.345(2), 144.349

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88;
10/16/89; 10/15/92, temporary; 4/15/92, temporary 11/14/97; 05/11/98,
01-25-00)

255-075-0020

Rights of a Parolee at a Formal Hearing

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

10-10-03 PERM

Conditions Violations

255-075-0025
Rights at Hearing

- (1) The designee of the Sanction Authority (eg. Hearings Officer) shall provide the offender a written notice of the hearing at least three (3) working days prior to the hearing.
- (2) The hearing notice shall include:
 - (a) a Notice of Rights as provided in ORS 144.343(3);
 - (b) a written statement of alleged violations; [and]
 - (c) any documents or evidence which form the basis of the alleged violations; and
 - (d) the date and location of the hearing.
- (3) The offender may elect to waive the three working day notification period prior to the hearing and begin the hearing immediately.
- (4) If the offender elects to waive the three working day notification period, the Hearings Officer shall obtain a written waiver or tape record the offender's verbal statement waiving the three working day notification period.
- (5) The Hearings Officer shall ascertain whether the offender has understood the allegations and the offender's rights and whether the offender can read, hear and understand the language of the proceedings. The Hearings Officer shall postpone the hearing if needed assistance is not readily available.

Statutory Authority: ORS 144.343(3)
History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88;
10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0026
Waiver of Hearing

- (1) In all cases, the offender may waive the right to a hearing by signing a Notice of Rights form. A refusal to participate in the hearings process shall also constitute a waiver of the right to a hearing.
- (2) When the purpose of a hearing is to consider a parole or post-prison supervision violation, the waiver of the right to a hearing acknowledges that the offender violated the conditions in whole or in part and that the Sanction Authority may order local sanctions, may modify conditions of supervision, may extend active supervision or that the Board may order return to prison, without further hearing.
- (3) When the purpose of the hearing is to modify parole or post-prison supervision conditions or, in the case of parole, to consider extending active supervision, the waiver of the hearing indicates acceptance of the modifications.

- (4) If the offender waives the right to a hearing, the offender may offer a written or verbal statement pertaining to the dispositional phase of the violation hearing.
- (5) If the hearing is conducted via teleconference or video conference, the offender shall submit written waiver of the right to a hearing to the Hearings Officer within five (5) days after the waiver.
- (6) The person delivering the Notice of Rights shall tape record or document in writing any statement made at the time of waiver.
- (7) If the offender waives the right to a hearing, the Hearings Officer or Supervising Officer shall submit to the Sanction Authority the following:
 - (a) a Notice of Rights form;
 - (b) any written offender statements and/or a summary of oral statements;
 - (c) the Hearing Summary, including a history of local interventions and sanctions ordered and a recommendation regarding disposition;
 - (d) any supporting information, including the supervising officer's report and other documentary evidence submitted.

Statutory Authority: ORS 144.050, 144.140; 144.343
 History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 4/15/92, temporary 11/14/97; **05/11/98**)

255-075-0030
Rejection of Waiver

If the Sanction Authority is not satisfied that the offender knowingly and intelligently waived his or her hearing rights or if it needs more information before making its decision, it may order a new hearing, to be conducted by the Hearings Officer or the Sanction Authority.

Statutory Authority: ORS 144.050, 144.140, 144.343
 History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0031
Hearings Process

- (1) The Hearings Officer shall conduct the violation hearing reasonably near the place of the alleged violation or the place of confinement or may conduct the hearing by teleconference or video conference.
- (2) Unless the Hearings Officer finds good cause on the record, the parole and post-prison supervision officer shall present information and evidence at the hearing and arrange for the presence of witnesses for the state. The parole and post-prison supervision officer shall make dispositional recommendations.

(3) The Hearings Officer shall make a tape recording of the hearing.

Statutory Authority: ORS 144.050, 144.106, 144.140, 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary, 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0035

Representation/Ability to Pay Attorney Fees

- (1) In all cases, the offender is entitled to representation by an attorney at the offender's own expense.
- (2) For Board cases only, if the Hearings Officer or the Board deems the offender indigent, and unable to pay for an attorney, the offender is entitled to a Board appointed attorney if the Board or Hearings Officer further finds that the offender has made a timely and colorable claim that:
 - (a) the offender has not committed the alleged violation;
 - (b) there are substantial or complex mitigating circumstances which make revocation inappropriate even if the offender admits violation or it is a matter of record; or
 - (c) the offender appears incapable or representing himself/herself.
- (3) For Board cases only, if the Hearings Officer appoints an attorney, the Hearings Officer shall notify the Board of payment to be made to the appointed attorney. When the Board approves payment for a Board appointed attorney, it shall not exceed \$60 per hour and \$300 per case. The attorney shall send the Board a billing within 90 days of the violation hearing.
- (4) When the Hearings Officer or Board refuses to appoint an attorney, the Hearings Officer or Board shall state the grounds for refusal in the record.
- (4) For Local Supervisory Authority cases, the Local Supervisory Authority may set its own criteria for appointment of an attorney and shall set its own standards for payment of appointed attorneys.

Statutory Authority: ORS 144.343

History: (2/1/79; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 10/15/91; 10/9/92, temporary 11/14/97; 02-06-01)

255-075-0036

Subpoenas; Witnesses

- (1) Offenders shall make their own arrangements for calling and presenting witnesses. However, upon the request of any party to the hearing, and upon a proper showing of the relevance and reasonable scope of the testimony to be offered, the Sanction Authority or Hearings Officer shall issue subpoenas requiring the attendance and testimony of witnesses. In addition, the Sanction Authority or the Hearings Officer may subpoena documents when relevant.

- (2) The Board shall reimburse fees and mileage as prescribed by law to witnesses appearing under subpoena, other than the parties, state officers or employees, provided the Hearing Officer or Sanction Authority certifies that the witness's testimony was relevant and material to the hearing.
- (3) The offender may present witnesses who have relevant information, and has the right to confront the persons or witnesses who have presented information against the offender.
- (4) The Hearings Officer or Sanction Authority may deny confrontation of witnesses by the offender if that confrontation would subject the witness to the risk of harm.
- (5) If the Hearings Officer or Sanction Authority denies confrontation of witnesses, the Hearings Officer or Sanction Authority shall state the reason(s) for the decision and conduct an independent examination of the witness on the record.

Statutory Authority: ORS 144.347

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98)

255-075-0040

Compelling of Witnesses: Contempt

The Sanction Authority or Hearings Officer or party requesting a subpoena, may seek contempt proceedings in the circuit court of any county against any person refusing to honor the subpoena.

Statutory Authority: ORS 144.347(4)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 10/9/92; 05/11/98)

255-075-0042

Probable Cause; Preliminary Hearing; Deferral of Revocation Hearing

- (1) The Sanction Authority or Hearings Officer may use evidence received and the order of a court at a preliminary hearing or a conviction or other reliable, relevant information to establish that probable cause exists to believe that the offender has committed a violation of a condition of parole or post-prison supervision.
- (2) Should the offender waive the right to a preliminary hearing, the waiver shall constitute a waiver of a probable cause hearing.
- (3) When the Sanction Authority or Hearings Officer defers completion of a violation hearing until a trial is over and until the court or the parole and post-prison supervision officer notifies the Sanction Authority or Hearings Officer of the final disposition of the case, the Sanction Authority or Hearings Officer shall use a finding of probable cause to support the decision to suspend and detain an offender charged with the commission of a new crime.
- (4) Notwithstanding subsection (3) of this section, the Sanction Authority or Hearings Officer shall not extend a deferral following a finding of probable cause for a period greater than 120 days from the date of the preliminary hearing or waiver, unless the offender is released

from jail pending final disposition of the case, or waives in writing further delay.
Subsequent waivers shall not extend beyond 120 days.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (11/25/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88,
temporary; 5/19/88; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98)

255-075-0045

Evidence; Subpoena of Documents

- (1) The Sanction Authority or Hearings Officer may receive the following as evidence at a violation hearing:
 - (a) oral testimony under oath;
 - (b) affidavits or other sworn statements;
 - (c) letters;
 - (d) documents;
 - (e) reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole and post-prison supervision officers, doctors, psychologists, attorneys);
 - (f) uncertified copies of letters, documents, or reports shall be admissible in a revocation hearing if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable;
 - (g) evidence of criminal activity even when charges have been dismissed, not brought, or the offender has been acquitted at trial;
 - (h) reliable hearsay evidence; or
 - (i) any evidence determined to be material, relevant, and reliable, regardless of its nature.
- (2) Upon the request of any party to the hearing, the Sanction Authority, or Hearings Officer, may issue a subpoena duces tecum upon a proper showing of relevant and reasonable scope of the documentary or physical evidence being sought. Otherwise, the offender shall make the offender's own arrangements for presenting evidence.
- (3) The Sanction Authority or Hearings Officer may exclude documents or physical evidence upon making a finding that such evidence would pose a hazard to facility security or would not assist in the resolution of the allegation(s). The reason for exclusion shall be made part of the record.
- (4) The Sanction Authority or Hearings Officer may classify documents or physical evidence as confidential upon making a finding that revealing such evidence would pose a threat to the safety of the person providing the evidence.

- (5) The Sanction Authority or Hearings Officer shall make evidence received without disclosing the identity of the witness a sealed part of the record.

- (6) When a witness is unavailable, the Sanction Authority or Hearings Officer may receive statements in the form of documentary evidence. The Sanction Authority or Hearings Officer shall determine at an in-camera hearing the reliability and relevance of the absent witness's statement.

Statutory Authority: ORS 144.343, 144.347

History: (2/1/79; 11/25/81, temporary; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92; 05/11/98)

255-075-0046

Postponement

- (1) The Sanction Authority or Hearings Officer with Sanction Authority approval, may postpone a hearing for good cause and for a reasonable period of time, which shall not exceed 120 days.
- (2) The criteria for "good cause" includes, but is not limited to:
- (a) the preparation of defense;
 - (b) illness or unavailability of the offender or other persons;
 - (c) gathering of additional evidence; or
 - (d) avoiding interference with an ongoing police investigation or pending prosecution.
- (3) The Sanction Authority, or Hearings Officer with Sanction Authority approval, may make a finding of a violation and defer disposition for a reasonable time which may exceed 120 days if such delay is reasonably necessary for the offender, the Sanction Authority or Hearings Officer to obtain information relevant to disposition decision.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/18/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0050

Procedure for Receiving Evidence if Good Cause Exists Not to Require Confrontation or Disclosure of an Informant's Identity

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0055

Reopening Hearings: Criteria; Procedure

- (1) After the completion of a violation hearing, the Sanction Authority or Hearings Officer may reopen a hearing if substantial new information is discovered which was not known or could not be anticipated at the time of the hearing and which would significantly affect the outcome of the hearing.

- (2) The Sanction Authority or Hearings Officer shall send the offender notice of the decision to reopen the hearing and the new information to be considered. The re-opened hearing shall conform to the procedures of this Division.

Statutory Authority: ORS 144.050, 144.140, 144.343

History: (2/1/79; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0056

Hearings Record

- (1) The hearings record shall include:
- (a) a Hearings Report Summary;
 - (b) a written statement of alleged violations;
 - (c) supporting materials, including documentary evidence admitted;
 - (d) a signed Notice of Rights;
 - (e) the Order of Parole or Post-Prison Supervision;
 - (f) a notice of time and place of hearing;
 - (g) a tape recording of the advice of rights and the hearing;
 - (h) the supervising officer's report, including recommended dispositions; [and]
 - (i) the history of supervision, local sanctions and modifications; and
 - (j) if any, the written waiver of the offender's right to three working days notice of the hearing.
- (2) The Hearings Officer shall retain the tape recording used in subsection (1)(g) of this rule for (4) four years.

Statutory Authority: ORS 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98, 06-17-02, 10-10-03)

255-075-0060

Record of Parole Revocation Hearing

History: (2/1/79; 11/19/84, temporary; 2/28/85, repealed)

255-075-0065

Ten Day Period for Offender's Evidence and Exceptions

- (1) Within a reasonable time after the hearing, the Hearings Officer shall provide his or her report to the offender.
- (2) Unless the offender waives the right to respond, the offender shall have 10 days from the date the Hearings Officer mails the report to the offender to submit evidence and make written exceptions to the report for the Sanction Authority's consideration.
- (3) If the offender waives the right to respond, the Hearings Officer shall include the waiver in the Hearings Officer's report to the Sanction Authority.
- (4) When a Hearings Officer makes a final order pursuant to Board authority granted in writing, the offender shall not have a ten day period within which to submit evidence and written exceptions. The offender may appeal a Hearings Officer's order under Division 80 of these rules.

Statutory Authority: ORS 144.343(7)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0067

Final Action: Authority to Impose Administrative (Local) Sanctions, Revoke Supervision or Modify Conditions of Supervision

- 1) If an offender waives a hearing after receipt and review of the notice of rights, as provided in OAR 255-075-0005(6) a supervising officer may order administrative sanctions, including a local confinement sanction not exceeding thirty (30) days. The Local Supervisory Authority's designee may review the decision to order a local confinement sanction if the offender's underlying sentence was for 12 months or less. The Board may review the decision if the underlying sentence was more than 12 months.
- 2) After a hearing, or if an offender waives a hearing after receipt of the notice of rights, as provided in OAR 255-075-0005(6), a Hearings Officer or agency designee may order administrative sanctions, including a local confinement sanction not exceeding sixty (60) days. The Hearings Officer or agency designee shall send a copy of the final order and report to the Sanction Authority and, upon request, shall send the record of the hearing as described in OAR 255-075-0056. The Hearings Officer or agency designee shall retain the record for four (4) years.
- 3) After a hearing, or waiver, the Board may order administrative sanctions for offenders originally sentenced to more than 12 months, and a Local Supervisory Authority designee may order administrative sanctions for offenders originally sentenced to 12 months or less. The Board or a Local Supervisory Authority designee ordered local administrative confinement sanction may not exceed ninety (90) days.
- 4) The Board (for offenders originally sentenced to more than 12 months) or the Local Supervisory Authority designee (for offenders originally sentenced to 12 months or less) may override any sanction ordered by a supervising officer, agency designee or Hearings Officer.

- 5) Administrative Sanctions, including local confinement shall be applied in accordance with the Department of Corrections rules for structured, intermediate sanctions, OAR 291-58-010 et al., subject to jointly drafted revisions by the Department of Corrections and the Board.
- 6) If an administrative sanction is not sufficient to address the violation or to protect the public, the Sanction Authority may revoke supervision for a period(s) as set out in OAR 255-075-0079, or deny re-release for offenders on parole.
- 7) Conditions of supervision may be modified at any time by the Sanction Authority when necessary for the offender or public safety. If an offender objects to the modification, administrative review must be made within 45 days of the mailing date on the Board order or receipt of a written order by the Local Supervisory Authority.

Statutory Authority: ORS 144.106, 144.343

History: (4/30/92, temporary; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98, 5-13-03)

255-075-0070

Final Action: Procedure

- (1) When a case comes before the Board or Supervisory Authority or designee for decision, the Board or Supervisory Authority shall consider the Hearings Officer's report, and the offender's evidence and exceptions. The Board or Supervisory Authority or designee shall enter a decision, and shall record the decision in accordance with the sanction/intervention guidelines, OAR 291-58-010 et al. The Board shall vote in accordance with Exhibit K.
- (2) The Board or Supervisory Authority may adopt or reject any or all the Hearings Officer's findings and recommendations. The Board or Supervisory Authority may find a violation of conditions not alleged, if the evidence admitted at the hearing supports the finding and the evidence is uncontroverted. The final order shall indicate the findings adopted by the Board or Supervisory Authority.
- (3) A copy of the final order shall be forwarded to the offender with notice of the right to administrative and judicial review.
- (5) All final orders of the Board are subject to Administrative Review by the Board prior to seeking judicial review.

Statutory Authority: 144.125, 144.343

History: 2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/1/88; 10/18/88; 4/19/89, temporary; 10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98, 01-12-01)

255-075-0072

Re-release Order After Revocation

- (1) At the time of a revocation decision, the Sanction Authority shall make an order concerning re-release.

10-10-03 PERM

Conditions Violations

- (2) In the re-release order, the Sanction Authority may:
- (a) continue parole or post-prison supervision pursuant to 255-075-0075 or 255-075-0080; or
 - (b) set the re-release date in accordance with rule 255-075-0079; or
 - (c) The Board may defer the re-release decision pending a future disposition hearing for offenders on parole.
- (3) Upon notification that parole or post-prison supervision has terminated by operation of ORS 144.345(2), the Board shall apply subsection (2) of this rule.
- (4) Revocation of post-prison supervision stops the period of post-prison supervision from running while the offender is serving time in custody for a revocation sanction. The re-release order following a revocation sanction shall include a re-calculation of the post-prison supervision expiration date to account for the time the offender was in custody serving the revocation sanction.
- (5) The sum of the time actually served on the original incarceration sentence, all days served as a revocation sanction, and the time served in the community on post-prison supervision cannot exceed the maximum indeterminate sentence for the offense(s) for which the offender is on post-prison supervision.

Statutory Authority: ORS 144.346, 144.395

History: (4/19/89, temporary; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98 9-22-99)

Return to DOC for a Period of Greater than 12 months
255-075-0073

- (1) Post-prison supervision may be revoked and an offender returned to the custody of the Department of Corrections for a sanction that exceeds 12 months when:
- (a) The offender is currently in violation of a condition of supervision; and
 - (b) The offender scores at least a total of 44 points on the scale in Exhibit R of these rules; and
 - (c) The community corrections agency supervising the offender and/or a hearings officer recommend a return to the Department of Corrections for a sanction exceeding 12 months; and
 - (d) The Board finds that a sanction exceeding 12 months is appropriate.
- (2) This rule may only be applied to offenders serving a term of post-prison supervision for a felony crime committed on or after July 14, 1997, and the term of post-prison supervision:

- (a) follows completion of a sentence to a term of imprisonment that exceeds 12 months, or
 - (b) was imposed for a felony classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid, or
 - (c) was imposed as part of a sentence under ORS 137.700 or 137.707, or
 - (d) was imposed as part of a sentence as a dangerous offender under ORS 161.725 and 161.737, or
 - (e) is subject to ORS 144.103 (length of post-prison supervision for certain sex offenses).
- (3) A revocation hearing as described in OAR 255-075-0005 must be held when there is a recommendation under this rule.
 - (4) A community corrections agency and/or hearing officer recommending a sanction under this rule must specifically state how the offender fits the requirements of this rule (including the score on the scale), what efforts have been made to manage the offender in the community and why the offender cannot be safely managed in the community. The recommendation may also contain any other information that may assist the board.
 - (5) If a community corrections agency and/or hearing officer recommends a sanction under this rule, the board shall hold a hearing as described in OAR 255-075-0097 to determine whether a sanction exceeding 12 months is appropriate. After a hearing, the board can order a sanction of up to 24 months incarceration. The board must hold a subsequent hearing before it can order continued incarceration exceeding 24 months. The length of sanction imposed under this rule is determined by the board.
 - (6) Subject to the requirements of this rule, an offender may be required to serve a sanction under this rule up to the post-prison supervision expiration date for any offense for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule. When an offender is released from a sanction imposed under this rule, the offender must serve the balance, if any, of any post-prison supervision remaining up to the post-prison supervision expiration date. If the offender is not released prior to the post-prison supervision expiration date, the post-prison supervision will expire. The periods of post-prison supervision for all offenses for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule continue to run while an offender is serving a sanction under this rule.
 - (7) Board hearings under this rule will be conducted in the same manner that the board conducts future disposition hearings. The board may order a psychological evaluation for a hearing under this rule. The procedures for records, disclosure and notice outlined in Divisions 15 and 30 shall govern these hearings. A panel may conduct the hearing and the board shall make decisions pursuant to OAR 255-030-0015.
 - (8) In determining whether a sanction exceeding 12 months is appropriate or whether continued incarceration exceeding 24 months is appropriate, the board must consider the recommendation by the community corrections agency or hearing officer and may also consider the following:

- (a) the nature of the underlying conviction(s);
- (b) the offender's criminal history;
- (c) the history and nature of violations of post-prison supervision or parole;
- (d) findings made by a psychologist in a psychological evaluation;
- (e) conduct in institutions or jails;
- (f) programs completed in custody and/or in the community;
- (g) treatment available in the community;
- (h) release plans;
- (i) victim's statements, if any; and
- (j) any indications of reformation and rehabilitation.

Statutory Authority: (ORS 144.107)
 History: (03/12/01)

255-075-0075

Offenders Convicted of New Crime in This or Another Jurisdiction

- (1) If an offender has violated parole or post-prison supervision as a result of a conviction of a new crime and the court has ordered a prison term to the Department of Corrections, parole or post-prison supervision terminates without a violation hearing by operation of ORS 144.345(2).
- (2) Upon release from custody, if the Oregon sentence has not expired, Oregon supervision shall resume either in another jurisdiction under Interstate Compact or in Oregon. If, in preparing the re-release plan, the Department of Corrections cannot arrange supervision under Interstate Compact, the offender shall report to the appropriate Supervisory Authority for supervision.
- (3) The Sanction Authority shall make extradition decisions on a case-by-case basis in cooperation with the holding jurisdiction.
- (4) If the offender absconded supervision, the Sanction Authority shall count the inoperative time from the date the Sanction Authority issued its arrest and detention warrant to the arrest date in Oregon or if arrested out of state, upon return to Oregon custody. The Board shall forward the dates to the Department of Corrections for use in recalculating the sentence good time and expiration dates for those offenders under the Board's jurisdiction. For those not under the Board's authority, the inoperative time shall be calculated by the Supervisory Authority's designee.

Statutory Authority: ORS 144.345, 144.380, 144.610-.622
 History: (2/1/79; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 4/15/92, temporary 11/14/97; 05/11/98)

10-10-03 PERM

Conditions Violations

255-075-0076

Designation of Parole Failure

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88, repealed)

255-075-0078

Commencement Date for Prison Term Following a Violation

- (1) The commencement date for a new commitment which is concurrent to an incarceration sanction for a violation of parole or post-prison supervision shall be the sentencing date for the new crime.
- (2) The commencement date for a new commitment which is consecutive to an incarceration sanction for a violation of parole or post-prison supervision shall be either the release date established for the violation or the sentencing date for the new crime, whichever is later.
- (3) Notwithstanding subsection (2) of this rule, when the new commitment is consecutive to a sanction for a violation, the Sanction Authority may treat the violation and the new commitment as if they were concurrent. If treated as concurrent, the commencement date for the new commitment shall be the sentencing date for the new crime plus adjustment for credit for time served.
- (4) If the offender is returned with a parole or post-prison supervision violation and a new sentence which is consecutive to the sentence for which the offender was on parole, the commencement date for the new conviction shall be the date parole was revoked, if so stated on the court order.

Statutory Authority: ORS 144.346, 144.395, 144.780, 144.783

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0079

Guidelines for Re-release

- (1) For technical violation(s):
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-11-004.
- (2) For conduct constituting a crime:
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.
- (3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.

- (4) Offenders sentenced to life imprisonment for murder committed on or after 06-30-95 may serve further incarceration to the sentence expiration date. Offenders sentenced to life imprisonment for aggravated murder may serve further incarceration to the sentence expiration date.
- (5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.
- (7)
 - (a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.
 - (b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.
 - (c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.
- (8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.
- (9) Notwithstanding subsections 1-7 of this rule, the Board may choose to postpone re-release on parole pursuant to Divisions 50 and 60 of this chapter.
- (10) Notwithstanding subsections 1-8 of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.
- (11) Administrative sanctions do not count toward the revocation sanction limits.

Statutory Authority: ORS 135, 055, 144.103, 144.107, 144.108, 144.120(4), 144.125, 144.232, 144.345, 144.346, 144.395, 161.735

History: (4/19/89, temporary; 11/1/89; 10/15/90, temporary; 1/16/91; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98, 01-25-00, 05-13-03)

255-075-0080

Continuance on Parole or Supervision

- (1) The Sanction Authority may continue an offender on parole or post-prison supervision and order modification of conditions and/or sanction to time served.
- (2) The Sanction Authority may continue an offender on parole or post-prison supervision and order administrative sanctions as limited by OAR 255-075-0067

Statutory Authority: ORS 144.106, 144.343, 144.345(1)

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 4/30/92, temporary; 10/9/92, temporary 11/14/97; 05/11/98)

255-075-0082

Authority of Revocation Panel to Set New Parole Release Date for Parole Violators

History: (11/4/81 - 5/2/82, temporary; 11/19/84, suspended; 2/28/85, repealed)

255-075-0085

Parole Violators with No New Commitment; Action Required

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, suspended; 10/16/89, repealed)

255-075-0090

Guidelines for Reparole

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 11/1/89, repealed)

255-075-0095

Variation From Guidelines for Aggravation/Mitigation Permitted

History: (11/19/84, temporary; 2/28/85; 5/19/88; 7/1/88; 4/19/89, suspended; 10/16/89, repealed)

255-075-0096

Denial of Re-release Consideration

- (1) Upon a finding of aggravation pursuant to Exhibit E or Exhibit H, the Board may deny re-release on parole and set the parole release date up to two (2) days before the statutory good time date, or, in the case of murder or aggravated murder, require the parole violator to serve for life. This action requires the affirmative vote of a majority of members, except that if the result is life imprisonment, the full Board must vote unanimously.
- (2) Denial of re-release on parole requires a future disposition hearing.

- (3) Cases in which the Board sets a parole violator within the guidelines set forth in rule 255-075-0079 and the result requires the parole violator to serve to the end of the sentence, do not require a majority vote of all members.
- (4) At any time after denial of re-release, the Board may adjust the parole release date to accommodate changes in the good time date.

Statutory Authority: ORS 144.085, 144.120(4), 144.245, 144.395, 144.780, 144.783-787
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 5/1/91, temporary; 10/15/91, 03/14/97)

255-075-0097

Time for Future Disposition Hearing

When the Board holds a future disposition hearing pursuant to 255-075-0072(2) or 255-075-0096, the following timelines shall apply:

- (1) If the offender has a new conviction, the Board may schedule the future disposition hearing at the same time as the new prison term hearing.
- (2) If the offender has no new conviction or has no prison term hearing, the Board shall schedule the future disposition hearing within 60 days of return to the institution.

Statutory Authority: ORS 144.050, 144.140, 144.395
History: (4/19/89, temporary; 10/16/89; 10/9/92)

255-075-0098

Restoration of Statutory and Meritorious Goodtime

Upon recommendation of the superintendent of the institution, the Board may restore part or all of forfeited statutory and meritorious goodtime when:

- (1) there is no violation of parole; or
- (2) parole is revoked on a best interest basis and there is no actual parole violation; or
- (3) parole is revoked on a technical violation; or
- (4) parolee is within 180 days of discharge; or
- (5) parole is revoked for new criminal activity which is a misdemeanor or non person-to-person class C felony and:
 - (a) the new criminal activity was already sanctioned at the local level;
or
 - (b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.

- (6) An offender ordered to serve a term of incarceration as a Revocation sanction for a post-prison supervision violation is not eligible for goodtime, earned-credit time, work release, transitional or temporary leave.

Statutory Authority: ORS 421.120, 144.108(3)

History: (3/14/88, temporary; 5/19/88; 12/6/88; 10/16/89; 10/9/92, 03/14/97, temporary 11/14/97; 05/11/98)

255-075-0100

Future Disposition Hearing Packet

The Future Disposition Hearing Packet shall contain:

- (1) institution face sheet;
- (2) revocation recommendation;
- (3) final order of revocation;
- (4) administrative action sheet;
- (5) revocation hearing findings;
- (6) Board Action Form ordering parole or Board Action Form ordering post-prison supervision conditions;
- (7) disciplinary report, when extension is recommended;
- (8) recommendation regarding statutory and meritorious goodtime;
- (9) correspondence;
- (10) statements of imprisonment for violation; and
- (11) face sheet from old parole analysis report or comparable report.
- (12) Inmate's Notice of Rights and Board of Parole & Post-Prison Supervision Procedures.

Statutory Authority: ORS 144.185, 144.395

History: (5/19/88; 12/6/88; 10/16/89, 03/14/97)

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 it's 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 Board.
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 illegally used controlled substances.
4. 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.

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. Offender shall have no contact with minor females and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
4. Offender shall have no contact with minor males and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
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 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 frequenting, 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) 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.
 - (e) 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.
 - (f) 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.
 - (g) Unless otherwise indicated for the treatment required under subparagraph (E) 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.
 - (h) 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.
 - (i) 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.
 - (j) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.
 - (k) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.

EXHIBIT Q-1
RISK ASSESSMENT SCALE

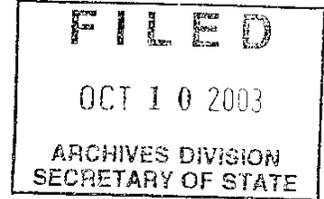
<u>CATEGORY</u>	<u>SCORE</u>
Negative Scale (increase risk)	
*History of sexual crimes	<u>10-</u>
*History of sex offense convictions	<u>10-</u>
*Stranger to victim	<u>10-</u>
*Multiple victims – On current sex offense conviction	<u>10-</u>
*Use of weapons or threats	<u>10-</u>
Victim under 14 years of age or mentally/physically disabled	<u>10-</u>
Not in "treatment"	<u>10-</u>
Shows no empathy for victim(s)	<u>10-</u>
Not progressing in treatment	<u>10-</u>
New crime during supervision	<u>10-</u>
Technical violation related to sexual assault cycle	<u>10-</u>
Multiple paraphilia	<u>10-</u>
Impulsive or compulsive behavior	<u>10-</u>
Primary sexual preference is children	<u>10-</u>
Community instability	<u>10-</u>
*Prior non-sexual criminal history	<u>10-</u>
Substance abuse involved in sexual offending behavior	<u>10-</u>
Substance abuse problems	<u>10-</u>
Anger problems	<u>5-</u>
Technical violation during supervision	<u>5-</u>
Use of sexually arousing materials	<u>5-</u>
Mental status inhibits responsible functioning	<u>5-</u>
No support system or support system tolerates/supports denial	<u>5-</u>
Positive Scale (reduce risk)	
Takes full responsibility for offending behavior	<u>10</u>
Clear identification and understanding of sexual assault cycle	<u>10</u>
Passes disclosure polygraph	<u>10</u>
Clarification to victims completed	<u>10</u>
Successful completion of approved treatment program	<u>10</u>
Passed compliance (maintenance) polygraph	<u>10</u>
Completed substance abuse treatment and maintains abstinence	<u>10</u>
Demonstrated understanding of thinking errors	<u>5</u>
Support system reinforces compliance and treatment	<u>5</u>
Special conditions compliance	<u>5</u>
Automatic Override to Level 1	
*Forcible Rape	<u>X</u>
*Use of weapon during commission of offense	<u>X</u>
*Men who molest boys (multiple male victims)	<u>X</u>

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

Oregon Board of Parole & Post-Prison Supervision Chapter 255
Agency and Division Administrative Rules Chapter
Number
Michael R. Washington 503-945-9009
Rules Coordinator Telephone
2575 Center Street NE, Ste 100 Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

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



AMEND: 255-070-0001 (Exhibit J)

REPEAL:

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

Amend and Renumber: Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

RECEIVED
03 OCT 16 PM 3 110
BOARD OF PAROLE

ORS 144.102, 144.270, 137.540
Stat. Auth.: ORS
None
Other Authority
None
Stats. Implemented: ORS

RULE SUMMARY

The amendment is necessary so that the board's rule and exhibit will be consistent with the Oregon Revised Statutes.

A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

11-28-03
Last Day for Public Comment

Michael R. Washington 10-10-03
Authorized Signer and Date

The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Parole & Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of Amendments and Adoption	)	Statutory Authority,
of Rules of the Board of Parole and	)	Statutes Implemented,
Post-Prison Supervision	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 137.540, 144.102, 144.270

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): This amendment is necessary so that the board's rule and exhibit will be consistent with the Oregon Revised Statutes.

Documents Relied Upon: None

Fiscal and Economic Impact: We are not aware of any fiscal or economic effect this amendment will have on the board, other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted this amendment and change during a business meeting and due to the nature of the amendments, felt it was not necessary to consult the Administrative Rule Advisory Committee.

Michael R. Washington

10-10-03

Authorized Signer and Date

DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions Not Limited by Exhibit J
255-070-0001

- (1) The Board may order parole conditions pursuant to OAR 255-070-0015.
- (2) The Board shall approve post-prison supervision conditions pursuant to OAR 213-11-001.
- (3) Conditions of parole and post-prison supervision are not limited to those shown in Exhibit J.

Statutory Authority: (ORS 144.096, 144.102, 144.270)

History: (5/31/85; 11/3/86, temporary; 4/1/87; 4/15/88, temporary; 5/19/88; 7/1/88;
10/18/88; 4/5/90; 4/30/92, temporary; 10/9/92; 10/15/93, 11/09/98,
9-15-99 Notice/Temp, 11-15-99, 05-22-00, 12/15/01-Notice/Temp,
01-29-02, 04-15-02 – Notice/Temp, 06-17-02, 06-13-03, 10/10/03,
10/10/03 - Notice Temp

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 [Board] 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 illegally used controlled substances.
4. 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.

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. Offender shall have no contact with minor females and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
4. Offender shall have no contact with minor males and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
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 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 frequenting, 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) 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.
 - (e) 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.
 - (f) 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.
 - (g) Unless otherwise indicated for the treatment required under subparagraph (E) 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.
 - (h) 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.
 - (i) 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.
 - (j) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.
 - (k) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.