

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Definitions  
255-035-005

- [(1) "Crime severity rating": The classification given to a prisoner's commitment crime according to the seriousness.]
- [(2) "History/risk score": Refers to the criminal history/risk assessment. It is a rating, from a high of eleven (11) to a low of zero (0) points, based on the seriousness of the prior record and factors reflecting likelihood of success on parole.]
- [(3) "Guideline ranges": Ranges of months to be served as a prison term before parole release for each crime severity rating and history/risk score.]
- [(4) "Guideline Matrix": A table which displays the guideline range by showing the intersection of the crime severity rating and the history/risk score.]
- [(5) "Initial parole release date": A fixed date, by month, day and year, assigned to a prisoner for parole release based on the guideline range for his/her particular offense severity rating and history/risk score aggravation, mitigation, and minimum sentence(s).]
- [(6) "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.]
- [(7) "Serious physical injury": Any injury which creates [or causes] substantial risk of death, or serious and protracted disfigurement, or protracted impairment of health or the protracted loss or impairment of the function of any bodily organ.]
- [(8) "Harm-loss": The actual or immediately threatened injury associated with particular criminal conduct, whether to person or property.]
- [(9) "Principal range": The range for the crime holding the highest severity.]

Permanent effective 5/19/88

- [(10) "Subordinate range": The shorter range, or if two or more ranges are identical the remaining range or ranges shall be the subordinate range or ranges.]
- [(11) "Base range": The range for each crime category reflected in Exhibit C under the "excellent" column.]
- [(12) "Summing the ranges": An action taken in cases where sentences have been imposed consecutively in which the base range for each consecutive sentence is added to the principal range.]

Permanent effective 5/19/88

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 --  
BOARD OF PAROLE

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Definitions

255-35-005 (1) "Crime severity rating": The classification given to a prisoner's commitment crime according to the seriousness.

(2) "History/risk score": Refers to the Criminal History/Risk Assessment. It is a rating, from a high of eleven (11) to a low of zero (0) points, based on the seriousness of the prior record and factors reflecting likelihood of success on parole.

(3) "Guideline ranges": Ranges of months to be served as a prison term before parole release for each crime severity rating and history/risk score.

(4) "Guideline matrix": A table which displays the guideline range by showing the intersection of the crime severity rating and the history/risk score.

(5) "Initial parole release date": A fixed date, by month, day and year, assigned to a prisoner for parole release based on the guideline range for his/her particular offense severity rating and history/risk score.

(6) "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.

(7) "Serious physical injury": An injury which creates or causes substantial risk of death, or serious and protracted disfigurement, or protracted impairment of health or the protracted loss or impairment of the function of any bodily organ.

(8) "Harm-loss": The actual or immediately threatened injury associated with particular criminal conduct, whether to person or property.

(9) "Principal range": The range for the crime holding the highest severity.

(10) "Subordinate range": The shorter range, or if two or more ranges are identical the remaining range or ranges shall be the subordinate range or ranges.

Temporary effective 7/21/87 to 1/16/88

(11) "Base range": The range for each crime category that is reflected in Exhibit C under the "Excellent" column.

(12) "Summing the ranges": An action taken in cases where sentences have been imposed consecutively in which the base range for each consecutive sentence is added to the principal range.

[ED.NOTE: The Exhibit referred to in the above rule is not printed in the Oregon Administrative Rules Compilation. Copies are available from the Adopting agency.]

Stat.Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 15-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 9-1985, f. & ef. 5-31-85

[ED.NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Definitions

255-35-005 (1) "Crime severity rating": The classification given to a prisoner's commitment crime according to the seriousness.

(2) "History/risk score": Refers to the Criminal History/Risk Assessment. It is a rating, from a high of eleven (11) to a low of zero (0) points, based on the seriousness of the prior record and factors reflecting likelihood of success on parole.

(3) "Guideline ranges": Ranges of months to be served as a prison term before parole release for each crime severity rating and history/risk score.

(4) "Guideline matrix": A table which displays the guideline range by showing the intersection of the crime severity rating and the history/risk score.

(5) "Initial parole release date": A fixed date, by month, day and year, assigned to a prisoner for parole release based on the guideline range for his/her particular offense severity rating and history/risk score.

(6) "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.

(7) "Serious physical injury": An injury which creates or causes substantial risk of death, or serious and protracted disfigurement, or protracted impairment of health or the protracted loss or impairment of the function of any bodily organ.

(8) "Harm-loss": The actual or immediately threatened injury associated with particular criminal conduct, whether to person or property.

(9) "Principal range": The range for the crime holding the highest severity.

(10) "Subordinate range": The shorter range, or if two or more ranges are identical the remaining range or ranges shall be the subordinate range or ranges.

Temporary effective 6/18/87 to 12/14/87  
but amendments suspended 7/21/87

(11) "Base range": The range for each crime category that is reflected in Exhibit C under the "Excellent" column.]

(11) [(12)] "Summing the ranges": An action taken in cases where sentences have been imposed consecutively in which the base range for each consecutive sentence is added to the principal range.

[ED.NOTE: The Exhibit referred to in the above rule is not printed in the Oregon Administrative Rules Compilation. Copies are available from the Adopting agency.]

Stat.Auth.: ORS Ch. 144  
Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 15-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 9-1985, f. & ef. 5-31-85

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Temporary effective 6/18/87 to 12/14/87  
but amendments suspended 7/21/87

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Definitions

255-35-005 (1) "Crime severity rating": The classification given to a prisoner's commitment crime according to the seriousness.

(2) "History/risk score": Refers to the Criminal History/Risk Assessment. It is a rating, from a high of eleven (11) to a low of zero (0) points, based on the seriousness of the prior record and factors reflecting likelihood of success on parole.

(3) "Guideline ranges": Ranges of months to be served as a prison term before parole release for each crime severity rating and history/risk score.

(4) "Guideline matrix": A table which displays the guideline range by showing the intersection of the crime severity rating and the history/risk score.

(5) "Initial parole release date": A fixed date, by month, day and year, assigned to a prisoner for parole release based on the guideline range for his/her particular offense severity rating and history/risk score.

(6) "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.

(7) "Serious physical injury": An injury which creates or causes substantial risk of death, or serious and protracted disfigurement, or protracted impairment of health or the protracted loss or impairment of the function of any bodily organ.

(8) "Harm-loss": The actual or immediately threatened injury associated with particular criminal conduct, whether to person or property.

(9) "Principal range": The range for the crime holding the highest severity.

(10) "Subordinate range": The shorter range, or if two or more ranges are identical the remaining range or ranges shall be the subordinate range or ranges.

Temporary effective 6/8/87 to 12/4/87  
but see 6/18/87 temporary replacement

[11) "Base range": The range for each crime category that is reflected in Exhibit C under the "Excellent" column.]

(11) [12) "Summing the ranges": An action taken in cases where sentences have been imposed consecutively in which the base range for each consecutive sentence is added to the principal range.

[ED.NOTE: The Exhibit referred to in the above rule is not printed in the Oregon Administrative Rules Compilation. Copies are available from the Adopting agency.]

Stat.Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 15-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 9-1985, f. & ef. 5-31-85

[ED.NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

DIVISION 35  
APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

255-35-005 Definitions

- (1) "Crime [Offense] Severity Rating": The classification given to a prisoner's commitment crime [offense] according to the [its] seriousness. [of the crime, used as one dimension in establishing the prison term to be served. A rating of seven (7) is most serious; a rating of one (1) is least serious. Some broad offenses, which include various types of criminal behavior (e.g., burglary, theft, robbery, et al), are separated into different categories on the basis of actual criminal conduct.]
- (2) "History/Risk Score": Refers to the Criminal History/Risk Assessment. [i]t is a rating, from a high of eleven (11) to a low of zero (0) points, [used as the second dimension in establishing the prison term to be served. The rating emphasizes both] based on the seriousness of the prior record and factors reflecting likelihood of success on parole.
- (3) "Guideline Ranges": Ranges of months to be served as a prison term before parole release for each crime [offense] severity rating and history/risk score. [A parole release date will normally be set within the applicable guideline range. The Board may only vary from the ranges if it finds the presence of aggravation or mitigation.]
- (4) "Guideline Matrix": A table which displays the guideline range by showing the intersection of the crime severity rating and the history/risk score. [Refers to the table of guideline ranges displayed at the intersection of the appropriate offense severity rating and history/risk illustrated in Exhibit C.]
- (5) "Initial Parole Release Date": A fixed date, by month, day and year, assigned to a prisoner for parole release, based on the guideline range for his/her particular crime severity rating and history/risk score. [A parole release date can only be changed following a hearing for reasons specified in Division 60 and ORS 144.126. The parole release date ends on the last day of the designated month and year.]

- (6) "Particularly Violent or Otherwise Dangerous Criminal Conduct": Conduct which is not merely unpleasant or offensive, but [exceeds aggravation listed in subsection 255-35-030(1)(a). This conduct of a type] which is indifferent [manifests indifference] to the value of human safety or property. [e.g., actions which terrorize or inflict serious mental distress on a victim, as the rapist who telephones the victim and threatens to repeat the crime; unusual or protracted cruelty; multiple victims in a single or separate incident; extremely high harm-loss, as the burglar who takes a stereo and proceeds to destroy a large number of items left in the house with an axe; infliction of serious physical injury, if not an element of the crime).]
- [(7) "Parole Consideration Hearing": The hearing scheduled for a prisoner when parole release has been deferred at the prison term hearing.]
- (7)[(8)] "Serious Physical Injury": An injury which creates or causes substantial risk of death, or serious and protracted disfigurement, or protracted impairment of health or the protracted loss or impairment of the function of any bodily organ.
- (8)[(9)] "Harm-loss": The actual or immediately threatened injury associated with particular criminal conduct, whether to person or property.
- (9)[10] "Principal range": The range for the crime holding the highest severity.
- [The longest range imposed in a chain of ranges shall be the principal range.]
- (10)[11] "Subordinate range": The shorter range, or if two or more ranges are identical the remaining range or ranges shall be the subordinate range or ranges.
- (11)[12] The] "Base range": [is] [t]The range for each crime category that [and] is reflected in Exhibit C under the "Excellent" Column.
- (12) "Summing the Ranges": An action taken in cases where sentences have been imposed consecutively in which the base range for each consecutive sentence is added to the principal range.

## DIVISION 35

APPLICATION OF THE GUIDELINES  
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255-35-005 (1) "Offense severity rating": The classification given to a prisoner's commitment offense according to the seriousness of the crime, used as one dimension in establishing a rating of one is least serious. Some broad offenses, which include various types of criminal behavior (e.g., burglary, theft, robbery, et. al.) are separated into different categories on the basis of actual criminal conduct.

(2) "History/risk score": Refers to the Criminal History/Risk Assessment; it is a rating, from a high of 11 to a low of zero points, used as the second dimension in establishing the prison term to be served. The rating emphasizes both the seriousness of the prior record and factors reflecting likelihood of success on parole.

(3) "Guideline ranges": Ranges of months to be served as a prison term before parole release for each offense severity rating and history/risk score. A parole release date will normally be set within the applicable guideline range. The Board may only vary from the ranges if it finds the presence of aggravation or mitigation.

(4) "Guideline matrix": Refers to the table of guidelines ranges displayed at the intersection of the appropriate offense severity rating and history/risk score illustrated in Exhibit C.

(5) "Parole release date": A fixed date, by month and year, assigned to a prisoner for parole release based on the guideline range for his/her particular offense severity rating and history/risk score. A parole release date can only be changed following

Temporary effective 11/25/81 to 5/23/82  
Became permanent 5/19/82

a hearing for reasons specified in Division 60 and ORS 144.126. The parole release date ends on the last day of the designated month and year.

(6) "Particularly violent or otherwise dangerous criminal conduct": Conduct which is not merely unpleasant or offensive, but exceeds aggravation listed in subsection 255-35-030(1)(a). This is conduct of a type which manifests indifference to the value of human safety or property (e.g., actions which terrorize or inflict serious mental distress on a victim, as the rapist who telephones the victim and threatens to repeat the crime; unusual or protracted cruelty; multiple victims in a single or separate incident; extremely high harm-loss, as the burglar who takes a stereo and proceeds to destroy a large number of items left in the house with an axe; infliction of serious physical injury, if not an element of the crime).

(7) "Parole consideration hearing": The hearing scheduled for a prisoner when parole release has been deferred at the prison term hearing.

(8) "Serious physical injury": An injury which creates or causes substantial risk or death, or serious and protracted disfigurement, or protracted impairment of health or the protracted loss or impairment of the function of any bodily organ.

(9) "Harm-loss": The actual or immediately threatened injury associated with particular criminal conduct, whether to person or property.

(10) Principal range: The longest range imposed in a chain of ranges shall be the principal range.

(11) Subordinate range: The shorter range, or if two or

more ranges are identical the remaining range or ranges shall be the subordinate range or ranges.

(12) The Base range is the range for each crime category and is reflected in Exhibit C under the "Excellent" column.

Stat. Auth.: ORS Ch. 144  
Hist: 2PB 1-1979, f. & ef. 2-1-79

Temporary effective 11/25/81 to 5/23/82  
Became permanent 5/19/82

DIVISION 35

APPLICATION OF THE GUIDELINES  
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Definitions

255-35-005 (1) "Offense severity rating": The classification given to a prisoner's commitment offense according to the seriousness of the crime, used as one dimension in establishing the prison term to be served. A rating of seven is most serious; a rating of one is least serious. Some broad offenses, which include various types of criminal behavior (e.g., burglary, theft, robbery, et al), are separated into different categories on the basis of actual criminal conduct.

(2) "History/risk score": Refers to the Criminal History/Risk Assessment; it is a rating, from a high of 11 to a low of zero points, used as the second dimension in establishing the prison term to be served. The rating emphasizes both the seriousness of the prior record and factors reflecting likelihood of success on parole.

(3) "Guideline ranges": Ranges of months to be served as a prison term before parole release for each offense severity rating and history/risk score. A parole release date will normally be set within the applicable guideline range. The Board may only vary from the ranges if it finds the presence of aggravation or mitigation.

(4) "Guideline matrix": Refers to the table of guideline ranges displayed at the intersection of the appropriate offense severity rating and history/risk score illustrated in Exhibit C.

(5) "Parole release date": A fixed date, by month and year, assigned to a prisoner for parole release based on the guideline range for his/her particular offense severity rating and history/risk score. A parole release date can only be changed following a hearing for reasons specified in division 60 and ORS 144.126. The parole release date ends on the last day of the designated month and year.

(6) "Particularly violent or otherwise dangerous criminal conduct": Conduct which is not merely unpleasant or offensive, but exceeds aggravation listed in subsection 255-35-030(1)(a). This is conduct of a type which manifests indifference to the value of human safety or property (e.g., actions which terrorize or inflict serious mental distress on a victim, as the rapist who telephones the victim and threatens to repeat the crime; unusual or protracted cruelty; multiple victims in a single or separate incident; extremely high harm-loss, as the burglar who takes a stereo and proceeds to destroy a large number of items left in the house with an axe; infliction of serious physical injury, if not an element of the crime).

(7) "Parole consideration hearing": The hearing scheduled for a prisoner when parole release has been deferred at the prison term hearing.

(8) "Serious physical injury": An injury which creates or causes substantial risk of death, or serious and protracted disfigurement, or protracted impairment of health or the protracted loss or impairment of the function of any bodily organ.

(9) "Harm-loss": The actual or immediately threatened injury associated with particular criminal conduct, whether to person or property.

Stat. Auth.: ORS Ch. 144

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



DIVISION 35

APPLICATIONS OF THE GUIDELINES TO ESTABLISH A PRISON TERM

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)

Permanent effective 11/15/00

OREGON ADMINISTRATIVE RULES  
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DIVISION 35

APPLICATION OF THE GUIDELINES  
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Exhibits  
255-35-006

Exhibits AI, AII, AIII, BI, BII, C, D, EI, EII, EIII, 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)

Permanent effective 10/9/92



OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Rating Crime Severity: Generally, Multiple Concurrent Convictions  
255-35-010

- [(1) The Board shall assign a crime severity rating from one to seven, according to Exhibit A, for each prisoner's commitment crimes(s).]
- [(2) Two or more convictions with sentences to be served at the same time (concurrent sentences) shall be rated according to the most serious crime. The prisoner shall be given a prison term that results in the longest incarceration.]
- [(3) When there are two (2) or more sentences that have been imposed consecutively, each crime shall be rated separately in accordance with rule 255-35-022.]

Permanent effective 5/19/88

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Rating Crime Severity: Generally, Multiple Concurrent Convictions

255-35-010 (1) The Board shall assign a crime severity rating from one to seven, according to Exhibit A, for each prisoner's commitment crime(s).

(2) Two or more convictions with sentences to be served at the same time (concurrent sentences) shall be rated according to the most serious crime. The prisoner shall be given a prison term that results in the longest incarceration.

(3) When there are two (2) or more sentences that have been imposed consecutively, each crime shall be rated separately in accordance with rule 255-35-022.

[ED. NOTE: The Exhibit referred to in the above rule is not printed in the Oregon Administrative Rules Compilation. Copies are available from the adopting agency.]

Stat.Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80; 2PB 1-1981, f. 1-20-81, ef. 2-15-81; 2PB 2-1981, f. 3-5-81, ef. 4-1-81; 2PB 4-1981(Temp), f. & ef. 11-4-81; 2PB 15-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 9-1985, f. & ef. 5-31-85

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

DIVISION 35

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255-35-010 Rating Crime Severity: Generally, [For] Multiple Concurrent Convictions[, Attempts, Solicitation,, Conspiracy, Crimes Not Listed, and Consecutive Sentences]

- (1) The Board shall assign a[n] crime [offense] severity rating from one to seven, according to Exhibit A, for each prisoner's commitment crime(s).[prisoner's commitment.]
- (2) Two or more convictions with sentences to be served at the same time (concurrent sentences) shall be rated according to the most serious crime. The prisoner shall be given a prison term that results in the longest incarceration.

[Special Situations:

- (a) Multiple convictions with concurrent sentences shall be classified according to the crime bearing the highest rating;
- (b) Attempt (ORS 161.405) and Solicitation (ORS 161.435) shall be assigned a rating one category less than the criminal activity intended. Conspiracy shall be assigned the same severity as the actual crime except that Conspiracy to Commit Murder shall be classified a six (6) rather than seven (7);
- (c) Crimes not listed shall be rated by comparison to crimes listed on this table;
- (d) When consecutive sentences have been imposed, a rating shall be assigned for each offense, except as provided in Rule 255-35-022.]
- (3) When there are two (2) or more sentences that have been imposed consecutively, each crime shall be rated separately in accordance with Rule 255-35-022.

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DIVISION 35

APPLICATION OF THE GUIDELINES  
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Rating Offense Severity: Generally; For Multiple Concurrent Convictions, Attempts, Solicitation, Conspiracy, Crimes Not Listed, And Consecutive Sentences

255-35-010

- (1) The Board shall assign an offense severity rating from one to seven, according to Exhibit D, for each prisoner's crime of commitment.
- (2) Special Situations:
  - (a) Multiple convictions with concurrent sentences shall be classified according to the crime bearing the highest rating.
  - (b) Attempt (ORS 161.405) and Solicitation (ORS 161.423) shall be assigned a rating one category less than the criminal activity intended. Conspiracy shall be assigned the same severity as the actual crime except that Conspiracy to Commit Murder shall be classified a six (6) rather than a seven (7).
  - (c) Crimes not listed shall be rated by comparison to crimes listed on this table.
  - (d) When consecutive sentences have been imposed, a rating shall be assigned for each offense, except as provided in paragraph 255-35-02[0(2)(e)(A)] 2.
- [(3) The Board shall make a formal finding of fact of offense severity in the prisoner's presence at the prison term hearing.]

Temporary effective 11/4/81 to 5/2/82  
Became permanent 5/19/82

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255-35-010 Shall be amended as follows:

- (1) The Board shall assign an offense severity rating from one to seven according to Exhibit A, for each prisoner's crime of commitment.
- (2) Special Situations:
  - (a) Multiple convictions with concurrent sentences shall be classified according to the crime bearing the highest rating.
  - (b) Attempt (ORS 161.405) and Solicitation (ORS 161.435) shall be assigned a rating one category less than the criminal activity intended [;]. [but] Conspiracy shall be assigned the same severity as the actual crime, except that Conspiracy to Commit Murder shall be classified a six (6) rather than seven (7).
  - (c) Crimes not listed shall be rated by comparison to crimes listed on this table.
  - (d) When consecutive sentences have been imposed, a rating shall be assigned for each offense, except as provided in paragraph 255-35-020(2)(e)(A).
- (3) The Board shall make a formal finding of fact of offense severity in the prisoner's presence at the prison term hearing.

Permanent effective 2/15/81

STAT.AUTH.:ORS Ch.144

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

ITEM 1

AMENDMENT TO 255-35-010

Amending OAR 255-35-010 to read as follows:

RATING OFFENSE SEVERITY: Generally; For Multiple Concurrent Convictions, Attempts, Solicitation, Conspiracy, Crimes Not Listed, and Consecutive Sentences.

255-35-010 Shall be amended as follows:

- (1) The Board shall assign an offense severity rating from one to seven according to Exhibit A, for each prisoner's crime of commitment.
- (2) Special Situations:
  - (a) Multiple convictions with concurrent sentences shall be classified according to the crime bearing the highest rating.
  - (b) Attempt (ORS 161.405) and Solicitation (ORS 161.435) shall be assigned a rating one category less than the criminal activity intended [;]. [but] Conspiracy shall be assigned the same severity as the actual crime, except that Conspiracy to Commit Murder shall be classified a six (6) rather than seven (7).
  - (c) Crimes not listed shall be rated by comparison to crimes listed on this table.
  - (d) When consecutive sentences have been imposed, a rating shall be assigned for each offense, except as provided in paragraph 255-35-020(2)(e)(A).
- (3) The Board shall make a formal finding of fact of offense severity in the prisoner's presence at the prison term hearing.

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(2) Special Situations:

(a) Multiple convictions with concurrent sentences shall be classified according to the crime bearing the highest rating.

(b) Attempt (ORS 161.405) and Solicitation (ORS 161.435) shall be assigned a rating one category less than the criminal activity intended; but Conspiracy shall be assigned the same severity as the actual crime.

(c) Crimes not listed shall be rated by comparison to crimes listed on this table.

(d) When consecutive sentences have been imposed, a rating shall be assigned for each offense, except as provided in paragraph 255-35-020(2)(e)(A).

(3) The Board shall make a formal finding of fact of offense severity in the prisoner's presence at the prison term hearing.

Stat. Auth.: ORS Ch. 144

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

**Rating Offense Severity: Generally; For Multiple Concurrent Convictions, Attempts, Solicitation, Conspiracy, Crimes Not Listed, and Consecutive Sentences**

255-35-010 (1) The Board shall assign an offense severity rating from one to seven, according to Exhibit A, for each prisoner's crime of commitment.

Permanent effective 2/1/79



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DIVISION 35

APPLICATION OF THE GUIDELINES  
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[255-35-012 Board to Make Findings of Fact Regarding Offense Severity; Waiver of Exit Interview; Establishing Conditions of Parole

- (1) In the prisoner's presence, the Board shall make formal findings of fact pertaining to offense severity, history/risk, aggravation, mitigation, guideline range and shall set, except as provided by rules 255-30-030 and 255-38-005, a release date.
- (2) If the Board in setting a release date waives an exit interview and does not schedule a review, it shall specify what conditions of parole including special conditions, shall be added to the parole order and whether the Board is ordering an exit interview prior to the release of the prisoner on temporary leave or parole. Parole conditions may be amended by a panel of the Board; changes shall be supported by written findings.]

Permanent effective 5/31/85

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255-35-012(1) In the prisoner's presence, the Board shall make formal findings of fact pertaining to offense severity, history/risk, aggravation, mitigation, guideline range and shall set, except as provided by 255-35-030 and 255-38-005, a release date.

(2) If the Board in setting a release date waives an exit interview and does not schedule a review, it shall specify what conditions of parole including special conditions, shall be added to the parole order and whether the Board is ordering an exit interview prior to the release of the prisoner on temporary leave or parole. Parole conditions may be amended by a panel of the Board; changes shall be supported by written findings.

Temporary effective 11/4/81 to 5/2/82  
Became permanent 5/19/82



DIVISION 35

**APPLICATIONS OF THE GUIDELINES TO ESTABLISH A PRISON TERM**

**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)

Permanent effective 11/15/00

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Factors which Determine An Initial Parole Release Date  
255-35-013

[(1) Except in those cases under OAR 255-32-025 the Board shall make findings of fact regarding a prisoner:

- (a) Crime severity rating (Exhibit A):
- (b) History/risk score (Exhibit C):
- (c) Guideline range (Exhibit C);
- (d) Aggravation/mitigation (Exhibit E).]

[(2) The Board shall then, except as provided by OAR 255-35-030 (parole denial) and 255-38-005 (dangerous offender) establish an initial parole release date and inform the prisoner of that 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 rational (Exhibit A);
- (3) the prisoner's history/risk assesment 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-20; and
- (8) minimum sentences.

Permanent effective 5/19/88

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

255-35-013      Factors Which Determine An Initial Parole Release Date

- (1) Except in those cases under OAR 255-32-025 the Board shall make findings of fact regarding a prisoner's:
  - (a) Crime severity rating (Exhibit A)
  - (b) History/risk score (Exhibit B),
  - (c) Guideline range (Exhibit C), and
  - (d) Aggravation/mitigation, (Exhibit E).
  
- (2) The Board shall then, except as provided by OAR 255-35-030 (parole denial) and 255-38-005 (dangerous offenders), establish an initial parole release date and inform the prisoner of that date.

Permanent effective 5/31/85



DIVISION 35

APPLICATIONS OF THE GUIDELINES TO ESTABLISH A PRISON TERM

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)

Permanent effective 11/15/00

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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Initial Parole Release Date for Offenders Whose Probations are Revoked  
November 1, 1989 or Later  
255-35-014

- (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 255-35-013 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 and herein incorporated by reference including:
    - (A) crime category (253-04-002, 253-04-003, 253-04-004, 253-04-005, Appendices 2, 3, 4 to OAR 253);
    - (B) criminal history as established by the post-sentence report (253-04-006, 253-04-007, 253-04-008, 253-04-009, 253-04-010, 253-04-011);
    - (C) guideline ranges (Appendix 1 to OAR 253);
    - (D) aggravating or mitigating factors, if any (253-05-001);
    - (E) upholding or overriding minimum sentences;
    - (F) summing of consecutive ranges (OAR 253-12-010 to 040); and
  - (c) except when the Board upholds a minimum sentence or denies parole, set the prison term pursuant to:
    - (A) the Sentencing Guidelines Grid (253-10-002, 253-05-006, 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 Guideline (255-35-013) 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 255-35-025.
- (4) Notwithstanding OAR 255-35-025, 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; temporary, 6/24/92; 10/9/92)

Permanent effective 10/9/92

Initial Parole Release Date for Offenders Whose Probations are Revoked November 1, 1989 or Later  
255-35-014

- (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 255-35-013 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 and herein incorporated by reference including:
    - (A) crime category (253-04-002, 253-04-003, 253-04-004, 253-04-005, Appendices 2, 3, 4 to OAR 253);
    - (B) criminal history as established by the post-sentence report (253-04-006, 253-04-007, 253-04-008, 253-04-009, 253-04-010, 253-04-011);
    - (C) guideline ranges (Appendix 1 to OAR 253);
    - (D) aggravating or mitigating factors, if any (253-05-001);
    - (E) upholding or overriding minimum sentences;
    - (F) summing of consecutive ranges (OAR 253-12-010 to 040); and
  - (c) except when the Board upholds a minimum sentence or denies parole, set the prison term pursuant to:
    - (A) the Sentencing Guidelines Grid (253-10-002, 253-05-006, 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 Guideline (255-35-013) 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 255-35-025, except that the Board may order a prison term of less than six (6) months.

Statutory Authority: ORS 137.551

History: (11/1/89; 7/1/90; 1/13/92; temporary, 6/24/92)

6/24/92

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Prison Term Guidelines

Temporary effective 6/24/92 to 12/20/92  
superceded by permanent filing 10/9/92

Initial Parole Release Date for Offenders Whose Probations are Revoked  
November 1, 1989 or Later  
255-35-014

(1) To the extent permissible under law, [F]for those offenders [whose crimes were] who committed crimes prior to November 1, 1989 and the court [whose probations are] revoked the previously ordered probation November 1, 1989 or later, the Board shall:

[(1)](a) make the findings of fact listed in OAR 255-35-013 pursuant to Divisions 30 and 35 of the Board of Parole and Post-Prison Supervision rules; and

[(2)](b) make findings of fact pursuant to the Sentencing Guidelines Grid and applicable rules found in OAR Chapter 253 and herein incorporated by reference including:

[(a)](A) crime category (253-04-002, 253-04-003, 253-04-004, 253-04-005, Appendices 2, 3, 4 to OAR 253);

[(b)](B) criminal history as established by the post-sentence report (253-04-006, 253-04-007, 253-04-008, 253-04-009, 253-04-010, 253-04-011);

[(c)](C) guideline ranges (Appendix 1 to OAR 253);

[(d)](D) aggravating or mitigating factors, if any (253-05-001);

[(e)](E) upholding or overriding minimum sentences;

[(f)](F) summing of consecutive ranges (OAR 253-12-010 to 040); and

[(3)](c) [E]except when the Board upholds a minimum sentence or denies parole, set the prison term pursuant to:

[(a)](A) the Sentencing Guidelines Grid (253-10-002, 253-05-006, 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)](B) the Matrix Guideline (255-35-013) if the resultant prison term would be shorter than it would be under the Sentencing Guidelines Grid and applicable rules.

[(4)](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 [shall be] at the minimum sentence.

[(5)](3) When the court orders a sentence [is] shorter than the applicable prison term, the Board shall apply OAR 255-35-025 [shall be applied].

Statutory Authority: (ORS 137.551, 144.110, 144.120, 144.785)

History: (11/1/89; 7/1/90; 1/13/92)

Initial Parole Release Date for Offenders Whose Probations are Revoked November 1, 1989 or Later (ORS 137.551)  
255-35-014 (11/1/89; 7/1/90)

For those offenders whose crimes were committed prior to November 1, 1989 and whose probations are revoked November 1, 1989 or later the Board shall:

- (1) make the findings of fact listed in OAR 255-35-013 pursuant to Divisions 30 and 35 of the Board of Parole and Post-Prison Supervision rules; and
- (2) make findings of fact pursuant to the Sentencing Guidelines Grid and applicable rules found in OAR Chapter 253 and herein incorporated by reference including:
  - (a) crime category (253-04-002, 253-04-003, 253-04-004, 253-04-005, Appendices 2, 3, 4 to OAR 253);
  - (b) criminal history as established by the post-sentence report (253-04-006, 253-04-007, 253-04-008, 253-04-009, 253-04-010, 253-04-011);
  - (c) guideline ranges (Appendix [A] 1 to OAR 253);
  - (d) aggravating or mitigating factors, if any (253-05-001);
  - (e) upholding or overriding minimum sentences;
  - (f) summing of consecutive ranges (OAR [253-12-002 to 003] 253-12-010 to 040); and
- (3) Except when the Board upholds a minimum sentence or denies parole, [S] set the prison term pursuant to:
  - (a) the Sentencing Guidelines Grid (253-10-002, 253-05-006, Appendix 1), if the resultant prison term would be [as long as that prison term is] shorter than it [otherwise] would be under the Board of Parole Matrix Guideline and applicable rules;
  - (b) the Matrix Guideline (255-35-013) if the resultant prison term would be shorter than it would be under the Sentencing Guidelines Grid and applicable rules.
- (4) 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 prison term shall be the minimum sentence.
- (5) When the sentence is shorter than the applicable prison term, OAR 255-35-025 shall be applied.

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

**APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM**

Initial Parole Release Date for Offenders Whose Probations are  
Revoked November 1, 1989 or Later  
255-35-014

For those offenders whose crimes were committed prior to November  
1, 1989 and whose probations are revoked November 1, 1989 or later  
the Board shall:

- (1) make the findings of fact listed in OAR 255-35-013 pursuant  
to Divisions 30 and 35 of the Board of Parole and  
Post-Prison Supervision rules; and
- (2) make findings of fact pursuant to the Sentencing Guidelines  
Grid and applicable rules found in OAR Chapter 253 and  
herein incorporated by reference including:
  - (a) crime category;
  - (b) criminal history;
  - (c) guideline ranges (Appendix A to OAR 253);
  - (d) aggravating or mitigating factors, if any
  - (e) upholding or overriding minimum sentences;
  - (f) summing of consecutive ranges (OAR 253-12-002 to  
003); and
- (3) Set the prison term pursuant to the Sentencing Guidelines  
Grid, as long as that prison term is shorter than it  
otherwise would be under the Board of Parole Matrix  
Guideline and applicable rules.

Permanent effective 11/1/89

Establishing the Prison Term



OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Criminal History/Risk Assessment  
255-35-015

[The Board shall use the table in Exhibit B to make a criminal history/risk assessment and shall assign a score from zero (0) to eleven (11) as set forth in Exhibit B as a formal finding of fact in the prisoner's presence at the prison term hearing.]

Permanent effective 5/19/88

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

255-35-015 Criminal History/Risk Assessment

[(1)]The Board shall use the table in Exhibit B to make a criminal history/risk assessment and shall assign a score from zero (0) to eleven (11) as set forth in Exhibit B as a formal finding of fact in the prisoner's presence at the prison term hearing.

Permanent effective 5/31/85

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

**Criminal History/Risk Assessment**

255-35-015 The Board shall use the table in Exhibit B to make a criminal history/risk assessment and shall assign a score from zero to 11 as set forth in Exhibit B as a formal finding of fact in the prisoner's presence at the prison term hearing.

Stat. Auth.: ORS Ch. 144

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

Permanent effective 2/1/79



Variations From the Ranges for Aggravation or Mitigation

255-35-016

- (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 [I] items of aggravation and mitigation [may be given] different weight and [are] not necessarily [balanced] 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 [T] the maximum allowable variations from a range [are shown in Exhibit D]. The Board may apply [A] a portion or all of the variation allowed [may be applied].
- (4) The Board shall also apply [T] these provisions [shall apply equally] 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)

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Variations From the Ranges for Aggravation or Mitigation  
255-35-016

- (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. Items of aggravation and mitigation may be given different weight and are not necessarily balanced 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) The maximum allowable variations from a range are shown in Exhibit D. A portion or all of the variation allowed may be applied.
- (4) These provisions shall apply equally to unified ranges.

Permanent effective 11/1/89

Establishing the Prison Term

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

[Establishing Conditions of Parole] Variations From the Ranges for  
Aggravation or Mitigation  
255-35-016

- (1) The Board may depart from the appropriate 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.
  - (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) The maximum allowable variations from a range are shown in Exhibit D. A portion or all of the variation allowed may be applied.
  - (4) These provisions shall apply equally to unified ranges.
- (1) If the Board in setting a release date waives a parole release hearing it shall specify condition(s) of parole including special conditions that shall be added to the parole order in accordance with OAR 255-70-0011
  - (2) The Board may order an exit interview prior to the release of the prisoner on parole.]
  - (3) Parole conditions may be amended administratively by a panel of the Board; changes shall be supported by written findings.]

Permanent effective 5/19/88

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

255-35-016

Establishing Conditions of Parole

- (1) If the Board in setting a release date waives a parole release hearing it shall specify condition(s) of parole including special conditions that shall be added to the parole order in accordance with OAR 255-70-001.
- (2) The Board may order an exit interview prior to the release of the prisoner on parole.
- (3) Parole conditions may be amended administratively by a panel of the Board; changes shall be supported by written findings.



OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Multiple Concurrent Convictions  
255-35-018

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

Permanent effective 11/1/89

Establishing the Prison Term

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Multiple Concurrent Convictions

255-35-018

When concurrent sentences exist, the prisoner shall be given a  
matrix range based on the crime with greatest range.

Permanent effective 5/19/88



[Consecutive Sentences:] Board Bound by Court Order  
255-35-020

(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 137.120, 137.122, 137.123, 144.050, 144.079,  
144.783)

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

10/9/92

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Prison Term Guidelines

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Consecutive Sentences: Board Bound by Court Order  
255-35-020 (2/1/79; 5/19/82; 5/31/85; 5/19/88; 4/5/90)

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.

Permanent effective 4/5/90

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

[Effect of Time on Escape on Prison Terms] Consecutive Sentences:  
Board Bound by Court Order  
255-35-020

The Board of Parole does not have the authority to run a sentence  
currently or consecutively to an out of state jurisdiction, but is  
bound by the final judgement order issued by the Oregon courts.

[Inoperative Time on Escape: In establishing the parole release date for a person who has escaped from a state correctional facility, time on escape shall not count toward the completion of the prison term. The time on escape prior to the parole release date shall be added to the prison term.]

Permanent effective 5/19/88

Effect of Time on Escape on Prison Terms [Other Considerations in Establishing a Prison Term: Time on Escape; Judicial Sentences]

Inoperative [Inoperable] Time on Escape: In establishing the parole release date for a person who has escaped from a state correctional facility [convicted of escape], time on escape shall not count toward the completion of the prison term. The time on escape prior to the parole release date shall be added to the prison term.

[(2) Judicial Sentences: Mandatory Minimums; Findings of Fact and Reasons for Sentence:

- (a) When judge imposes a minimum term of imprisonment pursuant to ORS 144.110(1), the Board shall not release the prisoner before the minimum has been served except upon affirmative votes of at least four members of the Board.
- (b) The Board shall consider the court's reasons for the sentence imposed. The Board shall rely upon any findings of fact determined in open court before counsel for the state and defendant to make its determinations relating to offense severity, history/risk score, and aggravation and mitigation, unless:
  - (1) The court applied the rules governing the establishment of the guideline ranges incorrectly;
  - (2) Information is available that was not considered at the time of sentencing;
  - (3) The court's findings, while technically correct, leads to an inequitable result.
- (c) When making a finding contrary to the court, the Board shall state the specific facts and reasons for its action and notify the sentencing judge of the decision and its reasons;
- (d) Where the Board has, by four affirmative votes, chosen to set a parole release date for a prisoner who has received a judicially imposed minimum sentence, the Board in setting the parole release date may apply the applicable matrix variations or establish a release date at any point up to the previously imposed minimum sentence. The Board shall cite reasons for exceeding the appropriate matrix range and variations.]

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

255-35-020 (1) Inoperable Time on Escape: In establishing the parole release date for a person convicted of escape, time on escape shall not count toward the completion of the prison term. The time on escape prior to the parole release date shall be added to the prison term.

[(2) Consecutive Sentences: When consecutive sentences have been imposed, the following shall apply:

(a) The Board shall sum the ranges established for each consecutive offense; however, when the range exceeds the good time date on the corresponding sentence, the ranges established in section 255-35-025(2) apply to that sentence in the series.

(b) For purposes of establishing a parole release date, the Board shall consider the summed ranges for consecutive sentences as a single, unified range. Any minimum sentences shall be considered a single, unified minimum.

(c) Because aggravation was considered in imposing consecutive sentences, a panel shall not set a prison term above the lower half of the summed range for Category 5, 6, and 7 offenses. If a panel makes a specific finding that aggravation exists which justifies a set in the upper half of the range, it shall refer the matter to the full Board for consideration. The Board may set a prison term in the top half of the range by a majority vote. The Board shall not go above the top of the summed ranges unless the variation is approved by at least four voting members following a hearing under section 255-35-035(2).

(d) The maximum downward variation from the ranges shown in Exhibit D shall be summed.

(e) When a sentence has been imposed consecutive to one already being served by a parolee, the range for the first sentence shall be the time served prior to revocation.

(A) If a single consecutive sentence is imposed, the prison term shall be established as for a single new sentence and the provisions of this rule shall not apply.

(B) If more than one new sentence is imposed consecutively, the provisions of this rule shall be followed as to all new sentences.]

(2) [3] Judicial Sentences: Mandatory Minimums; Findings of Fact and Reasons for Sentence:

(a) When a judge imposes a minimum term of imprisonment pursuant to ORS 144.110(1), the Board shall not release the prisoner before the minimum has been served except upon affirmative votes of at least four members of the Board.

(b) The Board shall consider the Court's reasons for the sentence imposed. The Board shall rely upon any findings of fact determined in open court before counsel for the state and defendant to make its determinations relating to offense severity, history/risk score, and aggravation and mitigation, unless:

(A) The court applied the rules governing the establishment of the guideline ranges incorrectly;

(B) Information is available that was not considered at the time of sentencing;

(C) The court's findings, while technically correct, leads to an inequitable result.

(c) When making a finding contrary to the court, the Board shall

state the specific facts and reasons for its action and notify the sentencing judge of the decision and its reasons.

(d) Where the Board has, by four affirmative votes, chosen to set a parole release date for a prisoner who has received a judicially imposed minimum sentence, the Board, in setting the parole release date may apply the applicable matrix and variations or establish a release date at any point up to the previously imposed minimum sentence. The Board shall cite reasons for exceeding the appropriate matrix range and variations.

Stat. Auth.: ORS Ch. 144  
Hist: 2PB 1-1979, f. & ef. 2-1-79

Permanent effective 5/19/82

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

**Other Considerations in Establishing a Prison Term: Time on  
Escape; Consecutive Sentences; Judicial Sentences**

**255-35-020** (1) **Inoperable Time on Escape:** In establishing the parole release date for a person convicted of escape, time on escape shall not count toward the completion of the prison term. The time on escape prior to the parole release date shall be added to the prison term.

(2) **Consecutive Sentences:** When consecutive sentences have been imposed, the following shall apply:

(a) The Board shall sum the ranges established for each consecutive offense; however, when the range exceeds the good time date on the corresponding sentence, the ranges established in section 255-35-025(2) apply to that sentence in the series.

(b) For purposes of establishing a parole release date, the Board shall consider the summed ranges for consecutive sentences as a single, unified range. Any minimum sentences shall be considered a single, unified minimum.

(c) Because aggravation was considered in imposing consecutive sentences, a panel shall not set a prison term above the lower half of the summed range for Category 5, 6, and 7 offenses. If a panel makes a specific finding that aggravation exists which justifies a set in the upper half of the range, it shall refer the matter to the full Board for consideration. The Board may set a prison term in the top half of the range by a majority vote. The Board shall not go above the top of the summed ranges unless the variation is approved by at least four voting members following a hearing under section 255-35-035(2).

(d) The maximum downward variation from the ranges shown in Exhibit D shall be summed.

(e) When a sentence has been imposed consecutive to one already being served by a parolee, the range for the first sentence shall be the time served prior to revocation.

(A) If a single consecutive sentence is imposed, the prison term shall be established as for a single new sentence and the provisions of this rule shall not apply.

(B) If more than one new sentence is imposed consecutively, the provisions of this rule shall be followed as to all new sentences.

(3) **Judicial Sentences: Mandatory Minimums; Findings of Fact and Reasons for Sentence:**

(a) When a judge imposes a minimum term of imprisonment pursuant to ORS 144.110(1), the Board shall not release the prisoner before the minimum has been served except upon affirmative votes of at least four members of the Board.

(b) The Board shall consider the court's reasons for the sentence imposed. The Board shall rely upon any findings of fact determined in open court before counsel for the state and defendant to make its determinations relating to offense severity, history/risk score, and aggravation and mitigation, unless:

(A) The court applied the rules governing the establishment of the guideline ranges incorrectly;

(B) Information is available that was not considered at the time of sentencing;

(C) The court's findings, while technically correct, leads to an inequitable result.

(c) When making a finding contrary to the court, the Board shall state the specific facts and reasons for its action and notify the sentencing judge of the decision and its reasons.



OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Consecutive Sentences: Creating a Unified Matrix Range  
255-35-021

- (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 subsection (1) of this section with the ranges established under subsection (2) of this section.
- (4) The method established by subsections (1) to (3) of this section 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 subsection (4) of this section, 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 rational. The unified range shall be the sum of the ranges established under this subsection.
- (6) The unified range may be subject to the variations established in accordance with OAR 255-35-016 and Exhibit D.



OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Consecutive Sentences: Referring a Case to the Full Board; Going Below the Range; Additional Consecutive Sentences (ORS 144.079, 144.783)  
255-35-022 (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)

- (1) When a panel recommends that a range be less than the sum of the terms under OAR 255-35-021, the panel shall refer the case [shall be referred] to [the Full] a majority of the Board.
- (2) The duration of imprisonment for consecutive sentences may be less than the sum of the terms under OAR 255-35-021, if the Board finds by [four] a majority vote [affirmative votes] that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect 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 [crimes] 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 [shall be computed] under the provisions of OAR 255-35-021; [or]
  - (b) conduct a hearing to consider only the additional consecutive sentences using base ranges for the additional [crimes] 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 255-35-021 (4).
- [(5) If the Board votes to unsum the consecutive ranges at the beginning of the hearing, then a hearing under section (3) of this rule is not required, unless one of the crimes involved is listed in OAR 255-35-021 (4). The new crime will be considered as a using the principal range.]

Permanent effective 10/15/91

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

- [(6)](5) If one of the crimes involved is listed in OAR 255-35-021 (4) and the sentence is consecutive, [then] the Board shall conduct a de novo hearing under subsection (3)(a) of this rule [must be conducted].
- [(7)](6) If a new [crime] sentence is consecutive to [crimes] 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 [must be conducted].
- [(8)](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 [crimes] sentences already considered, the Board shall establish the matrix range for the additional [crimes] sentences [shall be established] as if [it] they were [a] new [sentence] sentences. If the inmate has not yet been released on parole, the commencement date for the new [crimes] prison term shall be the parole release date established at the previous prison term hearing.

Permanent effective 10/15/91

Prison Term Guidelines

Consecutive Sentences: Referring a Case to the Full Board; Going Below the Range; Additional Consecutive Sentences (ORS 144.079, 144.783)  
255-35-022 (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)

- (1) When a panel recommends that a range be less than the sum of the terms under OAR 255-35-021, the case shall be referred to [the Full] a quorum of the Board.
- (2) The duration of imprisonment for consecutive sentences may be less than the sum of the terms under OAR 255-35-021, if the Board finds by [four] a majority vote [affirmative votes] that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect 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 crimes 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 unified range for the additional sentences and the sentences which were already considered shall be computed under the provisions of OAR 255-35-021; or
  - (b) conduct a hearing to consider only the additional consecutive sentences using base ranges for the additional crimes. The commencement date for the new prison term under this subsection shall be the parole release date set at the previous prison term hearing.
- (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 255-35-021 (4).
- (5) If the Board votes to unsum the consecutive ranges at the beginning of the hearing, then a hearing under section (3) of this rule is not required, unless one of the crimes involved is listed in OAR 255-35-021 (4). The new crime will be considered as a principal range.
- (6) If one of the crimes involved is listed in OAR 255-35-021 (4) and is consecutive, then a de novo hearing under subsection (3)(a) of this rule must be conducted.
- (7) If a new crime is consecutive to crimes already considered, and is the most serious offense with the highest crime severity rating and/or longest sentence, a de novo hearing under subsection (3)(a) of this rule must be conducted.
- (8) 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 crimes already considered, the matrix range for the additional crimes shall be established as if it were a new sentence. If the inmate has not yet been released on parole, the commencement date for the new crimes shall be the parole release date established at the previous prison term hearing.

Consecutive Sentences: Referring a Case to the Full Board; Going Below the Range; Additional Consecutive Sentences (ORS 144.079, 144.783)  
255-35-022 (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; 5/27/90)

- (1) When a panel recommends that a range be less than the sum of the terms under OAR 255-35-021, the case shall be referred to the Full Board.
- (2) The duration of imprisonment for consecutive sentences may be less than the sum of the terms under OAR 255-35-021, if the Board finds by four affirmative votes that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect 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 crimes 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 unified range for the additional sentences and the sentences which were already considered shall be computed under the provisions of OAR 255-35-021; or
  - (b) conduct a hearing to consider only the additional consecutive sentences using base ranges for the additional crimes. The commencement date for the new prison term under this subsection shall be the parole release date set at the previous prison term hearing.
- (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 255-35-021 (4).
- (5) If the Board votes to unsum the consecutive [sentences] ranges at the beginning of the hearing, then a hearing under section (3) of this rule is not required, unless one of the crimes involved is listed in OAR 255-35-021 (4). The new crime will be considered as a principal range.
- (6) If one of the crimes involved is listed in OAR 255-35-021 (4) and is consecutive, then a de novo hearing under subsection (3)(a) of this rule must be conducted.
- (7) If a new crime is consecutive to crimes already considered, and is the most serious offense with the highest crime severity rating and/or longest sentence, a de novo hearing under subsection (3)(a) of this rule must be conducted.
- (8) 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 crimes already considered, the matrix range for the additional crimes shall be established as if it were a new sentence. If the inmate has not yet been released on parole, the commencement date for the new crimes shall be the parole release date established at the previous prison term hearing.

Permanent effective 7/1/90

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Consecutive Sentences:[Effect of Consecutive Sentences on  
Establishing a Prison Term] Referring a Case to the Full Board;  
Going Below the Range; Additional Consecutive Sentences  
255-35-022

- [(1) When consecutive sentences have been imposed, a crime severity rating, history/risk score and a matrix range shall be assigned for each crime.]
- [(2) The term of imprisonment may be subject to variations established in accordance with OAR 255-35-035 and Exhibit D.]
- [(3) The Board shall consider the summed ranges as a single unified range.]
- [(4) In summing the ranges, the Board shall first establish the crime category, history/risk score and appropriate range for the principal crime. Subordinate ranges will then be established by taking each consecutive crime and establishing the applicable crime category and base range. The unified range will be determined by adding the base range for each subordinate crime to the principal range.]
- [(5) The Board may, by four (4) affirmative votes, choose to unsum one (1) or all of the ranges. Once unsummed, the Board will treat one or more consecutive sentences as concurrent sentences.]
- [(6) The following factors are considered by the Board in determining whether or not to unsum the ranges:
  - (a) consecutive sentences are not appropriate penalties for the criminal offenses involved; and
  - (b) the combined terms of imprisonment are not necessary to protect the community security.]
- [(7) When a two-member panel recommends that the Board choose to unsum one (1) or all the ranges, the case will be referred to the Full Board.]

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CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

- [(8) If the panel finds that the matrix range is inadequate to establish a prison term based upon findings of aggravation or mitigation, it shall secure a third vote or refer the matter to the Full Board.]
- [(9) When additional consecutive sentence(s) are imposed, the prison term shall be established as for a single new sentence.
- (a) When a sentence is imposed consecutively to a sentence on which parole has been granted, the matrix range shall be assigned as for a single new sentence.
- (b) Minimum sentences will be considered separately under the provisions of OAR 255-35-023 and 255-35-024.]
- (1) When a panel recommends that a range be less than the sum of the terms under OAR 255-35-021, the case shall be referred to the Full Board.
- (2) The duration of imprisonment for consecutive sentences may be less than the sum of the terms under OAR 255-35-021, if the Board finds by four affirmative votes that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect 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 crimes 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 unified range for the additional sentences and the sentences which were already considered shall be computed under the provisions of OAR 255-35-021; or

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- (b) conduct a hearing to consider only the additional consecutive sentences using base ranges for the additional crimes. The commencement date for the new prison term under this subsection shall be the parole release date set at the previous prison term hearing.
- (4) The provisions of subsection (3) of this section apply only to crimes which occurred on or after July 11, 1987, unless one of the crimes involved is listed in OAR 255-35-021 (4).
- (5) If the Board votes to unsum the consecutive sentences at the beginning of the hearing, then a hearing under subsection (3) of this section is not required, unless one of the crimes involved is listed in OAR 255-35-021 (4). The new crime will be considered as a principal range.
- (6) If one of the crimes involved is listed in OAR 255-35-021 (4) and is consecutive, then a denov hearing under subsection (3)(a) of this section must be conducted.
- (7) If a new crime is consecutive to crimes already considered, and is the most serious offense with the highest crime severity rating and/or longest sentence, a de novo hearing under subsection (3)(a) of this section must be conducted.
- (8) 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 crimes already considered, the matrix range for the additional crimes shall be established as if it were a new sentence. If the inmate has not yet been released on parole, the commencement date for the new crimes shall be the parole release date established at the previous prison term hearing.

Consecutive Sentences: Effect of Consecutive Sentences on  
Establishing a Prison Term  
255-35-022

- (1) When consecutive sentences have been imposed, a crime severity rating, history/risk score and a matrix range shall be assigned for each crime.
  - (2) The term of imprisonment may be subject to variations established in accordance with OAR 255-35-035 and Exhibit D.
  - (3) [(2)] The Board shall consider the summed ranges as a single unified range. [Any minimum sentences imposed in conjunction with consecutive terms shall be considered a single unified minimum.]
  - (4) [(3)] In summing the ranges, the Board shall first establish the crime category, history/risk score and appropriate range for the principal crime. Subordinate ranges will then be established by taking each consecutive crime and establishing the applicable crime category and base range. The unified range will be determined by adding the base range for each subordinate crime to the principal range.
  - (5) [(4)] The Board may, by four (4) [concurring] affirmative votes, choose to unsum one (1) or all of the ranges. Once unsummed, the Board will treat one or more consecutive sentences as concurrent sentences.
  - (6) [(5)] The following factors [may be] are considered by the Board in determining whether or not to unsum the ranges:
    - (a) consecutive sentences are not appropriate penalties for the criminal offenses involved; and
    - (b) the combined terms of imprisonment are not necessary to protect the community security.
- [(a) The crime category is 1, 2, 3, or 4 and one (1) or more of the following is applicable:]
- [(A) When the extent of the criminal history and the adequacy of the history/risk score, fails to appropriately reflect the criminal history of the offender;]
  - [(B) When the crimes are part of a crime spree that is uncharacteristic of the offender;]

Permanent effective 12/16/87

- [(C) When mitigation is present or the aggravation does not warrant summing of one (1) or more ranges.]
  - [(D) When the ranges or minimum sentences sentences, if any, are sufficient sanctions without summing the ranges.]
- [(b) The crime category is 5, 6, or 7 and one (1) or more of the following is applicable:]
- [(A) When the history/risk score for the principal range is three (3) or more;]
  - [(B) When the crimes are part of the same criminal episode;]
  - [(C) When minimum sentences exceed the range of the principal range;]
  - [(D) When sufficient mitigation is present (refer to Exhibit E).]
- (7) [(6)] When a two-member panel recommends that the Board choose to unsum one (1) or all the ranges, the case will be referred to the Full Board. [with or without a recommendation.]
- (8) [(7)] If the panel finds that the matrix range [prison term established according to matrix guidelines] is inadequate to establish a prison term based upon findings [because] of [the] aggravation or mitigation, it shall secure a third vote or refer the matter to the Full Board. [for consideration whichever is appropriate.]
- [(8) When a sentence has been imposed consecutive to one already being served by a parolee, the range for the first sentence shall be the time served prior to revocation.]
- (9) [(a)] When additional [If a single] consecutive sentence(s) are [is] imposed, the prison term shall be established as for a single new sentence. [and the provisions of this rule shall not apply. The Board may consider it an aggravating factor if a new sentence is imposed consecutively to a parole violation commitment.]
- (a) When a sentence is imposed consecutively to a sentence on which parole has been granted, the matrix range shall be assigned as for a single new sentence.

[(b) If more than one sentence is imposed consecutively, the provisions of this rule shall be followed as to all new sentences;]

(b) [(c)] Minimum sentences will be considered separately under the provisions of OAR 255-35-023 and 255-35-024.

[(9)Notwithstanding the above, if the sum of the ranges exceeds twice the principal term and standard variation established for the principal crime, the case shall be referred to the Full Board to consider treating the ranges concurrently.]

[(10)Aggravation for consecutive penalties shall increase with each successive range that is imposed consecutively.]

July 28, 1987

To: All Interested Persons

Fr: Georgina Dews, Law Clerk

*G.R.D.*

Re: Administrative Rules, 255-35-005 and 255-35-022.

On June 18, 1987, the Board adopted amendments to rules 255-35-005 and 255-35-022. These amendments were adopted to comply with an Attorney General Opinion which held that base ranges could not be used to compute matrix ranges for inmates with consecutive sentences.

On July 11, 1987, the Governor signed HB 3384 which altered the Board's statutory authority. HB 3384 allows for the use of base ranges in almost all instances. As a result, on July 21, 1987, the Board rescinded the amendments adopted on June 18, 1987.

However, only a portion of the amendments should have been rescinded. The filing dated July 21, 1987, was corrected by the Secretary of State's office, and the amendments which were retained and are still in effect are attached to this memo.

If you have any questions on this matter, please contact the Board.

GD/  
Encls.

Consecutive Sentences: Effect of Consecutive Sentences on Establishing a Prison Term

255-35-022 (1) When consecutive sentences have been imposed, a crime severity rating, history risk score and a matrix range shall be assigned for each crime.

(2) The term of imprisonment may be subject to variations established in accordance with OAR 255-35-035 and Exhibit D.

(3) [(2)] The Board shall consider the summed ranges as a single unified range. [Any minimum sentences imposed in conjunction with consecutive terms shall be considered a single unified minimum].

(4) [(3)] In summing the ranges, the Board shall first establish the crime category, history risk score and appropriate range for the principal crime. Subordinate ranges will then be established by taking each consecutive crime and establishing the applicable crime category and base range. The unified range will be determined by adding the base range for each subordinate crime to the principal range.

(5) [(4)] The Board may, by four (4) affirmative [concurring] votes, choose to unsum one (1) or all of the ranges. Once unsummed, the Board will treat one or more consecutive sentences as concurrent sentences.

(6) [(5)] The following factors are [maybe] considered by the Board in determining whether or not to sum the ranges:

(a) consecutive sentences are not appropriate penalties for the criminal offenses involved; and

(b) the combined terms of imprisonment are not necessary to protect the community security.

[(a) The crime category is 1, 2, 3, or 4 and one (1) or more of the following is applicable:]

[(A) When the extent of the criminal history and the adequacy of the history/risk score, fails to appropriately reflect the criminal history of the offender;]

[(B) When the crimes are part of a crime spree that is uncharacteristic of the offender;]

7/28/87 correction relating back to 7/21/87 temporary filing, became permanent 12/16/87 except for 1 word amendment to subsection 6

[(C) When mitigation is present or the aggravation does not warrant summing of one (1) or more ranges.]

[(D) When the ranges or minimum sentences, if any, are sufficient sanction without summing the ranges.]

[(b) The crime category is 5, 6, or 7 and one (1) or more of the following is applicable:]

[(A) When the history/risk score for the principal range is three (3) or more;]

[(B) When the crimes are part of the same criminal episode;]

[(C) When minimum sentences exceed the range of the principal range;]

[(D) When sufficient mitigation is present (refer to Exhibit E).]

(2) [(6)] When a two-member panel recommends that the Board choose to unsum one (1) or all the ranges, the case will be referred to the Full Board,\_\_\_[with or without a recommendation.]

(8) [(7)] If the panel finds that the matrix range [prison term established according to matrix guidelines] is inadequate to establish a prison term based upon findings [because] of [the] aggravation or mitigation, it shall secure a third vote or refer the matter to the Full Board,\_\_\_[for consideration whichever is appropriate.]

[(8) When a sentence has been imposed consecutive to one already being served by a parolee, the range for the first sentence shall be the time served prior to revocation.]

(9) [(a)] When additional [If a single] consecutive sentence(s) are [is] imposed, the prison term shall be established as for a single new sentence. [and the provisions of this rule shall not apply. The Board may consider it an aggravating factor if a new sentence is imposed consecutively to a parole violation commitment.]

[(b) If more than one sentence is imposed consecutively, the provisions of this rule shall be followed as to all new sentences;]

7/28/87 correction relating back to 7/21/87 temporary filing, became permanent 12/16/87 except for 1 word amendment to subsection 6.

(a) When a sentence is imposed consecutively to a sentence on which parole has been granted, the matrix range shall be assigned as for a single new sentence.

(b) [(c)] Minimum sentences will be considered separately under the provisions of OAR 255-35-023 and 255-35-024.

[(9) Notwithstanding the above, if the sum of the ranges exceeds twice the principal term and standard variation established for the principal crime, the case shall be referred to the Full Board to consider treating the ranges concurrently.]

[(10) Aggravation for consecutive penalties shall increase with each successive range that is imposed consecutively.]

7/28/87 correction relating back to 7/21/87 temporary filing, became permanent 12/16/87 except for 1 word amendment to subsection 6.

Consecutive Sentences: Effect of Consecutive Sentences on Establishing a Prison Term

255-35-022 (1) When consecutive sentences have been imposed, a rating and a range shall be assigned for each crime.

(2) The Board shall consider the summed ranges as a single unified range. Any minimum sentences imposed in conjunction with consecutive terms shall be considered a single unified minimum.

(3) In summing the ranges, the Board shall first establish the crime category, history risk score and appropriate range for the principal crime. Subordinate ranges will then be established by taking each consecutive crime and establishing the applicable crime category and base range. The unified range will be determined by adding the base range for each subordinate crime to the principal range.

(4) The Board may, by four (4) concurring votes, choose to unsum one (1) or all of the ranges. Once unsummed, the Board will treat one or more consecutive sentences as concurrent sentences.

(5) The following factors may be considered by the Board in determining whether or not to sum the ranges:

(a) The crime category is 1, 2, 3, or 4 and one (1) or more of the following is applicable:

(A) When the extent of the criminal history and the adequacy of the history/risk score, fails to appropriately reflect the criminal history of the offender;

(B) When the crimes are part of a crime spree that is uncharacteristic of the offender;

(C) When mitigation is present or the aggravation does not warrant summing of one (1) or more ranges.

(D) When the ranges or minimum sentences, if any, are sufficient sanction without summing the ranges.

(b) The crime category is 5, 6, or 7 and one (1) or more of the following is applicable:

(A) When the history/risk score for the principal range is three (3) or more;

(B) When the crimes are part of the same criminal episode;

(C) When minimum sentences exceed the range of the principal range;

(D) When sufficient mitigation is present (refer to Exhibit E).

(6) When a two-member panel recommends that the Board choose to unsum one (1) or all the ranges, the case will be referred to the Full Board with or without a recommendation.

(7) If the panel finds that the prison term established according to matrix guidelines is inadequate because of aggravation or mitigation, it shall secure a third vote or refer the matter to the full Board for consideration whichever is appropriate.

(8) When a sentence has been imposed consecutive to one already being served by a parolee, the range for the first sentence shall be the time served prior to revocation:

(a) If a single consecutive sentence is imposed, the prison term shall be established as for a single new sentence and the provisions of this rule shall not apply. The Board may consider it an aggravating factor if a new sentence is imposed consecutively to a parole violation commitment;

(b) If more than one sentence is imposed consecutively, the provisions of this rule shall be followed as to all new sentences;

(c) Minimum sentences will be considered separately under the provisions of OAR 255-35-023 and 255-35-024.

(9) Notwithstanding the above, if the sum of the ranges exceeds twice the principal term and standard variation established for the principal crime, the case shall be referred to the full Board to consider treating the ranges concurrently.

(10) Aggravation for consecutive penalties shall increase with each successive range that is imposed consecutively.

[ED.NOTE: The Exhibit referred to in the above rule is not printed in the Oregon Administrative Rules Compilation. Copies are available from the adopting agency.]

Stat.Auth.: ORS Ch. 144

Hist: 2PB 15-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 9-1985, f. & ef. 5-31-85

[ED.NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Consecutive Sentences: Effect of Consecutive Sentences on Establishing a Prison Term

255-35-022 (1) When consecutive sentences have been imposed, a crime severity rating, history risk score and a matrix range shall be assigned for each crime.

(2) The duration of the term of imprisonment shall be the sum of the terms set by the Board pursuant to the ranges established for the offenses set forth in Exhibit C.

(3) The term of imprisonment may be subject to variations established in accordance with OAR 255-35-035 and Exhibit D.

(4) [(2)] The Board shall consider the summed ranges as a single unified range. [Any minimum sentences imposed in conjunction with consecutive terms shall be considered a single unified minimum].

[(3) In summing the ranges, the Board shall first establish the crime category, history risk score and appropriate range for the principal crime. Subordinate ranges will then be established by taking each consecutive crime and establishing the applicable crime category and base range. The unified range will be determined by adding the base range for each subordinate crime to the principal range.]

(5) [(4)] The Board may, by four (4) affirmative [concurring] votes, choose to unsum one (1) or all of the ranges. Once unsummed, the Board will treat one or more consecutive sentences as concurrent sentences.

(6) [(5)] The following factors are [maybe] considered by the Board in determining whether or not to sum the ranges:

(a) consecutive sentences are not appropriate penalties for the criminal offenses involved; and

(b) the combined terms of imprisonment are not necessary to protect the community security.

[(a) The crime category is 1, 2, 3, or 4 and one (1) or more of the following is applicable:]

[(A) When the extent of the criminal history and the adequacy of the history/risk score, fails to appropriately reflect the criminal history of the offender;]

[(B) When the crimes are part of a crime spree that is uncharacteristic of the offender;]

[(C) When mitigation is present or the aggravation does not warrant summing of one (1) or more ranges.]

[(D) When the ranges or minimum sentences, if any, are sufficient sanction without summing the ranges.]

[(b) The crime category is 5, 6, or 7 and one (1) or more of the following is applicable:]

[(A) When the history/risk score for the principal range is three (3) or more;]

[(B) When the crimes are part of the same criminal episode;]

[(C) When minimum sentences exceed the range of the principal range;]

[(D) When sufficient mitigation is present (refer to Exhibit E).]

(7) [(6)] When a two-member panel recommends that the Board choose to unsum one (1) or all the ranges, the case will be referred to the Full Board. [with or without a recommendation.]

(8) [(7)] If the panel finds that the matrix range [prison term established according to matrix guidelines] is inadequate to establish a prison term based upon findings [because] of [the] aggravation or mitigation, it shall secure a third vote or refer the matter to the Full Board. [for consideration whichever is appropriate.]

[(8) When a sentence has been imposed consecutive to one already being served by a parolee, the range for the first sentence shall be the time served prior to revocation.]

(9) [(a)] When additional [If a single] consecutive sentence(s) are [is] imposed, the prison term shall be established as for a single new sentence. [and the provisions of this rule shall not apply. The Board may consider it an aggravating factor if a new sentence is imposed consecutively to a parole violation commitment.]

(a) If a sentence is imposed consecutively to one already being served, the matrix range shall be assigned as for a single new sentence.

[(b) If more than one sentence is imposed consecutively, the provisions of this rule shall be followed as to all new sentences;]

Temporary effective 6/18/87 to 12/14/87  
but see 7/21/87 temporary replacement  
and 7/28/87 correction

(b) When a sentence is imposed consecutively to a sentence on which parole has been granted, the matrix range shall be assigned as for a single new sentence.

[(c) Minimum sentences will be considered separately under the provisions of OAR 255-35-023 and 255-35-024.]

[(9) Notwithstanding the above, if the sum of the ranges exceeds twice the principal term and standard variation established for the principal crime, the case shall be referred to the Full Board to consider treating the ranges concurrently.]

[(10) Aggravation for consecutive penalties shall increase with each successive range that is imposed consecutively.]

Temporary effective 6/18/87 to 12/14/87  
but see 7/21/87 temporary replacement  
and 7/28/87 correction

Consecutive Sentences: Effect of Consecutive Sentences on Establishing a Prison Term

255-35-022 (1) When consecutive sentences have been imposed, a crime severity rating, history risk score and a matrix range shall be assigned for each crime.

(2) The duration of the term of imprisonment shall be the sum of the terms set by the Board pursuant to the ranges established for the offenses set forth in Exhibit C.

(3) The term of imprisonment may be subject to variations established in accordance with OAR 255-35-035 and Exhibit D.

(4) [(2)] The Board shall consider the summed ranges as a single unified range. [Any minimum sentences imposed in conjunction with consecutive terms shall be considered a single unified minimum].

[(3) In summing the ranges, the Board shall first establish the crime category, history risk score and appropriate range for the principal crime. Subordinate ranges will then be established by taking each consecutive crime and establishing the applicable crime category and base range. The unified range will be determined by adding the base range for each subordinate crime to the principal range.]

(5) [(4)] The Board may, by four (4) affirmative [concurring] votes, choose to unsum one (1) or all of the ranges. Once unsummed, the Board will treat one or more consecutive sentences as concurrent sentences.

(6) [(5)] The following factors are [maybe] considered by the Board in determining whether or not to sum the ranges:

(a) consecutive sentences are not appropriate penalties for the criminal offenses involved; and

(b) the combined terms of imprisonment are not necessary to protect the community security.

[(a) The crime category is 1, 2, 3, or 4 and one (1) or more of the following is applicable:]

[(A) When the extent of the criminal history and the adequacy of the history/risk score, fails to appropriately reflect the criminal history of the offender;]

[(B) When the crimes are part of a crime spree that is uncharacteristic of the offender;]

[(C) When mitigation is present or the aggravation does not warrant summing of one (1) or more ranges.]

[(D) When the ranges or minimum sentences, if any, are sufficient sanction without summing the ranges.]

[(b) The crime category is 5, 6, or 7 and one (1) or more of the following is applicable:]

[(A) When the history/risk score for the principal range is three (3) or more;]

[(B) When the crimes are part of the same criminal episode;]

[(C) When minimum sentences exceed the range of the principal range;]

[(D) When sufficient mitigation is present (refer to Exhibit E).]

(7) [(6)] When a two-member panel recommends that the Board choose to unsum one (1) or all the ranges, the case will be referred to the Full Board. [with or without a recommendation.]

(8) [(7)] If the panel finds that the matrix range [prison term established according to matrix guidelines] is inadequate to establish a prison term based upon findings [because] of [the] aggravation or mitigation, it shall secure a third vote or refer the matter to the Full Board. [for consideration whichever is appropriate.]

[(8) When a sentence has been imposed consecutive to one already being served by a parolee, the range for the first sentence shall be the time served prior to revocation.]

(9) [(a)] When additional [If a single] consecutive sentence(s) are [is] imposed, the prison term shall be established as for a single new sentence. [and the provisions of this rule shall not apply. The Board may consider it an aggravating factor if a new sentence is imposed consecutively to a parole violation commitment.]

(a) If a sentence is imposed consecutively to one already being served, the matrix range shall be assigned as for a single new sentence.

[(b) If more than one sentence is imposed consecutively, the provisions of this rule shall be followed as to all new sentences;]

Temporary effective 6/8/87 to 12/4/87  
but see 6/18/87 temporary replacement

(b) When a sentence is imposed consecutively to a sentence on which parole has been granted, the matrix range shall be assigned as for a single new sentence.

[(c) Minimum sentences will be considered separately under the provisions of OAR 255-35-023 and 255-35-024.]

[(9) Notwithstanding the above, if the sum of the ranges exceeds twice the principal term and standard variation established for the principal crime, the case shall be referred to the Full Board to consider treating the ranges concurrently.]

[(10) Aggravation for consecutive penalties shall increase with each successive range that is imposed consecutively.]

Temporary effective 6/8/87 to 12/4/87  
but see 6/18/87 temporary replacement

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

255-35-022 Consecutive Sentences: Effect of Consecutive  
Sentences on Establishing a Prison Term

- (1) When consecutive sentences have been imposed, a rating and a range shall be assigned for each crime.

[The Board may by four concurring votes choose not to sum ranges established pursuant to OAR 255-35-025 for crime categories 5, 6, or 7 when one or more of the following is applicable:

- (a) The history/risk score for the principal range is three or more;
- (b) The crimes are part of the same criminal episode;
- (c) Minimum sentences exceed the range of the principal range;
- (d) Sufficient mitigation is present.(refer to Exhibit E).]

- (2) The Board shall consider the summed ranges as a single unified range. Any minimum sentences imposed in conjunction with consecutive terms shall be considered a single unified minimum.

[The Board may by four concurring votes choose not to sum the ranges for crime categories 1, 2, 3 or 4 when, in addition to the factors in section (1) of this rule, one or more of the following is applicable:

Permanent effective 5/31/85

- (a) The extent of the criminal history and the adequacy of the history/risk score, fails to appropriately reflect the criminal history of the offender;
  - (b) The crimes are part of a crime spree that is uncharacteristic of the offender;
  - (c) Mitigation is present or the aggravation does not warrant summing of one or more ranges;
  - (d) The ranges or minimum sentences, if any, are a sufficient sanction without summing the ranges.]
- (3) In summing the ranges, the Board shall first establish the crime category, history risk score and appropriate range for the principal crime. Subordinate ranges will then be established by taking each consecutive crime and establishing the applicable crime category and base range. The unified range will be determined by adding the base range for each subordinate crime to the principal range.

[When a two-member panel recommends that the Board chose not to sum the ranges the case may be decided, if there are four concurring votes, by a file pass and a review of the record. The members who review the record established by the panel may either approve the panel recommendation or request a hearing before the full board. In full board cases and cases referred by a panel which do not receive the required four votes, the issue of unsumming the ranges shall be decided following a hearing before the full board in the same manner as any other finding. The Chairperson may refer a case to the full board or remand to a panel following an Administrative Review.]

- (4) The Board may, by four (4) concurring votes, choose to unsum one (1) or all of the ranges. Once unsummed, the Board will treat one or more consecutive sentences as concurrent sentences.

[The Board may sum the ranges established for each consecutive offense; however, when the ranges established in Section 255-35-025(2) apply to that sentence in the series.]

- (5) The following factors may be considered by the Board in determining whether or not to sum the ranges:
- (a) The crime category is 1, 2, 3, or 4 and one (1) or more of the following is applicable:
- (1) When the extent of the criminal history and the adequacy of the history/risk score, fails to appropriately reflect the criminal history of the offender;
  - (2) When the crimes are part of a crime spree that is uncharacteristic of the offender;
  - (3) When mitigation is present or the aggravation does not warrant summing of one (1) or more ranges;
  - (4) When the ranges or minimum sentences, if any, are sufficient sanction without summing the ranges.
- (b) The crime category is 5, 6, or 7 and one (1) or more of the following is applicable:
- (1) When the history/risk score for the principal range is three (3) or more;
  - (2) When the crimes are part of the same criminal episode;
  - (3) When minimum sentences exceed the range of the principal range;
  - (4) When sufficient mitigation is present (refer to Exhibit E).

[For purposes of establishing a parole release date, the Board shall consider the summed ranges for consecutive sentences as a single unified range. Any minimum sentences shall be considered a single unified minimum.]

- (6) When a two-member panel recommends that the Board choose to unsum one (1) or all the ranges, the case will be referred to the Full Board with or without a recommendation.

(7)[(6)] If the panel finds that the prison term [range] established according to matrix guidelines is inadequate because of aggravation or mitigation, [by applying Section 255-35-035(2) is not an adequate sanction for the aggravation present] it shall secure a third vote or refer the matter to the full board for consideration whichever is appropriate.

(8)[(7)] When a sentence has been imposed consecutive to one already being served by a parolee, the range for the first sentence shall be the time served prior to revocation:

(a) If a single consecutive sentence is imposed, the prison term shall be established as a single new sentence and the provisions of this rule shall not apply. The Board may consider it an aggravating factor if a new sentence is imposed consecutively to a parole violation commitment;

(b) If more than one sentence is imposed consecutively, the provisions of this rule shall be followed as to all new sentences;

(c) Minimum sentences will be considered separately under the provisions of OAR 255-35-023 and 024 [255-35-020(2)].

[(8) In summing the ranges, the Board shall establish the prisoner's term by reference to the crime category, history/risk score and appropriate range for the principal term. Subordinate ranges will be summed by adding the range for base ranges to the principal range.]

(9) Notwithstanding the above, if the sum of the ranges exceeds twice the principal term and standard variation established for the principal crime, the case shall be referred to the full board to consider treating the ranges concurrently.

[(10) The Board may choose to treat one or more consecutively imposed ranges concurrently.]

(11) If the ranges are not summed, the panel may exercise the variation permitted to a panel in Rule 255-35-025 and Exhibit D.]

(10)[(12) Requisite] Aggravation for consecutive penalties shall increase with each successive range that is imposed consecutively.

Permanent effective 5/31/85

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

255-35-022

(1) The Board may by four concurring votes choose not to sum ranges established pursuant to OAR 255-35-025 for crime categories 5, 6, or 7 when one or more of the following is applicable:

- (a) the history/risk score for the principal range is 3 or more;
- (b) the crimes are part of the same criminal episode;
- (c) minimum sentences exceed the range of the principal range;
- (d) sufficient mitigation is present (refer to Exhibit E).

(2) The Board may by four concurring votes choose not to sum the ranges for crime categories 1, 2, 3, or 4 when, in addition to the factors in subsection (1) above, one or more of the following is applicable:

- (a) the extent of the criminal history and the adequacy of the history/risk score, fails to appropriately reflect the criminal history of the offender;
- (b) the crimes are part of a crime spree that is uncharacteristic of the offender;
- (c) mitigation is present or the aggravation does not warrant summing of one or more ranges;
- (d) the ranges or minimum sentences, if any, are a sufficient sanction without summing the ranges.

(3) When a two member panel recommends that the Board choose not to sum the ranges the case may be decided, if there are four concurring votes, by a file pass and a review of the record. The members who review the record established by the panel may either approve the panel recommendation or request a hearing before the full board. In full board cases and cases referred by a panel which do not receive the required four votes the issue of unsumming the ranges shall be decided following a hearing before the full Board in the same manner as any other finding. The Chairperson may refer a case to the full board or remand to a panel following an Administrative Review.

(4) The Board may sum the ranges established for each consecutive offense; however, when the range exceeds the good time date on the corresponding sentence, the ranges established in section 255-35-025(2) apply to that sentence in the series.

(5) For purposes of establishing a parole release date, the Board shall consider the summed ranges for consecutive sentences as a single unified range. Any minimum sentences shall be considered a single unified minimum.

(6) If the panel finds that the range established by applying 255-35-035(2) is not an adequate sanction for the aggravation present, it shall secure a third vote or refer the matter to the full board for consideration whichever is appropriate.

(7) When a sentence has been imposed consecutive to one already being served by a parolee, the range for the first sentence shall be the time served prior to revocation.

(a) If a single consecutive sentence is imposed, the prison term shall be established as for a single new sentence and the

provisions of this rule shall not apply. The Board may consider it an aggravating factor if a new sentence is imposed consecutively to a parole violation commitment.

(b) If more than one sentence is imposed consecutively, the provisions of this rule shall be followed as to all new sentences.

(c) Minimum sentences will be considered separately under the provisions of OAR 255-35-020(2).

(8) In summing the ranges the Board shall establish the prisoner's term by reference to the crime category, history/risk score and appropriate range for the principal term. Subordinate ranges will be summed by adding the range for base ranges to the principal range.

(9) Notwithstanding the above, if the sum of the ranges exceeds twice the principal term and standard variation established for the principal crime, the case shall be referred to the full Board to consider treating the ranges concurrently.

(10) The Board may choose to treat one or more consecutively imposed ranges concurrently.

(11) If the ranges are not summed, the panel may exercise the variation permitted to a panel in 255-35-035 and Exhibit D.

(12) Requisite aggravation for consecutive penalties shall increase with each successive range that is imposed consecutively.

Temporary effective 11/25/81 to 5/23/82  
Became permanent 5/19/82



DIVISION 35

APPLICATIONS OF THE GUIDELINES TO ESTABLISH A PRISON TERM

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)

Permanent effective 11/15/00

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Effect of Minimum Sentences on Prison Terms; Consecutive Minimum Sentences  
(ORS 144.035(4), 144.110, 144.245, 144.783, 161.610, 163.105)  
255-35-023 (5/31/85; 7/7/87, temporary; 12/14/87; 5/19/88; 4/5/90; 5/1/91,  
temporary; 10/15/91)

- (1) The Board shall not release a prisoner on parole until the prisoner has served a judicially imposed minimum prison term [has been served], except upon the affirmative majority vote of [four] 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 [four members] 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 guideline range and the standard variations allowed, unless there are remaining judicial minimums above the guideline range in length, which the Board has upheld.
- (3) When the court has ordered [there are] 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 [four] 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 255-35-013 or 255-35-014, and shall state the facts and reasons for its actions.
- (5) Notwithstanding subsection (3) of this rule, when the Board overrides [a] an ORS 163.115 murder minimum, the vote must be unanimous.
- (6) The Board [may] shall not override ORS 161.610 gun minimums except as provided by ORS 144.122, ORS 144.126 and OAR 255-40-028.
- (7) The Board [may] shall not override ORS 163.105 aggravated murder minimums.

Permanent effective 10/15/91

Prison Term Guidelines

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Effect of Minimum Sentences on Prison Terms; Consecutive Minimum Sentences  
(ORS 144.035(4), 144.110, 144.245, 144.783)  
255-35-023 (5/31/85; 7/7/87, temporary; 12/14/87; 5/19/88; 4/5/90; 5/1/91,  
temporary)

- (1) The Board shall not release a prisoner on parole until a judicially imposed minimum prison term has been served, except upon the affirmative vote of [four] a majority 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 [four members] 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 guideline range and the standard variations allowed.
- (3) When there are 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 [four] 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 255-35-013 or 255-35-014, and shall state the facts and reasons for its actions.
- (5) Notwithstanding subsection (3) of this rule, when the Board overrides a ORS 163.115 murder minimum, the vote must be unanimous.
- (6) The Board may not override ORS 161.610 gun minimums.
- (7) The Board may not override ORS 163.105 aggravated murder minimums.

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

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Effect of [Judicial] Minimum Sentences on Prison Terms [Under ORS 144.110]; Consecutive Minimum Sentences 255-35-023 (5/31/85; 7/7/87, temporary; 12/14/87; 5/19/88; 4/5/90)

- (1) The Board shall not release a prisoner on parole until a judicially imposed minimum prison term has been served, except upon the affirmative vote of four 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 four members of the Board have made the findings listed in subsection (1) of this section, The Board shall establish a prison term using the guideline range and the standard variations allowed.
- (3) When there are 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 four 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 255-35-013 or 255-35-014, and shall state the facts and reasons for its actions.
- (5) Notwithstanding subsection (3) of this rule, when the Board overrides a ORS 163.115 murder minimum, the vote must be by unanimous vote of all members.
- (6) The Board may not override a ORS 161.610 gun minimum.
- (7) The Board may not override a ORS 163.105 aggravated murder minimum.

Permanent effective 4/5/90

Effect of Judicial Minimum Sentences on Prison Terms Under ORS  
144.110; Consecutive Minimum Sentences  
255-35-023

- (1) The Board shall not release a prisoner on parole until [before] a judicially imposed minimum prison term has been served, except upon the affirmative vote of four members who have found [when at least four members of the Board find] that:
- (a) the minimum term is not an appropriate penalty for the criminal offense; and [The court applied the guideline rules incorrectly; or]
  - (b) the minimum term is not necessary to protect the public. [The Board has information not available to the court at the time of sentencing; or]
  - [(c) The court's findings, though technically correct, lead to an inequitable result.]
- (2) If at least four members of the Board have made the findings listed in subsection (1) of this section, The Board shall establish a prison term using the guideline range and the standard variations allowed.
- (3) When there are 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 four 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) [(2)] The Board shall set a parole release date in accordance with OAR 255-35-013, and shall state the facts and reasons for its actions. [The Board shall state the facts and reasons for its actions and it shall then inform the sentencing court of its decisions and reasons. the Board shall the set a parole release date in accordance with OAR 255-35-013.]

Effect of Judicial Minimum Sentences on Prison Terms Under  
ORS 144.110

255-35-023 (1) The Board shall not release a prisoner before a judicially imposed minimum prison term sentence has been served except when at least four members of the Board find that:

[(a) The court applied the guideline rules incorrectly; or]

(a) [(b)] The Board has information not available to the court at the time of sentencing; or

(b) [(c)] The court's findings, though technically correct, lead to an inequitable result; or,

(c) The consecutive minimums are not appropriate penalties for the criminal offenses involved; or

(d) The combined consecutive minimums are not necessary to protect the community security.

(2) The Board may, by four (4) concurring votes:

(a) Unsum one or more of the ranges, and/or

(b) Unsum one or more of the judicial (ORS 144.110) minimums; and/or;

(c) Override one or more of the judicial (ORS 144.110) minimums.

(3) [(2)] The Board shall state the facts and reasons for its actions and it shall then inform the sentencing court of its decisions and reasons. The Board shall then set an initial parole release date in accordance with rule 255-35-013.

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

255-35-023      Effect of Judicial Minimum Sentences on Prison  
Terms Under ORS 144.110

- (1) The Board shall not release a prisoner before a judicially imposed minimum prison term sentence has been served except when at least four members of the Board find that:
  - (a) The court applied the guideline rules incorrectly; or,
  - (b) The Board has information not available to the court at the time of sentencing; or,
  - (c) The court's findings, though technically correct, lead to an inequitable result.
  
- (2) The Board shall state the facts and reasons for its actions and it shall then inform the sentencing court of its decisions and reasons. The Board shall then set an initial parole release date in accordance with Rule 255-35-013.



OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Effect of Judicial Mandatory Minimum Sentences on Prison Terms  
Under 161.610  
255-35-024

- [(1) In no case shall any person punishable under ORS 161.6.0 become eligible for work release or parole until the minimum term of imprisonment is served, less reductions of imprisonment for good time served.]
- [(2) The Board shall establish the prisoner's release date pursuant to OAR 255-35-015.]

Repealed

Permanent effective 5/19/88

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

255-35-024      Effect of Judicial Mandatory Minimum Sentences on  
Prison Terms Under ORS 161.610

- (1) In no case shall any person punishable under  
ORS 161.610 become eligible for work release  
or parole until the minimum term of imprison-  
ment is served, less reductions of imprison-  
ment for good time served.
  
- (2) The Board shall establish the prisoner's  
initial release date pursuant to  
OAR 255-35-013.

Permanent effective 5/31/85



DIVISION 35

APPLICATIONS OF THE GUIDELINES TO ESTABLISH A PRISON TERM

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)

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

DIVISION 35

**APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM**

Setting a Parole Release Date: When Matrix Range Exceeds Good Time Date  
(ORS 144.780-787)

255-35-025 (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 )

- (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 Board [following] shall [apply]:
  - (a) [Using] 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) [will fall] falls and which [will provide] 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 255-35-021(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	<u>6-6</u> 50-62

- (3) On sentences which are too short to fit within the matrix ranges for the correct crime category, the Board shall set the maximum prison term [shall be] at [one day] two days prior to the good time date.
  
- (4) When a prisoner 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 serve a period of parole supervision in accordance with the intent of ORS 144.245.

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

255-35-025 (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; 10/15/90, temporary)

- (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 [initial prison term] 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) using the correct crime category for the principal crime, apply the closest range within which the statutory good time date minus the times found in section (1)(a), (b), or (c) will fall and which will provide a fully applicable range.
  - (b) for subsequent consecutive sentences use the base range unless the principal crime is one of those listed in OAR 255-35-021(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 mo.=68	2	6	90-130	44-56
Theft I	5 yr.			2	1	6 - 6	<u>6-6</u>
							50-62

- (3) On sentences which are too short to fit within the matrix ranges for the correct crime category, the maximum prison term shall be one day prior to the goodtime date.

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

255-35-025 (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)

(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 maximum initial prison term [guideline range] shall be as follows [in order to allow a period of parole supervision]:

[(1)](a) Six months from the statutory good time date on a sentence of at least one year and less than three years;

[(2)](b) Nine months from the statutory good time date on a sentence of three years [up to] and less than six years.

[(3)](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) using the correct crime category for the principal crime, apply the closest range within which the statutory good time date minus the times found in section (1)(a), (b), or (c) will fall and which will provide a fully applicable range.

(b) for subsequent consecutive sentences use the base range unless the principal crime is one of those listed in OAR 255-35-021(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>
<u>Robbery I</u>	<u>10 yr.</u>	<u>80 mo.</u>	<u>-12 mo.=68</u>	<u>2</u>	<u>6</u>	<u>90-130</u>	<u>44-56</u>
<u>Theft I</u>	<u>5 yr.</u>			<u>2</u>	<u>1</u>	<u>6 - 6</u>	<u>6- 6</u>
							<u>50-62</u>

Permanent effective 4/5/90

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Setting a Parole Release Date: When [Guideline] Matrix Range  
Exceeds Good Time Date  
255-35-025

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, the guideline range shall be as follows in order to allow a period of parole supervision:

- [(1) Up to the statutory good time date on a sentence of one year or less;]
- (1) [(2)] Six months from the statutory good time date on a sentence of at least [more than] one year and less than three years;
- (2) [(3)] Nine months from the statutory good time date on a sentence of three years up to six years.
- (3) Twelve months from the statutory good time date on a sentence of six or more years



DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

**Setting a Parole Release Date: Guideline Ranges; Where Range Exceeds Good Time Date**

255-35-025 (1) The Board shall establish a prison term by setting a parole release date within the range for the appropriate offense severity rating and history/risk score shown in the guideline matrix, Exhibit C, unless it finds aggravation or mitigation sufficient to justify variation from the range pursuant to rule 255-35-035 or takes action according to section of this rule, or elects to deny parole according to rule 255-35-030.

(2) When the Board chooses to set a parole release date on a sentence with a statutory good time date shorter than the guideline range, the guideline range shall be as follows in order to allow a period of parole supervision:

(a) Up to the statutory good time date on a sentence of one year or less;

(b) Six months from the statutory good time date on a sentence of more than one year and less than three years;

(c) Nine months from the statutory good time date on a sentence of three years up to six years;

(d) Twelve months from the statutory good time date on a sentence of six or more years.

Stat. Auth.: ORS Ch. 144

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



DIVISION 35

APPLICATIONS OF THE GUIDELINES TO ESTABLISH A PRISON TERM

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)

Permanent effective 11/15/00

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Parole Denial (ORS 144.120(4))  
255-35-030 (2/1/79; 5/31/85; 5/19/88; 12/6/88; 5/1/91, temporary; 10/15/91)

- (1) Except when the result is life imprisonment, [T]the Board, with [four (4) affirmative votes] a majority vote of members, may deny parole pursuant to ORS 144.120(4) when:
- (a) [T]the commitment offense [of commitment] included particularly violent or otherwise dangerous criminal conduct as defined by section 255-05-005(30);
  - (b) [The offense was preceded by] two (2) or more Class A or Class B felony convictions preceded the commitment offense; or
  - (c) [T]he prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance such as to constitute a danger to the health or safety of the community.
- (2) When the result of parole denial is life in prison, the Board shall agree unanimously.
- [(2)](3) A [two-member] panel may refer the matter to the Full Board with the recommendation that the Board deny parole [should be denied] based on the criteria listed in subsection (1) of this section.
- [(3)](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.

Permanent effective 10/15/91

Prison Term Guidelines

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Parole Denial (ORS 144.120(4))  
255-35-030 (2/1/79; 5/31/85; 5/19/88; 12/6/88; 5/1/91, temporary)

- (1) The Board with [four (4) affirmative votes] a unanimous vote of members may deny parole pursuant to ORS 144.120(4) when:
  - (a) The offense of commitment included particularly violent or otherwise dangerous criminal conduct as defined by section 255-05-005(27);
  - (b) The offense was preceded by two (2) or more Class A or Class B felony convictions; or
  - (c) The prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance such as to constitute a danger to the health or safety of the community.
- (2) A [two-member] panel may refer the matter to the Full Board with the recommendation that parole should be denied based on the criteria listed in subsection (1) of this section.
- (3) 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.

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

Parole Denial: When Parole May be Denied  
255-35-030

- (1) The Board with four (4) affirmative votes may deny parole pursuant to ORS 144.120(4) when:
  - (a) The offense of commitment included particularly violent or otherwise dangerous criminal conduct as defined by section [255-35-005(6)] 255-05-005(24);
  - (b) The offense was preceded by two (2) or more Class A or Class B felony convictions; or
  - (c) The prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance such as to constitute a danger to the health or safety of the community.
- (2) A two-member panel may refer the matter to the Full Board with the recommendation that parole should be denied based on the criteria listed in subsection (1) of this section.
- (3) 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.

Permanent effective 12/6/88

12/06/88

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Parole Denial: When Parole May be Denied  
255-35-030

- (1) The Board with four (4) affirmative votes may [choose not to set a parole release date] deny parole pursuant to ORS 144.1210(4) when:
- (a) The offense [crime] of commitment included particularly violent or otherwise dangerous criminal conduct as defined by section 255-35-005(6); [or]
  - (b) The offense [crime] was preceded by two (2) or more Class A or Class B felony convictions, [convictions of a class A or class B felony]; or
  - (c) The prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, [and/or the prisoner.]
- [(2) Notwithstanding provisions of ORS 144.120, parole may be denied when the prisoner's guideline range is longer than the statutory good time date on the sentence imposed.]
- (2) [(3) If a] A two-member panel [decides that parole should be denied, it shall] may refer the matter to the Full Board [for consideration] with [its] the recommendation that parole should be denied based on the criteria listed in subsection (1) of this section.
- (3) [(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.

OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

- 255-35-030 Parole Denial: When Parole May be Denied[;  
Action by the Full Board Necessary]
- (1) The Board with four (4) affirmative votes may choose not to set a parole release date [(i.e., the prisoner shall serve to the end of his/her sentence)] pursuant to ORS 144.120[(4)](4) when:
- (a) The crime [offense] of commitment included particularly violent or otherwise dangerous criminal conduct as defined by Section 255-35-005(6); or
  - (b) The crime [offense] was preceded by two (2) or more convictions of a Class A or Class B felony; or
  - (c) The prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance such as to constitute a danger to the health or safety of the community and/or the prisoner.
- (2)[(d)] Notwithstanding provisions of ORS 144.120, parole may be denied when ~~t~~[T]he prisoner's guideline range is longer than the statutory good time date on the sentence imposed.
- (3)[(2)] If a two-member panel decides that parole should be denied, it shall refer the matter to the Full Board for consideration with its recommendation.
- [(3) When the guideline range for an offense, not including maximum allowable variations, exceeds the good time date on the sentence, the Board may deny parole by a vote of three members of the Board after a file pass. In all other cases, affirmative votes of at least four members of the Board are required to deny parole.]
- (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 the decision.

OREGON ADMINISTRATIVE RULES  
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DIVISION 35

APPLICATION OF THE GUIDELINES  
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**Parole Denial: When Parole May be Denied; Action by the Full Board Necessary**

255-35-030 (1) The Board may choose not to set a parole release date (i.e., the prisoner shall serve to the end of his/her sentence pursuant to ORS 144.120) when:

(a) The offense of commitment included particularly violent or otherwise dangerous criminal conduct as defined by section 255-35-005(6); or

(b) The offense was preceded by two or more convictions of a class A or class B felony; or

(c) The prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance;

(d) The prisoner's guideline range is longer than the statutory good time date on the sentence imposed.

(2) If a two-member panel decides that parole should be denied, it shall refer the matter to the full Board for consideration with its recommendation.

(3) When the guideline range for an offense, not including maximum allowable variations, exceeds the good time date on the sentence, the Board may deny parole by a vote of three members of the Board after a file pass. In all other cases, affirmative votes of at least four members of the Board are required to deny parole.

(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.

Stat. Auth.: ORS Ch. 144

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



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

- [(1) The Board may depart from the appropriate range only upon making a specific finding, by a preponderance of the evidence, that there is aggravation or mitigation which justifies departure from the range. The Board shall clearly state on the record the facts and specific reasons for its finding:
- [(a) Information considered by the Board in determining whether aggravation or mitigation exists shall be disclosed prior to the hearing to permit the prisoner an opportunity to respond before the Board finds aggravation or mitigation.]
- [(b) Any aggravating or mitigating circumstances which constitute a defining element of the crime or subcategory of the crime being rated, or which resulted in a lower history/risk score, shall not justify variation from the guidelines.]
- [(c) Plea Bargained Sentences: The Board may deem it aggravating circumstances if the prisoner has pled guilty to the crime of commitment and:]
- [(A) The prisoner has admitted or stipulated to facts either in court or before the Board which show the occurrence of more serious charges or other charges which has not been brought or has been dismissed; or]
- [(B) The court or the Board finds, by a preponderance of the evidence, that the prisoner's actual criminal conduct was of a different degree of seriousness than the crime of which he/she was convicted according to the rankings in Exhibit A. In such cases, the Board shall state the actual criminal conduct on the record.]
- [(d) Sentence imposed as aggravating or mitigating factor: The Board shall deem the sentence an aggravating or mitigating circumstance, which allows a variation from the guidelines, if it finds, by a preponderance of the evidence, that such sentence and the reasons for the sentence stated on the record by the sentencing judge pursuant to ORS 137.120(2) disclose:]
- [(A) The presence of any aggravating or mitigating circumstances described in subsection (1)(c) of this rule or in Exhibit E;

Repealed

- [(B) Other reasons showing enhanced or reduced harm or risk of harm involved in the criminal conduct, or enhanced or reduced culpability on the part of the prisoner when committing such conduct.]
- [(2) When a panel, based upon its findings, is of the opinion that the aggravating or mitigating circumstances are so substantial that a greater departure from the guideline range is required than is permitted to a panel in Exhibit D, it shall secure a third vote or refer the matter to the Full Board for consideration, whichever is appropriate:]
  - [(a) The sole issue the Full Board shall consider is whether the aggravating or mitigating circumstances found by the panel are of such consequence as to require departure from the variations permitted a panel in Exhibit D, or choose not to set a parole release date.]
  - [(b) The maximum allowable variations from a range are shown in Exhibit D.]
  - [(c) Before the Board can deny parole, the prisoner must be given a hearing before the Full Board. For prisoners who are incarcerated outside of Oregon, the hearing may be conducted by a conference telephone call.]
  - [(d) The Board shall clearly state on the record the facts and specific reasons for its decision to exceed the normal variations permitted a panel.]

Permanent effective 5/19/88

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255-35-035 Variations From the Ranges for Aggravation or Mitigation: Statements for Record, Prior Disclosure to Prisoners [Findings Necessary; Disclosure of Information; When Not Justified; Effect of Plea by Bargained Sentences; Sentence as Aggravating or Mitigating; Variation by a Panel of Two; Variation by the Full Board.]

- (1) The Board may depart from the appropriate range only upon making a specific finding, by a preponderance of the evidence, that there is aggravation or mitigation which justifies departure from the range. The Board shall clearly state on the record the facts and specific reasons for its finding:
  - (a) Information considered by the Board in determining whether aggravation or mitigation exists shall be disclosed prior to the hearing to permit the prisoner an opportunity to respond before the Board finds aggravation or mitigation.
  - (b) Any aggravating or mitigating circumstances which constitute a defining element of the crime or subcategory of the crime being rated, or which resulted in a lower history/risk score, shall not justify variation from the guidelines.
  - (c) Plea Bargained Sentences: The Board may deem it [an] aggravating circumstances if the prisoner has [pleaded] pled guilty to the crime of commitment and:
    - (1)[(A)] The prisoner has admitted or stipulated to facts either in court or before the Board which show the occurrence of more serious charges or other charges which have not been brought or have been dismissed; or

Permanent effective 5/31/85

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- (2)[(B)] The court or the Board finds, by a preponderance of the evidence, that the prisoner's actual criminal conduct was of a different degree of seriousness than the crime of which he/she was convicted according to the rankings in Exhibit A. In such cases, the Board shall state the actual criminal conduct on the record.
- (d) Sentence imposed as Aggravating or Mitigating Factor: The Board shall deem the sentence an aggravating or mitigating circumstance, which allows a variation from the guidelines, if it finds, by a preponderance of the evidence, that such sentence and the reasons for the sentence stated on the record by the sentencing judge pursuant to ORS 137.120(2) disclose:
- (1)[(A)] The presence of any aggravating or mitigating circumstances described in subsection (1)(c) of this rule or in Exhibit E;
- (2)[(B)] Other reasons showing enhanced or reduced harm or risk or harm involved in the criminal conduct, or enhanced or reduced culpability on the part of the prisoner when committing such conduct.
- [(e) Usual, but not exclusive, factors in aggravation or mitigation are shown in Exhibit E. The Board may consider circumstances not listed in Exhibit E.
- (f) Maximum upward or downward variations from a range permitted to a panel are shown in Exhibit D.]

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- (2) When a panel, based upon its findings, is of the opinion that the aggravating or mitigating circumstances are so substantial that a greater departure from the guideline range is required than is permitted to a panel in Exhibit D, it shall secure a third vote or refer the matter to the full Board for consideration, which ever is appropriate:
  - (a) The sole issue the full Board shall consider is whether the aggravating or mitigating circumstances found by the panel are of such consequence as to require departure from the variations permitted a panel in Exhibit D, or choose not to set a parole release date.
  - (b) The maximum allowable variations from a range are shown in Exhibit D.
  - (c) Before the Board can deny parole, the prisoner must be given a hearing before the full Board. For prisoners who are incarcerated outside of Oregon, the hearing may be conducted by a conference telephone call.
  - (d) The Board shall clearly state on the record the facts and specific reasons for its decision to exceed the normal variations permitted a panel.

Permanent effective 5/31/85

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255-35-035(1) The Board may depart from the appropriate range only upon making a specific finding, by a preponderance of the evidence, that there is aggravation or mitigation which justifies departure from the range. The Board shall clearly state on the record the facts and specific reasons for its finding:

(a) Information considered by the Board in determining whether aggravation or mitigation exists shall be disclosed prior to the hearing to permit the prisoner an opportunity to respond before the Board finds aggravation or mitigation.

(b) Any aggravating or mitigating circumstances which constitute a defining element of the crime or subcategory of the crime being rated, or which resulted in a lower history/risk score, shall not justify variation from the guidelines.

(c) Plea Bargained Sentences: The Board may deem it an aggravating circumstance if the prisoner has pleaded guilty to the crime of commitment and:

(A) The prisoner has admitted or stipulated to facts either in court or before the Board which show the occurrence of more serious charges or other charges which have not been brought or have been dismissed; or

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

Became permanent 5/19/82

(B) The court or the Board finds, by a preponderance of the evidence, that the prisoner's actual criminal conduct was of a different degree of seriousness than the crime of which he/she was convicted according to the rankings in Exhibit A. In such cases, the Board shall state the actual criminal conduct on the record.

(d) Sentence as Aggravating or Mitigating: The Board shall deem the sentence an aggravating or mitigating circumstance, which allows a variation from the guidelines, if it finds, by a preponderance of the evidence, that such sentence and the reasons for the sentence stated on the record by the sentencing judge pursuant to ORS 137.120(2) disclose:

(A) The presence of any aggravating or mitigating circumstances described in subsection (1)(c) of this rule or in Exhibit E;

(B) Other reasons showing enhanced or reduced harm or risk of harm involved in the criminal conduct, or enhanced or reduced culpability on the part of the prisoner when committing such conduct.

(e) Usual, but not exclusive, factors in aggravation or mitigation are shown in Exhibit E. The Board may consider circumstances not listed in Exhibit E.

(f) Maximum upward or downward variations from a range permitted to a panel are shown in Exhibit D.

(2) When a panel, based upon its findings, is of the opinion that the aggravating or mitigating circumstances are so substantial that a greater departure from the guideline range is

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

Became permanent 5/19/82

required than is permitted to a panel in Exhibit D, it shall secure a third vote or refer the matter to the full Board for consideration[;] , whichever is appropriate.

(a) The sole issue the full Board shall consider is whether the aggravating or mitigating circumstances found by the panel are of such consequence as to require departure from the variations permitted a panel in Exhibit D, or choose not to set a parole release date.

(b) The maximum allowable variations from a range [allowed to the Full Board] are shown in Exhibit D [and include the variation permitted to a panel. Affirmative votes of at least a majority of the Board shall be required to impose the allowable variations in Exhibit D or to exceed the variations in full Board cases. Affirmative votes of at least four members of the Board are required to exceed the variations in Exhibit D in all other cases.]

(c) Before the Board can [exceed the variations shown in Exhibit D or] deny parole, the prisoner must be given a hearing before the full Board. For prisoners who are incarcerated outside of Oregon, the hearing may be conducted by a conference telephone call.

(d) The Board shall clearly state on the record the facts and specific reasons for its decision to exceed the normal variations permitted a panel.

Temporary effective 11/4/81 to 5/2/82  
Became permanent effective 5/19/82

OREGON ADMINISTRATIVE RULES  
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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

Variations From the Ranges for Aggravation or Mitigation; Findings Necessary; Disclosure of Information; When Not Justified; Effect of Plea Bargained Sentences; Sentence as Aggravating or Mitigating; Variation by a Panel of Two; Variation by the Full Board

255-35-035 (1) The Board may depart from the appropriate range only upon making a specific finding, by a preponderance of the evidence, that there is aggravation or mitigation which justifies departure from the range. The Board shall clearly state on the record the facts and specific reasons for its finding:

(a) Information considered by the Board in determining whether aggravation or mitigation exists shall be disclosed prior to the hearing to permit the prisoner an opportunity to respond before the Board finds aggravation or mitigation.

(b) Any aggravating or mitigating circumstances which constitute a defining element of the crime or subcategory of the crime being rated, or which resulted in a lower history/risk score, shall not justify variation from the guidelines.

(c) Plea Bargained Sentences: The Board may deem it an aggravating circumstance if the prisoner has pleaded guilty to the crime of commitment *and*:

(A) The prisoner has admitted or stipulated to facts either in court or before the Board which show the occurrence of more serious charges or other charges which have not been brought or have been dismissed; *or*

(B) The court or the Board finds, by a preponderance of the evidence, that the prisoner's actual criminal conduct was of a different degree of seriousness than the crime of which he/she was convicted according to the rankings in Exhibit A. In such cases, the Board shall state the actual criminal conduct on the record.

(d) Sentence as Aggravating or Mitigating: The Board shall deem the sentence an aggravating or mitigating circumstance, which allows a variation from the guidelines, if it finds, by a preponderance of the evidence, that such sentence and the reasons for the sentence stated on the record by the sentencing judge pursuant to ORS 137.120(2) disclose:

(A) The presence of any aggravating or mitigating circumstances described in subsection (c) above or in Exhibit E;

(B) Other reasons showing enhanced or reduced harm or risk of harm involved in the criminal conduct, or enhanced or reduced culpability on the part of the prisoner when committing such conduct.

(e) Usual, but not exclusive, factors in aggravation or mitigation are shown in Exhibit E. The Board may consider circumstances not listed in Exhibit E.

(f) Maximum upward or downward variations from a range permitted to a panel are shown in Exhibit D.

(2) When a panel, based upon its findings, is of the opinion that the aggravating or mitigating circumstances are so substantial that a greater departure from the guideline range is required than is permitted to a panel in Exhibit D, it shall refer the matter to the full Board for consideration:

(a) The sole issue the full Board shall consider is whether the aggravating or mitigating circumstances found by the panel

are of such consequence as to require departure from the variations permitted a panel in Exhibit D, or choose not to set a parole release date.

(b) The maximum variations from a range allowed to the full Board are shown in Exhibit D and include the variation permitted to a panel. Affirmative votes of at least a majority of the Board shall be required to impose the allowable variations in Exhibit D or to exceed the variations in full Board cases. Affirmative votes of at least four members of the Board are required to exceed the variations in Exhibit D in all other cases.

(c) Before the Board can exceed the variations shown in Exhibit D or deny parole, the prisoner must be given a hearing before the full Board. For prisoners who are incarcerated outside of Oregon, the hearing may be conducted by a conference telephone call.

(d) The Board shall clearly state on the record the facts and specific reasons for its decision to exceed the normal variations permitted a panel.

Stat. Auth.: ORS Ch. 144

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



OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 -- BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

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

The Board may reset the parole hearing date of a  
prisoner with an offense severity rating of seven  
who was given a parole hearing date before  
January 26, 1977 according to the following  
minimum prison terms: Criminal History/Risk  
Assessment Score: 11-9--8 Years; 8-6 -- 10 years;  
5-3 -- 12 years; 2-0 -- 12 years.]

Repealed

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OREGON ADMINISTRATIVE RULES  
CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

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DIVISION 35

APPLICATION OF THE GUIDELINES  
TO ESTABLISH A PRISON TERM

**Resetting Pre-Guideline Parole Hearing Dates for Category 7  
Offenders**

255-35-040 The Board may reset the parole hearing date of a prisoner with an offense severity rating of seven who was given a parole hearing date before January 26, 1977 according to the following minimum prison terms: Criminal History/Risk Assessment Score: 11-9 — 8 years; 8-6 — 10 years; 5-3 — 12 years; 2-0 — 12 years.

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

Permanent effective 2/1/79