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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 291  
DEPARTMENT OF CORRECTIONS

**FILED**

03/26/2024 12:06 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Earned Discharge

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/14/2024 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

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**NEED FOR THE RULE(S)**

In 2021, the Legislative Assembly amended the Earned Discharge (EDIS) program statute, ORS 137.633, to include within the EDIS program certain cases under the authority of the Parole Board, to incorporate some crime exclusions where previously there were none, and to adjust the requirements around payment of restitution. 2021 Or Laws, chapter 450, section 1 [HB 2172 (2021)]. In 2023, the Legislative Assembly amended the 2021 law to apply these changes to sentences imposed before, on or after January 1, 2022. 2023 Or Laws, chapter 450, section 2 [SB 581 (2023)]. This change takes effect on January 1, 2024.

Amendment of OAR 291-209-0010(3) and OAR 291-209-0030, and suspension of OAR 291-209-0040, are needed to conform the Department of Corrections' division 209 rules to the requirements of the 2023 law. Amendment of OAR 291-209-0035 is needed to clarify that the supervising officer must track and document an adult on supervision's progress towards achieving earned discharge and provide a copy of the documentation to the person, rather than only communicate the information orally to the person. Amendment of OAR 291-209-0045 is needed to clarify that an adult on supervision who is engaged in a specialty court program is not eligible for earned discharge from supervision prior to program completion, and that courts, the Board of Parole and Post-Prison Supervision, and supervising officers should strive to connect adults on supervision with culturally specific programs whenever possible when assigning adults on supervision to specialty court and treatment programs.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE**

House Bill (2021) can be found at:

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2172/Enrolled>.

Senate Bill 581 (2023) can be found at:

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB581/Enrolled>.

**STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE**

In 2021, the Legislative Assembly amended the Earned Discharge (EDIS) program statute, ORS 137.633, to include within the EDIS program certain cases under the authority of the Parole Board, to incorporate some crime exclusions where previously there were none, and to adjust the requirements around payment of restitution. 2021 Or Laws, chapter 450, section 1 [HB 2172 (2021)]. In 2023, the Legislative Assembly amended the 2021 law to apply these changes to sentences imposed before, on, or after January 1, 2022. 2023 Or Laws, chapter 450, section 2 [SB 581(2023)]. This change took effect on January 1, 2024. The department's proposed amendment of OAR 291-209-0010(3) and OAR 291-209-0030, and repeal of OAR 291-209-0040, will permanently conform the department's division 209 rules to the requirements of the 2023 law. Accordingly, any impact on racial equity in this state regarding these proposed rulemaking actions are the result of the underlying legislation rather than the proposed rule amendments.

The department's proposed amendments to OAR 291-209-0035 will clarify that the supervising officer must track and document an adult on supervision's progress towards achieving earned discharge and provide a copy of the documentation to the person, rather than only communicate the information orally to the person. These proposed rule amendments are intended by the department to afford adults on supervision consistent updates and documented progress throughout their supervision towards earning an early discharge. The department understands that these proposed amendments to the rules will aid eligible adults on supervision in complying with supervision conditions and earning an early discharge from supervision. Because persons of color are overrepresented among adults on supervision, the department anticipates that its proposed amendment of OAR 291-209-0035 are likely to have a positive impact on racial equity in this state.

Among the department's proposed amendments to OAR 291-209-0045 are amendments that will clarify that: (1) An adult on supervision must complete any specialty court program ordered by the court in order to be determined to be in compliance with their conditions of supervision and any applicable supervision case plan; (2) Following a determination on an initial earned discharge review that an adult on supervision is not in compliance, the supervising officer must conduct a subsequent earned time discharge review upon receiving information at any time thereafter during the period that the adult on supervision has come into compliance; (3) If the supervising officer or designee determines that the adult on supervision is in compliance, the supervising officer shall recommend to the supervisory authority that it grant earned discharge to the adult on supervision; and (4) Upon receiving a request from the supervising officer, the supervisory authority shall grant the adult on supervision earned discharge if the supervisory authority determines that they are in compliance with their conditions of supervision and any applicable supervision case plan as defined in the department's rules. The department understands that these proposed amendments to the rules will aid eligible adults on supervision in complying with supervision conditions and earning an early discharge from supervision. Because persons of color are overrepresented among adults on supervision, the department anticipates that its proposed amendments to OAR 291-209-0045 are likely to have a positive impact on racial equity in this state.

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#### FISCAL AND ECONOMIC IMPACT:

The proposed revisions would implement earned discharge changes as a result of HB 2172 (2021) retroactive to the August 1, 2013 date of the original HB3194 legislation, through recent legislation in SB 581 (2023).

#### Background:

The Earned Discharge (EDIS) program, as established by HB 3194 (2013), and expanded by HB2172 (2021) allows for termination of an adult individual's probation or post-prison supervision sentence as a result ongoing compliance with the conditions of their supervision. The maximum reduction earned may not exceed 50 percent of the period of supervision imposed and may not be used to shorten the period of supervision to less than six months. The provisions of HB3194 became effective when rules were adopted in May 2014 and applied to anyone sentenced to a felony probation or local control sentence on or after August 1, 2013 and the expansion provisions became effective for all sentences on or after January 1, 2022.

Fiscal Impact:

This rule change will open up the opportunity for many more adults on supervision to potentially receive an early discharge from supervision resulting in fewer people on supervision, shorter lengths of stay on supervision; thereby reducing our footprint in the criminal justice system.

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COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

DOC, LOCAL GOVERNMENTS (COUNTIES), Adults on Supervision: This rule is not anticipated to have a fiscal impact on DOC or the counties because the grant in aid funding the counties receive will not change whether Adults on Supervision are released early or not. Adults on Supervision who are released earlier than scheduled as the result of this rule change could see improved employment options due to removed barriers of being under supervision, but this impact would be variable and difficult to accurately quantify.

AICs, other state agencies, general public: There is no anticipated fiscal impact for AICs, other state agencies, or the general public as the result of the passage of this rule.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules as they will not be impacted by these rules.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The department has determined that use of an advisory committee would not have provided any substantive assistance in drafting these rule revisions because of the technical nature of the revisions.

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RULES PROPOSED:

291-209-0010, 291-209-0030, 291-209-0035, 291-209-0040, 291-209-0045

AMEND: 291-209-0010

RULE SUMMARY: Amends rule to modify applicability of earned reduction of supervision changes per House Bill 2172 (2021) pursuant to Senate Bill 581 (2023).

CHANGES TO RULE:

291-209-0010

Authority, Purpose, and Policy ¶¶

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 137.633, 179.040, 423.020, 423.030, and 423.075.¶¶

(2) Purpose: The purpose of these rules is to describe how an adult on supervision may receive a reduction in the period of probation or post-prison supervision in accordance with the provisions of ORS 137.633.¶¶

(3) Policy:¶¶

(a) It is the policy of the Department of Corrections that the supervisory authority considers eligible adults on supervision for a reduction in the period of probation or post-prison supervision as provided in these rules.¶¶

(b) These rules do not apply to persons:¶¶

~~(A) who were sentenced between August 1, 2013, and December 3, convicted of a felony, a designated drug-related misdemeanor or a designated person misdemeanor and sentenced on or after August 1, 2021, to probation or, to post-prison supervision or to the legal and physical custody of the supervisory authority but the supervision was under the jurisdiction of the Board of Parole and Post-Prison Supervision; or~~¶¶

~~(B)~~ Department of Corrections or the supervisory authority under ORS 137.124.¶

(c) These rules do not apply to those whose supervision has been transferred to Oregon under the Interstate Compact for Adult Offender Supervision.

Statutory/Other Authority: ORS 137.633, 179.040, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075

AMEND: 291-209-0030

RULE SUMMARY: Amends rule to expand eligibility for EDIS to individuals on post-prison supervision under the control of the Board whose sentences were imposed before January 1, 2022; and to remove a reference to Lifetime Supervision.

CHANGES TO RULE:

291-209-0030

Period of Supervision Procedures ¶¶

~~(1) All persons convicted of a felony or designated drug-related misdemeanor and sentenced between August 1, 2013 and December 31, 2021 to probation or to the legal and physical custody of the supervisory authority under ORS 137.124(2) shall serve a minimum period of supervision before consideration for earned discharge under these rules. ¶¶~~

~~(2) All persons convicted of a felony, designated drug-related misdemeanor, or a designated person misdemeanor and sentenced on or after January 1, 2022 to probation, to post-prison supervision, or to the legal and physical custody of the supervisory authority under ORS 137.124(2) shall serve a minimum period of supervision before consideration for earned discharge under these rules. ¶¶~~

~~(3) A person is not eligible for earned discharge under subsection (2) of these rules if the person is serving: ¶¶~~

~~(a) A sentence for a crime described in: ¶¶~~

~~(A) ORS 163.095 (Aggravated, Attempted Aggravated, or Conspiracy to Commit Aggravated Murder); ¶¶~~

~~(B) ORS 163.107 (Murder I, Attempted Murder 1, or Conspiracy to Commit Murder 1); ¶¶~~

~~(C) ORS 163.115 (Murder II, Attempted Murder II, or Conspiracy to Commit Murder II); ¶¶~~

~~(D) ORS 163.118 (Manslaughter I); ¶¶~~

~~(E) ORS 163.125 (Manslaughter II); ¶¶~~

~~(F) ORS 163.149 (Aggravated Vehicular Homicide); ¶¶~~

~~(G) ORS 163.185 (Assault I); ¶¶~~

~~(H) ORS 163.225 (Kidnapping II); ¶¶~~

~~(I) ORS 163.235 (Kidnapping I); ¶¶~~

~~(J) ORS 163.365 (Rape II); ¶¶~~

~~(K) ORS 163.375 (Rape I); ¶¶~~

~~(L) ORS 163.395 (Sodomy II); ¶¶~~

~~(M) ORS 163.405 (Sodomy I); ¶¶~~

~~(N) ORS 163.408 (Unlawful Sexual Penetration II); ¶¶~~

~~(O) ORS 163.411 (Unlawful Sexual Penetration I); ¶¶~~

~~(P) ORS 163.427 (Sexual Abuse I); ¶¶~~

~~(Q) ORS 163.670 (Use of a Child in Display of Sexually Explicit Conduct); ¶¶~~

~~(R) ORS 164.325 (Arson I); ¶¶~~

~~(S) ORS 164.415 (Robbery I); or ¶¶~~

~~(T) ORS 167.017 (Compelling Prostitution); ¶¶~~

~~(b) A sentence for attempt or conspiracy to commit a crime described in ORS 163.095, 163.107, or 163.115; ¶¶~~

~~(c) A sentence for a crime committed prior to November 1, 1989; ¶¶~~

~~(d) A sentence imposed under the provisions of ORS 161.610 (Enhanced Penalty for Use of a Firearm During Commission of a Felony); ¶¶~~

~~(e) A sentence imposed under the provisions of ORS 161.725 (Standard for Sentencing of Dangerous Offenders) or 161.735 (Procedure for Determining Whether Defendant Dangerous); ¶¶~~

~~(f) A sentence imposed under the provisions of ORS 137.635 (Determinate Sentences Required for Certain Felony Convictions); ¶¶~~

~~(g) A sentence imposed under the provisions of: ¶¶~~

~~(A) ORS 137.690 (Major Felony Sex Crime); ¶¶~~

~~(B) ORS 164.061 (Sentence for Aggravated Theft I When Victim is 65 Years of Age or Older); ¶¶~~

~~(C) ORS 475.907 (Sentencing for Unlawful Delivery of Cocaine, Methamphetamine, Heroin, or Ecstasy to Minors); ¶¶~~

~~(D) ORS 475.925 or 475.930 (Sentences for Certain Controlled Substance Offenses); or ¶¶~~

~~(E) ORS 813.011 (Felony Driving Under the Influence of Intoxicants); or ¶¶~~

~~(h) A term of supervision subject to ORS 144.103 (Lifetime Supervision). ¶¶~~

~~(42) The maximum reduction earned under this rule may not exceed 50 percent of the period of supervision imposed. ¶¶~~

(53) A reduction may not be used to shorten the period of supervision to less than six months.

Statutory/Other Authority: ORS 137.633, 179.040, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075

AMEND: 291-209-0035

RULE SUMMARY: Amends rule to add requirements for tracking and documentation of progress and communication of progress with the adult on supervision.

CHANGES TO RULE:

291-209-0035

Notification

At the time of the first meeting with the adult on supervision, the supervising officer shall notify them adult on supervision of their eligibility for earned discharge, and then at least quarterly, shall ~~communicate~~ track and document their progress towards achieving earned discharge and share that document with them.

Statutory/Other Authority: ORS 137.633, 179.040, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075

REPEAL: 291-209-0040

RULE SUMMARY: Repeals rules pursuant to changes in legislation, specifically SB 581 (2023) which made the changes included as part of HB2172 retroactive to the August 1, 2013 date of the original HB3194 legislation.

CHANGES TO RULE:

~~291-209-0040~~

~~Earned Discharge for Sentences Imposed between August 1, 2013 and December 31, 2021 ¶¶~~

~~(1) At 60 days prior to completion of the minimum period of supervision as authorized in OAR 291-209-0030, the supervising officer or designee shall review the adult on supervision's file and determine if they are in compliance with their conditions of supervision and any applicable supervision case plan, which includes that the adult on supervision:¶¶~~

~~(a) Has fully paid any restitution or compensatory fines ordered by the court;¶¶~~

~~(b) Has not been administratively sanctioned, excluding interventions, or found in violation by the court in the immediate six months prior to consideration for discharge on the eligible case(s) under review; and¶¶~~

~~(c) Is actively participating in their supervision case plan.¶¶~~

~~(2) If the supervising officer or designee determines that the adult on supervision is in compliance, the supervising officer shall recommend to the supervisory authority that it grant earned discharge to the adult on supervision.¶¶~~

~~(3) Upon receiving a request from the supervising officer, the supervisory authority shall grant the adult on supervision earned discharge if the supervisory authority determines that they are in compliance with their conditions of supervision and any applicable supervision case plan as defined in these rules.¶¶~~

~~(4) If the supervising officer or designee determines that the adult on supervision is not in compliance, earned discharge shall not be granted. The supervising officer may conduct a subsequent earned discharge review at any point thereafter until the adult on supervision is approved for earned discharge or the case under consideration reaches its sentence expiration date.¶¶~~

~~(5) If the adult on supervision has been convicted of a new felony or misdemeanor crime that occurred while on supervision for the case under consideration, they are not eligible for earned discharge.¶¶~~

~~(6) These rules do not apply to persons originally sentenced before August 1, 2013, and who were subsequently resentenced between August 1, 2013 and December 31, 2021, as the result of an appellate decision or a post-conviction relief proceeding or for any other reason.~~

~~Statutory/Other Authority: ORS 137.633, 179.040, 423.020, 423.030, 423.075~~

~~Statutes/Other Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075~~



AMEND: 291-209-0045

RULE SUMMARY: Amends rule to add language around initial and subsequent earned discharge reviews.

CHANGES TO RULE:

291-209-0045

~~Earned Discharge for Sentences Imposed on or after January 1, 2022~~

~~(1) Initial Earned Discharge Reviews:~~

~~(a) At 60 days prior to completion of the minimum period of supervision as authorized in OAR 291-209-0030, the supervising officer or designee shall review the adult on supervision's file and determine if they are in compliance with their conditions of supervision and any applicable supervision case plan which includes that the adult on supervision:~~

~~(a) Has either fully paid any restitution and compensatory fine ordered by the court, or established a payment schedule through the court or appropriate supervising authority consistent with ORS 137.106, and is current in their payment obligations;~~

~~(b) Has not been administratively sanctioned, excluding interventions, or found in violation by the court in the immediate six months prior to consideration for discharge on the eligible case(s) under review; and~~

~~(c) Has completed any specialty court program ordered by the court, all treatment programs with set durations or timeframes and has consistently participated in ongoing treatment programs assigned by the court, BPPPS, or supervising officer.~~

~~(2)(b) If the supervising officer or designee determines that the adult on supervision is in compliance, the supervising officer shall recommend to the supervisory authority that it grant earned discharge to the adult on supervision.~~

~~(3b) Upon receiving a request from the supervising officer, the supervisory authority shall grant the adult on supervision earned discharge if the supervisory authority determines that they are in compliance with their conditions of supervision and any applicable supervision case plan as defined in these rules.~~

~~(4) Subsequent Earned Discharge Reviews:~~

~~(a) If the supervising officer or designee determines on an initial earned discharge review that the adult on supervision is not in compliance, earned discharge shall not be granted. ~~The~~ supervising officer may ~~shall~~ conduct a subsequent earned discharge review at any point thereafter upon receiving information at any time thereafter during the period of supervision that the adult on supervision has come into compliance until they are ~~adult on supervision is~~ approved for earned discharge or the case under consideration reaches its sentence expiration date.~~

~~(5b) If the supervising officer or designee determines that the adult on supervision is in compliance, the supervising officer shall recommend to the supervisory authority that it grant earned discharge to the adult on supervision.~~

~~(c) Upon receiving a request from the supervising officer, the supervisory authority shall grant the adult on supervision earned discharge if the supervisory authority determines that they are in compliance with their conditions of supervision and any applicable supervision case plan as defined in these rules.~~

~~(3) If the adult on supervision has been convicted of a new felony or misdemeanor crime that occurred while on supervision for the case under consideration, they are not eligible for earned discharge.~~

~~Statutory/Other Authority: ORS 137.633, 179.040, 423.020, 423.030, 423.075~~

~~Statutes/Other Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075~~