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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DOC 17-2023

CHAPTER 291

DEPARTMENT OF CORRECTIONS

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
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FILING CAPTION: Earned Discharge

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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.

JUSTIFICATION OF TEMPORARY FILING:

The Department of Corrections finds that following the permanent rulemaking process, rather than taking this temporary rulemaking action, will result in serious prejudice to the public interest because the department's failure to promptly take the above-described rulemaking actions will leave the department's division 209 rules out of compliance with changes in governing law which take effect on January 1, 2024, and lead to confusion and differing and inconsistent application of eligibility criteria and expectations for adults on supervision by the courts, Board of Parole and Post-Prison Supervision, and supervising officers with respect to the EDIS program.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None.

RULES:

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

AMEND: 291-209-0010

RULE TITLE: Authority, Purpose, and Policy

RULE SUMMARY: Amends rule to update the persons to which the rule applies or does not apply.

RULE TEXT:

(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 apply to persons convicted of a felony, a designated drug-related misdemeanor or a designated person misdemeanor and sentenced on or after August 1, 2013 to probation, to post-prison supervision or to the legal and physical custody of the 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 TITLE: Procedures

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.

RULE TEXT:

(1) 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.

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

(3) 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 TITLE: Notification

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

RULE TEXT:

At the time of the first meeting with the adult on supervision, the supervising officer shall notify the adult on supervision of their eligibility for earned discharge, and then at least quarterly, shall 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

SUSPEND: 291-209-0040

RULE TITLE: Earned Discharge for Sentences Imposed between August 1, 2013 and December 31, 2021

RULE SUMMARY: Suspends 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.

RULE TEXT:

- (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 TITLE: Earned Discharge

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

RULE TEXT:

(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.
- (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.
- (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.

(2) Subsequent Earned Discharge Reviews:

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