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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 291
DEPARTMENT OF CORRECTIONS

FILED
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ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Sex Offenders, Special Provisions

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/18/2024 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)

These rules establish criteria to be considered in determining the permanent residence requirements for certain sex offenders upon release and establish the eligibility criteria and procedures for identifying sexually violent dangerous offenders. These revisions incorporate changes in legislation per HB2549 (2013) and HB2520 (2015), incorporate changes in practice or department philosophy (HB 3146 (2019)), to clarify terminology, to update definitions and statutory references or further define process, to expand exception authority within county community corrections agencies, and to perform technical corrections.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

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

The Department of Corrections (DOC) anticipates that these proposed rulemaking actions will have an overall positive impact on racial equity in the State of Oregon. The department's Sex Offender, Special Provisions rules (OAR 291-202) establish uniform procedures, standards, and guidelines for residential placement and certain designations of adults on supervision that have been convicted of sexual offenses.

Among the proposed rulemaking actions is repeal of OAR 291-202-0030, which established a pilot program that has not been operational since 2010 and was statutorily repealed in the 2011 session per SB 356 (2011). The department intends to repeal this rule to conform the department's Division 202 rules to statutory changes. Because the department discontinued the pilot program in 2011 at the direction of the Legislative Assembly, the department anticipates that repeal of this rule will have no impact on racial equity in this state.

Other proposed amendments update definitions, ORS citations, and terminology as a result of legislative changes or changes to business practices. These changes are not substantive. For this reason, the department anticipates that these proposed rule amendments will have no impact on racial equity in this state.

Finally, amendments are proposed that will conform the rules to incorporate the new statutory term for individuals incarcerated in DOC institutions – “adult in custody,” and reflect changes in the way DOC staff address and refer to individuals who are incarcerated in DOC institutions. These proposed rules amendments align with DOC’s mission and guiding principles, referred to by DOC as the “Oregon Way,” which seeks to normalize and humanize the experience of adults in custody who are confined in Oregon’s prisons. DOC understands that taking steps to normalize and humanize the custodial experience improves relationships between staff and adults in custody, which in turn promotes the maintenance of internal security, order and discipline, and safety for adults in custody and staff. DOC further understands that all adults in custody, including communities of color, are positively impacted when a culture of inclusivity, normalization, and humanization is created, and that these proposed rule amendments represent another step toward creating this culture. For these reasons, the department anticipates that these proposed rule amendments will have a positive impact on racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

Rule 291-202 is modified to make some language changes and eliminate reference to an outdated pilot program.

The changes are not anticipated to have a fiscal impact on DOC, AIC's, other state agencies, local governments (the counties), or the general public.

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).

None.

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.

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.

RULES PROPOSED:

291-202-0010, 291-202-0020, 291-202-0030, 291-202-0040, 291-202-0100, 291-202-0110, 291-202-0120, 291-202-0130

AMEND: 291-202-0010

RULE SUMMARY: Amends rule to update Purpose and Policy statement and statutory references and remove reference to pilot program.

CHANGES TO RULE:

291-202-0010

Authority, Purpose, and Policy ¶

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 144.625, 144.641, 144.642, 179.040, 423.020, 423.030 and 423.075.¶

(2) Purpose: The purpose of these rules is to:¶

(a) ~~Establish a pilot program to study the feasibility and effectiveness of treating a limited number of sexual offenders (no more than 40 to 50 each year) with hormone or antiandrogen agents, such as medroxyprogesterone acriteria to be considered in determining the permanent residence requirements for certate, as provided in 1999 Or Laws, Chapter 435.¶~~

(b) ~~Establish Department of Corrections policies and procedures relating to the implementation and enforcement of the pilot chemical treatment program.¶~~

(c) ~~Establish criteria to be considered in determining the permanent residence requirements for certain sex offenders upon release in sex offenders upon release.¶~~

(b) Establish the eligibility criteria and procedures for identifying sexually violent dangerous offenders, as defined in ORS 144.635.¶

(3) Policy: It is the policy of the Department of Corrections to:¶¶

(a) ~~Promote public safety by holding offenders accountable for their actions; and by seeking ways to reduce their risk of committing future criminal acts.¶~~

(b) ~~Establish a pilot program for the evaluation and chemical treatment of a limited number of sexual offenders (no more than 40 to 50 each year) who are within six months of release on parole or post-prison supervision, and who are determined by the department to be most likely to benefit from chemical treatment upon their release.~~

Statutory/Other Authority: ORS 144.625, 144.627, 179.040, 423.020, 423.030, 423.075, 144.637, 144.642, 144.644, 144.646

Statutes/Other Implemented: ORS 144.625, 144.627, 179.040, 423.020, 423.030, 423.075, 144.637, 144.642, 144.644, 144.646

AMEND: 291-202-0020

RULE SUMMARY: Amends rule to change "inmate" to "adult in custody", update definitions, remove definitions related to pilot program, and clarify terminology.

CHANGES TO RULE:

291-202-0020

Definitions ¶¶

(1) ~~Chemical Treatment: The use of hormone or antiandrogen agents, such as medroxyprogesterone acetate, under the supervision of a physician, to reduce the sex drive of sexual offenders who are referred for treatment.~~ Adult in Custody (AIC): For purposes of these rules, any person aged 18 years or older, incarcerated for treatment detained in accordance with these rules.¶¶

(2) ~~Community Practitioner: A physician or other licensed medical practitioner who treats sexual offenders who are referred for chemical treatment in accordance with these rules.~~¶¶

(3) ~~Consulting Physician: A physician or other licensed medical practitioner who, at the request of the Department of Corrections, evaluates sexual offenders for suitability for participation in the department's pilot chemical treatment program.~~ rectional facility who is accused of, convicted of or sentenced for a violation of criminal law or for the violation of the terms and conditions of pretrial release, probation, post-prison supervision or a diversion program.¶¶

(4) ~~Inmate Offender: Any person under the supervision of the Department of Corrections who is not on probation, parole, post-prison supervision, or probation status.~~¶¶

(5) ~~Offender: Any person under the supervision of the Department of Corrections who is on parole, post-prison supervision or probation.~~ any other form of temporary or transitional leave from custody, or any form of conditional release.¶¶

(3) ~~Supervisory Authority: The state or local corrections agency or official designated in each county by that county's Board of County Commissioners or county court to operate corrections services.~~¶¶

(6) ~~Sex Crimes: Those sexual offenses listed in ORS 181.594(2), and public indecency as defined in ORS 163.465.~~ supervision services, custodial facilities, or both.

Statutory/Other Authority: ORS 144.6235, 144.6237, 179.040, 423.020, 423.030, 423.075, 144.642, 144.644, 144.646

Statutes/Other Implemented: ORS 144.635, 144.637, 179.040, 423.020, 423.030, 423.075, 144.642, 144.644, 144.646

RULE SUMMARY: Repeals rule to reflect change in practice (discontinuing chemical treatment pilot program).

CHANGES TO RULE:

~~291-202-0030~~

~~Procedures~~

~~(1) Evaluation Process:~~

~~(a) The Department of Corrections will screen inmates convicted of sex crimes who are eligible for release within six months on parole or post-prison supervision to determine their suitability for participation in the department's pilot chemical treatment program in accordance with these rules.~~

~~(b) The department may refer to a consulting practitioner for evaluation a limited number of inmates who satisfy the following criteria:~~

~~(A) Inmate has a current or past conviction of a sex crime;~~

~~(B) Inmate is within six months of release on parole or post-prison supervision; and~~

~~(C) Inmate's present incarceration is for a second conviction of a sex crime, inmate lacks intellectual capacity for impulse control, or inmate has demonstrated that he or she has excessive sex drive.~~

~~(c) The consulting practitioner will prepare and submit to the department's mental health administrator or designee, a report setting forth the practitioner's evaluation and recommendation concerning the inmate's suitability for chemical treatment upon release. The consulting practitioner's evaluation will typically include, at a minimum, a review of the inmate's corrections file, an interview with the inmate, the completion of a psychosocial history, and a diagnostic summary. The consulting practitioner may conclude that an inmate is not a suitable candidate for chemical treatment upon release, and provide to the department his or her report, without first completing a full evaluation of the inmate.~~

~~(d) Inmates who are determined by the department's mental health administrator or designee, in consultation with the consulting practitioner, to be suitable candidates for chemical treatment upon release will be informed of the effects of the chemical treatment, including any side effects that may result, and will acknowledge in writing, on a form drawn by the department, their receipt of this information.~~

~~(2) Referral to Community Physician for Chemical Treatment:~~

~~(a) The department will refer for chemical treatment a limited number of inmates (no more than 40 to 50 each year) who are determined by the department's mental health administrator or designee to be suitable candidates for chemical treatment upon their release in accordance with these rules.~~

~~(b) At the direction of the department's mental health administrator or designee, the consulting physician will make the direct referral of inmates to a community practitioner who will begin the chemical treatment upon the inmate's release.~~

~~(c) Upon referral, the inmate's assigned counselor will transmit all necessary information to the Board of Parole and Post-Prison Supervision and the supervising county community corrections agency.~~

~~(3) Monitoring Offender's Compliance With Chemical Treatment: The supervising county community corrections agency will adopt and implement the following procedures to monitor the offender's compliance with chemical treatment:~~

~~(a) A community practitioner providing chemical treatment to an offender upon a referral under these rules will promptly notify the offender's assigned parole officer of any failure by the offender to comply with the chemical treatment program;~~

~~(b) The community practitioner will oversee the administration of the chemical treatment and will maintain control of the medication between doses; and~~

~~(c) The community practitioner will test the offender's blood at least once every three months to monitor whether the offender is complying with the chemical treatment. The community practitioner will increase the frequency of testing when relapse warning signs are present.~~

~~Statutory/Other Authority: ORS 144.625, 144.627, 179.040, 423.020, 423.030, 423.075~~

~~Statutes/Other Implemented: ORS 144.625, 144.627, 179.040, 423.020, 423.030, 423.075~~

AMEND: 291-202-0040

RULE SUMMARY: Amends rule to update and clarify the criteria for residence requirements for certain sex offenders upon release; to update how a sex offender is defined for purposes of this rule; to expand exception authority from the parole and probation officer to the county community corrections agency; to clarify the rule; and to update statutory reference.

CHANGES TO RULE:

291-202-0040

Residence Requirements for Certain Sex Offenders Upon Release ¶

~~The criteria in sections (1) through (4) of this rule shall be considered in determining the residence requirements of certain sex offenders. (Reference Board of Parole and Post-Prison Supervision administrative rule OAR 255-060-0009.) ¶~~

~~(1) A sex offender~~ (1) For purposes of this rule, a sex offender is defined as a person classified as a sexually violent dangerous offender (ORS 137.765) or a ~~predatory level three~~ sex offender (~~181.765~~) ORS 163A.105. ¶

~~(2) A sex offender~~ may not reside near locations where children are the primary occupants or users. ¶

~~(23)~~ This prohibition applies to permanent housing and not to transitional housing. For purposes of this rule, transitional housing means housing intended to be occupied by a sexually violent dangerous offender or a ~~predatory level three~~ sex offender for 45 days or less immediately after release from custody. ¶

~~(34)~~ Exceptions to this prohibition may be made by the supervising ~~parole/probation officer~~ county community corrections agency if it is determined that there is sufficient information to support this placement in terms of public safety and the rehabilitation of the sex offender. In making this determination, the following factors must be considered: ¶

(a) Other residential placement options pose a higher risk to the community; ~~or~~ ¶

(b) An enhanced support system that endorses supervision goals and community safety efforts is available at this residence; ~~or~~ ¶

(c) Enhanced supervision monitoring will be in place (~~e.g. for example,~~ electronic supervision, curfew, live-in-care provider, along with community notification); ~~or~~ ¶

(d) This residence includes 24-hour case management; ~~or~~ ¶

(e) The sex offender is being released from ~~prison custody~~ unexpectedly and more suitable housing will be arranged as soon as possible. ¶

~~(f5)~~ If any of these factors apply to the offender and the residence under review, an exception to the permanent residence prohibition may be allowed. ¶

~~(4) If a supervising officer~~ supervising county community corrections agency makes an exception under this rule, the ~~supervising officer~~ must inform the community affected by this decision about the reasons for the decision prior to the ~~offender's release from custody~~ release of the person from custody in accordance with ORS 163A.215.

Statutory/Other Authority: ORS 144.642, 144.644, 144.646, 179.040, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 144.642, 144.644, 144.646, 179.040, 423.020, 423.030, 423.075

AMEND: 291-202-0100

RULE SUMMARY: Amends rule to change "inmate" to "adult in custody", to clarify language, and for other technical corrections.

CHANGES TO RULE:

291-202-0100

Offenders Eligible for the Sexually Violent Dangerous Offender Designation-

(1) "Sexually violent dangerous offender" is a person who is being released from custody after serving a sentence of incarceration as a result of conviction for an offense listed in subparagraph (1)(a) of this ~~paragraph~~rule, who has psychopathic personality features, sexually deviant arousal patterns or interests and a history of sexual assault, and who the ~~State~~-Board of Parole and Post-Prison Supervision or local supervisory authority finds presents a substantial probability of committing an offense listed in subparagraph (1)(a) of this ~~paragraph~~rule.¶

(a) The offenses to which this rule applies are:¶

(A) Rape in the first degree and sodomy in the first degree if the victim was:¶

(i) Subjected to forcible compulsion by the person;¶

(ii) Under 12 years of age; or¶

(iii) Incapable of consent by reason of mental defect, mental incapacitation, or physical helplessness;¶

(B) Unlawful sexual penetration in the first degree; and¶

(C) An attempt to commit a crime listed in (1)(a)(A) or (1)(a)(B) of this ~~subparagraph~~rule.¶

(b) "History of sexual assault" means that a person has engaged in unlawful sexual conduct that:¶

(A) Is not related to the crime for which the person is currently on parole or post-prison supervision; and¶

(B) Seriously endangered the life or safety of another person or involved a victim under 12 years of age.¶

(2) Every six months the Department of Corrections will provide the Board of Parole and Post-Prison Supervision with a list of ~~inmate~~AICs or offenders who have a history of sexual assault as defined in (1)(b) above, are serving a sentence of incarceration as a result of conviction for an offense listed in (1)(a) above, and who are within six months of release from custody.¶

(3) When any ~~inmate~~AIC or offender convicted as a "dangerous offender" under ORS 161.725 and ORS 161.735 is granted a firm release date by the Board of Parole and Post-Prison Supervision or is otherwise within six months of release from custody, Board of Parole and Post-Prison Supervision staff will screen the ~~inmate~~AIC or offender to determine if the ~~inmate~~AIC's or offender's record reveals that the ~~inmate~~AIC or offender was convicted of an offense listed in (1)(a) and has a history of sexual assault as described in (1)(b).¶

(4) If Board of Parole and Post-Prison Supervision staff determines that an ~~inmate~~AIC or offender has the qualifying conviction and history of sexual assault, the Board of Parole and Post-Prison Supervision will make a finding that the ~~inmate~~AIC or offender is eligible for designation as a sexually violent dangerous offender.

Statutory/Other Authority: ORS 179.040, 144.635, 144.637, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 144.635, 144.637, 423.020, 423.030, 423.075

AMEND: 291-202-0110

RULE SUMMARY: Amends rule to change "inmate" to "adult in custody", remove gendered references, and clarify rule.

CHANGES TO RULE:

291-202-0110

Sexually Violent Dangerous Offender Designation ¶¶

(1) The Board of Parole and Post-Prison Supervision may designate an ~~inmate~~inmate~~AIC~~ or offender as a sexually violent dangerous offender only if the ~~inmate~~inmate~~AIC~~ or offender:¶

(a) Participated in or refused to participate in a psychological evaluation ordered by the Board of Parole and Post-Prison Supervision; and,¶

(b) Requested an evidentiary hearing in accordance with these rules or waived entitlement to such a hearing.¶

(2) An ~~inmate~~inmate~~AIC~~ or offender who has been identified as eligible for designation as a sexually violent dangerous offender ~~designation~~ will receive notice of the ~~inmate~~inmate~~AIC~~'s or offender's eligibility for designation ~~and of the inmates a sexually violent dangerous offender and of the AIC's or offender's right to request a hearing before the Board of Parole and Post-Prison Supervision to present evidence why the sexually violent dangerous offender finding~~designation should not be made.¶

(3) The Board of Parole and Post-Prison Supervision will provide the ~~inmate~~inmate~~AIC~~ or offender with a copy of the Sexually Violent Dangerous Offender Designation: Notice of Rights (SVDO-1; Notice of Rights) prior to the evidentiary hearing. Upon receipt of the SVDO-1 Notice of Rights, the ~~inmate~~inmate~~AIC~~ or offender may request an evidentiary hearing or waive ~~his or her~~ right to the hearing.¶

(4) The Board of Parole and Post-Prison Supervision must receive and review the signed SVDO-1 Notice of Rights before an evidentiary hearing is conducted or waived to determine a ~~SVDO finding~~sexually violent dangerous offender designation. A refusal to participate in the hearings process shall also constitute a waiver of the right to a hearing.¶

(5) The Board of Parole and Post-Prison Supervision will consider any written objections to the psychological evaluation that are submitted by the ~~inmate~~inmate~~AIC~~ or offender. An ~~inmate~~inmate~~AIC~~ or offender may elect to waive the right to submit written objections.

Statutory/Other Authority: ORS 179.040, 144.635, 144.637, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 144.635, 144.637, 423.020, 423.030, 423.075

AMEND: 291-202-0120

RULE SUMMARY: Amends rule to change "inmate" to "adult in custody", for minor grammatical corrections, and to clarify language.

CHANGES TO RULE:

291-202-0120

Sexually Violent Dangerous Offender Evidentiary Hearing ¶

(1) The purposes of the evidentiary hearing are to:¶

(a) Determine whether the inmateAIC or offender meets the criteria of a sexually violent dangerous offender as defined in OAR 291-202-0100(1)(a) &and (b); and;¶

(b) Determine if there is a substantial probability of inmate'sthe AIC or offender's committing one of the offenses listed in OAR 291-202-0100(1)(a).¶

(2) At the conclusion of the evidentiary hearing, the Board of Parole and Post-Prison Supervision will determine whether the inmateAIC or offender should be designated as a sexually violent dangerous offender. A finding that an inmateAIC or offender is a sexually violent dangerous offender may be made by two Board of Parole and Post-Prison Supervision members, except in the case of an inmateAIC or offender who has been sentenced to life imprisonment or convicted of a crime involving the death of a victim, pursuant to ORS 144.054.¶

(3) When an inmateAIC or offender eligible for designation as a sexually violent dangerous offender has waived the right to an evidentiary hearing, the Board of Parole and Post-Prison Supervision will make the determination whether to designate the inmateAIC or offender a sexually violent dangerous offender based on all the information in the record, including any psychological evaluations.¶

(4) A finding that an inmateAIC or offender is a sexually violent dangerous offender will be contained in the inmateAIC's or offender's original order of supervision or an amended order of supervision.

Statutory/Other Authority: ORS 179.040, 144.635, 144.637, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 144.635, 144.637, 423.020, 423.030, 423.075

AMEND: 291-202-0130

RULE SUMMARY: Amends rule to change "inmate" to "AIC".

CHANGES TO RULE:

291-202-0130

Sexually Violent Dangerous Offender Community Supervision ¶

The community corrections agency supervising an ~~inmate~~AIC or offender found to be a sexually violent dangerous offender shall subject the ~~inmate~~AIC or offender to intensive supervision as defined in OAR 255-005-0005(26).

Statutory/Other Authority: ORS 179.040, 144.635, 144.637, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 144.635, 144.637, 423.020, 423.030, 423.075