

BLACK BINDER

BOARD RULES

2004 —

1-14-04

PERM

TEMP / Notice

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 12/31/03 by the
Date prior to or same as filing date

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

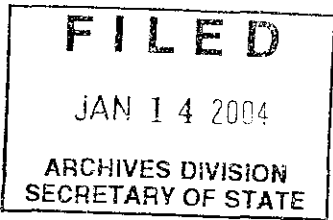
Cindy Hanners (503) 945-0903
Rules Coordinator Telephone

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

to become effective 01-14-04 Rulemaking Notice was published in the 10-01-03 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION

List each rule number separately, 000-000-0000



ADOPT:

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

AMEND:

255-070-0001 (Exhibit J)

REPEAL:

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

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

RECEIVED
04 JAN 21 PM 1:45
BOARD OF PAROLE

ORS 144.102, 144.270, 137.540
Stat. Auth.: ORS

None
Other Authority

ORS None
Stats. Implemented: ORS

RULE SUMMARY

The amendment is necessary so that the Board's rule and exhibit will be consistent with the Oregon Revised Statutes.

Cindy Hanners *Cindy Hanners* 01-14-04
Authorized Signer Date

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

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

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

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

Chapter 255
Administrative Rules Chapter Number

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

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

Statutory Authority: ORS 137.540, 144.102, 144.270

Other Authority: None

Statutes Implemented: ORS None

Need for the Rule(s): This amendment is necessary so that the board's rule and exhibit will be consistent with the Oregon Revised Statutes.

Documents Relied Upon: None

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

Administrative Rule Advisory Committee consulted?: No.

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

Michael R. Washington

10-10-03

Authorized Signer and Date

DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions Not Limited by Exhibit J

255-070-0001

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

Statutory Authority: (ORS 144.096, 144.102, 144.270)

History: (5/31/85; 11/3/86, temporary; 4/1/87; 4/15/88, temporary; 5/19/88; 7/1/88; 10/18/88; 4/5/90; 4/30/92, temporary; 10/9/92; 10/15/93, 11/09/98, 9-15-99 Notice/Temp, 11-15-99, 05-22-00, 12/15/01-Notice/Temp, 01-29-02, 04-15-02 – Notice/Temp, 06-17-02, 06-13-03–notice/temp, 10-10-03, **01-14-04**)

Offender Return to County of Residence

255-070-0003

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

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

Statutory Authority: (ORS 144.270(5))

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

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

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

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

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

Establishing Conditions
255-070-0015

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

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

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

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

EXHIBIT J

(ORS 144.102, 144.270, 144.275, 181.595)
OAR 255-060-0008, 255-065-0005, 255-070-0001-0015, 255-075-0002, 255-075-0004)

GENERAL/SPECIAL PAROLE AND POST-PRISON SUPERVISION CONDITIONS

Parole/Post-Prison Supervision is subject to all listed General Conditions and the designated Special Conditions. Prior to release the Board may modify the conditions at any time. After parole/post-prison supervision has commenced, conditions may be added upon your signed consent or after opportunity to be heard, orally or in writing.

Parole or Post-Prison Supervision may be revoked for violation of any of these conditions and/or you may be returned when parole or post-prison supervision is not in your best interest or the best interest of society.

The Board may, at it's discretion, sanction violations of Parole or Post-Prison Supervision Conditions; sanctions may include returning you to the Department of Corrections custody.

As used in this exhibit, the following words have the following meanings: "Offender" means persons released to parole or post-prison supervision. "Parole Officer" shall also mean the supervisory authority under the post-prison supervision system.

GENERAL CONDITIONS

1. Pay supervision fees, fines, restitution or other fees ordered by the Court.
2. Not use or possess controlled substances except pursuant to a medical prescription.
3. Submit to testing of breath or urine for controlled substance or alcohol use if the offender has a history of substance abuse or if there is a reasonable suspicion that the offender has illegally used controlled substances.
4. Participate in a substance abuse evaluation as directed by the supervising officer and follow the recommendations of the evaluator if there are reasonable grounds to believe there is a history of substance abuse.
5. Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency. Offender automatically waives extradition if offender absconds supervision out of State.
6. If physically able, find and maintain gainful full-time employment, approved schooling, or a full-time combination of both.
7. Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency.
8. Permit the supervising officer to visit the offender or the offender's residence or work site, and to conduct a walk-through of the common areas and of the rooms in the residence occupied by or under the control of the offender.

9. Consent to the search of person, vehicle or premises upon the request of a representative of the supervising officer if the supervising officer has reasonable grounds to believe that evidence of a violation will be found, and submit to fingerprinting or photographing, or both, when requested by the Department of Corrections or a county community corrections agency for supervision purposes.
10. Obey all laws, municipal, county, state and federal.
11. Promptly and truthfully answer all reasonable inquiries by the Department of Corrections or a county community corrections agency.
12. Not possess weapons, firearms, or dangerous animals.
13. Report as required and abide by the direction of the supervising officer.

SPECIAL CONDITIONS

1. Offender shall be evaluated by a mental health evaluator and follow all treatment recommendations.
2. Offender shall continue to take any psychiatric or psychotropic medication that was prescribed prior to or at the time of release from custody until otherwise directed by a physician. At the direction of the parole officer, the offender shall undergo a psychiatric evaluation and take any medications recommended. The offender shall comply with a medication monitoring program at the request of the parole officer.
3. Offender shall have no contact with minor females and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
4. Offender shall have no contact with minor males and shall not frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades) without prior written approval from their supervising officer.
5. Offender shall submit to random polygraph tests as part of a sex offender surveillance program. Failure to submit to the tests may result in return to custody. Specific responses to the tests shall not be the sole basis for return to custody.
6. Offender shall enter and complete or be successfully discharged from a recognized and approved sex offender treatment program which may include polygraph and/or plethysmograph testing. The offender shall abide by all rules and conditions of the sex offender treatment program. Offender shall abide by a prohibition of sexually deviant materials, activities or behavior that the offender may use for the purpose of deviant sexual arousal, unless otherwise allowed by the Parole Officer in writing.
7. Offender shall pay court ordered restitution to the clerk of the court of the county of sentencing (ORS 137.106, OAR 255-065-0005).
8. If required to report as a sex offender under ORS 181.595, report with the Department of State Police, a Chief of Police, a county Sheriff, or the Supervising Agency when supervision begins, within 10 days of a change in residence and once a year within 10 days of the person's date of birth.

9. Offender shall not possess or use intoxicating beverages.
10. Other: Special conditions may be imposed that are not listed above when the Board of Parole and Post-Prison Supervision determines that such conditions are necessary.
11. Offender shall have no contact direct or indirect with those listed below:
12. Consent to search of computer or other electronic equipment upon the request of the supervising officer, or their representative, if the supervising officer has reasonable grounds to believe that evidence of a violation will be found.
13. Sex Offender Package:
 - (a) Agreement to comply with any curfew set by the board, the supervisory authority or the supervising officer.
 - (b) A prohibition against contacting a person under 18 years of age without the prior written approval of the board, supervisory authority or supervising officer.
 - (c) A prohibition against frequenting, without the prior written approval of the board, supervisory authority or supervising officer, a place where persons under 18 years of age regularly congregate.
 - (d) A prohibition against working or volunteering at a school, day care center, park, playground or other place where persons under 18 years of age regularly congregate.
 - (e) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board, supervisory authority or supervising officer. The offender shall abide by all rules and conditions of the sex offender treatment program. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.
 - (f) A prohibition against any contact with the victim, directly or indirectly, unless approved by the victim, the person's treatment provider and the board, supervisory authority or supervising officer.
 - (g) Unless otherwise indicated for the treatment required under subparagraph (E) of this paragraph, a prohibition against viewing, listening to, owning or possessing any sexually stimulating visual or auditory materials that are relevant to the person's deviant behavior.
 - (h) Agreement to consent to a search of the person or the vehicle or residence of the person upon the request of a representative of the board or supervisory authority if the representative has reasonable grounds to believe that evidence of a violation of a condition of post-prison supervision will be found.
 - (i) Participation in random polygraph examinations to obtain information for risk management and treatment. The person is responsible for paying the expenses of the examinations. The results of a polygraph examination under this subparagraph may not be used in evidence in a hearing to prove a violation of post-prison supervision.
 - (j) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.
 - (k) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 01-05-04 by the
Date prior to or same as filing date.

Board of Parole and Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

Cindy Hanners
Rules Coordinator

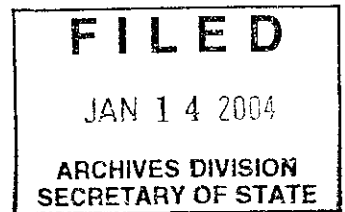
503-945-0903
Telephone

2575 Center St. NE, Ste 100, Salem, Oregon 97301-4621
Address

to become effective 01-14-2004 through 07-11-2004
Date upon filing or later A maximum of 180 days including the effective date.

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

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



AMEND: 255-060-0011 (Exhibits Q-1, Q-2, Q-3, Q-4)

SUSPEND:

ORS 144.050, 144.140, 181.585
Stat. Auth.: ORS

NONE
Other Authority

NONE
Stats. Implemented: ORS

RULE SUMMARY

The amendment of the rules is necessary to be consistent with the Department of Corrections approval of a new sex offender risk assessment scale. This new sex offender risk assessment scale is applicable to offenders being released on and after May 1, 2004.

01-14-2004 Authorized
Date

Cindy Hanners
Printed name

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

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Board of Parole and Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140, 181.585

Other Authority:

Statutes Implemented: ORS

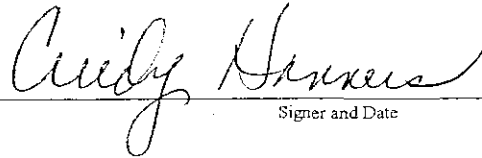
Need for the Temporary Rule(s):

The Department of Corrections release counselors are responsible for the assessment of convicted sex offenders, which is routinely done six months in advance of release, by way of a sex offender risk assessment scale. It is necessary for this rule to be adopted on an emergency basis so as to allow counselors the opportunity to use the assessment scale adopted by the Department of Corrections.

Documents Relied Upon: None.

Justification of Temporary Rule(s):

This new sex offender risk assessment scale is applicable for offenders being released on and after May 1, 2004.



01-14-04

Signer and Date

Cindy Hanners

Printed name

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

Cindy Hanners

Rules Coordinator

503-945-0904

Telephone

2575 Center Street NE, Ste 100 – Salem, Oregon 97301-4621

Address

RULEMAKING ACTION

ADOPT:

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

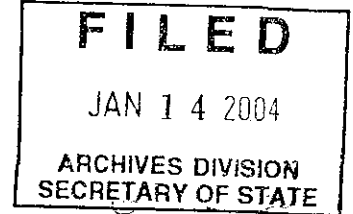
AMEND:

255-060-0011 (Exhibits Q-1, Q-2, Q-3, Q-4)

REPEAL:

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

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



RECEIVED
04 JAN 21 PM 1 16
OF PAROLE

ORS 144.050, 144.140, 181.585

Stat. Auth.: ORS

NONE

Other Authority

NONE

Stats. Implemented: ORS

RULE SUMMARY

The amendment of the rules is necessary to be consistent with the Department of Corrections approval of a new sex offender risk assessment scale. This new sex offender risk assessment scale is applicable to offenders being released on and after May 1, 2004.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

ORS 183.335(2)(b)(G) 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.

03-03-2004

Last Day for Public Comment

Signature and Date

01-14-2004

Cindy Hanners

Printed name

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

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

Board of Parole & Post-Prison Supervision

Agency and Division

Chapter 255

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140, 181.585

Other Authority:

Statutes Implemented: ORS

Need for the Rule(s):

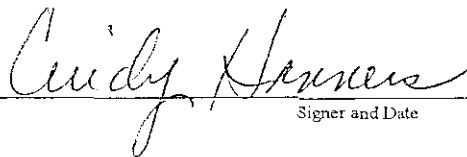
The Department of Corrections release counselors are responsible for the assessment of convicted sex offenders, which is routinely done six months in advance of release, by way of a sex offender risk assessment scale. It is necessary for this rule to be adopted on an emergency basis so as to allow counselors the opportunity to use the assessment scale adopted by the Department of Corrections.

Documents Relied Upon: None.

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

Administrative Rule Advisory Committee consulted?: No.

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



Signer and Date

01-14-04

Cindy Hanners

Printed name

255-060-0011

Procedures for Predatory Sex Offender

- (1) For purposes of this rule, a person is a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use only the ~~Sex Offender Risk Assessment Scale~~ STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II) which have been approved by the Department of Corrections as required by ORS 181.585(2).
- (2) The procedures set forth in this rule only apply to inmates or offenders released from a Department of Corrections institution on or after May 1, 2004, after serving a sentence of more than 12 months, whose original order of supervision is issued by the Board on or after January 1, 1999. Predatory sex offender designations made by the board for inmates or offenders released from a Department of Corrections institution before May 1, 2004, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores ~~three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale. The Board may make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores less than three or more starred (*) items and has no automatic override item(s) but scores at least 50 on the Sex Offender Risk Assessment Scale.~~ four or more points on the STATIC-99.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.
- (5) Subject to the procedures set forth below, inmates or offenders who score ~~three or more starred (*) items or one or more automatic override item(s) on the Sex Offender Risk Assessment Scale~~ four or more points on the STATIC-99 have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before a predatory sex offender finding is made.
 - (c) The Board must consider any written objections to the score on the ~~Sex Offender Risk Assessment Score~~ STATIC-99 timely submitted by the inmate or offender before making a predatory sex offender finding. The Board shall make the predatory sex offender finding if there is evidence to support a score on the ~~Sex Offender Risk Assessment Scale (Exhibit Q-I) of three or more starred (*) items or one or more automatic override item(s) using the definitions for the Sex Offender Risk Assessment Scale (Exhibit Q-I)~~ STATIC-99 of four or more points.

~~(6) The Board may also make a predatory finding for inmates or offenders with a total score of at least 5.0 on the Sex Offender Risk Assessment Scale but fewer than three starred (*) items and no automatic override items.~~

~~(a) Inmates or offenders referred to in section (6) of this rule are entitled to a Morrissey-type hearing prior to the Board making a predatory sex offender finding. This hearing must be held in accordance with the rules governing supervision violations as set forth in OAR 255-075-0031 through 255-075-0056. OAR 255-075-0065 does not apply to this rule.~~

~~(b) Following the hearing, the hearing officer shall submit written findings to the Board. A Board Member must review these written findings prior to making a predatory sex offender finding. A Board Member shall make a predatory sex offender finding if the Board Member determines that the evidence presented at the hearing supports a score of at least 5.0 on the Sex Offender Risk Assessment Scale.~~

(6) Inmates or offenders may elect to waive their right to submit written objections. ~~or waive their right participate in a hearing as set forth in this rule.~~ Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections or to participate in a hearing, the Board may make the predatory sex offender finding if the inmate's or offender's score on the ~~Sex Offender Risk Assessment Scale is at least 5.0, or there are at least three starred (*) items or there is at least one automatic override item.~~ STATIC-99 is four or more points.

(7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: Chapter 163 (1999 OR Laws)

History: (02-15-00, 03-12-02, 06/13/03, 10-10-03, 01/14/04 – Temp/Notice)

EXHIBIT Q-1

RISK ASSESSMENT SCALE

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

**EXHIBIT 7-1
STATIC-99 SCORING WORKSHEET**

SID No. _____

Evaluator: _____

Date: _____

01-14-04 Temp/Notice

Risk Factor	Codes	Score	Comments
1 Young	Aged 25 or older Aged 18 - 24.99	0 1	
2 Single	Ever lived with lover for at least two years? Yes No	0 1	
3 Index Non-sexual violence	No Yes	0 1	
4 Prior non-sexual violence	No Yes	0 1	
5 Prior Sex Offenses (Same rules as in RRASOR)	Charges Convictions None None 1-2 1 3-5 2-3 6+ 4+	0 1 2 3	
6 Prior sentencing dates (excluding index)	3 or less 4 or more	0 1	
7 Any convictions for non-contact sex offenses	No Yes	0 1	
8 Any Unrelated Victims	No Yes	0 1	
9 Any Stranger Victims	No Yes	0 1	
1 Any Male Victims	No Yes	0 1	
TOTAL SCORE			

TRANSLATING STATIC-99 SCORES INTO RISK CATEGORIES

STATIC-99 SCORE	Label for Risk Category	Sexual recidivism		
		5 years	10 years	15 years
0	Low	.05	.11	.13
1	Low	.06	.07	.07
2	Medium-Low	.09	.13	.16
3	Medium Low	.12	.14	.19
4	Medium-High	.26	.31	.36
5	Medium-High	.33	.38	.40
6 +	High	.39	.45	.52

1-05-04 Temp/Notice

STATIC-99 Scoring Worksheet (Revised 11/13/02)

STATIC-99 Scoring Worksheet

EXHIBIT Q-II

DEFINITIONS

Definitions

Sexual Offence

For the purposes of a STATIC-99 assessment a sexual offence is an officially recorded sexual misbehaviour or criminal behaviour with sexual intent. To be considered a sexual offence the sexual misbehaviour must result in some form of criminal justice intervention or official sanction. For people already engaged in the criminal justice system the sexual misbehaviour must be serious enough that individuals could be charged with a sexual offence if they were not already under legal sanction. Do not count offences such as failure to register as a sexual offender or consenting sex in prison.

Criminal justice interventions may include the following:

- Alternative resolutions agreements (Restorative Justice)
- Arrests
- Charges
- Community-based Justice Committee Agreements
- Criminal convictions
- Institutional rule violations for sexual offences (Do not count consenting sexual activity in prison)
- Parole and probation violations

Sanctions may include the following:

- Alternative resolution agreements
- Community supervision
- Conditional discharges
- Fines
- Imprisonment
- Loss of institutional time credits due to sexual offending ("worktime credits")

Generally, "worktime credit" or "institutional time credits" means credit towards (time off) a prisoner's sentence for satisfactory performance in work, training or education programs. Any prisoner who accumulates "worktime credit" may be denied or may forfeit the credit for failure or refusal to perform assigned, ordered, or directed work or for receiving a serious disciplinary offense.

Sexual offences are scored only from official records and both juvenile and adult offences count. You may not count self-reported offences except under certain limited circumstances, please refer to the introduction section – sub-section "Self-report and the STATIC-99".

An offence need not be called "sexual" in its legal title or definition for a charge or conviction to be considered a sexual offence. Charges or convictions that are explicitly for sexual assaults, or for the sexual abuse of children, are counted as sexual offenses on the STATIC-99, regardless of the offender's motive. Offenses that directly involve illegal sexual behaviour are counted as sex offenses even when the legal process has led to a "non-sexual" charge or conviction. An example of this would be where an offender is charged with or pleads guilty to a Break and Enter when he was really going in to steal dirty underwear to use for fetishistic purposes.

In addition, offenses that involve non-sexual behavior are counted as sexual offenses if they had a sexual motive. For example, consider the case of a man who strangles a woman to death as part of a sexual act but only gets charged with manslaughter. In this case the manslaughter charge would still be considered a sexual offence. Similarly, a man who strangles a woman to gain sexual compliance but only gets charged

EXHIBIT Q-II

DEFINITIONS

Scoring the STATIC-99 & Computing the Risk Estimates

Using the STATIC-99 Coding Form (Appendix 5) sum all individual item scores for a total risk score based upon the ten items. This total score can range from "0" to "12".

Scores of 6 and greater are all considered high risk and treated alike.

Once you have computed the total raw score refer to the table titled STATIC-99 Recidivism Percentages by Risk Level (Appendix 6).

Here you will find recidivism risk estimates for both sexual and violent recidivism over 5, 10, and 15-year projections. In the left-most column find the offender's raw STATIC-99 risk score. Remember that scores of 6 and above are read off the "6" line, high risk.

For example, if an offender scored a "4" on the STATIC-99 we would read across the table and find that this estimate is based upon a sample size of 190 offenders which comprised 18% of the original sample. Reading further, an offender with a score of "4" on the STATIC-99 is estimated as having a 26% chance of sexual reconviction in the first 5 years of liberty, a 31% chance of sexual reconviction over 10 years of freedom, and a 36% chance of sexual reconviction over 15 years in the community.

For violent recidivism we would estimate that an offender that scores a "4" on the STATIC-99 would have a 36% chance of reconviction for a violent offence over 5 years, a 44% chance of reconviction for a violent offence over 10 years, and a 52% chance of reconviction for a violent offence over a 15 year period. It is important to remember that sexual recidivism is included in the estimates of violent recidivism. You **do not** add these two estimates together to create an estimate of violent and sexual recidivism. The estimates of violent recidivism include incidents of sexual recidivism.

STATIC-99 risk scores may also be communicated as nominal risk categories using the following guidelines. Raw STATIC-99 scores of "0" and "1" should be reported as "Low Risk", scores of "2" and "3" reported as "Moderate-Low" risk, scores of "4" and "5" reported as "Moderate-High" risk, and scores of "6" and above as "High Risk".

Having determined the estimated risk of sexual and violent recidivism we suggest that you review Appendix seven (7) which is a suggested template for communicating STATIC-99 risk information in a report format.

DEFINITIONS

Item # 10 - Any Male Victims?

The Basic Principle: Research shows that offenders who have offended against male children or male adults recidivate at a higher rate compared to those who do not have male victims. Having male victims is correlated with measures of sexual deviance and is seen as an indication of increased sexual deviance; see Hanson and Bussière (1998), Table 1.

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in section "Items #8, #9, & #10 - The Three Victim Questions".

The Basic Rule: If the offender has male victims of sexual offences, non-consenting adults or child victims, score the offender a "1" on this item. If the offender's victims of sexual offences are all female, score the offender a "0" on this item.

Included in this category are all sexual offences involving male victims. Possession of child pornography involving boys, however, does not count. Exhibitionism to a mixed group of children (girls and boys) would not count unless there was clear evidence the offender was targeting the boys. Contacting male victims over the Internet does count.

If an offender assaults a transvestite in the mistaken belief the victim is a female (may be wearing female clothing) do not score the transvestite as a male victim. If it is certain the offender knew he was assaulting a male before the assault, score a male victim.

In some cases a sexual offender may beat-up or contain (lock in a car trunk) another male in order to sexually assault the male's date (wife, etc.). If the perpetrator simply assaults the male (non-sexual) in order to access the female you do not count him as a male victim on the STATIC-99. However, if the perpetrator involves the male in the sexual offence, such as tying him up and making him watch the rape (forced voyeuristic activity), the assault upon the male victim would count as a sexual offence and the male victim would count on the STATIC-99.

EXHIBIT Q-II

DEFINITIONS

Item # 9 - Any Stranger Victims?

The Basic Principle: Research shows that having a stranger victim is related to sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item “Victim Stranger (versus acquaintance)”.

Information Required to Score this Item: Use all credible information to score this item. “Credible Information” is defined in the section “Items #8, #9, & #10 - The Three Victim Questions”.

The Basic Rule: If the offender has victims of sexual offences who were strangers at the time of the offence, score the offender a “1” on this item. If the offender’s victims of sexual offences were all known to the offender for at least 24 hours prior to the offence, score the offender a “0” on this item. If the offender has a “stranger” victim, Item #8, “Any Unrelated Victims”, is generally scored as well.

A victim is considered a stranger if the victim did not know the offender 24 hours before the offence. Victims contacted over the Internet are not normally considered strangers unless a meeting was planned for a time less than 24 hours after initial communication.

For Stranger victims, the offender can either not know the victim or it can be the victim not knowing the offender. In the first case, where the offender does not know the victim, (the most common case), the offender chooses someone who they are relatively sure will not be able to identify them (or they just do not care) and offends against a stranger. However, there have been examples where the offender “should” have known the victim but just did not recognize them. This occurred in one case where the perpetrator and the victim had gone to school together but the perpetrator did not recognize the victim as someone they knew. In cases like this, the victim would still be a stranger victim as the offender’s intention was to attack a stranger.

The criteria for being a stranger are very high. Even a slight degree of knowing is enough for a victim not to be a stranger. If the victim knows the offender at all for more than 24 hours, the victim is not a stranger. For example, if the victim was a convenience store clerk and they recognized the perpetrator as someone who had been in on several occasions to buy cigarettes, the victim would no longer be a stranger victim. If a child victim can say they recognize the offender from around the neighborhood and the perpetrator has said “Hi” to them on occasion, the child is no longer a stranger victim. The evaluator must determine whether the victim “knew” the offender twenty-four hours (24) before the assault took place. The criteria for “know/knew” is quite low but does involve some level of interaction. They need not know each other’s names or addresses. However, simply knowing of someone but never having interacted with them would not be enough for the victim to count as “known”.

The Reverse Case

In cases of “stalking” or stalking-like behaviours the offender may know a great deal about the victim and their habits. However, if the victim does not know the offender when they attack this still qualifies as a stranger victim.

The “24 hour” rule also works in reverse – there have been cases where a performer assaulted a fan the first time they met. In this case, the victim (the fan) had “known of” the performer for years, but the performer (the perpetrator) had not known the fan for 24 hours. Hence, in cases such as this, the victim would count as a stranger because the perpetrator had not known the victim for 24 hours prior to the offence.

Internet, e-mail, and telephone

Sometimes offenders attempt to access or lure victims over the Internet. This is a special case and the threshold for not being a stranger victim is quite low. If the offender and the victim have communicated over the Internet (e-mail, or telephone) for more than twenty-four hours (24 hours) before the initial face-

EXHIBIT Q-II

DEFINITIONS

- Grandmother
- Grandson's wife
- Mother
- Niece/Nephew
- Sister
- Son's wife
- Stepdaughter/Stepson (Must have more than two years living together before abuse begins)
- Wife and Ex-wife
- Wife's daughter/step-daughter
- Wife's granddaughter
- Wife's grandmother
- Wife's mother

The relationships can be full, half, adopted, or common-law (two years living in these family relationships). The mirror relationships of the opposite gender would also count as related (e.g., brother, sons, nephews, granddaughter's husband).

People who are seen as unrelated for the purposes of scoring the STATIC-99

- Any step-relations where the relationship lasted less than two years
- Daughter of live-in girlfriend/Son of live-in girlfriend
(less than two years living together before abuse begins)
- Nephew's wife
- Second cousins
- Wife's aunt

Decisions about borderline cases (e.g., brother's wife) should be guided by a consideration of the psychological relationship existing prior to the sexual assault. If an offender has been living with the victim in a family/paternal/fraternal role for two years prior to the onset of abuse, the victim and the offender would be considered related.

Becoming "Unrelated"

If an offender who was given up for adoption (removed etc.) at birth (Mother and child having no contact since birth or shortly after) and the Mother (Sister, Brother etc.) is a complete stranger that the offender would not recognize (facial recognition) as their family, these biological family members could count as Unrelated Victims. This would only happen if the offender did not know they were offending against a family member.

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DEFINITIONS

Item # 8 - Any Unrelated Victims?

The Basic Principle: Research indicates that offenders who offend only against family members recidivate at a lower rate compared to those who have victims outside of their immediate family (Harris & Hanson, Unpublished manuscript). Having victims outside the immediate family is empirically related to a corresponding increase in risk.

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in the previous section "Items #8, #9, & #10 -The Three Victim Questions".

The Basic Rule: If the offender has victims of sexual offences outside their immediate family, score the offender a "1" on this item. If the offender's victims of sexual offences are all within the immediate family score the offender a "0" on this item.

A related victim is one where the relationship is sufficiently close that marriage would normally be prohibited, such as parent, brother, sister, uncle, grandparent, stepbrother, and stepsister. Spouses (married and common-law) are also considered related. When considering whether step-relations are related or not, consider the nature and the length of the pre-existing relationship between the offender and the victim before the offending started. Step-relationships lasting less than two years would be considered unrelated (e.g., step-cousins, stepchildren). Adult stepchildren would be considered related if they had lived for two years in a child-parent relationship with the offender.

Time and Jurisdiction Concerns

A difficulty in scoring this item is that the law concerning who you can marry is different across jurisdictions and across time periods within jurisdictions. For example, prior to 1998, in Ontario, there were 17 relations a man could not marry, including such oddities as "nephew's wife" and "wife's grandmother". In 1998 the law changed and there are now only 5 categories of people that you cannot marry in Ontario: grandmother, mother, daughter, sister, and granddaughter (full, half, and adopted). Hence, if a man assaulted his niece in 1997 he would not have an unrelated victim but if he committed the same crime in 1998 he would technically be assaulting an unrelated victim. We doubt very much the change in law would affect the man's choice of victim and his resulting risk of re-offence. As a result the following rules have been adopted.

People who are seen as related for the purposes of scoring the STATIC-99

1. Legally married spouses
2. Any live-in lovers of over two years duration. (Girlfriends/Boyfriends become related once they have lived with the offender as a lover for two years)
3. Anyone too closely related to marry (by jurisdiction of residence of the perpetrator)
4. The following relations whether or not marriage is permitted in the jurisdiction of residence of the perpetrator:
 - Aunt
 - Brother's wife
 - Common-law wife/Ex common-law wife (lived together for 2 years)
 - Daughter
 - Father's wife/step-mother
 - First cousins
 - Granddaughter
 - Grandfather
 - Grandfather's wife

EXHIBIT Q-II

DEFINITIONS

Stayed Charges

Victim information obtained from stayed charges should be counted.

Victims not at home

If an offender breaks into houses, (regardless of whether or not the victims are there to witness the offence) to commit a sexual offence, such as masturbating on or stealing their undergarments or does some other sexual offence – victims of this nature are considered victims for the purposes of the STATIC-99. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

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DEFINITIONS

If the information is credible (Children's Protective Association, victim impact statements, police reports) you may use this information to code the three victim questions, even if the offender has never been arrested or charged for those offences.

Exhibitionism

In cases of exhibitionism, the three victim items may be scored if there was a targeted victim, and the evaluator is confident that they know before whom the offender was trying to exhibit. If the offender exhibits before a mixed group, males and females, do not score "Male Victim" unless there is reason to believe that the offender was exhibiting specifically for the males in the group. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

Example: If a man exposed to a school bus of children he had never seen before (both genders), the evaluator would score this offender one risk point for Unrelated Victim, one risk point for Stranger Victim, but would not score a risk point for Male Victim unless there was evidence the offender was specifically targeting the boys on the bus.

In cases where there is no sexual context (i.e., the psychotic street person who takes a shower in the town fountain) there are no victims regardless of how offended they might be or how many people witnessed the event.

Internet Victims and Intention

If an offender provides pornographic material over the Internet, the intent of the communication is important. In reality a policeman may be on the other end of the net in a "sting" operation. If the offender thought he was providing pornography to a child, even though he sent it to a police officer, the victim information is counted as if a child received it. In addition, when offenders attempt, over the Internet, to contact face-to-face a "boy or girl" they have contacted over the Internet the victim information counts as the intended victim, even if they only "met" a policeman.

Intention is important. In a case where a child was pretending to be an adult and an adult "shared" pornography with that person in the honest belief that they were (legally) sharing it with another adult there would not be a victim.

Polygraph Information

Victim information derived solely from polygraph examinations is not used to score the STATIC-99 unless it can be corroborated by outside sources or the offender provides sufficient information to support a new criminal investigation.

Prowl by Night - Voyeurism

For these types of offences the evaluator should score specific identifiable victims. However, assume only female victims unless you have evidence to suggest that the offender was targeting males.

Sexual Offences against Animals

While the sexual assault of animals counts as a sexual offence, animals do not count as victims. This category is restricted to human victims. It makes no difference whether the animal was a member of the family or whether it was a male animal or a stranger animal.

Sex with dead bodies

If an offender has sexual contact with dead bodies these people do count as victims. The evaluator should score the three victim questions based upon the degree of pre-death relationship between the perpetrator and the victim.

DEFINITIONS

stumbling upon a crime scene does not make the observer a victim regardless of how repugnant the observer finds the behaviour.

Acquitted or Found Not Guilty

The criteria for coding victim information is "all credible information". In this type of situation it is important to distinguish between the court's stringent standard of determining guilt (Beyond a reasonable doubt) and "What is most likely to be true" -- a balance of probabilities. When the court sticks to the "Beyond a reasonable doubt" criteria they are not concluding that someone did not do the crime, just that the evidence was insufficient to be certain that they did it. The risk assessment perspective is guided by: "On the balance of probabilities, what is most likely to be true?" If the assessor, "On the balance of probabilities" feels that the offence more likely than not took place the victims may be counted.

For the assessment, therefore, it may be necessary to review the cases in which the offender was acquitted or found "Not Guilty" and make an independent determination of whether it is more likely than not that there were actual victims. If, in the evaluator's opinion, it were more likely that there was no sexual offence the evaluator would not count the victim information. In the resulting report the evaluator would generally include a score with the contentious victim information included and a score without this victim information included, showing how it affects the risk assessment both ways.

This decision to score acquittals and not guilty in this manner is buttressed by a research study in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Child Pornography

Victims portrayed in child pornography are not scored as victims for the purposes of the STATIC-99. They do not count as non-familial, stranger, nor male victims. Only real, live, human victims count. If your offender is a child pornography maker and a real live child was used to create pornography by your offender or your offender was present when pornography was created with a real live child, this child is a victim and should be scored as such on the STATIC-99 victim questions. (Note: manipulating pre-existing images to make child pornography [either digitally or photographically] is not sufficient -- a real child must be present) Making child pornography with a real child victim counts as a "Category A" offence and, hence, with even a single charge of this nature, the STATIC-99 is appropriate to use.

The evaluator may, of course, in another section of the report make reference to the apparent preferences demonstrated in the pornography belonging to the offender.

Conviction, but no victim

For the purposes of the STATIC-99, consensual sexual behaviour that is prohibited by statute does not create victims. This is the thinking behind Category "B" offences. Examples of this are prostitution offences and public toileting (Please see "Category "A" and Category "B" offences" in the Introduction section for a further discussion of this issue). Under some circumstances it is possible that in spite of a conviction for a sexual offence the evaluator may conclude that there are no real victims. An example of this could be where a boy (age 16 years) is convicted of Statutory Rape of his 15-year-old boyfriend (Assume age of consent in this jurisdiction to be 16 years of age). The younger boy tells the police that the sexual contact was consensual and the police report informs the evaluator that outraged parents were the complainants in the case. In a scenario like this, the younger boy would not be scored as a victim, the conviction notwithstanding.

Credible Information

Credible sources of information would include, but are not limited to, police reports, child welfare reports, victim impact statements or discussions with victims, collateral contacts and offender self-report.

EXHIBIT Q-II

DEFINITIONS

Items #8, #9, & # 10 – The Three Victim Questions

The following three items concern victim characteristics: Unrelated Victims, Stranger Victims, and Male Victims. For these three items the scoring is based on all available credible information, including self-report, victim accounts, and collateral contacts. The items concerning victim characteristics, however, only apply to sex offences in which the victims were children or non-consenting adults (Category “A” sex offences). Do not score victim information from non-sexual offences or from sex offences related to prostitution/pandering, possession of child pornography, and public sex with consenting adults (Category “B” sex offences). Do not score victim information on sexual offences against animals (Bestiality and similar charges).

In addition to all of the “everyday” sexual offences (Sexual Assault, Rape, Invitation to Sexual Touching, Buggery) you also score victim information on the following charges:

- Illegal use of a Minor in Nudity-oriented Material/Performance
- Importuning (Soliciting for Immoral Purposes)
- Indecent Exposure (When a specific victim has been identified)
- Sexually Harassing Telephone Calls
- Voyeurism (When a specific victim has been identified)

You do not score Victim Information on the following charges:

- Compelling Acceptance of Objectionable Material
- Deception to Obtain Matter Harmful to Juveniles
- Disseminating/Displaying Matter Harmful to Juveniles
- Offences against animals
- Pandering Obscenity
- Pandering Obscenity involving a Minor
- Pandering Sexually-Oriented Material involving a Minor
- Prostitution related offences

“Accidental Victims”

Occasionally there are “Accidental Victims” to a sexual offence. A recent example of this occurred when an offender was raping a woman in her living room. The noise awoke the victim’s four-year-old son. The son wandered into the living room and observed the rape in progress. The victim instructed her son to return to his bedroom and he complied at once. The perpetrator was subsequently charged and convicted of “Lewd and Lascivious Act on a Minor” in addition to the rape. In court the offender pleaded to both charges. In this case, the four-year-old boy would not count as a victim as there was no intention to commit a sexual offence against him. He would not count in any of the three victim items regardless of the conviction in court.

A common example of an accidental victim occurs when a person in the course of his/her daily life or profession happens across a sexual offence. Examples include police officers, park wardens, janitors, and floor walkers who observe a sexual offence in the course of their duties. If a male officer were to observe an exhibitionist exposing himself to a female, the offender would not be given the point for “Male Victim” as there was no intention to expose before the male officer. The evaluator would not give the offender a point for “male victim” unless the offender specifically chose a male officer to expose himself to. In the same vein, a floor walker or janitor who observes an offender masturbating while looking at a customer in a store would not be counted as a “stranger victim” or an “unrelated victim”. In short there has to be some intention to offend against that person for that person to be a victim. Merely

EXHIBIT Q-II

DEFINITIONS

Internet Crimes

Internet crimes were not recorded in the original samples for the STATIC-99 because the Internet had not advanced to the point where it was commonly available. As a result, determining how to score Internet crimes on the STATIC-99 requires interpretation beyond the available data. Internet crimes could be considered in two different ways. First, they could be considered a form of attempted sexual contact, where the wrongfulness of the behaviour is determined by what is about to happen. Secondly, they could be considered an inappropriate act in themselves, akin to indecent telephone calls (using an older technology). We believe that luring children over the Internet does not represent a fundamentally new type of crime but is best understood as a modern expression of traditional crimes. We consider communicating with children over the Internet for sexual purposes to be an inappropriate and socially harmful act in itself and, therefore, classify these acts with their historical precursors, such as indecent/obscene telephone calls, in the category of non-contact sexual offences.

Pimping and Prostitution Related Offences

Pimping and other prostitution related offences (soliciting a prostitute, promoting prostitution, soliciting for the purposes of prostitution, living off the avails of prostitution) do not count as non-contact sexual offences. (Note: prostitution was not illegal in England during the study period, though soliciting was)

Plea Bargains

Non-contact sexual offence convictions do not count if the non-contact offence charge arose as the result of a plea bargain. Situations such as this may appear in the criminal record where charges for a contact offence are dropped and the non-contact charges appear simultaneously with a guilty plea. An occurrence of this nature would be considered a contact offence and scored as such.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and others with indeterminate sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a Non-contact Sexual Offence that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a Non-contact Sexual Offence, this revocation of conditional release would count as a conviction for a Non-contact Sexual Offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a non-contact sexual offence charge would be laid by police.

EXHIBIT Q-II

DEFINITIONS

Item # 7 - Any Convictions for Non-contact Sex Offences

The Basic Principle: Offenders with paraphilic interests are at increased risk for sexual recidivism. For example, most individuals have little interest in exposing their genitals to strangers or stealing underwear. Offenders who engage in these types of behaviours are more likely to have problems conforming their sexual behaviour to conventional standards than offenders who have no interest in paraphilic activities.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record indicates a separate conviction for a non-contact sexual offence, the offender is scored a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-contact sexual offence, the offender is scored a "0" on this item.

This category requires a conviction for a non-contact sexual offence such as:

- Exhibitionism
- Possessing obscene material
- Obscene telephone calls
- Voyeurism
- Exposure
- Elicit sexual use of the Internet
- Sexual Harassment (Unwanted sexual talk)
- In certain jurisdictions "Criminal Trespass" or "Trespass by Night" may be used as a charge for voyeurism – these would also count

The criteria for non-contact sexual offences are strict: the offender must have been convicted, and the offence must indicate non-contact sexual misbehaviour. The "Index" offence(s) may include a conviction for a non-contact sexual offence and this offence can count in this category. The most obvious example of this is where an offender is charged and convicted of Exposure for "mooning" a woman from a car window. This would result in a coding of "1" for this item.

There are some cases, however, where the legal charge does not reflect the sexual nature of the offence. Take, for example, the same situation where an offender is charged with Exposure for "mooning" a woman from a car window, but the case is pled-down to, and the offender is finally convicted of Disorderly Conduct. In cases like this, while this item requires that there be a conviction, the coding of a non-contact sexual offence can be based on the behaviour that occurred in cases where the name of the offence is ambiguous.

Charges and arrests do not count, nor do self-reported offences. Sexual offences in which the offender intended to make contact with the victim (but did not succeed) would be considered attempted contact offences and are coded as contact offences (e.g., invitation to sexual touching, attempted rape). Some offences may include elements of both contact and non-contact offences, for example, sexual talk on Internet - arranging to meet the child victim. In this case, the conviction would count as a non-contact sex offence.

Attempted Contact Offences

Invitation to Sexual Touching, Attempted Rape and other such "attempted" contact offences are counted as "Contact" offences due to their intention.

EXHIBIT Q-II

DEFINITIONS

this would count as a sentencing date. However, if the member left the military when he normally would have and the "undesirable discharge" is the equivalent to a bad job reference then the criminal behaviour would not count as a Sentencing Date.

Military Courts Martial

If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence rather than a purely military offence {failure of duty} this counts as a sentencing date. Pure Military Offences {Insubordination, Not Following a Lawful Order, Dereliction of Duty, Conduct Unbecoming, etc.} do not count as Prior Sentencing Dates.

Not Guilty

Being found "Not Guilty" is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a sentencing date.

Post-Index Offences

Post-Index offences are not counted as sentencing occasions for the STATIC-99.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and others with indeterminate sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for criminal behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a criminal offence, this revocation of conditional release would count as a Prior Sentencing Date. Note: the evaluator should be sure that were this offender not already under sanction that a criminal charge would be laid by police and that a conviction would be highly likely. Revocations for violations of conditional release conditions, so called "technicals", (drinking violations, failure to report, being in the presence of minors) are insufficient to stand as Prior Sentencing Dates.

Note: for this item there have been some changes to the rules from previous versions. Some rules were originally written to apply to a specific jurisdiction. Over time, and in consultation with other jurisdictions the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item.

Suspended Sentences

Suspended sentences count as a sentencing date.

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are excluded; those where it is impossible to get a period of incarceration or community supervision. Offences that can only result in fines do not count.

Sentences for historical offences received while the offender is incarcerated for a more recent offence (pseudo-recidivism), are not counted. For two offences to be considered separate offences, the second offence must have been committed after the offender was sanctioned for the first offence.

Offence convictions occurring after the Index offence cannot be counted on this item.

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Diversionsary Adjudication

If a person commits a criminal offence as a juvenile or as an adult and receives a diversionsary adjudication, this counts as a sentencing date (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Extension of Sentence by a Parole Board (or similar)

If an offender is assigned extra time added to their sentence by a parole board for a criminal offence this counts as an additional sentencing date if the new time extended the total sentence. This would not count as a sentencing date if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is presently not possible in Canada.

Failure to Appear

If an offender fails to appear for sentencing, this is not counted as a sentencing date. Only the final sentencing for the charge for which the offender missed the sentencing date is counted as a sentencing date.

Failure to register as a sexual offender

If an offender receives a formal legal sanction, having been convicted of Failing to Register as a Sexual Offender, this conviction would count as a sentencing date. However, it should be noted that charges and convictions for Failure to Register as a Sexual Offender are not counted as sexual offences.

Juvenile Extension of Detention

In some states it is possible for a juvenile to be sentenced to a Detention/Treatment facility. At the end of that term of incarceration it is possible to extend the period of detention. Even though a Judge and a prosecutor are present at the proceedings, because there has been no new crime or charges/convictions, the extension of the original order is not considered a sentencing date.

Juvenile Offences

Both adult and juvenile convictions count in this item. In the case where a juvenile is not charged with a sexual or violent offence but is moved to a secure or more secure residential placement as the result of a sexual or violent incident, this counts as a sentencing date for the purposes of scoring Prior Sentencing Dates.

Military

If an "undesirable discharge" is given to a member of the military as the direct result of criminal behaviour (something that would have attracted a criminal charge were the offender not in the military),

DEFINITIONS**Item # 6 Prior Sentencing Dates**

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the “the best predictor of future behaviour, is past behaviour”. Andrews & Bonta (1998) state that having a criminal history is one of the “Big Four” predictors of future criminal behaviour. Prior Sentencing Dates is a convenient method of coding the length of the criminal record.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and the STATIC-99 in the Introduction section.

The Basic Rule: If the offender’s criminal record indicates four or more separate sentencing dates prior to the Index Offence, the offender is scored a “1” on this item. If the offender’s criminal record indicates three or fewer separate sentencing dates prior to the Index Offence, the offender scores a “0” on this item.

Count the number of distinct occasions on which the offender was sentenced for criminal offences. The number of charges/convictions does not matter, only the number of sentencing dates. Court appearances that resulted in complete acquittal are not counted, nor are convictions overturned over on appeal. The Index sentencing date is not included when counting up the sentencing dates.

If the offender is on some form of conditional release (parole/probation/bail etc.) “technical” violations do not count as new sentencing dates. For example, if an offender had a condition prohibiting drinking alcohol, a breach for this would not be counted as a new sentencing date. To be counted as a new sentencing date, the breach of conditions would have to be a new offence for which the offender could be charged if he were not already under criminal justice sanction.

Institutional rule violations do not count, even when the offence was for behaviour that could have resulted in a legal sanction if the offender had not already been incarcerated.

Count:

- Juvenile offences count (if you know about them – please see section on the use of self-report in the Introduction)
- Where applicable “Probation before judgment” counts as a conviction and a sentencing date
- Where applicable “Consent Decree” counts as a conviction and a sentencing date
- Suspended Sentences count as a sentencing date

Do Not Count:

- Stayed offences do not count as sentencing dates
- Institutional Disciplinary Actions/Reports do not count as sentencing dates

The offences must be of a minimum level of seriousness. The offences need not result in a serious sanction (the offender could have been fined), but the offence must be serious enough to permit a sentence of community supervision or custody/incarceration (as a juvenile or adult). Driving offences generally do not count, unless they are associated with serious penalties, such as driving while intoxicated or reckless driving causing death or injury.

Generally, most offences that would be recorded on an official criminal history would count – but the statute, as written in the jurisdiction where the offence took place, must allow for the imposition of a custodial sentence or a period of community supervision (adult or juvenile). Only truly trivial offences

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count as both a Prior Sex Offence “charge” and a Prior Sex Offence “conviction”. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police. Revocations for violations of conditional release conditions, so called “technicals” (drinking violations, failure to report, being in the presence of minors, being in the possession of legally obtained pornography) are insufficient to stand as Prior Sentencing Dates.

RRASOR and STATIC-99 – Differences in Scoring

Historical offences are scored differently between the RRASOR and the STATIC-99. On the RRASOR, if the offender is charged or convicted of historical offences committed prior to the Index Offence, these are counted as Prior Sexual Offences (User Report, The Development of a Brief Actuarial Risk Scale for Sexual Offense Recidivism 1997-04, Pg. 27, end of paragraph titled Prior Sexual Offences). This is not the case for the STATIC-99. For the STATIC-99, if the offender is charged or convicted of historical offences after the offender is charged or convicted of a more recent offence, these offences are to be considered part of the Index Offence (pseudo-recidivism) – forming an “Index Cluster”.

Suspended Sentences

Suspended sentences should be treated as equivalent to a charge and a conviction.

Teachers

Being transferred to a new school or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a teacher is transferred between schools due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

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correctional institution and would count as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Allegations that result in a "within-organization" disciplinary move or a move designed to explicitly address the offenders problems would be counted as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Being transferred to a new parish or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a priest/minister is transferred between parishes due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Prison Misconducts for Sexual Misbehaviours count as one charge per sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

For Example, Post-Index Sexual Offences: Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered separate crimes. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.

For Example, Post-Index Violent Offences: Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Probation before Judgement

Where applicable, "Probation before judgment" counts as a charge, conviction, and a sentencing date.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and others with indeterminate sentences

For a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence, this revocation of conditional release would

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Military Courts Martial

If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence, rather than a purely military offence {failure of duty}, these offences count, both charges and convictions, when scoring the STATIC-99. If the charges are sexual they count as sexual offences and if violent, they count as violent offences. These offences also count as sentencing dates (Item #6). Pure Military Offences {Conduct Unbecoming, Insubordination, Not following a lawful order, Dereliction of Duty, etc.} do not count when scoring the STATIC-99.

Noxious Substance

The charge of Giving A Noxious Substance (or it's equivalent, drugs, alcohol, or other stupeficient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit the sexual offence. If there were evidence the substance was given to the victim just prior to the sexual assault, this would count as a sexual offence. If there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Not Guilty

Being found "Not Guilty" can count as charges and can be used as the Index Offence. Note: This is not the case for Item #6, "Prior Sentencing Dates", where being found "Not Guilty" is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Official Diversions

Official diversions are scored as equivalent to a charge and a conviction (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Peace Bonds, Judicial Restraint Orders and "810" Orders

In some instances a Peace Bond/Judicial Restraint Order/810 Orders are placed on an offender when sexual charges are dropped or dismissed or when an offender leaves jail or prison. Orders of this nature, primarily preventative, are **not counted** as charges or convictions for the purposes of scoring the STATIC-99.

"PINS" Petition (Person in need of supervision)

There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to sexual aggression. This would count as a charge and a conviction for a sexual offence.

Priests and Ministers

For members of a religious group (Clergy and similar professions) some disciplinary or administrative actions within their own organization can count as a charge and a conviction. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of an official sanction would be removal from a parish for a priest or minister under the following circumstances.

If the receiving institution knows they are being sent a sex offender and considers it part of their mandate to address the offender's problem or attempt to help, this would function as equivalent to being sent to a

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there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Institutional Disciplinary Reports

Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female guard and masturbates in front of her, where she is the obvious and intended target of the act would count as a "charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell and is discovered by a female employee and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge" and could not stand as an Index offence. If you have insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and you do not score the occurrence.

An example of a behaviour that might get an inmate a disciplinary charge, but would not be used as a charge for scoring the STATIC-99, includes the inmate who writes an unwanted love letter to a female staff. The letter does not contain sexual content to the extent that the offender could be charged. Incidents of this nature do not count as a charge.

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Juvenile Offences

Both adult and juvenile charges and convictions count when scoring this item. In cases where a juvenile was not charged with a sexual offence but was moved to a secure or more secure residential placement as the result of a sexual incident, this counts as a charge and a conviction for the purposes of scoring Prior Sex Offences.

Juvenile Petitions

In some states, it is impossible for a juvenile offender to get a "conviction". Instead, the law uses the wording that a juvenile "petition is sustained" (or any such wording). For the purposes of scoring the STATIC-99 this is equivalent to an adult conviction because there are generally liberty-restricting consequences. Any of these local legal wordings can be construed as convictions if they would be convictions were that term available.

Military

For members of the military, a discharge from service as a result of sexual crimes would count as a charge and a conviction.

If an "undesirable discharge" were given to a member of the military as the direct result of a sexual offence, this would count as a sexual conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have, and the "undesirable discharge" is the equivalent to a bad job reference, the undesirable discharge would not count as a sexual offence or as a Sentencing Date (Item #6).

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that are clearly sexual? Or, does the evaluator score the two sex charges as sex charges and the assault charges as Non-sexual Violence?

In cases such as this, code all 5 offences as sex offences - based upon the following thinking:

- 1) From the evidence presented this appears to be a "focused" crime spree – We assume the evaluator has little doubt what would have happened had the women not escaped or fought back.
- 2) Our opinion of "focus" is reinforced by the exclusive nature of the victim group, "elderly females". This offender appears to want something specific, and, the very short time span - 20 days – leads us to believe that the offender was feeling some sexual or psychological pressure to offend.
- 3) An attempted contact sex offence is scored as a contact sex offence for the purposes of the STATIC-99. Charges such as Attempted Sexual Assault (Rape) and Invitation to Sexual Touching are coded as contact sex offences due to their intention.
- 4) We recommend that if the evaluator "based on the balance of probabilities" (not "beyond a reasonable doubt") - is convinced that sex offences were about to occur that these actions can be counted as sex offences.
- 5) Please also read sub-section "Similar Fact Crimes" in the "Definitions" section.

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Consent Decree

Where applicable, "Consent Decree" counts as a conviction and a sentencing date.

Court Supervision

In some states it is possible to receive a sentence of Court Supervision, where the court provides some degree of minimal supervision for a period (one year), this is similar to probation and counts as a conviction.

Detection by Child Protection Officials

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction.

Extension of Sentence by a Parole Board (or similar)

In some jurisdictions Parole Boards (or similar) have the power to extend the maximum period of incarceration beyond that determined by the court. If an offender is assigned extra time, added to their sentence, by a parole board for a sexual criminal offence this counts as an additional sexual charge and conviction. The new additional period of incarceration must extend the total sentence and must be for sexual misbehaviour. This would not count as a sexual conviction if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is not presently possible in Canada.

Giving Alcohol to a Minor

The charge of Giving Alcohol to a Minor (or it's equivalent, drugs, alcohol, noxious substance, or other stupeficient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit a sexual offence. If there were evidence the alcohol (or substance) was given to the victim just prior to the sexual assault, this would count as a sexual offence. If

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charge, you sum all remaining sexual offence charges. In this case you would sum, {Lewd and Lascivious with Child (X3), Sodomy (X1), and Oral Copulation (X1)} for a total of five (5) previous Sex Offence charges. You then sum the number of Prior Sex Offence convictions. In this case, there are three convictions for Lewd and Lascivious with Child. These two sums are then moved to the scoring chart shown below. The offender has five prior charges and three prior convictions for sexual offences. Looking at the chart below, the evaluator reads across the chart that indicates a final score for this item of two (2).

Prior Sexual Offences		
Charges	Convictions	Final Score
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

Charges and Convictions are counted separately – the column that gives the higher final score is the column that scores the item. It is possible to have six (6+) or more charges for a sexual offence and no convictions. Were this to happen, the offender's final score would be a three (3) for this item.

Acquittals

Acquittals count as charges and can be used as the Index Offence. The reason that acquittals are scored this way is based upon a research study completed in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Note: Acquittals do not count for Item #6 – Prior Sentencing Dates.

Adjudication Withheld

In some jurisdictions it is possible to attract a finding of "Adjudication Withheld", in which case the offender receives a probation-like period of supervision. This is counted as a conviction because a sentence was given.

Appeals

If an offender is convicted and the conviction is later overturned on appeal, code as one charge.

Arrests Count

In some instances, the offender has been arrested for a sexual offence, questioning takes place but no formal charges are filed. If the offender is arrested for a sexual offence and no formal charges are filed, a "1" is coded under charges, and a "0" is coded under convictions. If the offender is arrested and one or more formal charges are filed, the total number of charges is coded, even when no conviction ensues.

Coding "Crime Sprees"

Occasionally, an evaluator may have to score the STATIC-99 on an offender who has been caught at the end of a long line of offences. For example, over a 20-day period an offender breaks into 5 homes, each of which is the home of an elderly female living alone. One he rapes, one he attempts to rape but she gets away, and three more get away, one with a physical struggle (he grabs her wrists, tells her to shut up). The offender is subsequently charged with Sexual Assault, Attempted Sexual Assault, B & E with Intent (X2), and an Assault. The question is, do all the charges count as sexual offences, or just the two charges

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charges and a “2” under convictions. Convictions do not take priority over charges. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Generally when an offender is arrested, they are initially charged with one or more criminal charges. However, these charges may change as the offender progresses through the criminal justice system. Occasionally, charges are dropped for a variety of legal reasons, or “pled down” to obtain a final plea bargain. As a basic rule, when calculating charges use the most recent charging document as your source of official charges.

In some cases a number of charges are laid by the police and as the court date approaches these charges are “pled-down” to fewer charges. When calculating charges and convictions you count the number of charges that go to court. In other cases an offender may be charged with a serious sexual offence (Aggravated Sexual Assault) and in the course of plea bargaining agrees to plead to two (or more) lesser charges (Assault). Once again, you count the charges that go to court and in a case like this the offender would score as having more charges than were originally laid by the police.

When scoring this item, counting charges and convictions, it is important to use an official criminal record. One incident can result in several charges or convictions. For example, an offender perpetrates a rape where he penetrates the victim once digitally and once with his penis while holding her in a room against her will. This may result in two convictions for Sexual Battery (Sexual Assault or equivalent) and one conviction of False Imprisonment (Forcible Confinement or equivalent). So long as it is known that the False Imprisonment was part of the sexual offence, the offender would be scored as having three (3) sexual charges, three (3) sexual convictions and an additional risk point for a conviction of Non-sexual Violence[the False Imprisonment] (Either “Index” {Item #3} or “Prior” {Item #4} as appropriate).

Probation, parole and conditional release violations

If an offender violates probation, parole, or conditional release with a sexual misbehaviour, these violations are counted as one charge.

If the offender violates probation or parole on more than one occasion, within a given probation or parole period, each separate occasion of a sexual misbehaviour violation is counted as one charge. For example, a parole violation for indecent exposure in July would count as one charge. If the offender had another parole violation in November for possession of child pornography, it would be coded as a second charge.

Multiple probation, parole and conditional release violations for sexual misbehaviours laid at the same time are coded as one charge. Even though the offender may have violated several conditions of parole during one parole period, it is only counted as one charge, even if there were multiple sex violations.

The following is an example of counting charges and convictions.

Criminal History for John Jack			
Date	Charges	Convictions	Sanction
July 1996	Lewd and Lascivious with Child (X3) Sodomy Oral Copulation Burglary	Lewd and Lascivious with Child (X3) Sodomy (dismissed) Oral Copulation (dismissed) Burglary (dismissed)	3 Years
May 2001	Sexual Assault on a Child		

To determine the number of Prior Sex Offences you first exclude the Index Offence. In the above case, the May 2001 charge of Sexual Assault on a Child is the Index Offence. After excluding the May 2001

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Item # 5 – Prior Sex Offences

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the “the best predictor of future behaviour, is past behaviour”. Andrews & Bonta (1998) state that having a criminal history is one of the “Big Four” predictors of future criminal behaviour. More recently, and specific to sexual offenders, a meta-analytic review of the literature indicates that having prior sex offences is a predictive factor for sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item “Prior Sex Offences”.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and the STATIC-99” in the Introduction section.

The Basic Rule: This is the only item in the STATIC-99 that is not scored on a simple “0” or “1” dichotomy. From the offender’s official criminal record, charges and convictions are summed separately. Charges that are not proceeded with or which do not result in a conviction are counted for this item. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Charges and convictions are summed separately and these totals are then transferred to the chart below.

Note: For this item, arrests for a sexual offence are counted as “charges”.

Prior Sexual Offences		
Charges	Convictions	Final Score
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

Whichever column, charges or convictions, gives the offender the “higher” final score is the column that determines the final score. Examples are given later in this section.

This item is based on officially recorded institutional rules violations, probation, parole and conditional release violations, charges, and convictions. Only institutional rules violations, probation, parole, and conditional release violations, charges, and convictions of a sexual nature that occur **PRIOR** to the Index offence are included.

Do not count the Index Sexual Offence

The Index sexual offence charge(s) and conviction(s) are not counted, even when there are multiple offences and/or victims involved, and the offences occurred over a long period of time.

Count all sexual offences prior to the Index Offence

All pre-Index sexual charges and convictions are coded, even when they involve the same victim, or multiple counts of the same offence. For example, three charges for sexual assault involving the same victim would count as three separate charges. Remember, “counts count”. If an offender is charged with six counts of Invitation to Sexual Touching and is convicted of two counts you would score a “6” under

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Revocation of Conditional Release for "Lifers", Dangerous Offenders, and others with indeterminate sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence has been revoked (returned to prison from conditional release in the community without trial) for a Non-sexual Violent offence that happened prior to the Index sexual offence (or Index Cluster) this revocation can stand as a conviction for Non-sexual Violence if that non-sexually violent act were sufficient that it would generally attract a separate criminal charge for a violent offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a violent offence charge would be laid by police.

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Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence. An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	Charge	Conviction	Sentence
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation
If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

However, were you to see the following:

Criminal Record for Joe Smith			
Date	Charge	Conviction	Sentence
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation
If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

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- Kidnapping.
- Murder
- “PINS” Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a “PINS” petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was “Battery” or “Assault” and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury.

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

“Resisting Arrest” does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with “Assault a Peace/Police Officer” which would count as non-sexual violence.

Convictions that are coded as only “sexual”

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence.
- Convictions for “Sexual Battery” (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence.

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Item # 4 – Prior Non-sexual Violence – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 -- Item "Prior Violent Offences". The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for prior non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense. Sub-analyses of additional data sets confirm the relation of prior non-sexual violence and sexual recidivism (Hanson, & Thornton, 2002).

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record shows a separate conviction for a non-sexual violent offence prior to the Index Offence, you score the offender a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-sexual violent offence prior to their Index Offence, you score the offender a "0" on this item.

This item refers to convictions for non-sexual violence that are dealt with on a sentencing occasion that pre-dates the Index sex offence sentencing occasion. A separate non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim, but the offender must have been convicted for this non-sexual violent offence before the sentencing date for the Index offence. All non-sexual violence convictions are included, providing they were dealt with on a sentencing occasion prior to the Index sex offence.

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault causing bodily harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupeficient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item

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separate criminal charge for a violent offence, this offender can be scored for Index Non-sexual Violence when the accompanying sexual behaviour stands as the Index offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that both a sexual offence charge and a violent offence charge would be laid by police.

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would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" sexual offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	Charge	Conviction	Sentence
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation
If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

However, were you to see the following:

Criminal Record for Joe Smith			
Date	Charge	Conviction	Sentence
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation
If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and others with indeterminate sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that would generally attract a sexual charge if the offender were not already under sanction and at the same time this same offender committed a violent act sufficient that it would generally attract a

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- “PINS” Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a “PINS” petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was “Battery” or “Assault” and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury.

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

“Resisting Arrest” does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with “Assault a Peace/Police Officer” which would count as non-sexual violence.

Convictions that are coded as only “sexual”

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence.
- Convictions for “Sexual Battery” (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence.

Situations where points are scored both for a “Sexual Offence” and a Non-sexual Violence offence
An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences

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Item # 3 – Index Non-sexual Violence (NSV) – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item “Prior Violent Offences”. The presence of non-sexual violence predicts the seriousness of damage were a re-offense to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense.

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and the STATIC-99” in the Introduction section.

The Basic Rule: If the offender’s criminal record shows a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a “1” on this item. If the offender’s criminal record does not show a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a “0” on this item.

This item refers to convictions for non-sexual violence that are dealt with on the same sentencing occasion as the Index sex offence. A separate Non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim. All non-sexual violence convictions are included, providing they were dealt with on the same sentencing occasion as the Index sex offence(s).

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault causing bodily harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefiant in order to impair a victim)
- Grand Theft Person (“Grand Theft Person” is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item
- Kidnapping
- Murder

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Cases where the offender has lived over two years with a child victim in a "lover" relationship do not count as living with an intimate partner and the offender would be scored a "1" on this item. Illegal relationships (Incestuous relationship with his Mother) and live-in relationships with "once child" victims do not count as "living together" for the purposes of this item and once again the offender would score a "1" on this item. A "once child" victim is the situation where the offender abused a child but that victim is either still living, as an adult, in an intimate relationship with the offender or who has lived, as an adult, in an intimate relationship with the offender.

Exclusions

- Legal marriages involving less than two years of co-habitation do not count
- Male lovers in prison would not count
- Prison marriages (of any duration) where the offender is incarcerated during the term of the relationship do not count
- Illegal relationships, such as when the offender has had an incestuous relationship with his mother do not count
- Intimate relationships with non-human species do not count
- Relationships with victims do not count (see above for exception)
- Priests and others who for whatever reason have chosen, as a lifestyle, not to marry/co-habitate are still scored as having never lived with an intimate partner

Extended Absences

In some jurisdictions it is common for an offender to be away from the marital/family home for extended periods. The offender is generally working on oilrigs, fishing boats, bush camps, military assignment, or other venues of this nature. While the risk assessment instrument requires the intimate co-habitation to be continuous there is room for discretion. If the offender has an identifiable "home" that he/she shares with a lover and the intimate relationship is longer than two years, the evaluator should look at the nature and consistency of the relationship. The evaluator should attempt to determine, in spite of these prolonged absences, whether this relationship looks like an honest attempt at a long-term committed relationship and not just a relationship of convenience.

If this relationship looks like an honest attempt at a long-term committed relationship then the evaluator would score the offender a "0" on this item as this would be seen as an intimate relationship of greater than two years duration. If the evaluator thinks that the relationship is a relationship of convenience, the offender would score a "1". If the living together relationship is of long duration (three plus years) then the periods of absence can be fairly substantial (four months in a logging camp/oil rig, or six months or more on military assignment).

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Item # 2 – Ever Lived with an Intimate Partner – 2 Years

The Basic Principle: Research suggests that having a prolonged intimate connection to someone may be a protective factor against sexual re-offending. See Hanson and Bussière (1998), Table 1 – Items “Single (never married) and Married (currently)”. On the whole, we know that the relative risk to sexually re-offend is lower in men who have been able to form intimate partnerships.

Information Required to score this Item: To complete this item it is highly desirable that the evaluator confirm the offender’s relationship history through collateral sources or official records.

The Basic Rule: If the offender has never had an intimate adult relationship of two years duration you score the offender a “1” on this item. If the offender has had an intimate adult relationship of two years duration you score the offender a “0” on this item.

The intent of this item is to reflect whether the offender has the personality/psychological resources, as an adult, to establish a relatively stable “marriage-like” relationship with another person. It does not matter whether the intimate relationship was/is homosexual or heterosexual.

- **Missing Items** – The only item that may be omitted on the STATIC-99 is this one (Ever Lived With – Item #2). If no information is available this item should be scored a “0” (zero) – as if the offender has lived with an intimate partner for two years.
- To complete this item the evaluator should make an attempt to confirm the offender’s relationship history through collateral sources and official records. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. There may be certain cases (immigrants, refugees from third world countries) where it is not possible to access collaterals or official records. Where the evaluator, based upon the balance of probabilities, is convinced this person has lived with an intimate partner for two years the evaluator may score this item a “0”. It is greatly preferred that you confirm the existence of this relationship through collateral contacts or official records. This should certainly be done if the assessment is being carried out in an adversarial context where the offender would have a real motive to pretend to a non-existent relationship.
- In cases where confirmation of relationship history is not possible or feasible the evaluator may choose to score this item both ways and report the difference in risk estimate in their final report.

If a person has been incarcerated most of their life or is still quite young and has not had the opportunity to establish an intimate relationship of two years duration, they are still scored as never having lived with an intimate partner for two years. They score a “1”. There are two reasons for this. The first being, this was the way this item was scored in the original samples and to change this definition now would distance the resulting recidivism estimates from those validated on the STATIC-99. Secondly, having been part of, or experienced, a sustained relationship may well be a protective factor for sexual offending. As a result, the reason why this protective factor is absent is immaterial to the issue of risk itself.

The offender is given a point for this item if he has never lived with an adult lover (male or female) for at least two years. An adult is an individual who is over the age of consent to marriage. The period of cohabitation must be continuous with the same person.

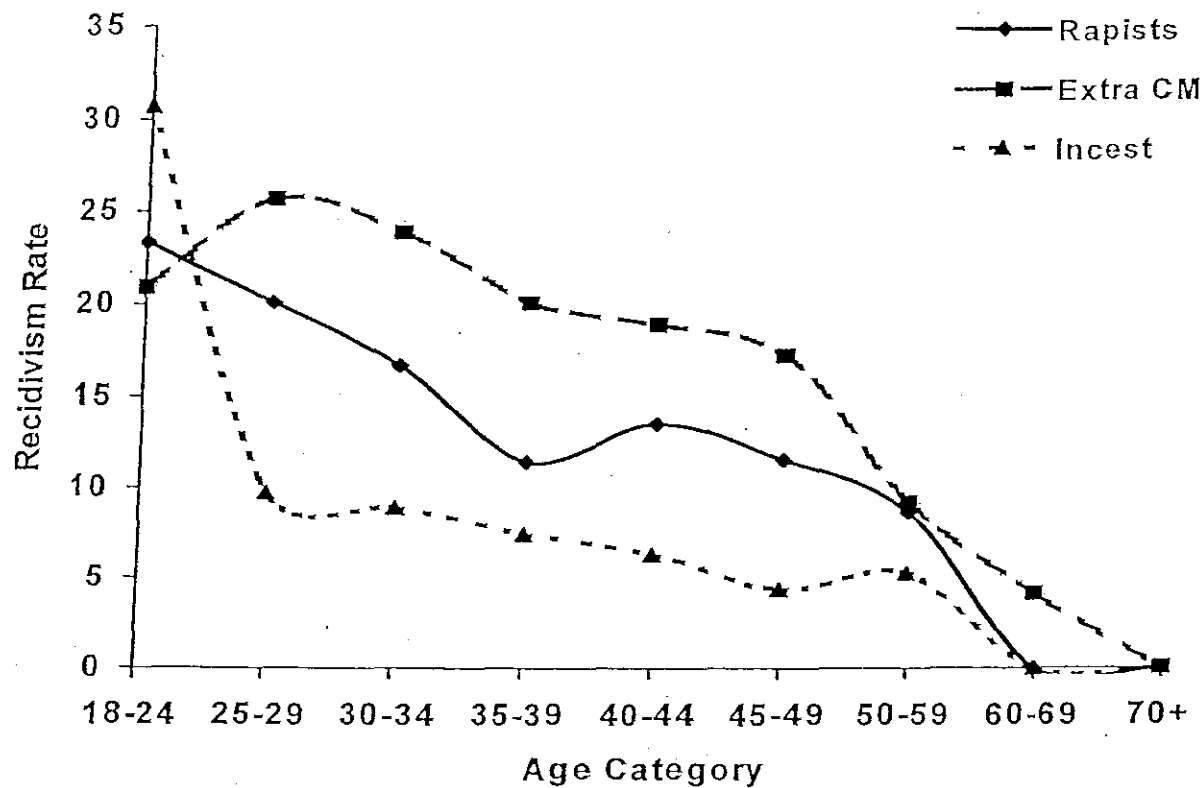
Generally, relationships with adult victims do not count. However, if the offender and the victim had two years of intimate relationship before the sexual offences occurred then this relationship would count, and the offender would score a “0” on this item. However, if the sexual abuse started before the offender and the victim had been living together in an intimate relationship for two years then the relationship would count regardless of its length.

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Figure 1

Age Distribution of Sexual Recidivism in Sexual Offenders



Rapists (n = 1,133)

Extra-familial Child Molesters [Extra CM] (n = 1,411)

Incest Offenders (n = 1,207)

Janson, R. K. (2002). Recidivism and age: Follow-up data on 4,673 sexual offenders. *Journal of Interpersonal Violence*, 17, 1046-1062.

Janson, R. K. (2001). *Age and sexual recidivism: A comparison of rapists and child molesters*. User Report 2001-01. Ottawa: Department of the Solicitor General of Canada. Department of the Solicitor General of Canada website, www.sgc.gc.ca

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Scoring the 10 Items

Item # 1 - Young

The Basic Principle: Research (Hanson, 2001) shows that sexual recidivism is more likely in an offender's early adult years than in an offender's later adult years. See Figure 1, next page.

Information Required to Score this Item: To complete this item the evaluator has to confirm the offender's birth date or have other knowledge of the offender's age.

The Basic Rule: If the offender is between his 18th and 25th birthday at exposure to risk you score the offender a "1" on this item. If the offender is past his 25th birthday at exposure to risk you score the offender a "0" on this item.

STATIC-99 is not intended for those who are less than 18 years old at the time of exposure to risk.

Under certain conditions, such as anticipated release from custody, the evaluator may be interested in an estimate of the offender's risk at some specific point in the future. This may occur if the offender is presently incarcerated (January) and you are interested in his risk when he is eligible for release in September. However, you know that the offender's 25th birthday will occur in May. If you were assessing the offender's estimated risk of re-offence for his possible release in September – because at time of exposure to risk he is past his 25th birthday - you would not give the risk point for being less-than-25 even though he is only 24 today. You calculate risk based upon age at exposure to risk.

Sometimes the point at which an offender will be exposed to risk may be uncertain, for example, if he is eligible for parole but may not get it. In these cases it may be appropriate to use some form of conditional wording indicating how his risk assessment would change according to when he is released.

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had never been sanctioned for these offences they were not on his record when he was convicted in 1998. Offences for which the offender has never been sanctioned that come to light once the offender is in the judicial process are considered "pseudo-recidivism" and are counted as part of the "Index Cluster". Historical charges of this nature are not counted as "priors".

The basic concept is that the offender has to be sanctioned for previous mis-behaviours and then "chose" to ignore that sanction and re-offend anyway. If he chooses to re-offend after a sanction then he creates a new offence and this offence is considered part of the record, usually a new Index offence. If historical offences come to light, for which the offender has never been sanctioned, once the offender is in the system for another sexual offence, these offences "come forward" and join the Index Offence to form an "Index Cluster".

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

For Example, Post-Index Sexual Offences: Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered a separate crime. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.

For Example, Post-Index Violent Offences: Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, as an "external risk factor", outside the context of the STATIC-99 assessment, in any subsequent report on the offender

Prior Offence(s)

A prior offence is any sexual or non-sexual crime, institutional rule violation, probation, parole or conditional release violation(s) and/or arrest charge(s) or, conviction(s), that was legally dealt with PRIOR to the Index offence. This includes both juvenile and adult offences. In general, to count as a prior, the sanction imposed for the prior offense must have occurred before the Index offense was committed. However, if the offender was aware that they were under some form of legal restraint and then goes out and re-offends in spite of this restriction, the new offence(s) would create a new Index offence. An example of this could be where an offender is charged with "Sexual Communication with a Person Under the Age of 14 Years" and is then released on his own recognizance with a promise to appear or where they are charged and released on bail. In both of these cases if the offender then committed an "Invitation to Sexual Touching" after being charged and released the "Invitation to Sexual Touching" would become the new Index offence and the "Sexual Communication with a Person Under the Age of 14 Years" would automatically become a "Prior" sexual offence.

In order to count violations of conditional release as "Priors" they must be "real crimes", something that someone not already engaged in the criminal justice system could be charged with. Technical violations such as Being in the Presence of Minors or Drinking Prohibitions do not count.

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the previous charge and become the Index offence. This is because the offender knew he/she had been detected for their previous crimes but chose to re-offend anyway.

An Index cluster can occur in three ways.

The first occurs when an offender commits multiple offences at the same time and these offences are then subsequently dealt with as a group by the police and the courts.

The second occurs when an Index offence has been identified for an offender and following this the evaluator becomes aware of previous historical offences for which the offender has never previously been charged or convicted. These previous offences come forward and become part of the "Index Cluster". This is also known as "Pseudo-recidivism". It is important to remember, these historical charges do not count as "priors" because the offending behaviour was not consequenced before the offender committed the Index offence. The issue being, the offender has not been previously sanctioned for his behaviour and then made the choice to re-offend.

The third situation arises when an offender is charged with several offences that come to trial within a short period of time (a month or so). When the criminal record is reviewed it appears that a cluster of charges were laid at the end of an investigation and that the court could not attend to all of these charges in one sitting day. When the evaluator sees groups of charges where it appears that a lot of offending has finally "caught up" with an offender – these can be considered a "cluster". If these charges happen to be the last charges they become an Index Cluster. The evaluator would not count the last court day as the "Index" and the earlier ones as "priors". A second example of this occurs when an offender goes on a crime "spree" – the offender repeatedly offends over time, but is not detected or caught. Eventually, after two or more crimes, the offender is detected, charged, and goes to court. But he has not been independently sanctioned between the multiple offences.

For Example: An offender commits a rape, is apprehended, charged, and released on bail. Very shortly after his release, he commits another rape, is apprehended and charged. Because the offender was apprehended and charged between crimes this does not qualify as a crime "spree" – these charges and possible eventual convictions would be considered separate crimes. If these charges were the last sexual offences on the offender's record – the second charge would become the Index and the first charge would become a "Prior".

However, if an offender commits a rape in January, another in March, another in May, and another in July and is finally caught and charged for all four in August this constitutes a crime "spree" because he was not detected or consequenced between these crimes. As such, this spree of sexual offences, were they the most recent sexual offences on the offenders record, would be considered an "Index Cluster" and all four rape offences would count as "Index" not just the last one.

Pseudo-recidivism

Pseudo-recidivism occurs when an offender currently involved in the criminal justice process is charged with old offences for which they have never before been charged. This occurs most commonly with sexual offenders when public notoriety or media publicity surrounding their trial or release leads other victims of past offences to come forward and lay new charges. Because the offender has not been charged or consequenced for these misbehaviours previously, they have not experienced a legal consequence and then chosen to re-offend.

For Example: Mr. Jones was convicted in 1998 of three sexual assaults of children. These sexual assaults took place in the 1970's. As a result of the publicity surrounding Mr. Jones' possible release in 2002, two more victims, now adults, come forward and lay new charges in 2002. These offences also took place in the 1970's but these victims did not come forward until 2002. Because Mr. Jones

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“Detected” by Child Protection Services

Being “detected” by the Children’s Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction. This is insufficient to create a new Index Offence.

Revocation of Conditional Release for “Lifers”, Dangerous Offenders, and others with indeterminate sentences – As an Index Offence

Occasionally, offenders on conditional release in the community who have a life sentence, who have been designated as Dangerous Offenders (Canada C.C.C. Sec. 753) or other offenders with indeterminate sentences either commit a new offence or breach their release conditions while in the community. Sometimes, when this happens the offenders have their conditional releases revoked and are simply returned to prison rather than being charged with a new offence or violation. Generally, this is done to save time and court resources as these offenders are already under sentence.

If a “lifer”, Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour this can serve as the Index Sexual Offence if the behaviour is of such gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence given the same behaviour. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police.

Historical Offences

The evaluator may face a situation where an offender is brought before the court on a series of sexual offences, all of which happened several years in the past. This most often occurs when an offender has offended against children in the past and as these children mature they come forward and charge the perpetrator. After the first charge is laid it is not unusual for other victims to appear and lay subsequent charges. The evaluator may be faced with an offender with multiple charges, multiple court dates, and possibly multiple convictions who has never before been to court – or who has never before been sanctioned for sexual misbehaviour. In a case like this, where the offender is before the court for the first time, all of the charges, court appearances and convictions become what is known as an “Index Cluster” and they are all counted as part of the Index Offence.

Index Cluster

An offender may commit a number of sexual offences in different jurisdictions, over a protracted period, in a spree of offending prior to being detected or arrested. Even though the offender may have a number of sentencing dates in different jurisdictions, the subsequent charges and convictions would constitute an “Index Cluster”. These “spree” offences would group together – the early ones would not be considered “priors” and the last, the “Index”, they all become the “Index Cluster”. This is because the offender has not been “caught” and sanctioned for the earlier offences and then “chosen” to re-offend in spite of the sanction. Furthermore, historical offences that are detected after the offender is convicted of a more recent sexual offence would be considered part of the Index offence (pseudo-recidivism) and become part of the Index Cluster (See subsequent section).

For two offences to be considered separate offences, the second offence must have been committed after the offender was detected and detained and/or sanctioned for the previous offence. For example, an offence committed while an offender was released on bail for a previous sexual offence would supersede

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Juveniles

Instances in which juveniles (ages 12–15) are placed into residential care for sexual aggression would count as a charge and conviction for a sexual offence. In jurisdictions where 16 and 17 year old sexual offenders remain in a juvenile justice system (not charged, tried, and sent to jail as adults are), where it is possible to be sent to a “home” or “placement”, this would count as a charge and a conviction for a sexual offence. In jurisdictions where juveniles aged 16 and 17 are charged, convicted, sentenced, and jailed much like adults, juvenile charges and convictions (between ages 16 & 17) would be counted the same as adult charges and convictions.

Sexual misbehaviour of children 11 or under would not count as a sex offence unless it resulted in official charges.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Similar Fact Crimes

An Offender assaults three different women on three different occasions. On the first two occasions he grabs the woman as she is walking past a wooded area, drags her into the bushes and rapes her. For this he is convicted twice of Sexual Assault (rape). In the third case he grabs the woman, starts to drag her into the bushes but she is so resistant that he beats her severely and leaves her. In this case he is convicted of Aggravated Assault. In order for the conviction to be counted as a sexual offence, it must have a sexual motivation. In a case like this it is reasonable to assume that the Aggravated Assault had a sexual motivation because it resembles the other sexual offences so closely. In the absence of any other indication to the contrary this Aggravated Assault would also be counted as a sexual offence. Note: This crime could also count as Non-sexual Violence.

Please also read subsection “Coding Crime Sprees” in section “Item #5 – Prior Sex Offences”.

Index offence

The Index offence is generally the most recent sexual offence. It could be a charge, arrest, conviction, or rule violation (see definition of a sexual offence, earlier in this section). Sometimes Index offences include multiple counts, multiple victims, and numerous crimes perpetrated at different times because the offender may not have been detected and apprehended. Some offenders are apprehended after a spree of offending. If this results in a single conviction regardless of the number of counts, all counts are considered part of the Index offence. Convictions for sexual offences that are subsequently overturned on appeal can count as the Index offence. Charges for sexual offences can count as the Index Offence, even if the offender is later acquitted.

Most of the STATIC-99 sample (about 70%) had no prior sexual offences on their record; their Index offence was their first recorded sexual misbehaviour. As a result, the STATIC-99 is valid with offenders facing their first sexual charges.

acquittals

acquittals count as charges and can be used as the Index Offence

convictions Overturned on Appeal

convictions that are subsequently overturned on appeal can count as an Index Offence.

EXHIBIT Q-II

DEFINITIONS

“charge” and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell is discovered by a female officer and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this “non-targeted” nature do not count as a “charge” and could not stand as an Index offence. If the evaluator has insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and the evaluator would not score these occurrences. A further important distinction is whether the masturbation takes place covered or uncovered. Masturbating under a sheet would not be regarded as an attempt at indecent exposure.

Consider these two examples:

- (1) A prisoner is masturbating under a sheet at a time when staff would not normally look in his cell. Unexpectedly a female member of staff opens the observation window, looks through the door, and observes him masturbating. This would not count as a sex offence for the purposes of STATIC-99, even if a disciplinary charge resulted.
- (2) In the alternate example, a prisoner masturbates uncovered so that his erect penis is visible to anyone who looks in his cell. Prison staff have reason to believe that he listens for the lighter footsteps of a female guard approaching his cell. He times himself so that he is exposed in this fashion at the point that a female guard is looking into the cell. This would count as a sexual offence for the purposes of scoring STATIC-99 if it resulted in an institutional punishment.

Rule: Prison Misconducts and Institutional Rule Violations for Sexual Misbehaviours count as one charge per sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Mentally Disordered and Developmentally Delayed Offenders

Some offenders suffer from sufficient mental impairment (major mental illness, developmental delays) that criminal justice intervention is unlikely. For these offenders, informal hearings and sanctions such as placement in treatment facilities and residential moves would be counted as both a charge and a conviction for a sexual offence.

Clergy and the Military

For members of the military or religious groups (clergy) (and similar professions) some movements within their own organizations can count as charges and convictions and hence, Index offences. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of this would be the “de-frocking” of a priest or minister or being publicly denounced. Another example would be where an offender is transferred within the organization and the receiving institution knows they are receiving a sex offender. If this institution considers it part of their mandate to address the offender’s problem or attempt to help him with his problem then this would function as equivalent to being sent to a correctional institution, and would count as a conviction and could be used as an Index Offence.

For members of the military, a religious group (clergy) or teachers (and similar professions) being transferred to a new parish/school/post or being sent to graduate school for re-training does not count as a conviction and cannot be used as an Index Offence.

EXHIBIT Q-II

DEFINITIONS

Rule: Simple questioning by police not leading to an arrest or charge is insufficient to count as a sexual offence.

Probation, parole or conditional release violations as Sexual Offences

Rule: Probation, parole or conditional release violations resulting in arrest or revocation/breach are considered sexual offences when the behaviour could have resulted in a charge/conviction for a sexual offence if the offender were not already under legal sanction.

Sometimes the violations are not clearly defined as a sexual arrest or conviction. The determination of whether to count probation, parole, or conditional release violations as sexual offences is dependent upon the nature of the sexual misbehaviour. Some probation, parole and conditional release violations are clearly of a sexual nature, such as when a rape or a child molestation has taken place or when behaviours such as exhibitionism or possession of child pornography have occurred. These violations would count as the Index offence if they were the offender's most recent criminal justice intervention.

Generally, violations due to "high-risk" behaviour would not be considered sex offences. The most common of these occurs when the offender has a condition not to be in the presence of children but is nevertheless charged with a breach - being in the presence of children. A breach of this nature would not be considered a sexual offence. This is a technical violation. The issue that determines if a violation of conditional release is a new sex offence or not is whether a person who has never been convicted of a sex offence could be charged and convicted of the breach behaviour. A person who has never faced criminal sanction could not be charged with being in the presence of minors; hence, because a non-criminal could not be charged with this offence, it is a technical violation. Non-sexual probation, parole and conditional release violations, and charges and convictions such as property offences or drug offences are not counted as sexual offences, even when they occur at the same time as sexual offences.

Taking the above into consideration, some high-risk behaviour may count as a sexual offence if the risk for sexual offence recidivism was truly imminent and an offence failed to occur only due to chance factors, such as detection by the supervision officer or resistance of the victim.

Definition of "Truly Imminent"

Examples of this nature would include an individual with a history of child molesting being discovered alone with a child and about to engage in a "wrestling game." Another example would be an individual with a long history of abducting teenage girls for sexual assault being apprehended while attempting to lure teenage girls into his car.

Institutional Rule Violations

Institutional rule violations resulting in institutional punishment can be counted as sex offences if certain conditions exist. The first condition is that the sexual behaviour would have to be sufficiently intrusive that a charge for a sexual offence would be possible were the offender not already under legal sanction. In other words, "if he did it on the outside would he get charged for it?" Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. Poorly timed or insensitive homosexual advances would not count even though his type of behaviour might attract institutional sanctions. The second condition is that the evaluator must be sure that the sexual assaults actually occurred and the institutional punishment was for the sexual behaviour.

In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female officer and masturbates in front of her, where she is the obvious and intended target of the act, would count as a

EXHIBIT Q-II

DEFINITIONS

- Incest
- Indecent exposure
- Invitation to sexual touching
- Lewd or lascivious acts with a child under 14
- Manufacturing/Creating child pornography where an identifiable child victim was used in the process (The offender had to be present or participate in the creation of the child pornography with a human child present)
- Molest children
- Oral copulation
- Penetration with a foreign object
- Rape (includes in concert) (Rape in concert is rape with one or more co-offenders. The co-offender can actually perpetrate a sexual crime or be involved to hold the victim down)
- Sexual Assault
- Sexual Assault Causing Bodily Harm
- Sexual battery
- Sexual homicide
- Sexual offences against animals (Bestiality)
- Sexual offences involving dead bodies (Offering an indignity to a dead body)
- Sodomy (includes in concert and with a person under 14 years of age)
- Unlawful sexual intercourse with a minor
- Voyeuristic activity (Trespass by night)

Category "B" Offences

- Consenting sex with other adults in public places
- Crimes relating to child pornography (possession, selling, transporting, creating where only pre-existing images are used, digital creation of)
- Indecent behaviour without a sexual motive (e.g., urinating in public)
- Offering prostitution services
- Pimping/Pandering
- Seeking/hiring prostitutes
- Solicitation of a prostitute

Certain sexual behaviours may be illegal in some jurisdictions and legal in others (e.g., prostitution). Count only those sexual misbehaviours that are illegal in the jurisdiction in which the risk assessment takes place and in the jurisdiction where the acts took place.

Exclusions

The following offences would not normally be considered sexual offences

- Annoying children
- Consensual sexual activity in prison (except if sufficiently indiscreet to meet criteria for gross indecency).
- Failure to register as a sex offender
- Being in the presence of children, loitering at schools
- Possession of children's clothing, pictures, toys
- Stalking (unless sexual offence appears imminent, please see definition of "Truly Imminent" below)
- Reports to child protection services (without charges)

EXHIBIT Q-II

DEFINITIONS

with Assault; this Assault charge would still be considered a sexual offence. Further examples of this kind include convictions for murder where there was a sexual component to the crime (perhaps a rape preceding the killing), kidnapping where the kidnapping took place but the planned sexual assault was interrupted before it could occur, and assaults "pled down" from sexual assaults.

Physical assaults, threats, and stalking motivated by sexual jealousy do not count as sexual offenses when scoring the STATIC-99.

Additional Charges

Offences that may not be specifically sexual in nature, occurring at the same time as the sexual offence, and under certain conditions, may be considered part of the sexual misbehaviour. Examples of this would include an offender being charged with/convicted of:

- Sexual assault (rape) and false imprisonment
- Sexual assault (rape) and kidnapping
- Sexual assault (rape) and battery

In instances such as these, depending upon when in the court process the risk assessment was completed, the offender would be coded as having been convicted of two sexual offences plus scoring in another item (Index or Prior Non-sexual Violence). For example if an offender were convicted of any of the three examples above prior to the current "Index" offence, the offender would score 2 "prior" sex offence charges and 2 "prior" sex offence convictions (On Item #5 – Prior Sexual Offences) and a point for Prior Non-sexual Violence (Please see "Prior Non-sexual Violence" or "Index Non-sexual Violence" for a further explanation).

Category "A" and Category "B" Offences

For the purposes of the STATIC-99, sexual misbehaviours are divided into two categories. Category "A" involves most criminal charges that we generally consider "sexual offences" and that involve an identifiable child or non-consenting adult victim. This category includes all contact offences, exhibitionism, voyeurism, sex with animals and dead bodies.

Category "B" offences include sexual behaviour that is illegal but the parties are consenting or no specific victim is involved. Category "B" offences include prostitution related offences, consenting sex in public places, and possession of pornography. Behaviours such as urinating in public or public nudity associated with mental impairment are also considered Category "B" offences.

Rule: if the offender has any category "A" offences on their record - all category "B" offences should be counted as sex offences for the purpose of scoring sexual priors or identifying the Index offense. They do not count for the purpose of scoring victim type items. The STATIC-99 is not recommended for use with offenders who have only category "B" offences.

Offence names and legalities differ from jurisdiction to jurisdiction and a given sexual behaviour may be associated with a different charge in a different jurisdiction. The following is a list of offences that would typically be considered sexual. Other offence names may qualify when they denote sexual intent or sexual misbehaviour.

Category "A" Offences

- Aggravated Sexual Assault
- Attempted sexual offences (Attempted Rape, Attempted Sexual Assault)
- Contributing to the delinquency of a minor (where the offence had a sexual element)
- Exhibitionism

Effective 01-01-99

EXHIBIT Q-III

NOTICE OF RIGHTS TO FILE A WRITTEN OBJECTION TO SCORE ON STATIC-99 FOR PREDATORY SEX OFFENDER DESIGNATION

You have been provided with a copy of the ~~risk assessment scale~~ STATIC-99 that the Board of Parole Board and Post-Prison Supervision (hereafter "the Board) will use to decide whether you should be designated a predatory sex offender pursuant to ORS 181.585, et seq. If you are designated a predatory sex offender, you may be subject to community notification.

The Board will designate you a predatory sex offender if you score ~~three or more starred (*) items on the negative scale or if you score one or more starred (*) items in the automatic override section of the scale.~~ four or more points on the STATIC-99. You have a right to inform the Board in writing of the reasons you believe the score is wrong. You must fill out a form entitled "Written Objections to score on the STATIC-99 for Predatory Sex Offender Designation." This form is available through your counselor or supervising officer. You must clearly state on the form which risk factors you think were scored incorrectly and why. You must return the form to your counselor or supervising officer within three days of when you receive the form. Your counselor or supervising officer will send the form to the Board. The Board will consider your objections prior to making a predatory sex offender designation.

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

Inmate's Name (please print)

SID#

Inmate's Signature

Date

~~My risk assessment scale indicates a score of 3 or more(*) on negative scale or 1 or more (*) in the automatic override section and;~~ score on the STATIC-99 is four or more points and;

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

_____ I do not wish to submit a written objection.

Witness

Date

Inmate's release date

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

Effective 01/01/99

EXHIBIT Q-IV

WRITTEN OBJECTIONS TO SCORE ON ~~RISK ASSESSMENT SCALE~~ THE STATIC-99 FOR PREDATORY SEX OFFENDER DESIGNATION

Inmate _____ SID# _____

Institution _____

Current release date _____

Date inmate was provided with this form _____

- 1. Please state which of the ~~(*) categories of the risk assessment scale~~ risk factors on the STATIC-99 you believe were not scored correctly.

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

A COPY OF YOUR ~~RISK ASSESSMENT SCALE~~ STATIC-99 WORKSHEET MUST BE ATTACHED TO THIS FORM.

Inmate's Signature

Date

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

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole and Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

Cindy Hanners

Rules Coordinator

503-945-0903

Telephone

2575 Center St. NE, Ste 100

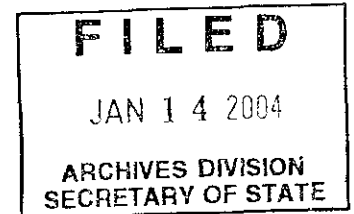
Address

Salem, OR 97301-3621

RULEMAKING ACTION

ADOPT:

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



AMEND:

REPEAL: 255-060-0014

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

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

ORS 144.050, 144.140

Stat. Auth.: ORS

Baty v. Slater, 161 OR App 653 (1999) OAR 213-005-0002

Other Authority

None

Stats. Implemented: ORS

RECEIVED
04 JAN 21 PM 1:15
D OF PAROLE

RULE SUMMARY

The Oregon Court of Appeals ruling in Carl Baty v. Debra Slater, 161 OR App 653 (1999) rendered OAR 255-060-0014 invalid. Pursuant to OAR 255-060-0014, an offenders' active supervision did not begin until they were released into the community. The ruling in Baty is that the term of active supervision commences upon completion of the prison term.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

ORS 183.335(2)(b)(G) 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.

03-03-2004

Last Day for Public Comment

Cindy Hanners
Signature and Date

01-14-2004

Cindy Hanners

Printed name

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

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

Oregon Board of Parole and Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140

Other Authority: Baty V. Slater, 161 OR App 653 (1999) OAR 213-005-0002

Statutes Implemented: ORS None

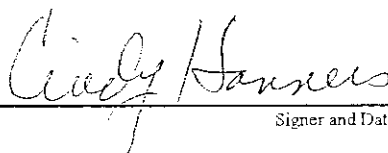
Need for the Rule(s): The repeal of OAR 255-060-0014 is necessary in light of the Oregon Court of Appeals decision in Baty V. Slater, 161 OR App 653 (1999). The ruling in Baty invalidated the board's practice of beginning an offenders' active supervision once the offender was released from custody into the community. The ruling in Baty requires that an offender's active supervision begin once the prison term has been completed.

Documents Relied Upon: None.

Fiscal and Economic Impact: The board is aware of a minimal positive fiscal or economic impact as a result of the repeal of OAR 255-060-0014. The board is not aware of any effect the repeal of OAR 255-060-0014 would have on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The board enacted this repeal during a business meeting and due to the nature of the repeal, felt it was not necessary to consult the administrative rule advisory committee.



01-14-04

Signer and Date

Cindy Hanners

Printed name

255-060-0014

Detainers

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

Statutory Authority: ORS 144.305, 144.310

History: (4/5/90; 10/9/92, 03/14/97, 11/09/98, 9-22-99, 01-14-04-Repeal Notice)

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

Board of Parole & Post-Prison Supervision
Agency and Division

255

Administrative Rules Chapter Number

Cindy Hanners
Rules Coordinator

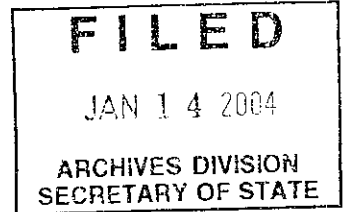
503-945-0903
Telephone

2575 Center Street NE, Ste 100 -- Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

ADOPT:

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



AMEND: 255-080-0005

REPEAL:

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

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

ORS 144.050, 144.140
Stat. Auth.: ORS

None
Other Authority

None
Stats. Implemented: ORS

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DEPT OF PAROLE

RULE SUMMARY

The amendment is necessary to establish the administrative review request process as it specifically relates to Orders of Supervision.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

ORS 183.335(2)(b)(G) 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.

03-03-04

Last Day for Public Comment

Cindy Hanners
Signature and Date

01-14-04

Cindy Hanners
Printed name

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140

Other Authority: None

Statutes Implemented: ORS: None


Need for the Rule(s): The amendment is necessary to establish the administrative review request process as it specifically relates to Orders of Supervision.

Documents Relied Upon: None

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

Administrative Rule Advisory Committee consulted?: No.

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

 01-14-04
Signer and Date

Cindy Hanners
Printed name

255-080-0005

Procedure for Administrative Review

- (1) An inmate/offender may request an administrative review by sending Exhibit O, Administrative Review Request Form, to the Board concisely explaining how his or her case fits the criteria for review listed in rule 255-080-0010.
- (2) The Board must receive requests for administrative review within forty-five (45) days after the mailing date on the Board's final action on the reviewed issue.
- (3) Regarding Orders of Supervision, the Board must receive requests for administrative review within forty-five (45) days after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof.
- ~~(4)~~[(3)] If the Board or its designee determines that the request is consistent with the criteria as defined in rules 255-080-0010 and 255-080-0011, and meets the deadline requirements, the Board will resolve the matter using the procedures outlined in OAR 255-080-0012.
- ~~(5)~~[(4)] When the Board or its designee denies review, the Board shall send the inmate/offender written notice of the specific reasons for denial.
- ~~(6)~~[(5)] When review is denied, the prior decision is re-affirmed.

Statutory Authority: ORS 144.335

History: (2/1/79; 11/25/81, temporary; 5/19/82; 5/31/85; 5/19/88; 12/6/88; 11/1/89; 2/20/91; 10/9/92, 03/14/97, 06-09-00, **01-14-04 - NOTICE**

4-15-04
Notice Temp

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 04-15-04 by the
Date prior to or same as filing date.

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

Michael R. Washington
Rules Coordinator Telephone 503-945-8978

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621
Address

to become effective 04-15-2004 through 10-11-2004
Date upon filing or later A maximum of 180 days including the effective date.

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

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

AMEND: 255-032-0015

SUSPEND:

RECEIVED
APR 19 PM 12 00
BOARD OF PAROLE

FILED
APR 15 2004
ARCHIVES DIVISION
SECRETARY OF STATE

ORS 163.105
Stat. Auth.: ORS

None
Other Authority

None
Stats. Implemented: ORS

RULE SUMMARY

The amendment of this rule is necessary to bring the dates within the rule into conformity with the effective date of ORS 163.105 as amended and passed into law by the Oregon Legislature (1999).

Michael R. Washington
Authorized Signer Date April 15, 2004

Michael R. Washington, Chair
Printed name

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 163.105

Other Authority: None

Statutes Implemented: ORS None

Need for the Temporary Rule(s): The amendment of this rule is necessary to bring the dates within the rule into conformity with the effective date of ORS 163.105 as amended and passed into law by the Oregon Legislature (1999).

Documents Relied Upon: None.

Justification of Temporary Rule(s): It is necessary that this rule be made effective immediately as it violates ex post facto provisions in the Federal and State Constitutions in its current posture.

Michael R. Washington

April 15, 2004

Signer and Date

Michael R. Washington, Chair

Printed name

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

Board of Parole & Post-Prison Supervision
Agency and Division

255

Administrative Rules Chapter Number

Michael R. Washington
Rules Coordinator

503-945-8978
Telephone

2575 Center Street NE, Ste 100 - Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

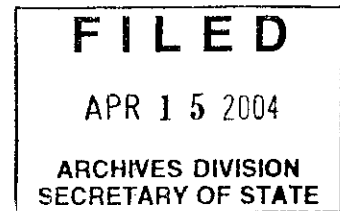
ADOPT:

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

AMEND:

255-032-0015

REPEAL:



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

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

ORS 163.105

Stat. Auth.: ORS

None

Other Authority

None

Stats. Implemented: ORS

RULE SUMMARY

The amendment of this rule is necessary to bring the dates within the rule into conformity with the effective date of ORS 163.105 as amended and passed into law by the Oregon Legislature (1999).

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

ORS 183.335(2)(b)(G) 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.

06-03-04

Last Day for Public Comment

Michael R. Washington

April 15, 2004

Signature and Date

Michael R. Washington, Chair

Printed name

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 163.105

Other Authority: None

Statutes Implemented: ORS: None

Need for the Rule(s): The amendment of this rule is necessary to bring the dates within the rule into conformity with the effective date of ORS 163.105 as amended and passed into law by the Oregon Legislature (1999).

Documents Relied Upon: None

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

Administrative Rule Advisory Committee consulted?: No.

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

Michael R. Washington

April 15, 2004

Signer and Date

Michael R. Washington, Chair

Printed name

Petition/Purpose for Review Hearing
255-032-0015

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after thirty (30) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after [June 30, 1995] October 23, 1999; or
- (2) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or between [April 1, 1995 through] June 30, 1995 through October 22, 1999; or
- (3) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before [April 1, 1995] June 30, 1995; or
- (4) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2); or
- (5) Anytime after twenty-five (25) years from the date of imposition of confinement pursuant to OAR 255-032-0010(3).

Statutory Authority: (ORS 163.115)

History: (5/31/85; 5/19/88; 1/16/91, 03/01/97, 5/18/99, 01-04-00, 05-13-03,
04-15-04 – Notice/Temp)

5-14-04
Joint
Filings
w/ DOC

5-14

PAR 4-2004 (79)

**CERTIFICATE AND ORDER FOR FILING
TEMPORARY ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on May 14, 2004, by the Board of Parole and Post-Prison Supervision.

DEPARTMENT OF CORRECTIONS

CHAPTER NUMBER: 291

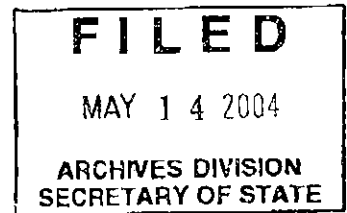
RULES COORDINATOR: Michael Washington

TELEPHONE: (503) 945-8978

ADDRESS: 2575 Center Street NE, Ste. 100
Salem, OR 97301-4621

to become effective May 14, 2004, through November 10, 2004

RULEMAKING ACTION



ADOPT:

AMEND: OAR 255-030-0025

SUSPEND:

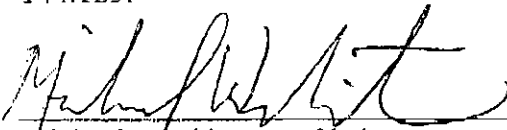
STATUTORY AUTHORITY: ORS 144.123 and 144.120(7)

OTHER AUTHORITY:

STATUTES IMPLEMENTED: ORS 144.123 and 144.120(7)

RULE SUMMARY

Need for the Temporary Rule(s): Amendments to the Board's rule are necessary to ensure that the Board's and the Department of Corrections policies and procedures governing who may accompany an inmate at a hearing before the Board are promulgated jointly as required by ORS 144.123.


Michael Washington, Chair

MAY 13, 2004
Date

STATEMENT OF NEED AND JUSTIFICATION

BOARD OF PAROLE AND POST-PRISON SUPERVISION CHAPTER NUMBER: 255

In the Matter of the Adoption of Temporary) Statement of Need and
Amendments to the Board's Rules Relating) Justification of
to Persons Who may Accompany an Inmate) Temporary Rule
at a Hearing Before the Board of Parole and)
Post-Prison Supervision, OAR 255-030-0025)

1. Effective immediately, the Board of Parole and Post-Prison Supervision is amending its administrative rule governing who may accompany an inmate at a hearing before the Board of Parole and Post-Prison Supervision.

2. Need for the Temporary Rule(s): Amendments to the Board's rule are necessary to ensure that the Board's and the Department of Corrections policies and procedures governing who may accompany an inmate at a hearing before the Board are promulgated jointly as required by ORS 144.123.

3. Documents Relied Upon: None

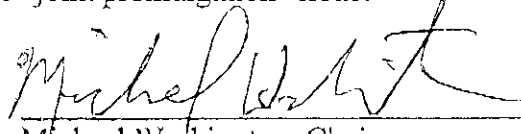
4. Justification of Temporary Rules:

(a) The Board finds that following the permanent rulemaking process, rather than taking this temporary rulemaking action, will result in serious prejudice to the public interest because it will cause the following specific consequences:

In litigation that is currently pending in the Oregon Court of Appeals, inmates have challenged the validity of the Board's current rules governing who may accompany an inmate at a hearing before the Board. Among the claims made by the inmates in the litigation is that the rules are invalid because they were not adopted jointly with the Oregon Department of Corrections (ODOC) as required by ORS 144.123. One of the inmates involved in the current litigation has indicated both to ODOC officials and to legal counsel that inmates will likely file suit to challenge the validity of Board decisions affecting them made in or following hearings conducted under the current rules, and also seek monetary damages from the Board and/or ODOC. Consequently, failure to promptly adopt these temporary rule amendments, together with the Board of Parole and Post-Prison Supervision, will leave at issue in the current and anticipated litigation the "joint promulgation" issue, and cause the Board and ODOC to incur additional costs associated with the defense of this issue. In addition, failure to eliminate the procedural issue through temporary rulemaking may itself result in the filing of additional inmate suits over the validity of the Board's current rules and decisions made in hearings under the current rules.

(b) This temporary rulemaking action will avoid or mitigate these consequences because prompt adoption of these rule amendments will assist the Board in defending

against the current litigation, and reduce or eliminate the risk that inmates will file additional litigation raising the "joint promulgation" issue.



Michael Washington, Chair

MAY 13, 2009
Date

255-030-0025

Who May Accompany an Inmate at a Board of Parole and Post-Prison Supervision Hearing

(1) Purpose: The purpose of this rule is to jointly establish with the Department of Corrections policies and procedures governing who may accompany an inmate in a hearing before the Board of Parole and Post-Prison Supervision

(2) Policy:

(a) It is the joint policy of the Department of Corrections and Board of Parole and Post-Prison Supervision that inmates be permitted to have a person accompany them in hearings before the Board in accordance with ORS 144.123, as provided in these rules.

(b) A person's access to a Department of Corrections facility is subject to the Department of Corrections rules on Facility Access (OAR 291-016), Visiting (Inmate) (OAR 291-127), and this rule, and may be prohibited or restricted by the functional unit manager or designee of the facility in which the hearing is being conducted when deemed necessary or advisable to maintain the health, safety and security of staff, inmates, or the public, or to maintain the safe, secure, and orderly operation and management of the facility.

(3) Persons Who May Accompany an Inmate at a Board Hearing:

(a) When appearing before the Board of Parole and Supervision in a hearing, an inmate may be accompanied at the Department of Corrections facility in which the inmate is confined, subject to the prior approval of the facility functional unit manager or designee, by:

(A) A person who has been approved for privileged visiting in accordance with the Department of Corrections rule on Visiting (Inmate) (OAR 291-127);

(B) An assigned inmate legal assistant from the Department of Corrections facility where the inmate is confined; or

(C) The inmate's attorney.

(b) In addition to those persons specified in subsection (3)(a) of this rule, the inmate may be accompanied at the hearing via telephone or videoconference by such other person, other than another inmate, as the Board of Parole and Post-Prison Supervision may, in its discretion, approve by prior arrangement.

(4) The Department of Corrections, if requested by an inmate or the Board, will assign an assigned inmate legal assistant from the Department of Corrections facility where the inmate is confined to accompany the inmate at a Board hearing.

(5) A person who is permitted to access a Department of Corrections facility for the purpose of accompanying an inmate at a Board hearing is subject to the rules of conduct, and the terms and conditions of visiting set forth in the department's rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127).

(6) Who May Appear at a Board Hearing

(a) The victim, personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction, parole officer and institution counselor shall have the right to appear at hearings.

(b) Any member of the public, including the media, may attend Board hearings, but may not participate. The Board may eject any disruptive person from a hearing. The Board may require all parties other than the Board and its staff to leave the hearing during deliberations. All parties shall abide by Department of Corrections' rules while attending hearings within Department of Corrections' facilities.

Stat. Auth.: ORS 144.123 & ORS 144.120(7)

Stats. Implemented: ORS 144.120(7), ORS 144.123 & ORS 192.630

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 10-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 2-1990, f. & cert. ef. 4-5-90; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00; PAR 4-2004(Temp), f. & cert. ef. 5-14-04 thru 11-10-04

255-

6-14-04

PERM

TEMP / NOTICE

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on April 15, 2004 by the
Date prior to or same as filing date.

Oregon Board of Parole and Post-Prison Supervision

Agency and Division

Chapter 255

Administrative Rules Chapter Number

Michael R. Washington

Rules Coordinator

503-945-9009

Telephone

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621

Address

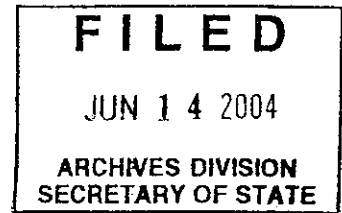
to become effective June 14, 2004 Rulemaking Notice was published in the May 1, 2004 *Oregon Bulletin*.**
Date upon filing or later Month and Year

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT:

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



AMEND:

255-032-0015

PEAL:

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

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

RECEIVED
04 JUN 17 PM 2 00
BOARD OF PAROLE

ORS 163.105

Stat. Auth.: ORS

None

Other Authority

None

Stats. Implemented: ORS

RULE SUMMARY

The amendment of this rule is necessary to bring the dates within the rule into conformity with the effective date of ORS 163.105 as amended and passed into law by the Oregon Legislature (1999).

Michael R. Washington

Authorized Signer

June 14, 2004

Date

Michael R. Washington

Printed name

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

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

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 163.105

Other Authority: None

Statutes Implemented: ORS None

Need for the Temporary Rule(s): The amendment of this rule is necessary to bring the dates within the rule into conformity with the effective date of ORS 163.105 as amended and passed into law by the Oregon Legislature (1999).

Documents Relied Upon: None.

Justification of Temporary Rule(s): It is necessary that this rule be made effective immediately as it violates ex post facto provisions in the Federal and State Constitutions in its current posture.

Michael R. Washington

April 15, 2004

Signer and Date

Michael R. Washington, Chair

Printed name

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 163.105

Other Authority: None

Statutes Implemented: ORS: None

Need for the Rule(s): The amendment of this rule is necessary to bring the dates within the rule into conformity with the effective date of ORS 163.105 as amended and passed into law by the Oregon Legislature (1999).

Documents Relied Upon: None

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

Administrative Rule Advisory Committee consulted?: No.

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

Michael R. Washington

April 15, 2004

Signer and Date

Michael R. Washington, Chair

Printed name

DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

Prison Term Hearing to be Held
255-032-0005

- (1) An adult person convicted of Aggravated Murder under ORS 163.095 shall receive a hearing within one year of sentencing. A person convicted of Murder under ORS 163.115 that was committed on or after June 30, 1995, and who was sentenced to life with a twenty-five (25) year minimum shall receive a hearing within one year of sentencing. At the hearing the Board shall set a review date congruent with the minimum terms set forth in OAR 255-032-0010 rather than a parole release date.
- (2) Adult persons sentenced to death or life without the possibility of release or parole shall not receive a hearing.
- (3) Adult persons sentenced to life with a twenty (20) or thirty (30) year minimum for aggravated murder shall receive a prison term hearing pursuant to ORS 144.120 if they also have a sentence to the Department of Corrections' custody for a crime other than aggravated murder.
- (4) Inmates, who were juveniles and waived to adult court pursuant to ORS 419C.340 through 419C.364, and were under the age of 17 years at the time of their crime(s), and were convicted of Aggravated Murder, per ORS 163.095, and whose crimes were committed after October 31, 1989 and prior to April 1, 1995, shall receive a prison term hearing. At the hearing, the Board shall set a review date consistent with the terms set forth in OAR 255-032-0011 rather than a projected parole release date.

Statutory Authority: (ORS 144.120, 163.095, 163.115, 419c.340, 419c.364)
History: (5/31/85; 11/1/89; 1/16/91; 10/9/92; 5/18/99, 01-04-00,
05-13-03)

Minimum Period of Confinement Pursuant to ORS 163.105 or ORS 163.115
255-032-0010

- (1) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(1) shall be thirty (30) years.
- (2) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(2) prior to December 6, 1984, shall be twenty (20) years.
- (3) The minimum period of confinement for a person sentenced to life for Murder under ORS 163.115 committed on or after June 30, 1995, shall be twenty-five (25) years.

Statutory Authority: (ORS 144.110, 163.105, 163.115)
History: (5/31/85; 5/19/88, 5/18/99, 01-04-00, 05-13-03)

255-032-0011

Schedule of Initial Parole Consideration for Inmates Described in OAR 255-032-0005(4)

- (1) The Board shall conduct a hearing pursuant to OAR 255-030-0013, 255-030-0015, 255-030-0021, 255-030-0023 and 255-030-0025 through -0055.
- (2) The Board shall set a review date pursuant to Exhibit P-III, or deny parole, pursuant to OAR 255-035-0030.
- (3) The method established by sections (1) to (3) of OAR 255-035-0021 shall not apply to inmates described in OAR 255-032-0005(4). To determine the unified range for inmates described in OAR 255-032-0005(4) with consecutive sentences for aggravated murder, the Board shall establish the matrix range for each crime by using the inmate's history/risk score pursuant to Exhibit P-III. The unified range shall be the sum of the ranges established under this section.
- (4) The Board may depart from the appropriate matrix range for inmates described in OAR 255-032-0005(4) only upon making a specific finding that there is aggravation or mitigation which justifies departure from the range pursuant to Exhibits E-1 and E-2. The Board shall clearly state on the record the facts and specific reasons for its finding. The Board may give items of aggravation and mitigation different weight and not necessarily balance them one for one. Exhibit D does not apply to inmates described in OAR 255-032-0005(4). The Board cannot apply aggravating or mitigating factors to adjust an inmate's matrix range more than one level up or down. Mitigating factors cannot reduce an inmate's matrix range below the lowest possible range on the matrix.
- (5) If the Board denies parole, the inmate may petition for review after 480 months from the adjusted inception date. If the Board determines, following a review of the inmate's petition and institutional record, there is reasonable grounds to believe that rehabilitation may have occurred and that the possibility of parole should be considered, a review hearing shall be scheduled.
- (6) If the Board sets a review date pursuant to Exhibit P-III, the Board shall conduct a progress review five years prior to the established review date. The progress review does not require a hearing with the inmate; however, the inmate may submit materials to be considered. The purpose of the progress review is to determine the inmate's institutional conduct and rehabilitation efforts since the prison term hearing.
- (7) The Board may determine a parole release date or future review dates any time after the established review date. The Board may order a psychological evaluation. Refusal to submit to an evaluation if one is ordered will be grounds for automatic deferral of the hearing for up to five years or a lesser time if deemed appropriate by the Board. If parole was previously denied, that decision will remain in effect and further petitions for review will not be considered at less than two (2) year intervals.

- (8) At the review hearing, the Board will consider, but is not limited to, the following:
- (a) the inmate's involvement in correctional treatment, medical care, educational, vocational or other training in the institution which will substantially enhance his/her capacity to lead a law-abiding life when released;
 - (b) the inmate's institutional employment history;
 - (c) the inmate's institutional disciplinary conduct;
 - (d) the inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate's personality which may promote or hinder conformity to law;
 - (e) the inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcohol;
 - (f) the inmate's prior criminal history, including the nature and circumstances of previous offenses;
 - (g) the inmate's conduct during any previous period of probation or parole;
 - (h) the inmate does/does not have a mental or emotional disturbance, deficiency, condition or disorder predisposing them to the commission of a crime to a degree rendering them a danger to the health and safety of the community;
 - (i) the adequacy of the inmate's parole plan including community support from family, friends, treatment providers, and others in the community; type of residence, neighborhood or community in which the inmate plans to live;
 - (j) there is a reasonable probability that the inmate will remain in the community without violating the law, and there is substantial likelihood that the inmate will conform to the conditions of parole.

The decision for the Board shall be whether there are significant indications of reformation and rehabilitation such that the offender does not represent a risk to the community and that it is in the offender's and the community's best interest that he/she be released to the community under conditions of supervision.

If the Board does not make the above finding, the Board shall set a subsequent review hearing date not to exceed five (5) years from the present review.

Statutory Authority: (ORS 163.105)
History: (5/18/99)

Petition/Purpose for Review Hearing
255-032-0015

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after thirty (30) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after October 23, 1999; or
- (2) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or between June 30, 1995 through October 22, 1999; or
- (3) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before June 30, 1995; or
- (4) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2); or
- (5) Anytime after twenty-five (25) years from the date of imposition of confinement pursuant to OAR 255-032-0010(3).

Statutory Authority: (ORS 163.115)

History: (5/31/85; 5/19/88; 1/16/91, 03/01/97, 5/18/99, 01-04-00, 05-13-03, 04-15-04-Notice/Temp, 06-14-04)

Purpose of Review Hearing
255-032-0020

- (1) The sole issue of the hearing described in OAR 255-032-0015 shall be to determine whether or not the inmate is likely to be rehabilitated within a reasonable period of time. Criteria indicating whether the inmate is likely to be rehabilitated prior to release include:
 - (a) the inmate's involvement in correctional treatment, medical care, educational, vocational or other training in the institution which will substantially enhance his/her capacity to lead a law-abiding life when released;
 - (b) the inmate's institutional employment history;
 - (c) the inmate's institutional disciplinary conduct;
 - (d) the inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate personality which may promote or hinder conformity to law;
 - (e) the inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcoholic liquor;
 - (f) the inmate's prior criminal history, including the nature and circumstances of previous offenses;

- (g) the inmate's conduct during any previous period of probation or parole;
- (h) the inmate does/does not have a mental or emotional disturbance, deficiency, condition or disorder predisposing them to the commission of a crime to a degree rendering them a danger to the health and safety of the community;
- (i) the adequacy of the inmate's parole plan including community support from family, friends, treatment providers, and others in the community; type of residence, neighborhood or community in which the inmate plans to live;
- (j) there is a reasonable probability that the inmate will remain in the community without violating the law, and there is substantial likelihood that the inmate will conform to the conditions of parole.

Statutory Authority: (ORS 163.115)

History: (5/31/85; 10/29/93; 5/18/99)

Manner of Review Hearing
255-032-0025

- (1) The Board shall conduct the proceeding in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) If the inmate is without sufficient funds to employ an attorney, the inmate shall have the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$75 per hour and \$750 per case. The attorney shall send the Board a billing within 90 days of the hearing.
- (2) If upon hearing all the evidence, the Full Board upon a unanimous vote of all members finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.
- (3) When a inmate has a consecutive sentence for a crime other than aggravated murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentences(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the aggravated murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Statutory Authority: (ORS 144.120, 163.105, 163.115, 183-310-550)

History: (5/31/85; 5/19/88; 11/1/89; 1/16/91; 5/1/91, temporary; 10/15/91; 10/29/93, 01-04-00, 02-06-01)

Effect of Denying Relief Request
05-13-03

Aggravated Murder

255-032-0035

If the Board finds that the inmate is not capable of rehabilitation, the Board shall deny the relief sought in the inmate petition. Not less than two years after the denial the inmate may petition again for a change in the terms of confinement. Further petitions for a change may be made at intervals of not less than two years thereafter.

Statutory Authority: (ORS 163.115)
History: (5/31/85; 5/19/88, 03/01/97)

Record/Notice
255-032-0040

Provisions for maintaining a record of the hearings and providing notice of decision shall be those set forth in Divisions 15 and 30 of these rules.

Statutory Authority: (ORS 183.335, 183.360)
History: (5/31/85)

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 01-05-2004 by the
Date prior to or same as filing date.

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

Chapter 255
Administrative Rules Chapter Number

Michael R. Washington
Rules Coordinator

503-945-9009
Telephone

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621
Address

to become effective 06-14-2004 Rulemaking Notice was published in the February 2004 *Oregon Bulletin*.**
Date upon filing or later Month and Year

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT:

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

AMEND: 255-060-0011 (Exhibits Q-I, Q-II, Q-III, Q-IV)

REPEAL: 255-060-0014

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

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

ORS 144.050, 144.140, 181.585,

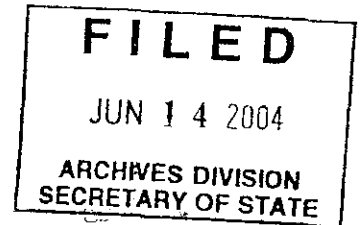
Stat. Auth.: ORS

Baty v. Slater, 161 OR App 653 (1999) OAR 213-005-0002

Other Authority

None

Stats. Implemented: ORS



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04 JUN 17 PM 1 58
BOARD OF PAROLE

RULE SUMMARY

255-060-0011: The amendment of the rules is necessary to be consistent with the Department of Corrections approval of a new sex offender risk assessment scale. This new sex offender risk assessment scale is applicable to offenders being released on and after May 1, 2004.

255-060-0014: The Oregon Court of Appeals ruling in Carl Baty v. Debra Slater, 161 OR App 653 (1999) rendered OAR 255-060-0014 invalid. Pursuant to OAR 255-060-0014, an offenders' active supervision did not begin until they were released into the community. The ruling in Baty is that the term of active supervision commences upon completion of the prison term.

Michael R. Washington

Authorized Signer

06-14-2004
Date

Michael R. Washington

Printed name

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

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

STATEMENT OF NEED AND FISCAL IMPACT

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

Oregon Board of Parole and Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140

Other Authority: Baty V. Slater, 161 OR App 653 (1999) OAR 213-005-0002

Statutes Implemented: ORS None

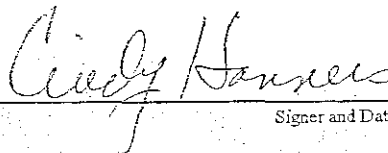
Need for the Rule(s): The repeal of OAR 255-060-0014 is necessary in light of the Oregon Court of Appeals decision in Baty V. Slater, 161 OR App 653 (1999). The ruling in Baty invalidated the board's practice of beginning an offenders' active supervision once the offender was released from custody into the community. The ruling in Baty requires that an offender's active supervision begin once the prison term has been completed.

Documents Relied Upon: None.

Fiscal and Economic Impact: The board is aware of a minimal positive fiscal or economic impact as a result of the repeal of OAR 255-060-0014. The board is not aware of any effect the repeal of OAR 255-060-0014 would have on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The board enacted this repeal during a business meeting and due to the nature of the repeal, felt it was not necessary to consult the administrative rule advisory committee.



01-14-04

Signer and Date

Cindy Hanners

Printed name

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Board of Parole and Post-Prison Supervision
Agency and Division

Chapter 255
Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140, 181.585

Other Authority:

Statutes Implemented: ORS

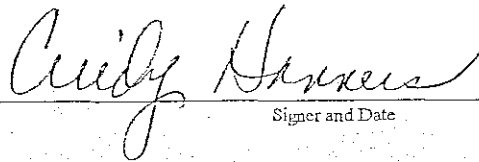
Need for the Temporary Rule(s):

The Department of Corrections release counselors are responsible for the assessment of convicted sex offenders, which is routinely done six months in advance of release, by way of a sex offender risk assessment scale. It is necessary for this rule to be adopted on an emergency basis so as to allow counselors the opportunity to use the assessment scale adopted by the Department of Corrections.

Documents Relied Upon: None.

Justification of Temporary Rule(s):

This new sex offender risk assessment scale is applicable for offenders being released on and after May 1, 2004.



Signer and Date

01-14-04

Cindy Hanners

Printed name

DIVISION 60

RELEASE TO POST-PRISON SUPERVISION OR PAROLE AND EXIT INTERVIEWS

255-060-0006

Exit Interviews: Parole Plan; and Psychiatric Records

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

Statutory Authority: ORS 144.098, 144.125, 144.800

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

255-060-0008

Release Plans

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

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

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

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

255-060-0009

**Residence Requirements for Certain Sex Offenders
Upon Release from Custody**

- (1) A sex offender classified as a sexually violent dangerous offender (ORS 137.765) or a predatory sex offender (ORS 181.765) may not reside near locations where children are the primary occupants or users.
- (2) This prohibition applies to permanent housing and not to transitional housing. For purposes of this rule, transitional housing means housing intended to be occupied by a sexually violent dangerous offender or a predatory sex offender for 45 days or less immediately after release from custody.
- (3) Exceptions to this prohibition may be made by the supervising parole/probation officer if it is determined that there is sufficient information to support this placement in terms of public safety and the rehabilitation of the offender. In making this determination, the following factors must be considered:
 - a. Other residential placement options pose a higher risk to the community, or
 - b. An enhanced support system that endorses supervision goals and community safety efforts is available at this residence, or
 - c. Enhanced supervision monitoring will be in place (e.g. electronic supervision, curfew, live-in-care provider, along with community notification), or
 - d. This residence includes 24-hour case management, or
 - e. The offender is being released from prison unexpectedly and more suitable housing will be arranged as soon as possible.

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

4. The supervising officer must inform the community affected by this decision about the reasons for the decision prior to the offender's release from custody.

Statutory Authority:
History: (Temp/Notice 12-15-01, 01-29-02, 04-15-02-Temp/Notice, 06-17-02, 10-10-03)

255-060-0010

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

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

10-10-03

Parole Release & Exit Interview

255-060-0011

Procedures for Predatory Sex Offender

- (1) For purposes of this rule, a person is a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use only the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II) which have been approved by the Department of Corrections as required by ORS 181.585(2).
- (2) Predatory sex offender designations made by the board for inmates or offenders released from a Department of Corrections institution before May 1, 2004, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a predatory sex offender if the inmate or offender four or more points on the STATIC-99.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.
- (5) Subject to the procedures set forth below, inmates or offenders who score four or more points on the STATIC-99 have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before a predatory sex offender finding is made.
 - (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate or offender before making a predatory sex offender finding. The Board shall make the predatory sex offender finding if there is evidence to support a score on the STATIC-99 of four or more points.
- (6) Inmates or offenders may elect to waive their right to submit written objections. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections, the Board may make the predatory sex offender finding if the inmate's or offender's score on the STATIC-99 is four or more points.
- (6) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: Chapter 163 (1999 OR Laws)
History: (02-15-00, 03-12-02, 06/13/03, 10-10-03, 01/14/04--Temp/Notice,
06-14-04)

255-060-0012
Psychological or Psychiatric Reports

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

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

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

255-060-0013
Postponement Order

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

- (1) the facts and specific reasons for the decision and the votes of the Board members;

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Parole Release & Exit Interview

(2) notice of the right to administrative appeal pursuant to the procedures of Division 80.

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

255-060-0014

Detainers

Statutory Authority: ORS 144.305, 144.310
History: (4/5/90; 10/9/92, 03/14/97, 11/09/98, 9-22-99, **06-14-04 REPEALED**)

255-060-0015

Instate Parole Release Interview Procedures

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

255-060-0020

Out-of-State Parole Release Hearing Procedures

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

Statutory Authority: ORS 144.098, 144.125
History: (2/1/79; 5/31/85; 5/19/88; 10/9/92, 03/14/97, **11/09/98**)

255-060-0025

Parole Consideration for Prisoners in a Local Jail

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

255-060-0030

Exit Interview Board Review Packet

The exit interview Board Review Packet shall contain:

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

Statutory Authority: ORS 144.096, 144.098, 144.185
History: (5/19/88; 4/5/90, 03/14/97)

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Parole Release & Exit Interview

Inmate Name: _____ CDC No. _____ Evaluator: _____ Date: _____

Risk Factor	Codes	Score	Comments
1 Young	Aged 25 or older Aged 18 - 24, 99	0 1	
2 Single	Ever lived with lover for at least two years? Yes No	0 1	
3 Index Non-sexual violence	No Yes	0 1	
4 Prior non-sexual violence	No Yes	0 1	
5 Prior Sex Offenses (Same rules as in RRASOR)	Charges Convictions None None 1-2 1 3-5 2-3 6+ 4+	0 1 2 3	
6 Prior sentencing dates (excluding index)	3 or less 4 or more	0 1	
7 Any convictions for non-contact sex offenses	No Yes	0 1	
8 Any Unrelated Victims	No Yes	0 1	
9 Any Stranger Victims	No Yes	0 1	
10 Any Male Victims	No Yes	0 1	
TOTAL SCORE		1	

TRANSLATING STATIS-99 SCORES INTO RISK CATEGORIES

STATIS-99 SCORE	Label for Risk Category	Sexual recidivism		
		5 years	10 years	15 years
0	Low	.05	.11	.13
1	Low	.06	.07	.07
2	Medium-Low	.09	.13	.16
3	Medium Low	.12	.14	.19
4	Medium-High	.26	.31	.36
5	Medium-High	.33	.38	.40
6+	High	.39	.45	.52

(Revised 11/13/02)
06-14-2004

EXHIBIT Q-II

DEFINITIONS

Definitions

Sexual Offence

For the purposes of a STATIC-99 assessment a sexual offence is an officially recorded sexual misbehaviour or criminal behaviour with sexual intent. To be considered a sexual offence the sexual misbehaviour must result in some form of criminal justice intervention or official sanction. For people already engaged in the criminal justice system the sexual misbehaviour must be serious enough that individuals could be charged with a sexual offence if they were not already under legal sanction. **Do not count offences such as failure to register as a sexual offender or consenting sex in prison.**

Criminal justice interventions may include the following:

- Alternative resolutions agreements (Restorative Justice)
- Arrests
- Charges
- Community-based Justice Committee Agreements
- Criminal convictions
- Institutional rule violations for sexual offences (Do not count consenting sexual activity in prison)
- Parole and probation violations

Sanctions may include the following:

- Alternative resolution agreements
- Community supervision
- Conditional discharges
- Fines
- Imprisonment
- Loss of institutional time credits due to sexual offending ("worktime credits")

Generally, "worktime credit" or "institutional time credits" means credit towards (time off) a prisoner's sentence for satisfactory performance in work, training or education programs. Any prisoner who accumulates "worktime credit" may be denied or may forfeit the credit for failure or refusal to perform assigned, ordered, or directed work or for receiving a serious disciplinary offense.

Sexual offences are scored only from official records and both juvenile and adult offences count. You may not count self-reported offences except under certain limited circumstances, please refer to the Introduction section – sub-section "Self-report and the STATIC-99".

An offence need not be called "sexual" in its legal title or definition for a charge or conviction to be considered a sexual offence. Charges or convictions that are explicitly for sexual assaults, or for the sexual abuse of children, are counted as sexual offenses on the STATIC-99, regardless of the offender's motive. Offenses that directly involve illegal sexual behaviour are counted as sex offenses even when the legal process has led to a "non-sexual" charge or conviction. An example of this would be where an offender is charged with or pleads guilty to a Break and Enter when he was really going in to steal dirty underwear to use for fetishistic purposes.

In addition, offenses that involve non-sexual behavior are counted as sexual offenses if they had a sexual motive. For example, consider the case of a man who strangles a woman to death as part of a sexual act but only gets charged with manslaughter. In this case the manslaughter charge would still be considered a sexual offence. Similarly, a man who strangles a woman to gain sexual compliance but only gets charged

EXHIBIT Q-II

DEFINITIONS

with Assault; this Assault charge would still be considered a sexual offence. Further examples of this kind include convictions for murder where there was a sexual component to the crime (perhaps a rape preceding the killing), kidnapping where the kidnapping took place but the planned sexual assault was interrupted before it could occur, and assaults "pled down" from sexual assaults.

Physical assaults, threats, and stalking motivated by sexual jealousy do not count as sexual offenses when scoring the STATIC-99.

Additional Charges

Offences that may not be specifically sexual in nature, occurring at the same time as the sexual offence, and under certain conditions, may be considered part of the sexual misbehaviour. Examples of this would include an offender being charged with/convicted of:

- Sexual assault (rape) and false imprisonment
- Sexual assault (rape) and kidnapping
- Sexual assault (rape) and battery

In instances such as these, depending upon when in the court process the risk assessment was completed, the offender would be coded as having been convicted of two sexual offences plus scoring in another item (Index or Prior Non-sexual Violence). For example if an offender were convicted of any of the three examples above prior to the current "Index" offence, the offender would score 2 "prior" sex offence charges and 2 "prior" sex offence convictions (On Item #5 -- Prior Sexual Offences) and a point for Prior Non-sexual Violence (Please see "Prior Non-sexual Violence" or "Index Non-sexual Violence" for a further explanation).

Category "A" and Category "B" Offences

For the purposes of the STATIC-99, sexual misbehaviours are divided into two categories. Category "A" involves most criminal charges that we generally consider "sexual offences" and that involve an identifiable child or non-consenting adult victim. This category includes all contact offences, exhibitionism, voyeurism, sex with animals and dead bodies.

Category "B" offences include sexual behaviour that is illegal but the parties are consenting or no specific victim is involved. Category "B" offences include prostitution related offences, consenting sex in public places, and possession of pornography. Behaviours such as urinating in public or public nudity associated with mental impairment are also considered Category "B" offences.

Rule: if the offender has any category "A" offences on their record - all category "B" offences should be counted as sex offences for the purpose of scoring sexual priors or identifying the Index offense. They do not count for the purpose of scoring victim type items. The STATIC-99 is not recommended for use with offenders who have only category "B" offences.

Offence names and legalities differ from jurisdiction to jurisdiction and a given sexual behaviour may be associated with a different charge in a different jurisdiction. The following is a list of offences that would typically be considered sexual. Other offence names may qualify when they denote sexual intent or sexual misbehaviour.

Category "A" Offences

- Aggravated Sexual Assault
- Attempted sexual offences (Attempted Rape, Attempted Sexual Assault)
- Contributing to the delinquency of a minor (where the offence had a sexual element)
- Exhibitionism

EXHIBIT Q-II

DEFINITIONS

- Incest
- Indecent exposure
- Invitation to sexual touching
- Lewd or lascivious acts with a child under 14
- Manufacturing/Creating child pornography where an identifiable child victim was used in the process (The offender had to be present or participate in the creation of the child pornography with a human child present)
- Molest children
- Oral copulation
- Penetration with a foreign object
- Rape (includes in concert) (Rape in concert is rape with one or more co-offenders. The co-offender can actually perpetrate a sexual crime or be involved to hold the victim down)
- Sexual Assault
- Sexual Assault Causing Bodily Harm
- Sexual battery
- Sexual homicide
- Sexual offences against animals (Bestiality)
- Sexual offences involving dead bodies (Offering an indignity to a dead body)
- Sodomy (includes in concert and with a person under 14 years of age)
- Unlawful sexual intercourse with a minor
- Voyeuristic activity (Trespass by night)

Category "B" Offences

- Consenting sex with other adults in public places
- Crimes relating to child pornography (possession, selling, transporting, creating where only pre-existing images are used, digital creation of)
- Indecent behaviour without a sexual motive (e.g., urinating in public)
- Offering prostitution services
- Pimping/Pandering
- Seeking/hiring prostitutes
- Solicitation of a prostitute

Certain sexual behaviours may be illegal in some jurisdictions and legal in others (e.g., prostitution). Count only those sexual misbehaviours that are illegal in the jurisdiction in which the risk assessment takes place and in the jurisdiction where the acts took place.

Exclusions

The following offences would not normally be considered sexual offences

- Annoying children
- Consensual sexual activity in prison (except if sufficiently indiscreet to meet criteria for gross indecency).
- Failure to register as a sex offender
- Being in the presence of children, loitering at schools
- Possession of children's clothing, pictures, toys
- Stalking (unless sexual offence appears imminent, please see definition of "Truly Imminent" below)
- Reports to child protection services (without charges)

EXHIBIT Q-II

DEFINITIONS

Rule: Simple questioning by police not leading to an arrest or charge is insufficient to count as a sexual offence.

Probation, Parole or Conditional Release Violations as Sexual Offences

Rule: Probation, parole or conditional release violations resulting in arrest or revocation/breach are considered sexual offences when the behaviour could have resulted in a charge/conviction for a sexual offence if the offender were not already under legal sanction.

Sometimes the violations are not clearly defined as a sexual arrest or conviction. The determination of whether to count probation, parole, or conditional release violations as sexual offences is dependent upon the nature of the sexual misbehaviour. Some probation, parole and conditional release violations are clearly of a sexual nature, such as when a rape or a child molestation has taken place or when behaviours such as exhibitionism or possession of child pornography have occurred. These violations would count as the Index offence if they were the offender's most recent criminal justice intervention.

Generally, violations due to "high-risk" behaviour would not be considered sex offences. The most common of these occurs when the offender has a condition not to be in the presence of children but is nevertheless charged with a breach - being in the presence of children. A breach of this nature would not be considered a sexual offence. This is a technical violation. The issue that determines if a violation of conditional release is a new sex offence or not is whether a person who has never been convicted of a sex offence could be charged and convicted of the breach behaviour. A person who has never faced criminal sanction could not be charged with being in the presence of minors; hence, because a non-criminal could not be charged with this offence, it is a technical violation. Non-sexual probation, parole and conditional release violations, and charges and convictions such as property offences or drug offences are not counted as sexual offences, even when they occur at the same time as sexual offences.

Taking the above into consideration, some high-risk behaviour may count as a sexual offence if the risk for sexual offence recidivism was truly imminent and an offence failed to occur only due to chance factors, such as detection by the supervision officer or resistance of the victim.

Definition of "Truly Imminent"

Examples of this nature would include an individual with a history of child molesting being discovered alone with a child and about to engage in a "wrestling game." Another example would be an individual with a long history of abducting teenage girls for sexual assault being apprehended while attempting to lure teenage girls into his car.

Institutional Rule Violations

Institutional rule violations resulting in institutional punishment can be counted as sex offences if certain conditions exist. The first condition is that the sexual behaviour would have to be sufficiently intrusive that a charge for a sexual offence would be possible were the offender not already under legal sanction. In other words, "if he did it on the outside would he get charged for it?" Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. Poorly timed or insensitive homosexual advances would not count even though this type of behaviour might attract institutional sanctions. The second condition is that the evaluator must be sure that the sexual assaults actually occurred and the institutional punishment was for the sexual behaviour.

In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female officer and masturbates in front of her, where she is the obvious and intended target of the act, would count as a

EXHIBIT Q-II

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“charge” and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell is discovered by a female officer and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this “non-targeted” nature do not count as a “charge” and could not stand as an Index offence. If the evaluator has insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and the evaluator would not score these occurrences. A further important distinction is whether the masturbation takes place covered or uncovered. Masturbating under a sheet would not be regarded as an attempt at indecent exposure.

Consider these two examples:

- (1) A prisoner is masturbating under a sheet at a time when staff would not normally look in his cell. Unexpectedly a female member of staff opens the observation window, looks through the door, and observes him masturbating. This would not count as a sex offence for the purposes of STATIC-99, even if a disciplinary charge resulted.
- (2) In the alternate example, a prisoner masturbates uncovered so that his erect penis is visible to anyone who looks in his cell. Prison staff have reason to believe that he listens for the lighter footsteps of a female guard approaching his cell. He times himself so that he is exposed in this fashion at the point that a female guard is looking into the cell. This would count as a sexual offence for the purposes of scoring STATIC-99 if it resulted in an institutional punishment.

Rule: Prison Misconducts and Institutional Rule Violations for Sexual Misbehaviours count as one charge per sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Mentally Disordered and Developmentally Delayed Offenders

Some offenders suffer from sufficient mental impairment (major mental illness, developmental delays) that criminal justice intervention is unlikely. For these offenders, informal hearings and sanctions such as placement in treatment facilities and residential moves would be counted as both a charge and a conviction for a sexual offence.

Clergy and the Military

For members of the military or religious groups (clergy) (and similar professions) some movements within their own organizations can count as charges and convictions and hence, Index offences. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of this would be the “de-frocking” of a priest or minister or being publicly denounced. Another example would be where an offender is transferred within the organization and the receiving institution knows they are receiving a sex offender. If this institution considers it part of their mandate to address the offender’s problem or attempt to help him with his problem then this would function as equivalent to being sent to a correctional institution, and would count as a conviction and could be used as an Index Offence.

For members of the military, a religious group (clergy) or teachers (and similar professions) being transferred to a new parish/school/post or being sent to graduate school for re-training does not count as a conviction and cannot be used as an Index Offence.

EXHIBIT Q-II

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Juveniles

Instances in which juveniles (ages 12–15) are placed into residential care for sexual aggression would count as a charge and conviction for a sexual offence. In jurisdictions where 16 and 17 year old sexual offenders remain in a juvenile justice system (not charged, tried, and sent to jail as adults are), where it is possible to be sent to a “home” or “placement”, this would count as a charge and a conviction for a sexual offence. In jurisdictions where juveniles aged 16 and 17 are charged, convicted, sentenced, and jailed much like adults, juvenile charges and convictions (between ages 16 & 17) would be counted the same as adult charges and convictions.

Sexual misbehaviour of children 11 or under would not count as a sex offence unless it resulted in official charges.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Similar Fact Crimes

An Offender assaults three different women on three different occasions. On the first two occasions he grabs the woman as she is walking past a wooded area, drags her into the bushes and rapes her. For this he is convicted twice of Sexual Assault (rape). In the third case he grabs the woman, starts to drag her into the bushes but she is so resistant that he beats her severely and leaves her. In this case he is convicted of Aggravated Assault. In order for the conviction to be counted as a sexual offence, it must have a sexual motivation. In a case like this it is reasonable to assume that the Aggravated Assault had a sexual motivation because it resembles the other sexual offences so closely. In the absence of any other indication to the contrary this Aggravated Assault would also be counted as a sexual offence. Note: This crime could also count as Non-sexual Violence.

Please also read subsection “Coding Crime Sprees” in section “Item #5 – Prior Sex Offences”.

Index offence

The Index offence is generally the most recent sexual offence. It could be a charge, arrest, conviction, or rule violation (see definition of a sexual offence, earlier in this section). Sometimes Index offences include multiple counts, multiple victims, and numerous crimes perpetrated at different times because the offender may not have been detected and apprehended. Some offenders are apprehended after a spree of offending. If this results in a single conviction regardless of the number of counts, all counts are considered part of the Index offence. Convictions for sexual offences that are subsequently overturned on appeal can count as the Index offence. Charges for sexual offences can count as the Index Offence, even if the offender is later acquitted.

Most of the STATIC-99 sample (about 70%) had no prior sexual offences on their record; their Index offence was their first recorded sexual misbehaviour. As a result, the STATIC-99 is valid with offenders facing their first sexual charges.

Acquittals

Acquittals count as charges and can be used as the Index Offence.

Convictions Overturned on Appeal

Convictions that are subsequently overturned on appeal can count as an Index Offence.

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"Detected" by Child Protection Services

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction. This is insufficient to create a new Index Offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences – As an Index Offence

Occasionally, offenders on conditional release in the community who have a life sentence, who have been designated as Dangerous Offenders (Canada C.C.C. Sec. 753) or other offenders with indeterminate sentences either commit a new offence or breach their release conditions while in the community. Sometimes, when this happens the offenders have their conditional releases revoked and are simply returned to prison rather than being charged with a new offence or violation. Generally, this is done to save time and court resources as these offenders are already under sentence.

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour this can serve as the Index Sexual Offence if the behaviour is of such gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence given the same behaviour. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police.

Historical Offences

The evaluator may face a situation where an offender is brought before the court on a series of sexual offences, all of which happened several years in the past. This most often occurs when an offender has offended against children in the past and as these children mature they come forward and charge the perpetrator. After the first charge is laid it is not unusual for other victims to appear and lay subsequent charges. The evaluator may be faced with an offender with multiple charges, multiple court dates, and possibly multiple convictions who has never before been to court – or who has never before been sanctioned for sexual misbehaviour. In a case like this, where the offender is before the court for the first time, all of the charges, court appearances and convictions become what is known as an "Index Cluster" and they are all counted as part of the Index Offence.

Index Cluster

An offender may commit a number of sexual offences in different jurisdictions, over a protracted period, in a spree of offending prior to being detected or arrested. Even though the offender may have a number of sentencing dates in different jurisdictions, the subsequent charges and convictions would constitute an "Index Cluster". These "spree" offences would group together – the early ones would not be considered "priors" and the last, the "Index", they all become the "Index Cluster". This is because the offender has not been "caught" and sanctioned for the earlier offences and then "chosen" to re-offend in spite of the sanction. Furthermore, historical offences that are detected after the offender is convicted of a more recent sexual offence would be considered part of the Index offence (pseudo-recidivism) and become part of the Index Cluster (See subsequent section).

For two offences to be considered separate offences, the second offence must have been committed after the offender was detected and detained and/or sanctioned for the previous offence. For example, an offence committed while an offender was released on bail for a previous sexual offence would supersede

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the previous charge and become the Index offence. This is because the offender knew he/she had been detected for their previous crimes but chose to re-offend anyway.

An Index cluster can occur in three ways.

The first occurs when an offender commits multiple offences at the same time and these offences are then subsequently dealt with as a group by the police and the courts.

The second occurs when an Index offence has been identified for an offender and following this the evaluator becomes aware of previous historical offences for which the offender has never previously been charged or convicted. These previous offences come forward and become part of the "Index Cluster". This is also known as "Pseudo-recidivism". It is important to remember, these historical charges do not count as "priors" because the offending behaviour was not consequenced before the offender committed the Index offence. The issue being, the offender has not been previously sanctioned for his behaviour and then made the choice to re-offend.

The third situation arises when an offender is charged with several offences that come to trial within a short period of time (a month or so). When the criminal record is reviewed it appears that a cluster of charges were laid at the end of an investigation and that the court could not attend to all of these charges in one sitting day. When the evaluator sees groups of charges where it appears that a lot of offending has finally "caught up" with an offender – these can be considered a "cluster". If these charges happen to be the last charges they become an Index Cluster. The evaluator would not count the last court day as the "Index" and the earlier ones as "priors". A second example of this occurs when an offender goes on a crime "spree" – the offender repeatedly offends over time, but is not detected or caught. Eventually, after two or more crimes, the offender is detected, charged, and goes to court. But he has not been independently sanctioned between the multiple offences.

For Example: An offender commits a rape, is apprehended, charged, and released on bail. Very shortly after his release, he commits another rape, is apprehended and charged. Because the offender was apprehended and charged between crimes this does not qualify as a crime "spree" – these charges and possible eventual convictions would be considered separate crimes. If these charges were the last sexual offences on the offender's record – the second charge would become the Index and the first charge would become a "Prior".

However, if an offender commits a rape in January, another in March, another in May, and another in July and is finally caught and charged for all four in August this constitutes a crime "spree" because he was not detected or consequenced between these crimes. As such, this spree of sexual offences, were they the most recent sexual offences on the offenders record, would be considered an "Index Cluster" and all four rape offences would count as "Index" not just the last one.

Pseudo-recidivism

Pseudo-recidivism occurs when an offender currently involved in the criminal justice process is charged with old offences for which they have never before been charged. This occurs most commonly with sexual offenders when public notoriety or media publicity surrounding their trial or release leads other victims of past offences to come forward and lay new charges. Because the offender has not been charged or consequenced for these misbehaviours previously, they have not experienced a legal consequence and then chosen to re-offend.

For Example: Mr. Jones was convicted in 1998 of three sexual assaults of children. These sexual assaults took place in the 1970's. As a result of the publicity surrounding Mr. Jones' possible release in 2002, two more victims, now adults, come forward and lay new charges in 2002. These offences also took place in the 1970's but these victims did not come forward until 2002. Because Mr. Jones

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had never been sanctioned for these offences they were not on his record when he was convicted in 1998. Offences for which the offender has never been sanctioned that come to light once the offender is in the judicial process are considered "pseudo-recidivism" and are counted as part of the "Index Cluster". Historical charges of this nature are not counted as "priors".

The basic concept is that the offender has to be sanctioned for previous mis-behaviours and then "chose" to ignore that sanction and re-offend anyway. If he chooses to re-offend after a sanction then he creates a new offence and this offence is considered part of the record, usually a new Index offence. If historical offences come to light, for which the offender has never been sanctioned, once the offender is in the system for another sexual offence, these offences "come forward" and join the Index Offence to form an "Index Cluster".

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

For Example, Post-Index Sexual Offences: Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered a separate crime. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.

For Example, Post-Index Violent Offences: Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, as an "external risk factor", outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Prior Offence(s)

A prior offence is any sexual or non-sexual crime, institutional rule violation, probation, parole or conditional release violation(s) and/or arrest charge(s) or, conviction(s), that was legally dealt with PRIOR to the Index offence. This includes both juvenile and adult offences. In general, to count as a prior, the sanction imposed for the prior offence must have occurred before the Index offence was committed. However, if the offender was aware that they were under some form of legal restraint and then goes out and re-offends in spite of this restriction, the new offence(s) would create a new Index offence. An example of this could be where an offender is charged with "Sexual Communication with a Person Under the Age of 14 Years" and is then released on his own recognizance with a promise to appear or where they are charged and released on bail. In both of these cases if the offender then committed an "Invitation to Sexual Touching" after being charged and released the "Invitation to Sexual Touching" would become the new Index offence and the "Sexual Communication with a Person Under the Age of 14 Years" would automatically become a "Prior" sexual offence.

In order to count violations of conditional release as "Priors" they must be "real crimes", something that someone not already engaged in the criminal justice system could be charged with. Technical violations such as Being in the Presence of Minors or Drinking Prohibitions do not count.

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Scoring the 10 Items

Item # 1 - Young

The Basic Principle: Research (Hanson, 2001) shows that sexual recidivism is more likely in an offender's early adult years than in an offender's later adult years. See Figure 1, next page.

Information Required to Score this Item: To complete this item the evaluator has to confirm the offender's birth date or have other knowledge of the offender's age.

The Basic Rule: If the offender is between his 18th and 25th birthday at exposure to risk you score the offender a "1" on this item. If the offender is past his 25th birthday at exposure to risk you score the offender a "0" on this item.

STATIC-99 is not intended for those who are less than 18 years old at the time of exposure to risk.

Under certain conditions, such as anticipated release from custody, the evaluator may be interested in an estimate of the offender's risk at some specific point in the future. This may occur if the offender is presently incarcerated (January) and you are interested in his risk when he is eligible for release in September. However, you know that the offender's 25th birthday will occur in May. If you were assessing the offender's estimated risk of re-offence for his possible release in September – because at time of exposure to risk he is past his 25th birthday – you would not give the risk point for being less-than-25 even though he is only 24 today. You calculate risk based upon age at exposure to risk.

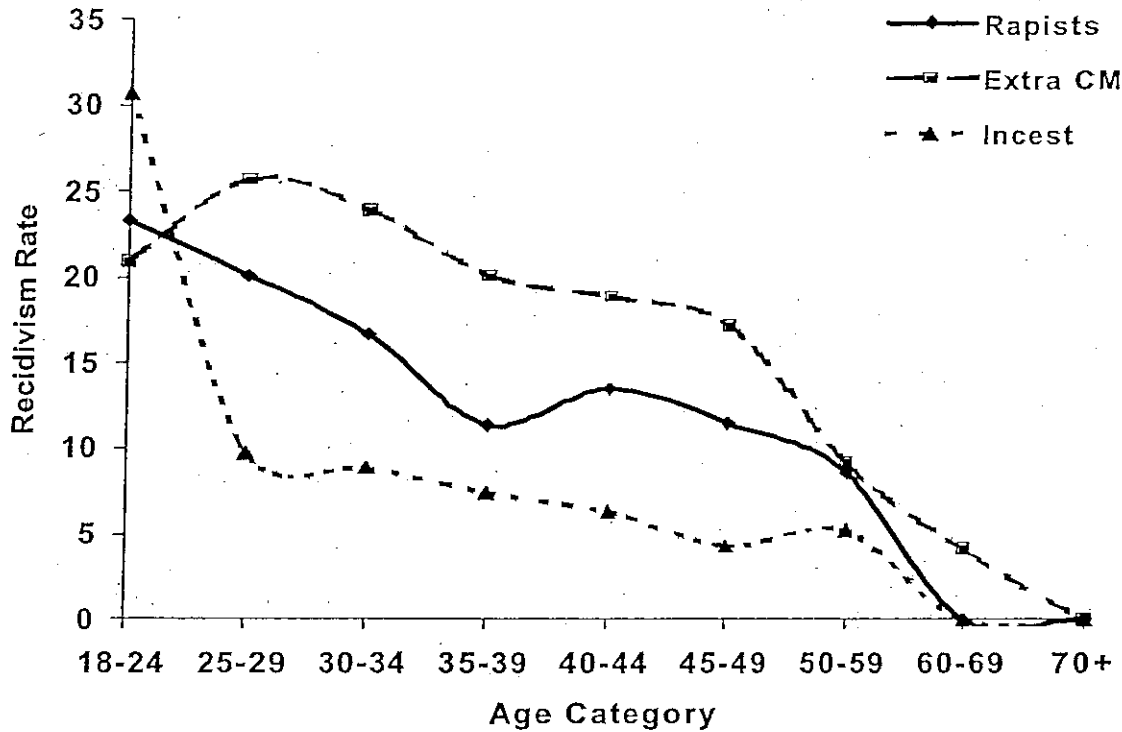
Sometimes the point at which an offender will be exposed to risk may be uncertain, for example, if he is eligible for parole but may not get it. In these cases it may be appropriate to use some form of conditional wording indicating how his risk assessment would change according to when he is released.

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Figure 1

Age Distribution of Sexual Recidivism in Sexual Offenders



Rapists (n = 1,133)
Extra-familial Child Molesters [Extra CM] (n = 1,411)
Incest Offenders (n = 1,207)

Hanson, R. K. (2002). Recidivism and age: Follow-up data on 4,673 sexual offenders: Journal of Interpersonal Violence, 17, 1046-1062.

Hanson, R. K. (2001). *Age and sexual recidivism: A comparison of rapists and child molesters*. User Report 2001-01. Ottawa: Department of the Solicitor General of Canada. Department of the Solicitor General of Canada website, www.sgc.gc.ca

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Item # 2 – Ever Lived with an Intimate Partner – 2 Years

The Basic Principle: Research suggests that having a prolonged intimate connection to someone may be a protective factor against sexual re-offending. See Hanson and Bussière (1998), Table 1 – Items “Single (never married) and Married (currently)”. On the whole, we know that the relative risk to sexually re-offend is lower in men who have been able to form intimate partnerships.

Information Required to score this Item: To complete this item it is highly desirable that the evaluator confirm the offender’s relationship history through collateral sources or official records.

The Basic Rule: If the offender has never had an intimate adult relationship of two years duration you score the offender a “1” on this item. If the offender has had an intimate adult relationship of two years duration you score the offender a “0” on this item.

The intent of this item is to reflect whether the offender has the personality/psychological resources, as an adult, to establish a relatively stable “marriage-like” relationship with another person. It does not matter whether the intimate relationship was/is homosexual or heterosexual.

- **Missing Items** – The only item that may be omitted on the STATIC-99 is this one (Ever Lived With – Item #2). If no information is available this item should be scored a “0” (zero) – as if the offender has lived with an intimate partner for two years.
- To complete this item the evaluator should make an attempt to confirm the offender’s relationship history through collateral sources and official records. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. There may be certain cases (immigrants, refugees from third world countries) where it is not possible to access collaterals or official records. Where the evaluator, based upon the balance of probabilities, is convinced this person has lived with an intimate partner for two years the evaluator may score this item a “0”. It is greatly preferred that you confirm the existence of this relationship through collateral contacts or official records. This should certainly be done if the assessment is being carried out in an adversarial context where the offender would have a real motive to pretend to a non-existent relationship.
- In cases where confirmation of relationship history is not possible or feasible the evaluator may choose to score this item both ways and report the difference in risk estimate in their final report.

If a person has been incarcerated most of their life or is still quite young and has not had the opportunity to establish an intimate relationship of two years duration, they are still scored as never having lived with an intimate partner for two years. They score a “1”. There are two reasons for this. The first being, this was the way this item was scored in the original samples and to change this definition now would distance the resulting recidivism estimates from those validated on the STATIC-99. Secondly, having been part of, or experienced, a sustained relationship may well be a protective factor for sexual offending. As a result, the reason why this protective factor is absent is immaterial to the issue of risk itself.

The offender is given a point for this item if he has never lived with an adult lover (male or female) for at least two years. An adult is an individual who is over the age of consent to marriage. The period of co-habitation must be continuous with the same person.

Generally, relationships with adult victims do not count. However, if the offender and the victim had two years of intimate relationship before the sexual offences occurred then this relationship would count, and the offender would score a “0” on this item. However, if the sexual abuse started before the offender and the victim had been living together in an intimate relationship for two years then the relationship would not count regardless of its length.

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Cases where the offender has lived over two years with a child victim in a "lover" relationship do not count as living with an intimate partner and the offender would be scored a "1" on this item. Illegal relationships (Incestuous relationship with his Mother) and live-in relationships with "once child" victims do not count as "living together" for the purposes of this item and once again the offender would score a "1" on this item. A "once child" victim is the situation where the offender abused a child but that victim is either still living, as an adult, in an intimate relationship with the offender or who has lived, as an adult, in an intimate relationship with the offender.

Exclusions

- Legal marriages involving less than two years of co-habitation do not count
- Male lovers in prison would not count
- Prison marriages (of any duration) where the offender is incarcerated during the term of the relationship do not count
- Illegal relationships, such as when the offender has had an incestuous relationship with his mother do not count
- Intimate relationships with non-human species do not count
- Relationships with victims do not count (see above for exception)
- Priests and others who for whatever reason have chosen, as a lifestyle, not to marry/co-habitate are still scored as having never lived with an intimate partner

Extended Absences

In some jurisdictions it is common for an offender to be away from the marital/family home for extended periods. The offender is generally working on oilrigs, fishing boats, bush camps, military assignment, or other venues of this nature. While the risk assessment instrument requires the intimate co-habitation to be continuous there is room for discretion. If the offender has an identifiable "home" that he/she shares with a lover and the intimate relationship is longer than two years, the evaluator should look at the nature and consistency of the relationship. The evaluator should attempt to determine, in spite of these prolonged absences, whether this relationship looks like an honest attempt at a long-term committed relationship and not just a relationship of convenience.

If this relationship looks like an honest attempt at a long-term committed relationship then the evaluator would score the offender a "0" on this item as this would be seen as an intimate relationship of greater than two years duration. If the evaluator thinks that the relationship is a relationship of convenience, the offender would score a "1". If the living together relationship is of long duration (three plus years) then the periods of absence can be fairly substantial (four months in a logging camp/oil rig, or six months or more on military assignment).

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Item # 3 – Index Non-sexual Violence (NSV) – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item “Prior Violent Offences”. The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense.

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and the STATIC-99” in the Introduction section.

The Basic Rule: If the offender’s criminal record shows a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a “1” on this item. If the offender’s criminal record does not show a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a “0” on this item.

This item refers to convictions for non-sexual violence that are dealt with on the same sentencing occasion as the Index sex offence. A separate Non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim. All non-sexual violence convictions are included, providing they were dealt with on the same sentencing occasion as the Index sex offence(s).

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault causing bodily harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefiant in order to impair a victim)
- Grand Theft Person (“Grand Theft Person” is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item
- Kidnapping
- Murder

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- “PINS” Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a “PINS” petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was “Battery” or “Assault” and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

“Resisting Arrest” does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with “Assault a Peace/Police Officer” which would count as non-sexual violence.

Convictions that are coded as only “sexual”

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for “Sexual Battery” (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

Situations where points are scored both for a “Sexual Offence” and a Non-sexual Violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences

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would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" sexual offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	Charge	Conviction	Sentence
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation

If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")

However, were you to see the following:

Criminal Record for Joe Smith			
Date	Charge	Conviction	Sentence
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation

If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that would generally attract a sexual charge if the offender were not already under sanction and at the same time this same offender committed a violent act sufficient that it would generally attract a

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separate criminal charge for a violent offence, this offender can be scored for Index Non-sexual Violence when the accompanying sexual behaviour stands as the Index offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that both a sexual offence charge and a violent offence charge would be laid by police.

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Item # 4 – Prior Non-sexual Violence – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item “Prior Violent Offences”. The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for prior non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense. Sub-analyses of additional data sets confirm the relation of prior non-sexual violence and sexual recidivism (Hanson & Thornton, 2002).

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and the STATIC-99” in the Introduction section.

The Basic Rule: If the offender’s criminal record shows a separate conviction for a non-sexual violent offence prior to the Index Offence, you score the offender a “1” on this item. If the offender’s criminal record does not show a separate conviction for a non-sexual violent offence prior to their Index Offence, you score the offender a “0” on this item.

This item refers to convictions for non-sexual violence that are dealt with on a sentencing occasion that pre-dates the Index sex offence sentencing occasion. A separate non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim, but the offender must have been convicted for this non-sexual violent offence before the sentencing date for the Index offence. All non-sexual violence convictions are included, providing they were dealt with on a sentencing occasion prior to the Index sex offence.

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault Causing Bodily Harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupeficient in order to impair a victim)
- Grand Theft Person (“Grand Theft Person” is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item

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- Kidnapping
- Murder
- “PINS” Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a “PINS” petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was “Battery” or “Assault” and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

“Resisting Arrest” does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with “Assault a Peace/Police Officer” which would count as non-sexual violence.

Convictions that are coded as only “sexual”

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for “Sexual Battery” (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

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Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	Charge	Conviction	Sentence
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation
If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

However, were you to see the following:

Criminal Record for Joe Smith			
Date	Charge	Conviction	Sentence
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation
If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

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Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence has been revoked (returned to prison from conditional release in the community without trial) for a Non-sexual Violent offence that happened prior to the Index sexual offence (or Index Cluster) this revocation can stand as a conviction for Non-sexual Violence if that non-sexually violent act were sufficient that it would generally attract a separate criminal charge for a violent offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a violent offence charge would be laid by police.

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Item # 5 – Prior Sex Offences

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the “the best predictor of future behaviour, is past behaviour”. Andrews & Bonta (2003) state that having a criminal history is one of the “Big Four” predictors of future criminal behaviour. More recently, and specific to sexual offenders, a meta-analytic review of the literature indicates that having prior sex offences is a predictive factor for sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item “Prior Sex Offences”.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and the STATIC-99” in the Introduction section.

The Basic Rule: This is the only item in the STATIC-99 that is not scored on a simple “0” or “1” dichotomy. From the offender’s official criminal record, charges and convictions are summed separately. Charges that are not proceeded with or which do not result in a conviction are counted for this item. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Charges and convictions are summed separately and these totals are then transferred to the chart below.

Note: For this item, arrests for a sexual offence are counted as “charges”.

Prior Sexual Offences		
Charges	Convictions	Final Score
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

Whichever column, charges or convictions, gives the offender the “higher” final score is the column that determines the final score. Examples are given later in this section.

This item is based on officially recorded institutional rules violations, probation, parole and conditional release violations, charges, and convictions. Only institutional rule s violations, probation, parole, and conditional release violations, charges, and convictions of a sexual nature that occur **PRIOR** to the Index offence are included.

Do not count the Index Sexual Offence

The Index sexual offence charge(s) and conviction(s) are not counted, even when there are multiple offences and/or victims involved, and the offences occurred over a long period of time.

Count all sexual offences prior to the Index Offence

All pre-Index sexual charges and convictions are coded, even when they involve the same victim, or multiple counts of the same offence. For example, three charges for sexual assault involving the same victim would count as three separate charges. Remember, “counts count”. If an offender is charged with six counts of Invitation to Sexual Touching and is convicted of two counts you would score a “6” under

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charges and a "2" under convictions. Convictions do not take priority over charges. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Generally when an offender is arrested, they are initially charged with one or more criminal charges. However, these charges may change as the offender progresses through the criminal justice system. Occasionally, charges are dropped for a variety of legal reasons, or "pled down" to obtain a final plea bargain. As a basic rule, when calculating charges use the most recent charging document as your source of official charges.

In some cases a number of charges are laid by the police and as the court date approaches these charges are "pled-down" to fewer charges. When calculating charges and convictions you count the number of charges that go to court. In other cases an offender may be charged with a serious sexual offence (Aggravated Sexual Assault) and in the course of plea bargaining agrees to plead to two (or more) lesser charges (Assault). Once again, you count the charges that go to court and in a case like this the offender would score as having more charges than were originally laid by the police.

When scoring this item, counting charges and convictions, it is important to use an official criminal record. One incident can result in several charges or convictions. For example, an offender perpetrates a rape where he penetrates the victim once digitally and once with his penis while holding her in a room against her will. This may result in two convictions for Sexual Battery (Sexual Assault or equivalent) and one conviction of False Imprisonment (Forcible Confinement or equivalent). So long as it is known that the False Imprisonment was part of the sexual offence, the offender would be scored as having three (3) sexual charges, three (3) sexual convictions and an additional risk point for a conviction of Non-sexual Violence [the False Imprisonment] (Either "Index" {Item #3} or "Prior" {Item #4} as appropriate).

Probation, Parole and Conditional Release Violations

If an offender violates probation, parole, or conditional release with a sexual misbehaviour, these violations are counted as one charge.

If the offender violates probation or parole on more than one occasion, within a given probation or parole period, each separate occasion of a sexual misbehaviour violation is counted as one charge. For example, a parole violation for indecent exposure in July would count as one charge. If the offender had another parole violation in November for possession of child pornography, it would be coded as a second charge.

Multiple probation, parole and conditional release violations for sexual misbehaviours laid at the same time are coded as one charge. Even though the offender may have violated several conditions of parole during one parole period, it is only counted as one charge, even if there were multiple sex violations.

The following is an example of counting charges and convictions.

Criminal History for John Jack			
Date	Charges	Convictions	Sanction
July 1996	Lewd and Lascivious with Child (X3) Sodomy Oral Copulation Burglary	Lewd and Lascivious with Child (X3) Sodomy (dismissed) Oral Copulation (dismissed) Burglary (dismissed)	3 Years
May 2001	Sexual Assault on a Child		

To determine the number of Prior Sex Offences you first exclude the Index Offence. In the above case, the May 2001 charge of Sexual Assault on a Child is the Index Offence. After excluding the May 2001

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charge, you sum all remaining sexual offence charges. In this case you would sum, {Lewd and Lascivious with Child (X3), Sodomy (X1), and Oral Copulation (X1)} for a total of five (5) previous Sex Offence charges. You then sum the number of Prior Sex Offence convictions. In this case, there are three convictions for Lewd and Lascivious with Child. These two sums are then moved to the scoring chart shown below. The offender has five prior charges and three prior convictions for sexual offences. Looking at the chart below, the evaluator reads across the chart that indicates a final score for this item of two (2).

Prior Sexual Offences		
Charges	Convictions	Final Score
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

Charges and Convictions are counted separately – the column that gives the higher final score is the column that scores the item. It is possible to have six (6+) or more charges for a sexual offence and no convictions. Were this to happen, the offender's final score would be a three (3) for this item.

Acquittals

Acquittals count as charges and can be used as the Index Offence. The reason that acquittals are scored this way is based upon a research study completed in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Note: Acquittals do not count for Item #6 – Prior Sentencing Dates.

Adjudication Withheld

In some jurisdictions it is possible to attract a finding of "Adjudication Withheld", in which case the offender receives a probation-like period of supervision. This is counted as a conviction because a sentence was given.

Appeals

If an offender is convicted and the conviction is later overturned on appeal, code as one charge.

Arrests Count

In some instances, the offender has been arrested for a sexual offence, questioning takes place but no formal charges are filed. If the offender is arrested for a sexual offence and no formal charges are filed, a "1" is coded under charges, and a "0" is coded under convictions. If the offender is arrested and one or more formal charges are filed, the total number of charges is coded, even when no conviction ensues.

Coding "Crime Sprees"

Occasionally, an evaluator may have to score the STATIC-99 on an offender who has been caught at the end of a long line of offences. For example, over a 20-day period an offender breaks into 5 homes, each of which is the home of an elderly female living alone. One he rapes, one he attempts to rape but she gets away, and three more get away, one with a physical struggle (he grabs her wrists, tells her to shut up). The offender is subsequently charged with Sexual Assault, Attempted Sexual Assault, B & E with Intent (X2), and an Assault. The question is, do all the charges count as sexual offences, or just the two charges

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that are clearly sexual? Or, does the evaluator score the two sex charges as sex charges and the assault charges as Non-sexual Violence?

In cases such as this, code all 5 offences as sex offences - based upon the following thinking:

- 1) From the evidence presented this appears to be a "focused" crime spree – We assume the evaluator has little doubt what would have happened had the women not escaped or fought back.
- 2) Our opinion of "focus" is reinforced by the exclusive nature of the victim group, "elderly females". This offender appears to want something specific, and, the very short time span - 20 days – leads us to believe that the offender was feeling some sexual or psychological pressure to offend.
- 3) An attempted contact sex offence is scored as a contact sex offence for the purposes of the STATIC-99. Charges such as Attempted Sexual Assault (Rape) and Invitation to Sexual Touching are coded as contact sex offences due to their intention.
- 4) We recommend that if the evaluator "based on the balance of probabilities" (not "beyond a reasonable doubt") - is convinced that sex offences were about to occur that these actions can be counted as sex offences.
- 5) Please also read sub-section "Similar Fact Crimes" in the "Definitions" section.

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Consent Decree

Where applicable, "Consent Decree" counts as a conviction and a sentencing date.

Court Supervision

In some states it is possible to receive a sentence of Court Supervision, where the court provides some degree of minimal supervision for a period (one year), this is similar to probation and counts as a conviction.

Detection by Child Protection Officials

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction.

Extension of Sentence by a Parole Board (or similar)

In some jurisdictions Parole Boards (or similar) have the power to extend the maximum period of incarceration beyond that determined by the court. If an offender is assigned extra time, added to their sentence, by a parole board for a sexual criminal offence this counts as an additional sexual charge and conviction. The new additional period of incarceration must extend the total sentence and must be for sexual misbehaviour. This would not count as a sexual conviction if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is not presently possible in Canada.

Giving Alcohol to a Minor

The charge of Giving Alcohol to a Minor (or it's equivalent, drugs, alcohol, noxious substance, or other stupeficient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit a sexual offence. If there were evidence the alcohol (or substance) was given to the victim just prior to the sexual assault, this would count as a sexual offence. If

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there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Institutional Disciplinary Reports

Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female guard and masturbates in front of her, where she is the obvious and intended target of the act would count as a "charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell and is discovered by a female employee and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge" and could not stand as an Index offence. If you have insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and you do not score the occurrence.

An example of a behaviour that might get an inmate a disciplinary charge, but would not be used as a charge for scoring the STATIC-99, includes the inmate who writes an unwanted love letter to a female staff. The letter does not contain sexual content to the extent that the offender could be charged. Incidents of this nature do not count as a charge.

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Juvenile Offences

Both adult and juvenile charges and convictions count when scoring this item. In cases where a juvenile was not charged with a sexual offence but was moved to a secure or more secure residential placement as the result of a sexual incident, this counts as a charge and a conviction for the purposes of scoring Prior Sex Offences.

Juvenile Petitions

In some states, it is impossible for a juvenile offender to get a "conviction". Instead, the law uses the wording that a juvenile "petition is sustained" (or any such wording). For the purposes of scoring the STATIC-99 this is equivalent to an adult conviction because there are generally liberty-restricting consequences. Any of these local legal wordings can be construed as convictions if they would be convictions were that term available.

Military

For members of the military, a discharge from service as a result of sexual crimes would count as a charge and a conviction.

If an "undesirable discharge" were given to a member of the military as the direct result of a sexual offence, this would count as a sexual conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have, and the "undesirable discharge" is the equivalent to a bad job reference, the undesirable discharge would not count as a sexual offence or as a Sentencing Date (Item #6).

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Military Courts Martial

If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence, rather than a purely military offence {failure of duty}, these offences count, both charges and convictions, when scoring the STATIC-99. If the charges are sexual they count as sexual offences and if violent, they count as violent offences. These offences also count as sentencing dates (Item #6). Pure Military Offences {Conduct Unbecoming, Insubordination, Not following a lawful order, Dereliction of Duty, etc.} do not count when scoring the STATIC-99.

Noxious Substance

The charge of Giving A Noxious Substance (or it's equivalent, drugs, alcohol, or other stupeficient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit the sexual offence. If there were evidence the substance was given to the victim just prior to the sexual assault, this would count as a sexual offence. If there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Not Guilty

Being found “Not Guilty” can count as charges and can be used as the Index Offence. Note: This is not the case for Item #6, “Prior Sentencing Dates”, where being found “Not Guilty” is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Official Diversions

Official diversions are scored as equivalent to a charge and a conviction (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Peace Bonds, Judicial Restraint Orders and “810” Orders

In some instances a Peace Bond/Judicial Restraint Order/810 Orders are placed on an offender when sexual charges are dropped or dismissed or when an offender leaves jail or prison. Orders of this nature, primarily preventative, **are not counted** as charges or convictions for the purposes of scoring the STATIC-99.

“PINS” Petition (Person in need of supervision)

There have been cases where a juvenile has been removed from his home by judicial action under a “PINS” petition due to sexual aggression. This would count as a charge and a conviction for a sexual offence.

Priests and Ministers

For members of a religious group (Clergy and similar professions) some disciplinary or administrative actions within their own organization can count as a charge and a conviction. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of an official sanction would be removal from a parish for a priest or minister under the following circumstances.

If the receiving institution knows they are being sent a sex offender and considers it part of their mandate to address the offender's problem or attempt to help, this would function as equivalent to being sent to a

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correctional institution and would count as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Allegations that result in a "within-organization" disciplinary move or a move designed to explicitly address the offenders problems would be counted as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Being transferred to a new parish or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a priest/minister is transferred between parishes due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Prison Misconducts for Sexual Misbehaviours Count as One Charge per Sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

For Example, Post-Index Sexual Offences: Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered separate crimes. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.

For Example, Post-Index Violent Offences: Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Probation before Judgement

Where applicable, "Probation before judgment" counts as a charge, conviction, and a sentencing date.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence, this revocation of conditional release would

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count as both a Prior Sex Offence "charge" and a Prior Sex Offence "conviction". Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police. Revocations for violations of conditional release conditions, so called "technicals" (drinking violations, failure to report, being in the presence of minors, being in the possession of legally obtained pornography) are insufficient to stand as Prior Sentencing Dates.

RRASOR and STATIC-99 – Differences in Scoring

Historical offences are scored differently between the RRASOR and the STATIC-99. On the RRASOR, if the offender is charged or convicted of historical offences committed prior to the Index Offence, these are counted as Prior Sexual Offences (User Report, The Development of a Brief Actuarial Risk Scale for Sexual Offense Recidivism 1997-04, Pg. 27, end of paragraph titled Prior Sexual Offences). This is not the case for the STATIC-99. For the STATIC-99, if the offender is charged or convicted of historical offences after the offender is charged or convicted of a more recent offence, these offences are to be considered part of the Index Offence (pseudo-recidivism) – forming an "Index Cluster".

Suspended Sentences

Suspended sentences should be treated as equivalent to a charge and a conviction.

Teachers

Being transferred to a new school or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a teacher is transferred between schools due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

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Item # 6 Prior Sentencing Dates

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thomdyke stated that the “the best predictor of future behaviour, is past behaviour”. Andrews & Bonta (2003) state that having a criminal history is one of the “Big Four” predictors of future criminal behaviour. Prior Sentencing Dates is a convenient method of coding the length of the criminal record.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and the STATIC-99 in the Introduction section.

The Basic Rule: If the offender’s criminal record indicates four or more separate sentencing dates prior to the Index Offence, the offender is scored a “1” on this item. If the offender’s criminal record indicates three or fewer separate sentencing dates prior to the Index Offence, the offender scores a “0” on this item.

Count the number of distinct occasions on which the offender was sentenced for criminal offences. The number of charges/convictions does not matter, only the number of sentencing dates. Court appearances that resulted in complete acquittal are not counted, nor are convictions overturned over on appeal. The Index sentencing date is not included when counting up the sentencing dates.

If the offender is on some form of conditional release (parole/probation/bail etc.) “technical” violations do not count as new sentencing dates. For example, if an offender had a condition prohibiting drinking alcohol, a breach for this would not be counted as a new sentencing date. To be counted as a new sentencing date, the breach of conditions would have to be a new offence for which the offender could be charged if he were not already under criminal justice sanction.

Institutional rule violations do not count, even when the offence was for behaviour that could have resulted in a legal sanction if the offender had not already been incarcerated.

Count:

- Juvenile offences count (if you know about them – please see section on the use of self-report in the Introduction)
- Where applicable “Probation before judgment” counts as a conviction and a sentencing date
- Where applicable “Consent Decree” counts as a conviction and a sentencing date
- Suspended Sentences count as a sentencing date

Do Not Count:

- Stayed offences do not count as sentencing dates
- Institutional Disciplinary Actions/Reports do not count as sentencing dates

The offences must be of a minimum level of seriousness. The offences need not result in a serious sanction (the offender could have been fined), but the offence must be serious enough to permit a sentence of community supervision or custody/incarceration (as a juvenile or adult). Driving offences generally do not count, unless they are associated with serious penalties, such as driving while intoxicated or reckless driving causing death or injury.

Generally, most offences that would be recorded on an official criminal history would count – but the statute, as written in the jurisdiction where the offence took place, must allow for the imposition of a custodial sentence or a period of community supervision (adult or juvenile). Only truly trivial offences

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are excluded; those where it is impossible to get a period of incarceration or community supervision. Offences that can **only** result in fines do not count.

Sentences for historical offences received while the offender is incarcerated for a more recent offence (pseudo-recidivism), are not counted. For two offences to be considered separate offences, the second offence must have been committed after the offender was sanctioned for the first offence.

Offence convictions occurring after the Index offence cannot be counted on this item.

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Diversionsary Adjudication

If a person commits a criminal offence as a juvenile or as an adult and receives a diversionsary adjudication, this counts as a sentencing date (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Extension of Sentence by a Parole Board (or similar)

If an offender is assigned extra time added to their sentence by a parole board for a criminal offence this counts as an additional sentencing date if the new time extended the total sentence. This would not count as a sentencing date if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is presently not possible in Canada.

Failure to Appear

If an offender fails to appear for sentencing, this is not counted as a sentencing date. Only the final sentencing for the charge for which the offender missed the sentencing date is counted as a sentencing date.

Failure to Register as a Sexual Offender

If an offender receives a formal legal sanction, having been convicted of Failing to Register as a Sexual Offender, this conviction would count as a sentencing date. However, it should be noted that charges and convictions for Failure to Register as a Sexual Offender are not counted as sexual offences.

Juvenile Extension of Detention

In some states it is possible for a juvenile to be sentenced to a Detention/Treatment facility. At the end of that term of incarceration it is possible to extend the period of detention. Even though a Judge and a prosecutor are present at the proceedings, because there has been no new crime or charges/convictions, the extension of the original order is not considered a sentencing date.

Juvenile Offences

Both adult and juvenile convictions count in this item. In the case where a juvenile is not charged with a sexual or violent offence but is moved to a secure or more secure residential placement as the result of a sexual or violent incident, this counts as a sentencing date for the purposes of scoring Prior Sentencing Dates.

Military

If an "undesirable discharge" is given to a member of the military as the direct result of criminal behaviour (something that would have attracted a criminal charge were the offender not in the military),

EXHIBIT Q-II

DEFINITIONS

this would count as a sentencing date. However, if the member left the military when he normally would have and the “undesirable discharge” is the equivalent to a bad job reference then the criminal behaviour would not count as a Sentencing Date.

Military Courts Martial

If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence rather than a purely military offence {failure of duty} this counts as a sentencing date. Pure Military Offences {Insubordination, Not Following a Lawful Order, Dereliction of Duty, Conduct Unbecoming, etc.} do not count as Prior Sentencing Dates.

Not Guilty

Being found “Not Guilty” is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a sentencing date.

Post-Index Offences

Post-Index offences are not counted as sentencing occasions for the STATIC-99.

Revocation of Conditional Release for “Lifers”, Dangerous Offenders, and Others with Indeterminate Sentences

If a “lifer”, Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for criminal behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a criminal offence, this revocation of conditional release would count as a Prior Sentencing Date. Note: the evaluator should be sure that were this offender not already under sanction that a criminal charge would be laid by police and that a conviction would be highly likely. Revocations for violations of conditional release conditions, so called “technicals”, (drinking violations, failure to report, being in the presence of minors) are insufficient to stand as Prior Sentencing Dates.

Note: for this item there have been some changes to the rules from previous versions. Some rules were originally written to apply to a specific jurisdiction. Over time, and in consultation with other jurisdictions the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item.

Suspended Sentences

Suspended sentences count as a sentencing date.

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Item # 7 - Any Convictions for Non-contact Sex Offences

The Basic Principle: Offenders with paraphilic interests are at increased risk for sexual recidivism. For example, most individuals have little interest in exposing their genitals to strangers or stealing underwear. Offenders who engage in these types of behaviours are more likely to have problems conforming their sexual behaviour to conventional standards than offenders who have no interest in paraphilic activities.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record indicates a separate conviction for a non-contact sexual offence, the offender is scored a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-contact sexual offence, the offender is scored a "0" on this item.

This category requires a conviction for a non-contact sexual offence such as:

- Exhibitionism
- Possessing obscene material
- Obscene telephone calls
- Voyeurism
- Exposure
- Elicit sexual use of the Internet
- Sexual Harassment (Unwanted sexual talk)
- In certain jurisdictions "Criminal Trespass" or "Trespass by Night" may be used as a charge for voyeurism – these would also count

The criteria for non-contact sexual offences are strict: the offender must have been convicted, and the offence must indicate non-contact sexual misbehaviour. The "Index" offence(s) may include a conviction for a non-contact sexual offence and this offence can count in this category. The most obvious example of this is where an offender is charged and convicted of Exposure for "mooning" a woman from a car window. This would result in a coding of "1" for this item.

There are some cases, however, where the legal charge does not reflect the sexual nature of the offence. Take, for example, the same situation where an offender is charged with Exposure for "mooning" a woman from a car window, but the case is pled-down to, and the offender is finally convicted of Disorderly Conduct. In cases like this, while this item requires that there be a conviction, the coding of a non-contact sexual offence can be based on the behaviour that occurred in cases where the name of the offence is ambiguous.

Charges and arrests do not count, nor do self-reported offences. Sexual offences in which the offender intended to make contact with the victim (but did not succeed) would be considered attempted contact offences and are coded as contact offences (e.g., invitation to sexual touching, attempted rape). Some offences may include elements of both contact and non-contact offences, for example, sexual talk on Internet - arranging to meet the child victim. In this case, the conviction would count as a non-contact sex offence.

Attempted Contact Offences

Invitation to Sexual Touching, Attempted Rape and other such "attempted" contact offences are counted as "Contact" offences due to their intention.

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Internet Crimes

Internet crimes were not recorded in the original samples for the STATIC-99 because the Internet had not advanced to the point where it was commonly available. As a result, determining how to score Internet crimes on the STATIC-99 requires interpretation beyond the available data. Internet crimes could be considered in two different ways. First, they could be considered a form of attempted sexual contact, where the wrongfulness of the behaviour is determined by what is about to happen. Secondly, they could be considered an inappropriate act in themselves, akin to indecent telephone calls (using an older technology). We believe that luring children over the Internet does not represent a fundamentally new type of crime but is best understood as a modern expression of traditional crimes. We consider communicating with children over the Internet for sexual purposes to be an inappropriate and socially harmful act in itself and, therefore, classify these acts with their historical precursors, such as indecent/obscene telephone calls, in the category of non-contact sexual offences.

Pimping and Prostitution Related Offences

Pimping and other prostitution related offences (soliciting a prostitute, promoting prostitution, soliciting for the purposes of prostitution, living off the avails of prostitution) do not count as non-contact sexual offences. (Note: prostitution was not illegal in England during the study period, though soliciting was).

Plea Bargains

Non-contact sexual offence convictions do not count if the non-contact offence charge arose as the result of a plea bargain. Situations such as this may appear in the criminal record where charges for a contact offence are dropped and the non-contact charges appear simultaneously with a guilty plea. An occurrence of this nature would be considered a contact offence and scored as such.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a Non-contact Sexual Offence that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a Non-contact Sexual Offence, this revocation of conditional release would count as a conviction for a Non-contact Sexual Offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a non-contact sexual offence charge would be laid by police.

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Items #8, #9, & # 10 – The Three Victim Questions

The following three items concern victim characteristics: Unrelated Victims, Stranger Victims, and Male Victims. For these three items the scoring is based on all available credible information, including self-report, victim accounts, and collateral contacts. The items concerning victim characteristics, however, only apply to sex offences in which the victims were children or non-consenting adults (Category "A" sex offences). Do not score victim information from non-sexual offences or from sex offences related to prostitution/pandering, possession of child pornography, and public sex with consenting adults (Category "B" sex offences). Do not score victim information on sexual offences against animals (Bestiality and similar charges).

In addition to all of the "everyday" sexual offences (Sexual Assault, Rape, Invitation to Sexual Touching, Buggery) you also score victim information on the following charges:

- Illegal use of a Minor in Nudity-oriented Material/Performance
- Importuning (Soliciting for Immoral Purposes)
- Indecent Exposure (When a specific victim has been identified)
- Sexually Harassing Telephone Calls
- Voyeurism (When a specific victim has been identified)

You do not score Victim Information on the following charges:

- Compelling Acceptance of Objectionable Material
- Deception to Obtain Matter Harmful to Juveniles
- Disseminating/Displaying Matter Harmful to Juveniles
- Offences against animals
- Pandering Obscenity
- Pandering Obscenity involving a Minor
- Pandering Sexually-Oriented Material involving a Minor
- Prostitution related offences

"Accidental Victims"

Occasionally there are "Accidental Victims" to a sexual offence. A recent example of this occurred when an offender was raping a woman in her living room. The noise awoke the victim's four-year-old son. The son wandered into the living room and observed the rape in progress. The victim instructed her son to return to his bedroom and he complied at once. The perpetrator was subsequently charged and convicted of "Lewd and Lascivious Act on a Minor" in addition to the rape. In court the offender pleaded to both charges. In this case, the four-year-old boy would not count as a victim as there was no intention to commit a sexual offence against him. He would not count in any of the three victim items regardless of the conviction in court.

A common example of an accidental victim occurs when a person in the course of his/her daily life or profession happens across a sexual offence. Examples include police officers, park wardens, janitors, and floor walkers who observe a sexual offence in the course of their duties. If a male officer were to observe an exhibitionist exposing himself to a female, the offender would not be given the point for "Male Victim" as there was no intention to expose before the male officer. The evaluator would not give the offender a point for "male victim" unless the offender specifically chose a male officer to expose himself to. In the same vein, a floor walker or janitor who observes an offender masturbating while looking at a customer in a store would not be counted as a "stranger victim" or an "unrelated victim". In short there has to be some intention to offend against that person for that person to be a victim. Merely

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stumbling upon a crime scene does not make the observer a victim regardless of how repugnant the observer finds the behaviour.

Acquitted or Found Not Guilty

The criteria for coding victim information is "all credible information". In this type of situation it is important to distinguish between the court's stringent standard of determining guilt (Beyond a reasonable doubt) and "What is most likely to be true" – a balance of probabilities. When the court sticks to the "Beyond a reasonable doubt" criteria they are not concluding that someone did not do the crime, just that the evidence was insufficient to be certain that they did it. The risk assessment perspective is guided by: "On the balance of probabilities, what is most likely to be true?" If the assessor, "On the balance of probabilities" feels that the offence more likely than not took place the victims may be counted.

For the assessment, therefore, it may be necessary to review the cases in which the offender was acquitted or found "Not Guilty" and make an independent determination of whether it is more likely than not that there were actual victims. If, in the evaluator's opinion, it were more likely that there was no sexual offence the evaluator would not count the victim information. In the resulting report the evaluator would generally include a score with the contentious victim information included and a score without this victim information included, showing how it effects the risk assessment both ways.

This decision to score acquittals and not guilty in this manner is buttressed by a research study in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Child Pornography

Victims portrayed in child pornography are not scored as victims for the purposes of the STATIC-99. They do not count as non-familial, stranger, nor male victims. Only real, live, human victims count. If your offender is a child pornography maker and a real live child was used to create pornography by your offender or your offender was present when pornography was created with a real live child, this child is a victim and should be scored as such on the STATIC-99 victim questions. (Note: manipulating pre-existing images to make child pornography [either digitally or photographically] is not sufficient – a real child must be present) Making child pornography with a real child victim counts as a "Category A" offence and, hence, with even a single charge of this nature, the STATIC-99 is appropriate to use.

The evaluator may, of course, in another section of the report make reference to the apparent preferences demonstrated in the pornography belonging to the offender.

Conviction, But No Victim

For the purposes of the STATIC-99, consensual sexual behaviour that is prohibited by statute does not create victims. This is the thinking behind Category "B" offences. Examples of this are prostitution offences and public toileting (Please see "Category "A" and Category "B" offences" in the Introduction section for a further discussion of this issue). Under some circumstances it is possible that in spite of a conviction for a sexual offence the evaluator may conclude that there are no real victims. An example of this could be where a boy (age 16 years) is convicted of Statutory Rape of his 15-year-old boyfriend (Assume age of consent in this jurisdiction to be 16 years of age). The younger boy tells the police that the sexual contact was consensual and the police report informs the evaluator that outraged parents were the complainants in the case. In a scenario like this, the younger boy would not be scored as a victim, the conviction notwithstanding.

Credible Information

Credible sources of information would include, but are not limited to, police reports, child welfare reports, victim impact statements or discussions with victims, collateral contacts and offender self-report.

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If the information is credible (Children's Protective Association, victim impact statements, police reports) you may use this information to code the three victim questions, even if the offender has never been arrested or charged for those offences.

Exhibitionism

In cases of exhibitionism, the three victim items may be scored if there was a targeted victim, and the evaluator is confident that they know before whom the offender was trying to exhibit. If the offender exhibits before a mixed group, males and females, do not score "Male Victim" unless there is reason to believe that the offender was exhibiting specifically for the males in the group. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

Example: If a man exposed to a school bus of children he had never seen before (both genders), the evaluator would score this offender one risk point for Unrelated Victim, one risk point for Stranger Victim, but would not score a risk point for Male Victim unless there was evidence the offender was specifically targeting the boys on the bus.

In cases where there is no sexual context (i.e., the psychotic street person who takes a shower in the town fountain) there are no victims regardless of how offended they might be or how many people witnessed the event.

Internet Victims and Intention

If an offender provides pornographic material over the Internet, the intent of the communication is important. In reality a policeman may be on the other end of the net in a "sting" operation. If the offender thought he was providing pornography to a child, even though he sent it to a police officer, the victim information is counted as if a child received it. In addition, when offenders attempt, over the Internet, to contact face-to-face a "boy or girl" they have contacted over the Internet the victim information counts as the intended victim, even if they only "met" a policeman.

Intention is important. In a case where a child was pretending to be an adult and an adult "shared" pornography with that person in the honest belief that they were (legally) sharing it with another adult there would not be a victim.

Polygraph Information

Victim information derived solely from polygraph examinations is not used to score the STATIC-99 unless it can be corroborated by outside sources or the offender provides sufficient information to support a new criminal investigation.

Prowl by Night - Voyeurism

For these types of offences the evaluator should score specific identifiable victims. However, assume only female victims unless you have evidence to suggest that the offender was targeting males.

Sexual Offences Against Animals

While the sexual assault of animals counts as a sexual offence, animals do not count as victims. This category is restricted to human victims. It makes no difference whether the animal was a member of the family or whether it was a male animal or a stranger animal.

Sex with Dead Bodies

If an offender has sexual contact with dead bodies these people do count as victims. The evaluator should score the three victim questions based upon the degree of pre-death relationship between the perpetrator and the victim.

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Stayed Charges

Victim information obtained from stayed charges should be counted.

Victims Not at Home

If an offender breaks into houses, (regardless of whether or not the victims are there to witness the offence) to commit a sexual offence, such as masturbating on or stealing their undergarments or does some other sexual offence – victims of this nature are considered victims for the purposes of the STATIC-99. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

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Item # 8 - Any Unrelated Victims?

The Basic Principle: Research indicates that offenders who offend only against family members recidivate at a lower rate compared to those who have victims outside of their immediate family (Harris & Hanson, Unpublished manuscript). Having victims outside the immediate family is empirically related to a corresponding increase in risk.

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in the previous section "Items #8, #9, & #10 -The Three Victim Questions".

The Basic Rule: If the offender has victims of sexual offences outside their immediate family, score the offender a "1" on this item. If the offender's victims of sexual offences are all within the immediate family score the offender a "0" on this item.

A related victim is one where the relationship is sufficiently close that marriage would normally be prohibited, such as parent, brother, sister, uncle, grandparent, stepbrother, and stepsister. Spouses (married and common-law) are also considered related. When considering whether step-relations are related or not, consider the nature and the length of the pre-existing relationship between the offender and the victim before the offending started. Step-relationships lasting less than two years would be considered unrelated (e.g., step-cousins, stepchildren). Adult stepchildren would be considered related if they had lived for two years in a child-parent relationship with the offender.

Time and Jurisdiction Concerns

A difficulty in scoring this item is that the law concerning who you can marry is different across jurisdictions and across time periods within jurisdictions. For example, prior to 1998, in Ontario, there were 17 relations a man could not marry, including such oddities as "nephew's wife" and "wife's grandmother". In 1998 the law changed and there are now only 5 categories of people that you cannot marry in Ontario: grandmother, mother, daughter, sister, and granddaughter (full, half, and adopted). Hence, if a man assaulted his niece in 1997 he would not have an unrelated victim but if he committed the same crime in 1998 he would technically be assaulting an unrelated victim. We doubt very much the change in law would affect the man's choice of victim and his resulting risk of re-offence. As a result the following rules have been adopted.

People who are seen as related for the purposes of scoring the STATIC-99

1. Legally married spouses
2. Any live-in lovers of over two years duration. (Girlfriends/Boyfriends become related once they have lived with the offender as a lover for two years)
3. Anyone too closely related to marry (by jurisdiction of residence of the perpetrator)
4. The following relations whether or not marriage is permitted in the jurisdiction of residence of the perpetrator:
 - Aunt
 - Brother's wife
 - Common-law wife/Ex common-law wife (lived together for 2 years)
 - Daughter
 - Father's wife/step-mother
 - First cousins
 - Granddaughter
 - Grandfather
 - Grandfather's wife

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- Grandmother
- Grandson's wife
- Mother
- Niece/Nephew
- Sister
- Son's wife
- Stepdaughter/Stepson (Must have more than two years living together before abuse begins)
- Wife and Ex-wife
- Wife's daughter/step-daughter
- Wife's granddaughter
- Wife's grandmother
- Wife's mother

The relationships can be full, half, adopted, or common-law (two years living in these family relationships). The mirror relationships of the opposite gender would also count as related (e.g., brother, sons, nephews, granddaughter's husband).

People who are seen as unrelated for the purposes of scoring the STATIC-99

- Any step-relations where the relationship lasted less than two years
- Daughter of live-in girlfriend/Son of live-in girlfriend (less than two years living together before abuse begins)
- Nephew's wife
- Second cousins
- Wife's aunt

Decisions about borderline cases (e.g., brother's wife) should be guided by a consideration of the psychological relationship existing prior to the sexual assault. If an offender has been living with the victim in a family/paternal/fraternal role for two years prior to the onset of abuse, the victim and the offender would be considered related.

Becoming "Unrelated"

If an offender who was given up for adoption (removed etc.) at birth (Mother and child having no contact since birth or shortly after) and the Mother (Sister, Brother etc.) is a complete stranger that the offender would not recognize (facial recognition) as their family, these biological family members could count as Unrelated Victims. This would only happen if the offender did not know they were offending against a family member.

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DEFINITIONS

Item # 9 - Any Stranger Victims?

The Basic Principle: Research shows that having a stranger victim is related to sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item “Victim Stranger (versus acquaintance)”.

Information Required to Score this Item: Use all credible information to score this item. “Credible Information” is defined in the section “Items #8, #9, & #10 - The Three Victim Questions”.

The Basic Rule: If the offender has victims of sexual offences who were strangers at the time of the offence, score the offender a “1” on this item. If the offender’s victims of sexual offences were all known to the offender for at least 24 hours prior to the offence, score the offender a “0” on this item. If the offender has a “stranger” victim, Item #8, “Any Unrelated Victims”, is generally scored as well.

A victim is considered a stranger if the victim did not know the offender 24 hours before the offence. Victims contacted over the Internet are not normally considered strangers unless a meeting was planned for a time less than 24 hours after initial communication.

For Stranger victims, the offender can either not know the victim or it can be the victim not knowing the offender. In the first case, where the offender does not know the victim, (the most common case), the offender chooses someone who they are relatively sure will not be able to identify them (or they just do not care) and offends against a stranger. However, there have been examples where the offender “should” have known the victim but just did not recognize them. This occurred in one case where the perpetrator and the victim had gone to school together but the perpetrator did not recognize the victim as someone they knew. In cases like this, the victim would still be a stranger victim as the offender’s intention was to attack a stranger.

The criteria for being a stranger are very high. Even a slight degree of knowing is enough for a victim not to be a stranger. If the victim knows the offender at all for more than 24 hours, the victim is not a stranger. For example, if the victim was a convenience store clerk and they recognized the perpetrator as someone who had been in on several occasions to buy cigarettes, the victim would no longer be a stranger victim. If a child victim can say they recognize the offender from around the neighborhood and the perpetrator has said “Hi” to them on occasion, the child is no longer a stranger victim. The evaluator must determine whether the victim “knew” the offender twenty-four hours (24) before the assault took place. The criteria for “know/knew” is quite low but does involve some level of interaction. They need not know each other’s names or addresses. However, simply knowing of someone but never having interacted with them would not be enough for the victim to count as “known”.

The Reverse Case

In cases of “stalking” or stalking-like behaviours the offender may know a great deal about the victim and their habits. However, if the victim does not know the offender when they attack this still qualifies as a stranger victim.

The “24 hour” rule also works in reverse – there have been cases where a performer assaulted a fan the first time they met. In this case, the victim (the fan) had “known of” the performer for years, but the performer (the perpetrator) had not known the fan for 24 hours. Hence, in cases such as this, the victim would count as a stranger because the perpetrator had not known the victim for 24 hours prior to the offence.

Internet, E-mail, and Telephone

Sometimes offenders attempt to access or lure victims over the Internet. This is a special case and the threshold for not being a stranger victim is quite low. If the offender and the victim have communicated over the Internet (e-mail, or telephone) for more than twenty-four hours (24 hours) before the initial face-

EXHIBIT Q-II

DEFINITIONS

to-face meeting, the victim (child or adult) is not a stranger victim. To be clear, this means that if an offender contacts, for the first time, a victim at 8 p.m. on a Wednesday night, their first face-to-face meeting must start before 8 p.m. on Thursday night. If this meeting starts before 8 p.m., and they remain in direct contact, the sexual assault might not start until midnight – as long as the sexual assault is still within the first face-to-face meeting – this midnight sexual assault would still count as a stranger assault. If they chat back and forth for longer than 24 hours, the victim can no longer be considered a stranger victim for the purposes of scoring the STATIC-99.

It is possible in certain jurisdictions to perpetrate a sexual offence over the Internet, by telephone or e-mail and never be in physical proximity to the victim. If the offender transmits sexually explicit/objectionable materials over the Internet within 24 hours of first contact, this can count as a stranger victim; once again the “24 hour rule” applies. However, if the perpetrator and the victim have been in communication for more than 24 hours prior to the sending of the indecent material or the starting of indecent talk on the telephone then the victim can no longer be considered a stranger.

Becoming a “Stranger” Again

It is possible for someone who the offender had met briefly before to become a stranger again. It is possible for the offender to have met a victim but to have forgotten the victim completely (over a period of years). If the offender believed he was assaulting a stranger, the victim can be counted as a stranger victim. This occurred when an offender returned after many years absence to his small hometown and assaulted a female he thought he did not know, not realizing that they had gone to the same school.

EXHIBIT Q-II

DEFINITIONS

Item # 10 - Any Male Victims?

The Basic Principle: Research shows that offenders who have offended against male children or male adults recidivate at a higher rate compared to those who do not have male victims. Having male victims is correlated with measures of sexual deviance and is seen as an indication of increased sexual deviance; see Hanson and Bussière (1998), Table 1.

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in section "Items #8, #9, & #10 - The Three Victim Questions".

The Basic Rule: If the offender has male victims of sexual offences, non-consenting adults or child victims, score the offender a "1" on this item. If the offender's victims of sexual offences are all female, score the offender a "0" on this item.

Included in this category are all sexual offences involving male victims. Possession of child pornography involving boys, however, does not count. Exhibitionism to a mixed group of children (girls and boys) would not count unless there was clear evidence the offender was targeting the boys. Contacting male victims over the Internet does count.

If an offender assaults a transvestite in the mistaken belief the victim is a female (may be wearing female clothing) do not score the transvestite as a male victim. If it is certain the offender knew he was assaulting a male before the assault, score a male victim.

In some cases a sexual offender may beat-up or contain (lock in a car trunk) another male in order to sexually assault the male's date (wife, etc.). If the perpetrator simply assaults the male (non-sexual) in order to access the female you do not count him as a male victim on the STATIC-99. However, if the perpetrator involves the male in the sexual offence, such as tying him up and making him watch the rape (forced voyeuristic activity), the assault upon the male victim would count as a sexual offence and the male victim would count on the STATIC-99.

EXHIBIT Q-III

**NOTICE OF RIGHTS TO FILE A WRITTEN OBJECTION TO SCORE ON STATIC-99 FOR
PREDATORY SEX OFFENDER DESIGNATION**

You have been provided with a copy of the STATIC-99 that the Board of Parole Board and Post-Prison Supervision (hereafter "the Board) will use to decide whether you should be designated a predatory sex offender pursuant to ORS 181.585, et seq. If you are designated a predatory sex offender, you may be subject to community notification.

The Board will designate you a predatory sex offender if you score four or more points on the STATIC-99. You have a right to inform the Board in writing of the reasons you believe the score is wrong. You must fill out a form entitled "Written Objections to score on the STATIC-99 for Predatory Sex Offender Designation." This form is available through your counselor or supervising officer. You must clearly state on the form which risk factors you think were scored incorrectly and why. You must return the form to your counselor or supervising officer within three days of when you receive the form. Your counselor or supervising officer will send the form to the Board. The Board will consider your objections prior to making a predatory sex offender designation.

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

Inmate's Name (please print)

SID#

Inmate's Signature

Date

My score on the STATIC-99 is four or more points and:

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

_____ I do not wish to submit a written objection.

Witness

Date

Inmate's release date _____

EXHIBIT Q-IV

WRITTEN OBJECTIONS TO SCORE ON THE STATIC-99 FOR PREDATORY SEX OFFENDER DESIGNATION

Inmate _____ SID# _____

Institution _____

Current release date _____

Date inmate was provided with this form _____

1. Please state which of the risk factors on the STATIC-99 you believe were not scored correctly.

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

A COPY OF YOUR STATIC-99 WORKSHEET MUST BE ATTACHED TO THIS FORM.

Inmate's Signature

Date

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 01-05-2004 by the
Date prior to or same as filing date.

Oregon Board of Parole and Post-Prison Supervision

Agency and Division

Chapter 255

Administrative Rules Chapter Number

Michael R. Washington

Rules Coordinator

503-945-9009

Telephone

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621

Address

to become effective 06-14-2004 Rulemaking Notice was published in the February 2004 *Oregon Bulletin*.**
Date upon filing or later Month and Year

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT:

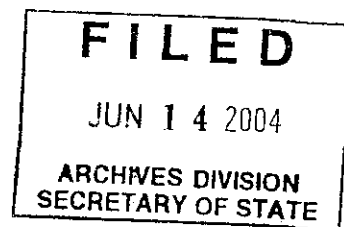
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 255-080-0005

REPEAL:

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

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



RECEIVED
JUN 17 PM 1 59
BOARD OF PAROLE

ORS 144.050, 144.140

Stat. Auth.: ORS

None

Other Authority

None

Stats. Implemented: ORS

RULE SUMMARY

The amendment is necessary to establish the administrative review request process as it specifically relates to Orders of Supervision

Michael R. Washington

Authorized Signer

06-14-2004

Date

Michael R. Washington

Printed name

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

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

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

Agency and Division:

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140

Other Authority: None

Statutes Implemented: ORS: None

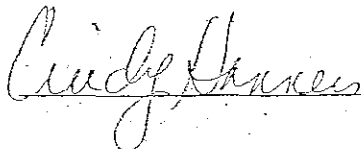
Need for the Rule(s): The amendment is necessary to establish the administrative review request process as it specifically relates to Orders of Supervision.

Documents Relied Upon: None

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

Administrative Rule Advisory Committee consulted?: No.

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



01-14-04
Signer and Date

Cindy Hanners

Printed name

DIVISION 80

ADMINISTRATIVE APPEAL

255-080-0001

Exhaustion of Remedies

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

Statutory Authority: ORS 144.335

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

255-080-0005

Procedure for Administrative Review

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

Statutory Authority: ORS 144.335

History: (2/1/79; 11/25/81, temporary; 5/19/82; 5/31/85; 5/19/88; 12/6/88; 11/1/89; 2/20/91; 10/9/92, 03/14/97, 06-09-00, 06-14-04)

255-080-0010

Criteria for Granting a Review

The criteria for granting a review are:

- (1) The Board action is not supported by evidence in the record; or
- (2) Pertinent information was available at the time of the hearing which, through no fault of the inmate/offender, was not considered; or
- (3) Pertinent information was not available at the time of the hearing, e.g., information concerning convictions from other jurisdictions; or
- (4) The action of the Board is inconsistent with its rules or policies and the inconsistency is not explained; or
- (5) The action of the Board is in violation of constitutional or statutory provisions or is a misinterpretation of those provisions.
- (6) The action of the Board is outside its statutory grant of discretion.

Statutory Authority: ORS 144.335, 183.482(8)

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

255-080-0011

Limitations on Requests for Administrative Review

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

- (1) Findings of aggravation when the Board has set the prison term within or below the matrix range;
- (2) Findings of aggravation when the Board has not overridden a judicial minimum and the prison term has been set equal to the judicial minimum;
- (3) Matters which have previously been appealed and decided on the merits by either the Board or the appellate court(s);
- (4) Board orders that were mailed more than 45 days prior to the request for review;
- (5) Subject matter of a hearing or review and/or Board order other than the Board order being appealed;
- (6) Matters that will not change the parole release date or conditions or length of supervision;
- (7) Board orders that are not final;
- (8) Errors previously corrected;
- (9) Order which sustains a minimum term and the inmate/offender does not contest the crime severity rating and history risk score;

- (10) Order which denies, grants or grants in part an inmate/offender's request for a prison term reduction based upon outstanding reformation under ORS 144.122;
- (11) Order which refers an inmate/offender for psychological evaluation;
- (12) Order which postpones an inmate/offender's release date because of:
 - (a) a Board finding of dangerousness under ORS 144.125(3) and OAR 255-060-0012
 - (b) an inmate/offender's refusal to submit to a psychological evaluation;
- (13) Order which postpones an inmate/offender's release date because of serious misconduct during confinement; or
- (14) Order which denies an inmate/offender's request under ORS 144.228(1) for an early parole consideration hearing.
- (15) Order which sets an initial release date under ORS 144.120, except if inmate/offender contests the crime severity rating, the history risk score or aggravating factors found by the Board under Board rules;
- (16) Order which sets a date for a parole consideration hearing under ORS 144.228;
- (17) Order which sets a release date or declines to set a release date after a parole consideration hearing under ORS 144.228.

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

255-080-0012
Administrative Review Hearing Procedure

- (1) If the Board or its designee determines that the request for review is consistent with the criteria in OAR 255-080-0010 and the limits of 255-080-0011, the Board may open the case for review.
- (2) The Board may open a case for reconsideration of a finding without receiving a request, without regard to time limits, and without opening all findings for review and appeal.
- (3) The Board may conduct the review using the following methods:
 - (a) administrative file pass, with the number of concurring votes required by OAR 255-030-0015; or
 - (b) other administrative action by the Board or its designee, e.g., to correct errors in the history risk score, crime category, credit for time served, inoperative time or adjusted commitment dates; or
 - (c) administrative hearing, in cases where review would cause an adverse result for the prisoner.

(4) When the Board schedules an inmate/offender for an administrative review hearing and the inmate/offender has not received the Hearing Packet, the Board may proceed with the hearing, if the inmate/offender waives the right to adequate notice of the hearing and receipt of the Board Review Packet.

(5) The Board shall send the inmate/offender written notice of the Board decision and findings.

Statutory Authority: ORS 144.335

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

255-080-0015

Administrative Review Hearing Packet

The Administrative Review Hearing Packet shall contain:

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

Statutory History: ORS 144.130; 144.335

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

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on June 24, 2004 by the
Date prior to or same as filing date.

Board of Parole and Post-Prison Supervision
Agency and Division

255
Administrative Rules Chapter Number

Michael R. Washington
Rules Coordinator

503-945-8978
Telephone

2575 Center Street NE, Ste 100 – Salem, Oregon 97301-4621
Address

to become effective June 14, 2004 through December 10, 2004
Date upon filing or later A maximum of 180 days including the effective date.

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

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

AMEND: 255-075-0079

SUSPEND:

ORS 144.050, 144.140, 144.346, 163.105, 163.115
Stat. Auth.: ORS

OAR 213-005-0004
Other Authority

None
Stats. Implemented: ORS

RULE SUMMARY

The amendment of the proposed rule clarifies the board's authority to require offenders who were sentenced to life in prison or received a lifetime period of post-prison supervision for the crime of Murder to serve further incarceration to the sentence expiration date, regardless of the time the crime was committed. This amendment is necessary to bring the board's rules into conformity with OAR 213-005-0004.

Michael R. Washington
Authorized Signer

06-14-04
Date

Michael R. Washington, Chair
Printed name

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140, 144.346, 163.105, 163.115

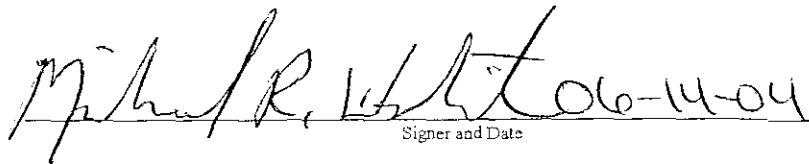
Other Authority: OAR 213-005-0004

Statutes Implemented: ORS NONE

Need for the Temporary Rule(s): The amendment of the current rule is necessary to clarify the board's authority to return offenders sentenced to life or a lifetime period of Post-Prison Supervision for the crime of Murder to serve further incarceration to the sentence expiration date upon a violation of conditions of supervision. Also, this amendment is necessary to bring the board's rules into conformity with OAR 213-005-0004

Documents Relied Upon: Formal advice from the Department of Justice regarding the board's authority to sanction offenders. DOJ file No. 255-001-GG0890-02.

Justification of Temporary Rule(s): The temporary rule is justified by allowing the board to further its mission which in part is the protection of the public, by allowing it to address some of the most dangerous offenders with the most severe sanction.


Signer and Date

Michael R. Washington

Printed name

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

Board of Parole & Post-Prison Supervision
Agency and Division

255
Administrative Rules Chapter Number

Michael R. Washington
Rules Coordinator

503-945-8978
Telephone

2575 Center Street NE, Ste 100 - Salem, Oregon 97301-4621
Address

RULEMAKING ACTION

ADOPT:

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

AMEND: **255-075-0079**

REPEAL:

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

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

ORS 144.050, 144.140, 144.346, 163.105, 163.115
Stat. Auth.: ORS

OAR 213-005-0004
Other Authority

None
Stats. Implemented: ORS

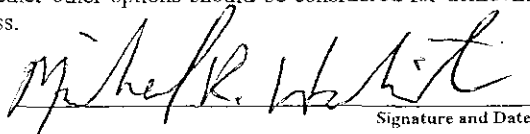
RULE SUMMARY

The amendment of the proposed rule clarifies the board's authority to require offenders who were sentenced to life in prison or received a lifetime period of post-prison supervision for the crime of Murder to serve further incarceration to the sentence expiration date, regardless of the time the crime was committed. This amendment is necessary to bring the board's rules into conformity with OAR 213-005-0004.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

ORS 183.335(2)(b)(G) 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.

08-02-2004
Last Day for Public Comment


Signature and Date

Michael R. Washington, Chair
Printed name

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140, 144.346, 163.105, 163.115

Other Authority: OAR 213-005-0004

Statutes Implemented: ORS NONE

Need for the Rule(s): The amendment of the current rule is necessary to clarify the board's authority to return offenders sentenced to life or a lifetime period of Post-Prison Supervision for the crime of Murder to serve further incarceration to the sentence expiration date upon a violation of conditions of supervision. Also, this amendment is necessary to bring the board's rules into conformity with OAR 213-005-0004.

Documents Relied Upon: Formal advice from the Department of Justice regarding the board's authority to sanction offenders. DOJ file No. 255-001-GG0890-02.

Fiscal and Economic Impact: The Board is aware that there may be a minimal fiscal and economic impact on the Department of Corrections as a result of the amendment of OAR 244-075-0079. The board is not aware of any effect this amendment would have on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The board enacted this amendment during a business meeting and due to the nature of the amendment, felt it was not necessary to consult with the Administrative Rule Advisory Committee.


Signer and Date

06-14-04

Michael R. Washington, Chair

Printed name

255-075-0079

Guidelines for Re-release

- (1) For technical violation(s):
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-011-0004.
- (2) For conduct constituting a crime:
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.
- (3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.
- (4) Offenders sentenced to life imprisonment or received a lifetime period of post-prison supervision for murder committed on or after 06-30-95 may serve further incarceration to the sentence expiration date. Offenders sentenced to life imprisonment for aggravated murder may serve further incarceration to the sentence expiration date.
- (5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.
- (7)
 - (a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.
 - (b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.

- (c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.
- (8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.
- (9) Notwithstanding subsections 1-7 of this rule, the Board may choose to postpone re-release on parole pursuant to Divisions 50 and 60 of this chapter.
- (10) Notwithstanding subsections 1-8 of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.
- (11) Administrative sanctions do not count toward the revocation sanction limits.

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

History: (4/19/89, temporary; 11/1/89; 10/15/90, temporary; 1/16/91; 10/9/92;
10/29/93, temporary 11/14/97; 05/11/98, 01-25-00, 05-13-03,
06-14-04- NOTICE/TEMP)

9-3-04

TEMP

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 09-02-04 by the
Date prior to or same as filing date.

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

Michael R. Washington, Chair 503-945-8978
Rules Coordinator Telephone

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621
Address

to become effective 09-03-2004 through 03-01-2005
Date upon filing or later A maximum of 180 days including the effective date.

RULEMAKING ACTION

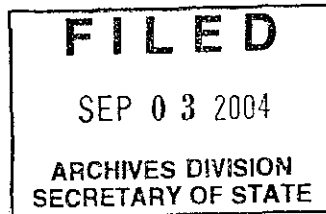
List each rule number separately, 000-000-0000.

ADOPT:

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

AMEND: 255-080-0005, 255-080-0011

SUSPEND:



RECEIVED
04 SEP 09 PM 09
BOARD OF PAROLE

ORS 144.050, 144.140, 144.335
Stat. Auth.: ORS

Ayers v. BOP (A121588); Walz v. BOP (A120892); Walters v. BOP (A119796); Al wadud v. BOP (A120823); and Bird v. BOP (A122454)
Other Authority

None
Stats. Implemented: ORS

RULE SUMMARY

The amendment of these rules is necessary to bring the rules into conformity with the Oregon Court of Appeals consolidated decision in the above entitled cases.

Michael R. Washington 09-03-2004
Authorized Signer Date

Michael R. Washington, Chair
Printed name

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

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Board of Parole and Post-Prison Supervision

Statutory Authority: ORS 144.050, 144.140, 144.335

Other Authority: Ayers v. BOP (A121588); Walz v. BOP (A120892); Walters v. BOP (A119796); Al_wadud v. BOP (A120823); and Bird v. BOP (A122454)

Statutes Implemented: NONE

Need for the Temporary Rule(s): The amendment of these rules is necessary to bring the rules into conformity with the Oregon Court of Appeals consolidated decision in the above cases.

Documents Relied Upon: NONE

Justification of Temporary Rule(s): It is necessary that these rules be made effective immediately as they violate an Oregon Court of Appeals decision in their current posture.

Michael R. Washington

Signer and Date

09-03-2004

Michael R. Washington, Chair

Printed name

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

Michael R. Washington

Rules Coordinator

503-945-8978

Telephone

2575 Center Street NE, Ste 100 - Salem, Oregon 97301-4621

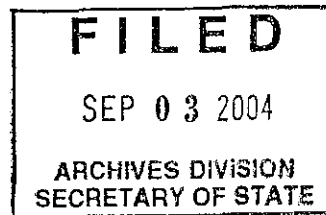
Address

RULEMAKING ACTION

ADOPT:

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

AMEND: 255-080-0005, 255-080-0011



REPEAL:

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

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

ORS 144.050, 144.140, 144.335

Stat. Auth.: ORS

Ayers v. BOP (A121588); Walz v. BOP (A120892); Walters v. BOP (A119796); Al wadud v. BOP (A120823); and Bird v. BOP (A122454)

Other Authority

None

Stats. Implemented: ORS

RULE SUMMARY

The amendment of these rules is necessary to bring the rules into conformity with the Oregon Court of Appeals consolidated decision in the above entitled cases.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

ORS 183.335(2)(b)(G) 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.

10-22-2004

Last Day for Public Comment

Michael R. Washington

Signature and Date

09-03-2004

Michael R. Washington, Chair

Printed name

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of: The Board of Parole and Post-Prison Supervision

Statutory Authority: ORS 144.050, 144.140, 144.335

Other Authority: Ayers v. BOP (A121588); Walz v. BOP (A120892); Walters v. BOP (A119796); Al_wadud v. BOP (A120823); and Bird v. BOP (A122454)

Statutes Implemented: None

Need for the Rule(s): The amendment of these rules is necessary to bring the rules into conformity with the Oregon Court of Appeals consolidated decision in the above entitled cases.

Documents Relied Upon: None

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

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted these amendments and changes during a business meeting and due to the nature of the amendments felt it was not necessary to consult the administrative rule advisory committee.

Michael R. Washington

Signer and Date

09-03-2004

Michael R. Washington, Chair

Printed name

DIVISION 80

ADMINISTRATIVE APPEAL

255-080-0001

Exhaustion of Remedies

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

Statutory Authority: ORS 144.335

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

255-080-0005

Procedure for Administrative Review

- (1) An inmate/offender may request an administrative review by sending Exhibit O, Administrative Review Request Form, to the Board concisely explaining how his or her case fits the criteria for review listed in rule 255-080-0010.
- (2) [The Board must receive requests for administrative review within forty-five (45) days after the mailing date on the Board's final action on the reviewed issue.] An inmate/offender must request administrative review within forty-five (45) days after the mailing date on the Board's final action on the reviewed issue. The Board will reject a request for administrative review as untimely unless:
 - (a) it is physically received by the Board on or before the 45th day after the mailing date on the Board's final action on the reviewed issue; or
 - (b) it is delivered to the Board by mail in an envelope bearing a United States Postal Service (USPS) cancellation stamp dated on or before the 45th day after the mailing date on the Board's final action on the reviewed issue; or
 - (c) in the case of an inmate, and in the absence of a legible USPS cancellation stamp, the inmate signed and dated the request and deposited it in the institutional mailing system in compliance with all applicable Department of Corrections rules on or before the 45th day after the mailing date on the Board's final action on the reviewed issue.
- (3) [Regarding Orders of Supervision, the Board must receive requests for administrative review within forty-five (45) days after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof.] Regarding Orders of Supervision, an offender must request administrative review within forty-five (45) days after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof. The Board will reject a request for administrative review of an order as untimely unless:

- (a) it is physically received by the Board on or before the 45th day after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof; or
- (b) it is delivered to the Board by mail in an envelope bearing a United States Postal Service (USPS) cancellation stamp dated on or before the 45th day after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof.

- (4) If the Board or its designee determines that the request is consistent with the criteria as defined in rules 255-080-0010 and 255-080-0011, and meets the deadline requirements, the Board will resolve the matter using the procedures outlined in OAR 255-080-0012.
- (5) When the Board or its designee denies review, the Board shall send the inmate/offender written notice of the specific reasons for denial.
- (6) When review is denied, the prior decision is re-affirmed.

Statutory Authority: ORS 144.335
History: (2/1/79; 11/25/81, temporary; 5/19/82; 5/31/85; 5/19/88; 12/6/88; 11/1/89; 2/20/91; 10/9/92, 03/14/97, 06-09-00, 06-14-04, 09/03/04 – TEMP/NOTICE)

255-080-0010

Criteria for Granting a Review

The criteria for granting a review are:

- (1) The Board action is not supported by evidence in the record; or
- (2) Pertinent information was available at the time of the hearing which, through no fault of the inmate/offender, was not considered; or
- (3) Pertinent information was not available at the time of the hearing, e.g., information concerning convictions from other jurisdictions; or
- (4) The action of the Board is inconsistent with its rules or policies and the inconsistency is not explained; or
- (5) The action of the Board is in violation of constitutional or statutory provisions or is a misinterpretation of those provisions.
- (6) The action of the Board is outside its statutory grant of discretion.

Statutory Authority: ORS 144.335, 183.482(8)
History: (2/1/79; 5/19/88; 12/6/88; 2/20/91; 10/9/92, 03/14/97)

255-080-0011

Limitations on Requests for Administrative Review

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

- (1) Findings of aggravation when the Board has set the prison term within or below the matrix range;
- (2) Findings of aggravation when the Board has not overridden a judicial minimum and the prison term has been set equal to the judicial minimum;
- (3) Matters which have previously been appealed and decided on the merits by either the Board or the appellate court(s);
- (4) [Board orders that were mailed more than 45 days prior to the request for review]
Administrative review requests considered untimely pursuant to rule 255-080-0005;
- (5) Subject matter of a hearing or review and/or Board order other than the Board order being appealed;
- (6) Matters that will not change the parole release date or conditions or length of supervision;
- (7) Board orders that are not final;
- (8) Errors previously corrected;
- (9) Order which sustains a minimum term and the inmate/offender does not contest the crime severity rating and history risk score;
- (10) Order which denies, grants or grants in part an inmate/offender's request for a prison term reduction based upon outstanding reformation under ORS 144.122;
- (11) Order which refers an inmate/offender for psychological evaluation;
- (12) Order which postpones an inmate/offender's release date because of:
 - (a) a Board finding of dangerousness under ORS 144.125(3) and OAR 255-060-0012
 - (b) an inmate/offender's refusal to submit to a psychological evaluation;
- (13) Order which postpones an inmate/offender's release date because of serious misconduct during confinement; or
- (14) Order which denies an inmate/offender's request under ORS 144.228(1) for an early parole consideration hearing.
- (15) Order which sets an initial release date under ORS 144.120, except if inmate/offender contests the crime severity rating, the history risk score or aggravating factors found by the Board under Board rules;
- (16) Order which sets a date for a parole consideration hearing under ORS 144.228;
- (17) Order which sets a release date or declines to set a release date after a parole consideration hearing under ORS 144.228.

11-2-04

PERM

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on October 7, 2004 by the
Date prior to or same as filing date.

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

Chapter 255
Administrative Rules Chapter Number

Michael R. Washington
Rules Coordinator

503-945-9009
Telephone

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621
Address

to become effective November 2, 2004 Rulemaking Notice was published in the July 1, 2004 Oregon Bulletin.**
Date upon filing or later Month and Year

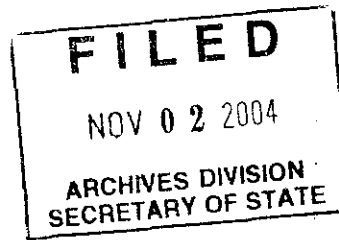
RULEMAKING ACTION
List each rule number separately, 000-000-0000.

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

AMEND: 255-075-0079

REPEAL:

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



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

ORS 144.050, 144.140, 144.346, 163.105, 163.115
Stat. Auth.: ORS

OAR 213-005-0004
Other Authority

None
Stats. Implemented: ORS

RULE SUMMARY

The amendment of the proposed rule clarifies the board's authority to require offenders who were sentenced to life in prison or received a lifetime period of post-prison supervision for the crime of Murder to serve further incarceration to the sentence expiration date, regardless of the time the crime was committed. This amendment is necessary to bring the board's rules into conformity with OAR 213-005-0004.

Michael R. Washington
Authorized Signer

11-02-2004
Date

Michael R. Washington
Typed name

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday
ARC 930-1997

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140, 144.346, 163.105, 163.115

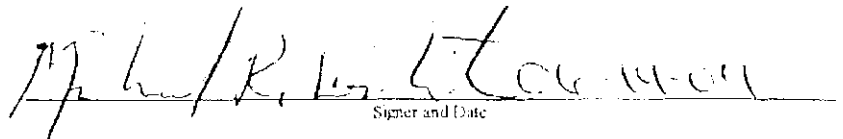
Other Authority: OAR 213-005-0004

Statutes Implemented: ORS NONE

Need for the Temporary Rule(s): The amendment of the current rule is necessary to clarify the board's authority to return offenders sentenced to life or a lifetime period of Post-Prison Supervision for the crime of Murder to serve further incarceration to the sentence expiration date upon a violation of conditions of supervision. Also, this amendment is necessary to bring the board's rules into conformity with OAR 213-005-0004

Documents Relied Upon: Formal advice from the Department of Justice regarding the board's authority to sanction offenders. DOJ file No. 255-001-GG0890-02.

Justification of Temporary Rule(s): The temporary rule is justified by allowing the board to further its mission which in part is the protection of the public, by allowing it to address some of the most dangerous offenders with the most severe sanction.


Signer and Date

Michael R. Washington

Printed name

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140, 144.346, 163.105, 163.115

Other Authority: OAR 213-005-0004

Statutes Implemented: ORS NONE

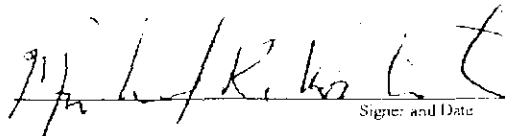
Need for the Rule(s): The amendment of the current rule is necessary to clarify the board's authority to return offenders sentenced to life or a lifetime period of Post-Prison Supervision for the crime of Murder to serve further incarceration to the sentence expiration date upon a violation of conditions of supervision. Also, this amendment is necessary to bring the board's rules into conformity with OAR 213-005-0004.

Documents Relied Upon: Formal advice from the Department of Justice regarding the board's authority to sanction offenders. DOJ file No. 255-001-GG0890-02.

Fiscal and Economic Impact: The Board is aware that there may be a minimal fiscal and economic impact on the Department of Corrections as a result of the amendment of OAR 244-075-0079. The board is not aware of any effect this amendment would have on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The board enacted this amendment during a business meeting and due to the nature of the amendment, felt it was not necessary to consult with the Administrative Rule Advisory Committee.

 06-14-11

Signer and Date

Michael R. Washington, Chair

Printed name

DIVISION 75

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

255-075-0001

Definitions

- (1) Administrative Sanction means local, structured, or intermediate sanctions as those terms are used in OAR 291-58-010 et al, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.
- (2) Sanction Authority means:
 - (a) The Board or its designee for:
 - (1) Any felony offender who received a sentence of more than twelve (12) months in the custody of the Department of Corrections; or
 - (2) Any felony offender who received a sentence of twelve (12) months or less but who also has an additional sentence(s) of greater than twelve (12) months.
 - (A) If an offender is on post-prison supervision for multiple sentences which include a sentence that exceeds twelve (12) months ("Board case") and a less than twelve (12)-month sentence ("Local Supervisory Authority case"), the Board will maintain jurisdiction of the post-prison supervision of the Local Supervisory Authority case until the Board's active involvement in the Board case(s) expires. Following expiration of the Board's case(s), the Board will maintain jurisdiction over the post-prison supervision of the Local Supervisory Authority case(s) until an offender is re-released following revocation of the post-prison supervision for the Local Supervisory Authority case(s), or until the Local Supervisory Authority petitions to assume jurisdiction, whichever comes first.
 - (B) If the Board issued the order of post-prison supervision for an offender whose only sentence was twelve (12) months or less, jurisdiction will remain with the Board until petition by the Supervisory Authority to assume jurisdiction or upon re-release following revocation of the post-prison supervision for that sentence; whichever comes first.
- (b) The Local Supervisory Authority or its designee for any felony offender whose crime was committed after November 1, 1989, was sentenced by the court to twelve (12) months or less, and who does not have an additional sentence of more than twelve (12) months for a felony.

Statutory Authority: ORS 144.140

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

255-075-0002

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

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

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

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

255-075-0003

Criteria for Allowing Offender to Remain in Community Pending Hearing

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

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

Statutory Authority: ORS 144.331(2)

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

255-075-0004

Guidelines for "Best Interest" Return

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

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

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

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

255-075-0005

Hearing Requirement: Procedure

- (1) Except as otherwise provided by these rules, before the Board can revoke parole or extend active parole supervision for offenders whose crimes occurred on or after December 4, 1986, and before November 1, 1989 (BM10), the Board or Hearings Officer shall conduct a hearing.
- (2) When the offender waives the hearing and/or consents to the order, the Board need not conduct a hearing when the Board extends supervision for offenders whose crimes occurred on or after December 4, 1986 and before November 1, 1989 (BM10).
- (3) Except in the cases set forth in OAR 255-075-0015 and section (6) of this rule, the Sanction Authority shall impose administrative sanctions or shall initiate a hearing within fifteen (15) days of arrest or detention for the violation of parole or post-prison supervision conditions.
- (4) If an in-custody violation hearing and a final order cannot be accomplished within fifteen (15) days, a supervising officer or Hearings Officer shall request a non-bailable suspend and detain warrant from the Sanction Authority.
- (5) Before a Hearings Officer can order more than sixty (60) days of local confinement without the offender's consent, the Hearings Officer shall conduct a violation hearing. Unless the Hearings Officer recommends a sanction, which is beyond his or her authority to order, the Hearings Officer may issue a final order subject to approval of the Sanction Authority, but immediately effective. If the recommended sanction exceeds sixty (60) days, it must be approved by the Supervisory Authority.
- (6) A hearing is not required when an administrative sanction or intervention involves local confinement of ninety (90) days or less when the offender consents to the sanctions or interventions. If the offender contests the allegations, the offender may request a hearing.

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

255-075-0006

Method of Hearing

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

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

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

255-075-0007

Designated Representative Conducts Hearing

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

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

255-075-0008

Locations of Hearing

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

255-075-0010

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

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

255-075-0015

When Offender in Another Jurisdiction: Return

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

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

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

255-075-0020

Rights of a Parolee at a Formal Hearing

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

255-075-0025

Rights at Hearing

11-02-2004 PERM

Conditions Violations

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

Statutory Authority: ORS 144.343(3)

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

255-075-0026

Waiver of Hearing

- (1) In all cases, the offender may waive the right to a hearing by signing a Notice of Rights form. A refusal to participate in the hearings process shall also constitute a waiver of the right to a hearing.
- (2) When the purpose of a hearing is to consider a parole or post-prison supervision violation, the waiver of the right to a hearing acknowledges that the offender violated the conditions in whole or in part and that the Sanction Authority may order local sanctions, may modify conditions of supervision, may extend active supervision or that the Board may order return to prison, without further hearing.
- (3) When the purpose of the hearing is to modify parole or post-prison supervision conditions or, in the case of parole, to consider extending active supervision, the waiver of the hearing indicates acceptance of the modifications.
- (4) If the offender waives the right to a hearing, the offender may offer a written or verbal statement pertaining to the dispositional phase of the violation hearing.
- (5) If the hearing is conducted via teleconference or video conference, the offender shall submit written waiver of the right to a hearing to the Hearings Officer within five (5) days after the waiver.
- (6) The person delivering the Notice of Rights shall tape record or document in writing any statement made at the time of waiver.

- (7) If the offender waives the right to a hearing, the Hearings Officer or Supervising Officer shall submit to the Sanction Authority the following:
- (a) a Notice of Rights form;
 - (b) any written offender statements and/or a summary of oral statements;
 - (c) the Hearing Summary, including a history of local interventions and sanctions ordered and a recommendation regarding disposition;
 - (d) any supporting information, including the supervising officer's report and other documentary evidence submitted.

Statutory Authority: ORS 144.050, 144.140; 144.343

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

255-075-0030

Rejection of Waiver

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

Statutory Authority: ORS 144.050, 144.140, 144.343

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

255-075-0031

Hearings Process

- (1) The Hearings Officer shall conduct the violation hearing reasonably near the place of the alleged violation or the place of confinement or may conduct the hearing by teleconference or video conference.
- (2) Unless the Hearings Officer finds good cause on the record, the parole and post-prison supervision officer shall present information and evidence at the hearing and arrange for the presence of witnesses for the state. The parole and post-prison supervision officer shall make dispositional recommendations.
- (3) The Hearings Officer shall make a tape recording of the hearing.

Statutory Authority: ORS 144.050, 144.106, 144.140, 144.343

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

255-075-0035

Representation/Ability to Pay Attorney Fees

- (1) In all cases, the offender is entitled to representation by an attorney at the offender's own expense.

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

Statutory Authority: ORS 144.343

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

255-075-0036

Subpoenas; Witnesses

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

Statutory Authority: ORS 144.347

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

255-075-0040

Compelling of Witnesses: Contempt

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

Statutory Authority: ORS 144.347(4)

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

255-075-0042

Probable Cause; Preliminary Hearing; Deferral of Revocation Hearing

- (1) The Sanction Authority or Hearings Officer may use evidence received and the order of a court at a preliminary hearing or a conviction or other reliable, relevant information to establish that probable cause exists to believe that the offender has committed a violation of a condition of parole or post-prison supervision.
- (2) Should the offender waive the right to a preliminary hearing, the waiver shall constitute a waiver of a probable cause hearing.
- (3) When the Sanction Authority or Hearings Officer defers completion of a violation hearing until a trial is over and until the court or the parole and post-prison supervision officer notifies the Sanction Authority or Hearings Officer of the final disposition of the case, the Sanction Authority or Hearings Officer shall use a finding of probable cause to support the decision to suspend and detain an offender charged with the commission of a new crime.
- (4) Notwithstanding subsection (3) of this section, the Sanction Authority or Hearings Officer shall not extend a deferral following a finding of probable cause for a period greater than 120 days from the date of the preliminary hearing or waiver, unless the offender is released from jail pending final disposition of the case, or waives in writing further delay. Subsequent waivers shall not extend beyond 120 days.

Statutory Authority: ORS 144.050, 144.140, 144.343

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

255-075-0045

Evidence; Subpoena of Documents

- (1) The Sanction Authority or Hearings Officer may receive the following as evidence at a violation hearing:
 - (a) oral testimony under oath;
 - (b) affidavits or other sworn statements;
 - (c) letters;
 - (d) documents;
 - (e) reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole and post-prison supervision officers, doctors, psychologists, attorneys);

- (f) uncertified copies of letters, documents, or reports shall be admissible in a revocation hearing if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable;
 - (g) evidence of criminal activity even when charges have been dismissed, not brought, or the offender has been acquitted at trial;
 - (h) reliable hearsay evidence; or
 - (i) any evidence determined to be material, relevant, and reliable, regardless of its nature.
- (2) Upon the request of any party to the hearing, the Sanction Authority, or Hearings Officer, may issue a subpoena duces tecum upon a proper showing of relevant and reasonable scope of the documentary or physical evidence being sought. Otherwise, the offender shall make the offender's own arrangements for presenting evidence.
 - (3) The Sanction Authority or Hearings Officer may exclude documents or physical evidence upon making a finding that such evidence would pose a hazard to facility security or would not assist in the resolution of the allegation(s). The reason for exclusion shall be made part of the record.
 - (4) The Sanction Authority or Hearings Officer may classify documents or physical evidence as confidential upon making a finding that revealing such evidence would pose a threat to the safety of the person providing the evidence.
 - (5) The Sanction Authority or Hearings Officer shall make evidence received without disclosing the identity of the witness a sealed part of the record.
 - (6) When a witness is unavailable, the Sanction Authority or Hearings Officer may receive statements in the form of documentary evidence. The Sanction Authority or Hearings Officer shall determine at an in-camera hearing the reliability and relevance of the absent witness's statement.

Statutory Authority: ORS 144.343, 144.347

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

255-075-0046
Postponement

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

Statutory Authority: ORS 144.050, 144.140, 144.343

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

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

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

255-075-0055
Reopening Hearings: Criteria; Procedure

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

Statutory Authority: ORS 144.050, 144.140, 144.343

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

255-075-0056
Hearings Record

- (1) The hearings record shall include:
 - (a) a Hearings Report Summary;
 - (b) a written statement of alleged violations;
 - (c) supporting materials, including documentary evidence admitted;
 - (d) a signed Notice of Rights;
 - (e) the Order of Parole or Post-Prison Supervision;
 - (f) a notice of time and place of hearing;
 - (g) a tape recording of the advice of rights and the hearing;
 - (h) the supervising officer's report, including recommended dispositions; [and]
 - (i) the history of supervision, local sanctions and modifications; and
 - (j) if any, the written waiver of the offender's right to three working days notice of the hearing.
- (2) The Hearings Officer shall retain the tape recording used in subsection (1)(g) of this rule for (4) four years.

Statutory Authority: ORS 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary
11/14/97; 05/11/98, 06-17-02, **10-10-03**)

255-075-0060
Record of Parole Revocation Hearing

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

255-075-0065
Ten Day Period for Offender's Evidence and Exceptions

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

Statutory Authority: ORS 144.343(7)

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

255-075-0067
**Final Action: Authority to Impose Administrative (Local) Sanctions,
Revoke Supervision or Modify Conditions of Supervision**

- 1) If an offender waives a hearing after receipt and review of the notice of rights, as provided in OAR 255-075-0005(6) a supervising officer may order administrative sanctions, including a local confinement sanction not exceeding thirty (30) days. The Local Supervisory Authority's designee may review the decision to order a local confinement sanction if the offender's underlying sentence was for 12 months or less. The Board may review the decision if the underlying sentence was more than 12 months.
- 2) After a hearing, or if an offender waives a hearing after receipt of the notice of rights, as provided in OAR 255-075-0005(6), a Hearings Officer or agency designee may order administrative sanctions, including a local confinement sanction not exceeding sixty (60) days. The Hearings Officer or agency designee shall send a copy of the final order and report to the Sanction Authority and, upon request, shall send the record of the hearing as described in OAR 255-075-0056. The Hearings Officer or agency designee shall retain the record for four (4) years.
- 3) After a hearing, or waiver, the Board may order administrative sanctions for offenders originally sentenced to more than 12 months, and a Local Supervisory Authority designee may order administrative sanctions for offenders originally sentenced to 12 months or less. The Board or a Local Supervisory Authority designee ordered local administrative confinement sanction may not exceed ninety (90) days.
- 4) The Board (for offenders originally sentenced to more than 12 months) or the Local Supervisory Authority designee (for offenders originally sentenced to 12 months or less) may override any sanction ordered by a supervising officer, agency designee or Hearings Officer.
- 5) Administrative Sanctions, including local confinement shall be applied in accordance with the Department of Corrections rules for structured, intermediate sanctions, OAR 291-58-010 et al., subject to jointly drafted revisions by the Department of Corrections and the Board.
- 6) If an administrative sanction is not sufficient to address the violation or to protect the public, the Sanction Authority may revoke supervision for a period(s) as set out in OAR 255-075-0079, or deny re-release for offenders on parole.
- 7) Conditions of supervision may be modified at any time by the Sanction Authority when necessary for the offender or public safety. If an offender objects to the modification, administrative review must be made within 45 days of the mailing date on the Board order or receipt of a written order by the Local Supervisory Authority.

Statutory Authority: ORS 144.106, 144.343

History: (4/30/92, temporary; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98,
5-13-03)

255-075-0070

Final Action: Procedure

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

Statutory Authority: 144.125, 144.343

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

255-075-0072

Re-release Order After Revocation

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

exceed the maximum indeterminate sentence for the offense(s) for which the offender is on post-prison supervision.

Statutory Authority: ORS 144.346, 144.395

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

Return to DOC for a Period of Greater than 12 months
255-075-0073

- (1) Post-prison supervision may be revoked and an offender returned to the custody of the Department of Corrections for a sanction that exceeds 12 months when:
 - (a) The offender is currently in violation of a condition of supervision; and
 - (b) The offender scores at least a total of 44 points on the scale in Exhibit R of these rules; and
 - (c) The community corrections agency supervising the offender and/or a hearings officer recommend a return to the Department of Corrections for a sanction exceeding 12 months; and
 - (d) The Board finds that a sanction exceeding 12 months is appropriate.
- (2) This rule may only be applied to offenders serving a term of post-prison supervision for a felony crime committed on or after July 14, 1997, and the term of post-prison supervision:
 - (a) follows completion of a sentence to a term of imprisonment that exceeds 12 months, or
 - (b) was imposed for a felony classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid, or
 - (c) was imposed as part of a sentence under ORS 137.700 or 137.707, or
 - (d) was imposed as part of a sentence as a dangerous offender under ORS 161.725 and 161.737, or
 - (e) is subject to ORS 144.103 (length of post-prison supervision for certain sex offenses).
- (3) A revocation hearing as described in OAR 255-075-0005 must be held when there is a recommendation under this rule.
- (4) A community corrections agency and/or hearing officer recommending a sanction under this rule must specifically state how the offender fits the requirements of this rule (including the score on the scale), what efforts have been made to manage the offender in the community and why the offender cannot be safely managed in the community. The recommendation may also contain any other information that may assist the board.
- (5) If a community corrections agency and/or hearing officer recommends a sanction under this rule, the board shall hold a hearing as described in OAR 255-075-0097 to determine whether a sanction exceeding 12 months is appropriate. After a hearing, the board can order a sanction of up to 24 months incarceration. The board must hold a subsequent hearing before it can order continued incarceration exceeding 24 months. The length of sanction imposed under this rule is determined by the board.

- (6) Subject to the requirements of this rule, an offender may be required to serve a sanction under this rule up to the post-prison supervision expiration date for any offense for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule. When an offender is released from a sanction imposed under this rule, the offender must serve the balance, if any, of any post-prison supervision remaining up to the post-prison supervision expiration date. If the offender is not released prior to the post-prison supervision expiration date, the post-prison supervision will expire. The periods of post-prison supervision for all offenses for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule continue to run while an offender is serving a sanction under this rule.
- (7) Board hearings under this rule will be conducted in the same manner that the board conducts future disposition hearings. The board may order a psychological evaluation for a hearing under this rule. The procedures for records, disclosure and notice outlined in Divisions 15 and 30 shall govern these hearings. A panel may conduct the hearing and the board shall make decisions pursuant to OAR 255-030-0015.
- (8) In determining whether a sanction exceeding 12 months is appropriate or whether continued incarceration exceeding 24 months is appropriate, the board must consider the recommendation by the community corrections agency or hearing officer and may also consider the following:
 - (a) the nature of the underlying conviction(s);
 - (b) the offender's criminal history;
 - (c) the history and nature of violations of post-prison supervision or parole;
 - (d) findings made by a psychologist in a psychological evaluation;
 - (e) conduct in institutions or jails;
 - (f) programs completed in custody and/or in the community;
 - (g) treatment available in the community;
 - (h) release plans;
 - (i) victim's statements, if any; and
 - (j) any indications of reformation and rehabilitation.

Statutory Authority: (ORS 144.107)

History: (03/12/01)

255-075-0075

Offenders Convicted of New Crime in This or Another Jurisdiction

- (1) If an offender has violated parole or post-prison supervision as a result of a conviction of a new crime and the court has ordered a prison term to the Department of Corrections, parole or post-prison supervision terminates without a violation hearing by operation of ORS 144.345(2).
- (2) Upon release from custody, if the Oregon sentence has not expired, Oregon supervision shall resume either in another jurisdiction under Interstate Compact or in Oregon. If, in preparing the

re-release plan, the Department of Corrections cannot arrange supervision under Interstate Compact, the offender shall report to the appropriate Supervisory Authority for supervision.

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

Statutory Authority: ORS 144.345, 144.380, 144.610-622

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

255-075-0076

Designation of Parole Failure

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

255-075-0078

Commencement Date for Prison Term Following a Violation

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

Statutory Authority: ORS 144.346, 144.395, 144.780, 144.783

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

255-075-0079

Guidelines for Re-release

- (1) For technical violation(s):

- (a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-011-0004.
- (2) For conduct constituting a crime:
- (a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.
- (3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.
- (4) Offenders sentenced to life imprisonment or received a lifetime period of post-prison supervision for murder may serve further incarceration to the sentence expiration date. Offenders sentenced to life imprisonment for aggravated murder may serve further incarceration to the sentence expiration date.
- (5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.
- (7)
- (a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.
 - (b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.
 - (c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.
- (8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.
- (9) Notwithstanding subsections 1-7 of this rule, the Board may choose to postpone re-release on parole pursuant to Divisions 50 and 60 of this chapter.
- (10) Notwithstanding subsections 1-8 of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.
- (11) Administrative sanctions do not count toward the revocation sanction limits.

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

History: (4/19/89, temporary; 11/1/89; 10/15/90, temporary; 1/16/91; 10/9/92; 10/29/93, temporary
11/14/97; 05/11/98, 01-25-00, 05-13-03,
06-14-04- temporary; **11-02-2004**)

255-075-0080

Continuance on Parole or Supervision

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

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

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

255-075-0082

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

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

255-075-0085

Parole Violators with No New Commitment; Action Required

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

255-075-0090

Guidelines for Reparole

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

255-075-0095

Variation From Guidelines for Aggravation/Mitigation Permitted

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

255-075-0096

Denial of Re-release Consideration

- (1) Upon a finding of aggravation pursuant to Exhibit E or Exhibit H, the Board may deny re-release on parole and set the parole release date up to two (2) days before the statutory good time date, or, in the case of murder or aggravated murder, require the parole violator to serve for life. This

action requires the affirmative vote of a majority of members, except that if the result is life imprisonment, the full Board must vote unanimously.

- (2) Denial of re-release on parole requires a future disposition hearing.
- (3) Cases in which the Board sets a parole violator within the guidelines set forth in rule 255-075-0079 and the result requires the parole violator to serve to the end of the sentence, do not require a majority vote of all members.
- (4) At any time after denial of re-release, the Board may adjust the parole release date to accommodate changes in the good time date.

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

255-075-0097

Time for Future Disposition Hearing

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

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

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

255-075-0098

Restoration of Statutory and Meritorious Goodtime

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

- (1) there is no violation of parole; or
- (2) parole is revoked on a best interest basis and there is no actual parole violation; or
- (3) parole is revoked on a technical violation; or
- (4) parolee is within 180 days of discharge; or
- (5) parole is revoked for new criminal activity which is a misdemeanor or non person-to-person class C felony and:
 - (a) the new criminal activity was already sanctioned at the local level;
or
 - (b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.

- (6) An offender ordered to serve a term of incarceration as a Revocation sanction for a post-prison supervision violation is not eligible for goodtime, earned-credit time, work release, transitional or temporary leave.

Statutory Authority: ORS 421.120, 144.108(3)

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

255-075-0100

Future Disposition Hearing Packet

The Future Disposition Hearing Packet shall contain:

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

Statutory Authority: ORS 144.185, 144.395

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

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on November 1, 2004 by the
Date prior to or same as filing date

Oregon Board of Parole and Post-Prison Supervision

Agency and Division

Chapter 255

Administrative Rules Chapter Number

Michael R. Washington

Rules Coordinator

503-945-9009

Telephone

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621

Address

to become effective November 2, 2004

Date upon filing or later

Rulemaking Notice was published in the

October 1, 2004

Month and Year

Oregon Bulletin.**

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: 255-030-0026

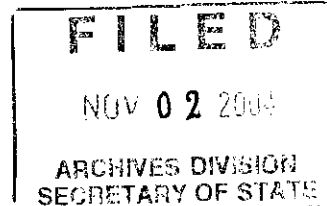
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 255-030-0025

REPEAL:

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

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



ORS 144.123, 144.120(7)

Stat. Auth.: ORS

None

Other Authority

ORS 144.123, 144.120(7)

Stats. Implemented: ORS

RULE SUMMARY

Amendments to the Board's rules are necessary to ensure that the Board's and the Department of Corrections policies and procedures governing who may accompany an inmate at a hearing before the Board are promulgated jointly as required by ORS 144.123.

Michael R. Washington

Authorized Signer

11-02-2004
Date

Michael R. Washington

Printed name

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

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Board of Parole and Post-Prison Supervision

Statutory Authority: ORS 144.123, 144.120(7)

Other Authority: NONE

Statutes Implemented: ORS 144.123, 144.120(7)

Need for the Rule(s): Amendments to the Board's rule are necessary to ensure that the Board's and the Department of Corrections policies and procedures governing who may accompany an inmate at a hearing before the Board are promulgated jointly as required by ORS 144.123.

Documents Relied Upon: NONE

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

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted these amendments and changes during a business meeting and due to the nature of the amendments felt it was not necessary to consult the administrative rule advisory committee.

Michael R. Washington

08-23-04

Signer and Date

Michael R. Washington, Chair

Printed name

STATEMENT OF NEED AND JUSTIFICATION

BOARD OF PAROLE AND POST-PRISON SUPERVISION CHAPTER NUMBER: 255

In the Matter of the Adoption of Temporary Amendments to the Board's Rules Relating to Persons Who may Accompany an Inmate at a Hearing Before the Board of Parole and Post-Prison Supervision, OAR 255-030-0025) Statement of Need and Justification of Temporary Rule

1. Effective immediately, the Board of Parole and Post-Prison Supervision is amending its administrative rule governing who may accompany an inmate at a hearing before the Board of Parole and Post-Prison Supervision.

2. Need for the Temporary Rule(s): Amendments to the Board's rule are necessary to ensure that the Board's and the Department of Corrections policies and procedures governing who may accompany an inmate at a hearing before the Board are promulgated jointly as required by ORS 144.123.

3. Documents Relied Upon: None

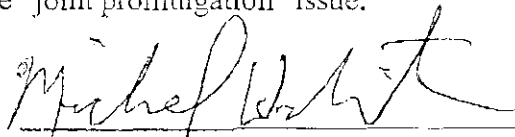
4. Justification of Temporary Rules:

(a) The Board finds that following the permanent rulemaking process, rather than taking this temporary rulemaking action, will result in serious prejudice to the public interest because it will cause the following specific consequences:

In litigation that is currently pending in the Oregon Court of Appeals, inmates have challenged the validity of the Board's current rules governing who may accompany an inmate at a hearing before the Board. Among the claims made by the inmates in the litigation is that the rules are invalid because they were not adopted jointly with the Oregon Department of Corrections (ODOC) as required by ORS 144.123. One of the inmates involved in the current litigation has indicated both to ODOC officials and to legal counsel that inmates will likely file suit to challenge the validity of Board decisions affecting them made in or following hearings conducted under the current rules, and also seek monetary damages from the Board and/or ODOC. Consequently, failure to promptly adopt these temporary rule amendments, together with the Board of Parole and Post-Prison Supervision, will leave at issue in the current and anticipated litigation the "joint promulgation" issue, and cause the Board and ODOC to incur additional costs associated with the defense of this issue. In addition, failure to eliminate the procedural issue through temporary rulemaking may itself result in the filing of additional inmate suits over the validity of the Board's current rules and decisions made in hearings under the current rules.

(b) This temporary rulemaking action will avoid or mitigate these consequences because prompt adoption of these rule amendments will assist the Board in defending

against the current litigation, and reduce or eliminate the risk that inmates will file additional litigation raising the "joint promulgation" issue.



Michael Washington, Chair

MAY 13, 2004
Date

DIVISION 30

PRISON TERM HEARING PROCEDURE

255-030-0002

Policy

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

255-030-0005

Definitions

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

255-030-0010

Scheduling Prison Term Hearings

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

Statutory Authority: ORS 144.120(1)

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

255-030-0012

Scheduling and Hearing Procedure for Aggravated Murder

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

255-030-0013

Notification of Hearing

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

Statutory Authority: ORS 144.120(7), 144.130

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

255-030-0015

When Full Board is Required; Procedures for Board Decision

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

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

Statutory Authority: ORS 144.035, 144.054

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

255-030-0020

Procedures for Full Board Decisions

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

255-030-0021

Teleconference Hearing

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

Statutory Authority: ORS 144.035(5)

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

255-030-0023

Prisoner Appearance at Board Hearing

- (1) The inmate shall be present in person or by telephone at the Parole Board hearing.

11-02-04

Prison Term Hearing

- (2) The Board may compel an inmate's appearance when an inmate refuses to appear.
- (3) The Board may elect not to compel the inmate to attend the hearing. In this instance, the Board may reschedule the hearing, or set the prison term in the inmate's absence.

Statutory Authority: ORS 144.035(5), 144.120

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

255-030-0024

Prison Term Hearing Waiver

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

Statutory Authority: ORS 144.120(1)(b)

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

255-030-0025

Inmate Accompaniment to Board of Parole and Post-Prison Supervision Hearing

- (1) Purpose: The purpose of these rules is to jointly establish with the Department of Corrections policies and procedures governing who may accompany an inmate in a hearing before the Board of Parole and Post-Prison Supervision
- (2) Policy: It is the joint policy of the Department of Corrections and Board of Parole and Post-Prison Supervision that inmates be permitted to have a person accompany them in hearings before the Board in accordance with ORS 144.123, as provided in these rules. The decision to approve a person's access to a Board hearing held within a Department of Corrections facility will be made by the functional unit manager or designee of the facility in which the inmate is confined, in accordance with the department's rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127). A person's access to a Department of Corrections facility may be prohibited or restricted by the functional unit manager or designee consistent with these rules; the health, safety and security of staff, inmates, and the public; and with the safe, secure, and orderly operation and management of the facility.

Statutory Authority: ORS 144.123, 144.120(7)

History: (2/1/79; 11/4/81, temporary; 5/19/82; 12/2/86, temporary; 4/28/87; 5/19/88; 4/5/90; 10/9/92, 03/14/97, 06-09-00, 05/14/04-temporary; **11-02-2004**)

255-030-0026

Who May Appear at a Board of Parole and Post-Prison Supervision Hearing

- (1) Inmate Accompaniment: When appearing before the Board of Parole and Supervision in a hearing, an inmate may be accompanied at the Department of Corrections facility in which the inmate is confined, subject to the prior approval of the facility functional unit manager or designee, by:
 - (a) A person who has been approved for privileged visiting in accordance with the Department of Corrections rule on Visiting (Inmate) (OAR 291-127);
 - (b) An assigned inmate legal assistant, selected in accordance with the Department of Corrections rule on Legal Affairs (Inmate) (OAR 291-139), from the Department of Corrections facility where the inmate is confined; or
 - (c) The inmate's attorney.
- (2) In addition to those persons specified in subsection (1) of this rule, the inmate may be accompanied at the hearing via telephone or videoconference by such other person as the Board of Parole and Post-Prison Supervision, in its discretion, may approve by prior arrangement.
- (3) The Department of Corrections, if requested by the inmate or the Board, will assign an assigned inmate legal assistant from the Department of Corrections facility where the inmate is confined to accompany an inmate at a Board hearing.

- (4) Others Who May Attend/Appear at a Board Hearing
- (a) Victim and District Attorney: The victim, personally, or by counsel or other representative, and the District Attorney from the committing jurisdiction or his/her representative, may attend/appear Board of Parole and Post-Prison Supervision Hearings.
 - (b) Public: Members of public may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings.
 - (c) Media Representatives: Approved media representatives may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings.
 - (d) Department of Corrections Employees, Volunteers, and Contractors: Department of Corrections employees, volunteers, and contractors may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings, except as requested by the Board in order to provide testimony in the hearing.
- (5) Means and Manner of Appearance/Attendance:
- (a) Board Hearings Conducted With Inmate in Person Within a Department of Corrections Facility:
 - (A) If the inmate will appear before the Board of Parole and Post-Prison Supervision in person within a Department of Corrections facility, the person(s) accompanying the inmate, the victim and the District Attorney, and/or their representatives, members of the public, and approved media representatives, may appear/attend the hearing in person at the Department of Corrections facility, subject to the approval by the functional unit manager of the facility in which the hearing is being conducted, or via telephone or videoconference as arranged in advance with the Board.
 - (B) A person desiring to appear/attend a Board of Parole and Post-Prison Supervision hearing in a Department of Corrections facility must contact the functional unit manager or designee of the Department of Corrections facility in which the hearing is scheduled to take place in advance of the hearing to arrange for their attendance/appearance.
 - (C) A person's access to a Department of Corrections facilities is subject to the Department of Corrections rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127), and may be prohibited or restricted by the functional unit manager or designee of the facility in which the hearing is being conducted consistent with the health, safety and security of staff, inmates, and the public, and with the safe, secure, and orderly operation and management of the facility.
 - (D) A person who appears/attends a Board of Parole and Post-Prison Supervision hearing in a Department of Corrections facility is subject to the rules of conduct, and the terms and conditions of visiting set forth in the department's rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127).
 - (b) Board Hearings Conducted With Inmate Via Telephone or Videoconference: If the inmate will appear before the Board of Parole and Post-Prison Supervision via telephone or videoconference, the person(s) accompanying the inmate, the victim and the District Attorney, and/or their representatives, members of the public, and approved media representatives, may appear/attend the hearing at the place in which the Board is meeting

for purposes of conducting the hearing, or via telephone or videoconference, as arranged in advance with the Board.

- (6) Conduct of Hearing: The Board of Parole and Post-Prison Supervision may eject any disruptive person from a hearing. The Board may require all persons to leave the designated hearing area during deliberations.

Statutory Authority: ORS 144.123, 144.120(7)

History: 05/14/04 - temporary; **11/02/04**

255-030-0027

Victim, District Attorney and Inmate Statements

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

Statutory Authority: ORS 144.120(7)

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

255-030-0030

Panel Decision: Use of Guidelines; Unanimity Requirement

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

255-030-0032

Evidence

- (1) The presiding chairperson at a Board hearing shall explain the issues for decision, which, in the case of a prison term hearing, are those issues set forth in OAR 255-035-0013.
- (2) Evidence of a type that reasonably prudent persons would commonly rely upon in the conduct of their serious affairs shall be admissible in Board hearings, including:
 - (a) The information set forth in OAR 255-030-0035;
 - (b) Other relevant evidence concerning the inmate if reasonably available.
- (3) Reliable, probative and substantial evidence shall support Board orders. Substantial evidence is found when the record, viewed as a whole, would permit a reasonable person to make a particular finding.
- (4) The Board may exclude evidence if it is:
 - (a) unduly repetitious;
 - (b) not of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs;
 - (c) provided by a person, other than a justice system official, without first hand

11-02-04

Prison Term Hearing

- knowledge of the circumstances of the crime;
 - (d) provided by a person, other than a justice system official, without first hand knowledge of the character of the inmate;
 - (e) addressing only guilt or innocence; or
 - (f) irrelevant or immaterial to the findings being made at that particular hearing.
- (5) The Board may receive evidence to which the inmate objects. If the presiding chairperson does not make rulings on its admissibility or exclusion during the hearing, the Board shall make findings on the record at the time a final order is issued.
- (6) Erroneous rulings on evidence shall not preclude Board action on the record unless shown to have substantially prejudiced the rights of the inmate.

Statutory Authority: ORS 144.050, 144.140

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

255-030-0035

Information the Board Shall Consider

- (1) The Board Review Packet shall contain:
 - (a) inmate's notice of rights and notice of administrative appeal;
 - (b) PSI, PAR, PSR or report of similar content;
 - (c) sentencing/judgement orders;
 - (d) facesheet;
 - (e) certification of time served credits;
 - (f) Board Action Forms;
 - (g) information pursuant to Ballot Measure 10;
 - (h) material submitted by the inmate or representative relating to the calculation of the prison term;
 - (i) current psychological/psychiatric evaluations;
 - (j) other relevant material selected at the Board's discretion.
- (2) The Board may consider additional information and recommendations from those with a special interest in the case. If considered, the Board Review Packet shall include the information. The Board must receive any information submitted pursuant to this section at least seven (7) days prior to the hearing. The Board may waive the seven day requirement.

Statutory Authority: ORS 144.185, 144.223

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

255-030-0040

Inmate's Access to Written Materials

- (1) The inmate shall have access to all the material in the Board Review Packet except that exempted by OAR 255-015-0010.
- (2) The inmate shall have access to all the victim and District Attorney's responses pursuant to OAR 255-030-0035 except that exempted by the Board pursuant to OAR 255-015-0010. The Board shall include the responses in the Board Review Packet or shall give the responses to the inmate as soon as they are available to the Board.
- (3) If the victim, his/her representative, or the District Attorney wishes to rebut any of the material in the Board Review Packet, the Board must receive the response seven (7) days prior to the hearing. The Board shall notify the victim that the Board will include the response in the Board Review Packet sent to the inmate unless the victim requests confidentiality.
- (4) The inmate or representative shall submit any relevant information at least seven (7) days prior to the hearing.

Statutory Authority: ORS 144.130

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

255-030-0045

Exemptions from Disclosure

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

255-030-0050

Record of Hearing: Content; Time to be Maintained

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

255-030-0055

Notice of Decision

- (1) Following a Board decision concerning the prison term of an inmate, the Board shall send written notice of the Board's final order to the inmate, District Attorney, sheriff or arresting agency, the Department of Corrections, and upon request, the victim, the sentencing judge and the trial counsel.
- (2) The Board's final order shall contain the following applicable findings:
 - (a) the prison term commencement date;
 - (b) the history/risk assessment score;
 - (c) the crime category with the subcategory rationale;
 - (d) the matrix range;
 - (e) when there are consecutive sentences, whether the range is unsummed and the reason for unsumming;
 - (f) when there is a variation from the range, the reason for the variation;
 - (g) aggravation;

- (h) mitigation;
- (i) the votes on minimum sentences;
- (j) the prison term set;
- (k) the votes of the Board members;
- (l) the parole release date;
- (m) when there are conditions of parole or post-prison supervision set, findings concerning the waiver of the residency condition, if any; and
- (n) sentencing guidelines range, if applicable.

Statutory Authority: ORS 144.120, 144.260, 144.135

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

255-030-0056

Notification of Release; Parties Notified

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

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on November 1, 2004 by the
Date prior to or same as filing date.

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

Chapter 255
Administrative Rules Chapter Number

Michael R. Washington
Rules Coordinator

503-945-9009
Telephone

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621
Address

to become effective November 2, 2004
Date upon filing or later

Rulemaking Notice was published in the October 1, 2004
Month and Year

*Oregon Bulletin.***

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

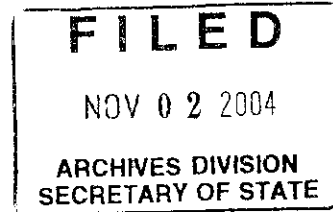
ADOPT:
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 255-080-0005, 255-080-0011

REPEAL:

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

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



ORS 144.050, 144.140, 144.335

Stat. Auth.: ORS

Ayers V. BOP (A121588); Walz V. BOOP (A120892); Walters v. BOP (A119796); Al-Wadud v. BOP (A120823); and Bird V. BOP (A122454)
Other Authority

None

Stats. Implemented: ORS

RULE SUMMARY

The amendment of these rules is necessary to bring the rules into conformity with the Oregon Court of Appeals consolidated decision in the above entitled cases.

Michael R. Washington

Authorized Signer

11-02-2004
Date

Michael R. Washington
Printed name

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

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of: The Board of Parole and Post-Prison Supervision

Statutory Authority: ORS 144.050, 144.140, 144.335

Other Authority: Ayers v. BOP (A121588); Walz v. BOP (A120892); Walters v. BOP (A119796); Al_wadud v. BOP (A120823); and Bird v. BOP (A122454)

Statutes Implemented: None

Need for the Rule(s): The amendment of these rules is necessary to bring the rules into conformity with the Oregon Court of Appeals consolidated decision in the above entitled cases.

Documents Relied Upon: None

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

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The Board of Parole and Post-Prison Supervision enacted these amendments and changes during a business meeting and due to the nature of the amendments felt it was not necessary to consult the administrative rule advisory committee.

Michael R. Washington

Signer and Date

09-03-2004

Michael R. Washington, Chair

Printed name

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Board of Parole and Post-Prison Supervision

Statutory Authority: ORS 144.050, 144.140, 144.335

Other Authority: Ayers v. BOP (A121588); Walz v. BOP (A120892); Walters v. BOP (A119796); Al_wadud v. BOP (A120823); and Bird v. BOP (A122454)

Statutes Implemented: NONE

Need for the Temporary Rule(s): The amendment of these rules is necessary to bring the rules into conformity with the Oregon Court of Appeals consolidated decision in the above cases.

Documents Relied Upon: NONE

Justification of Temporary Rule(s): It is necessary that these rules be made effective immediately as they violate an Oregon Court of Appeals decision in their current posture.

Michael R. Washington

Signer and Date

09-03-2004

Michael R. Washington, Chair

Printed name

DIVISION 80

ADMINISTRATIVE APPEAL

255-080-0001

Exhaustion of Remedies

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

Statutory Authority: ORS 144.335

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

255-080-0005

Procedure for Administrative Review

- (1) An inmate/offender may request an administrative review by sending Exhibit O, Administrative Review Request Form, to the Board concisely explaining how his or her case fits the criteria for review listed in rule 255-080-0010.
- (2) An inmate/offender must request administrative review within forty-five (45) days after the mailing date on the Board's final action on the reviewed issue. The Board will reject a request for administrative review as untimely unless:
 - (a) it is physically received by the Board on or before the 45th day after the mailing date on the Board's final action on the reviewed issue; or
 - (b) it is delivered to the Board by mail in an envelope bearing a United States Postal Service (USPS) cancellation stamp dated on or before the 45th day after the mailing date on the Board's final action on the reviewed issue; or
 - (c) in the case of an inmate, and in the absence of a legible USPS cancellation stamp, the inmate signed and dated the request and deposited it in the institutional mailing system in compliance with all applicable Department of Corrections rules on or before the 45th day after the mailing date on the Board's final action on the reviewed issue.
- (3) Regarding Orders of Supervision, an offender must request administrative review within forty-five (45) days after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof. The Board will reject a request for administrative review of an order as untimely unless:
 - (a) it is physically received by the Board on or before the 45th day after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof; or

- (b) it is delivered to the Board by mail in an envelope bearing a United States Postal Service (USPS) cancellation stamp dated on or before the 45th day after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof.
- (4) If the Board or its designee determines that the request is consistent with the criteria as defined in rules 255-080-0010 and 255-080-0011, and meets the deadline requirements, the Board will resolve the matter using the procedures outlined in OAR 255-080-0012.
- (5) When the Board or its designee denies review, the Board shall send the inmate/offender written notice of the specific reasons for denial.
- (6) When review is denied, the prior decision is re-affirmed.

Statutory Authority: ORS 144.335

History: (2/1/79; 11/25/81, temporary; 5/19/82; 5/31/85; 5/19/88; 12/6/88; 11/1/89; 2/20/91; 10/9/92, 03/14/97, 06-09-00, 06-14-04, 09/03/04-temporary; **11/02/2004**)

255-080-0010

Criteria for Granting a Review

The criteria for granting a review are:

- (1) The Board action is not supported by evidence in the record; or
- (2) Pertinent information was available at the time of the hearing which, through no fault of the inmate/offender, was not considered; or
- (3) Pertinent information was not available at the time of the hearing, e.g., information concerning convictions from other jurisdictions; or
- (4) The action of the Board is inconsistent with its rules or policies and the inconsistency is not explained; or
- (5) The action of the Board is in violation of constitutional or statutory provisions or is a misinterpretation of those provisions.
- (6) The action of the Board is outside its statutory grant of discretion.

Statutory Authority: ORS 144.335, 183.482(8)

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

255-080-0011

Limitations on Requests for Administrative Review

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

- (1) Findings of aggravation when the Board has set the prison term within or below the matrix range;
- (2) Findings of aggravation when the Board has not overridden a judicial minimum and the prison term has been set equal to the judicial minimum;

- (3) Matters which have previously been appealed and decided on the merits by either the Board or the appellate court(s);
- (4) Administrative review requests considered untimely pursuant to rule 255-080-0005;
- (5) Subject matter of a hearing or review and/or Board order other than the Board order being appealed;
- (6) Matters that will not change the parole release date or conditions or length of supervision;
- (7) Board orders that are not final;
- (8) Errors previously corrected;
- (9) Order which sustains a minimum term and the inmate/offender does not contest the crime severity rating and history risk score;
- (10) Order which denies, grants or grants in part an inmate/offender's request for a prison term reduction based upon outstanding reformation under ORS 144.122;
- (11) Order which refers an inmate/offender for psychological evaluation;
- (12) Order which postpones an inmate/offender's release date because of:
 - (a) a Board finding of dangerousness under ORS 144.125(3) and OAR 255-060-0012
 - (b) an inmate/offender's refusal to submit to a psychological evaluation;
- (13) Order which postpones an inmate/offender's release date because of serious misconduct during confinement, or
- (14) Order which denies an inmate/offender's request under ORS 144.228(1) for an early parole consideration hearing.
- (15) Order which sets an initial release date under ORS 144.120, except if inmate/offender contests the crime severity rating, the history risk score or aggravating factors found by the Board under Board rules;
- (16) Order which sets a date for a parole consideration hearing under ORS 144.228;
- (17) Order which sets a release date or declines to set a release date after a parole consideration hearing under ORS 144.228.

Statutory Authority: ORS 144.335

History: (2/20/91; 10/29/93, 06-09-00, 09-03-04-temporary; **11/02/2004**)

255-080-0012

Administrative Review Hearing Procedure

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

Statutory Authority: ORS 144.335

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

255-080-0015

Administrative Review Hearing Packet

The Administrative Review Hearing Packet shall contain:

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

Statutory History: ORS 144.130; 144.335

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

2-15-05

notice

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

Michael R. Washington

503-945-8978

Rules Coordinator

Telephone

2575 Center Street NE, Ste 100 – Salem, Oregon 97301-4621

Address

RULEMAKING ACTION

ADOPT:

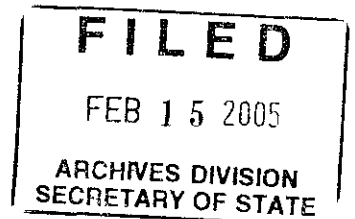
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: **255-005-0005**

REPEAL:

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

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



RS 144.050, 144.140

Stat. Auth.: ORS

Rule 2.110 of Interstate Compact for Adult Offender Supervision & OAR 291-180-170

Other Authority

None

Stats. Implemented: ORS

RULE SUMMARY

The amendment of this rule is necessary to bring it into conformity with federal law and other administrative rules regarding Interstate Compact.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

ORS 183.335(2)(b)(G) 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.

04-05-05
Last Day for Public Comment

Michael R. Washington

Signature and Date

02-15-05

Michael R. Washington, Chair

Printed name

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

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140

Other Authority: Rule 2.110 of Interstate Compact for Adult Offender Supervision & OAR 291-180-170

Statutes Implemented: ORS None

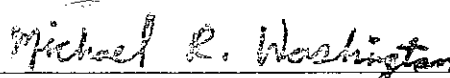
Need for the Rule(s): This amendment is necessary to bring the definition of inactive supervision into conformity with federal law and the Administrative Rules of the Department of Corrections regarding Interstate Compact.

Documents Relied Upon: None

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

Administrative Rule Advisory Committee consulted?: No.

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



Signer and Date

02-15-05

Michael R. Washington, Chair
Printed name

- (21) "Inactive Parole and "Inactive Post-Prison Supervision":** The offender remains under supervision however;
- (a) There is no direct supervision by a supervising officer and no requirement of regular reporting;
 - (b) There are no additional supervision fees; and
 - (c) the offender remains subject to arrest by a supervising officer for violation of conditions of supervision and return to active supervision at any time until expiration of the sentence or post-prison supervision term as outlined in Division 94; and
 - (d) (b) and (c) do not apply to those offenders being supervised in another state via Interstate Compact. Those offenders remain on active parole or post-prison supervision.

DIVISION 5

DEFINITIONS

This rule has been renumbered.

255-005-0005

Definitions

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

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

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

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

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

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

(59) **"Victim"**: The actual victim, a representative selected by the victim, the victim's next of kin or, in the case of abuse or corpse in any degree, an appropriate member of the immediate family of the decedent (Per ORS 144.120(7)).

The person or persons who have suffered financial, social, psychological or physical harm as a result of a crime and includes, in the case of a homicide or abuse or corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor (Per ORS 131.007).

Statutory Authority: ORS 144.050, 144.140

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

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

Michael R. Washington

Rules Coordinator

503-945-8978

Telephone

2575 Center Street NE, Ste 100 – Salem, Oregon 97301-4621

Address

RULEMAKING ACTION

ADOPT:

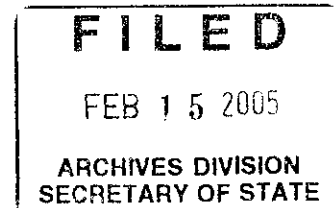
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 255-094-0000, 255-094-0010

REPEAL:

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

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



ORS 144.050, 144.140

Stat. Auth.: ORS

Rule 2.110 of Interstate Compact for Adult Offender Supervision & OAR 291-180-170

Other Authority

None

Stats. Implemented: ORS

RULE SUMMARY

The amendment of these rules is necessary for purposes of clarification and to bring one of the rules into conformity with federal law and other administrative rules regarding Interstate Compact.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

ORS 183.335(2)(b)(G) 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.

04-05-05
Last Day for Public Comment

Michael R. Washington
Signature and Date

02-15-05

Michael R. Washington, Chair
Printed name

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

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140

Other Authority: Rule 2.110 of Interstate Compact for Adult Offender Supervision & OAR 291-180-170

Statutes Implemented: ORS None

Need for the Rule(s): The amendment of these rules is necessary for purposes of clarification and to bring one of the rules into conformity with federal law and other administrative rules regarding Interstate Compact.

Documents Relied Upon: None

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

Administrative Rule Advisory Committee consulted?: No.

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

Michael R. Washington

Signer and Date

02-15-05

Michael R. Washington, Chair

Printed name

DIVISION 94

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

255-094-0000

Period of Active Parole or Post-Prison Supervision

- (1) The minimum periods of active parole and post-prison supervision shall be:
 - (a) six (6) months for offenders whose crimes were committed on or after November 1, 1989, and whose crimes fall within sentencing guidelines crime categories 1, 2 and 3;
 - (b) twelve (12) months for offenders whose crimes were committed on or after November 1, 1989, and whose crimes fall within sentencing guidelines crime categories 4, 5, 6, 7, 8, 9 and 10;
 - (c) for offenders whose crimes were committed after December 4, 1986, but prior to November 1, 1989, the period of active supervision shall be set by determining the equivalent sentencing guidelines crime category and applying sub-section (a) and (b) above, subject to the exceptions in section (2) below;
 - (d) for offenders whose crimes were committed prior to December 4, 1986, the Board shall apply the rules in effect at the time the crime was committed.

- (2) The following minimum periods of active parole and post-prison supervision are exceptions to section (1) of this rule:
 - (a) three (3) years for offenders sentenced as dangerous offenders under ORS 161.725 to 161.737;
 - (b) three (3) years for offenders sentenced for murder under ORS 163.115;
 - (c) three (3) years for offenders sentenced for aggravated murder under ORS 163.105;
 - (d) offenders sentenced for Rape I, Sodomy I, Sexual Penetration I, Sexual Penetration 2, Sex Abuse 2, and Attempts of these which occurred on or after September 29, 1991, shall serve active supervision to the expiration of the indeterminate sentence;
 - (e) offenders sentenced for Sex Abuse I or Attempted Sex Abuse I for crimes occurring on or after November 4, 1993, shall serve active supervision to the expiration of the indeterminate sentence;
 - (f) offenders sentenced for Sodomy II or Rape II for crimes occurring on or after October 23, 1999, shall serve active supervision to the expiration of the indeterminate sentence.

 - (g) offenders sentenced for Sex Abuse I or Attempted Sex Abuse I, for crimes which occurred on or after November 1, 1989, and prior to November 4, 1993, will serve active supervision in accordance with the period of post-prison supervision set by the sentencing court and the sentencing guidelines grid;

- (h) offenders sentenced for Rape I, Sodomy I, Sexual Penetration I, Sexual Penetration 2, or Sexual Abuse I, which occurred on or after December 4, 1986, and prior to November 1, 1989, shall serve a minimum of 36 months active supervision or to expiration of the sentence which ever comes first;
 - (i) offenders sentenced for Robbery in the First Degree under ORS 164.415 which occurred on or after June 30, 1995, shall serve a minimum period of 36 months active supervision; and
 - (j) offenders sentenced for Arson in the First Degree under ORS 164.325 which occurred on or after June 30, 1995, shall serve minimum period of 36 months active supervision; and.
 - (k) offenders sentenced as sexually violent dangerous offenders pursuant to Chapter 163 (1999 OR Laws) for crimes committed on or after October 23, 1999, shall serve active supervision for life.
- (3) Upon completion of the specified period of active parole or post-prison supervision, the supervisory authority shall place the offender on inactive supervision status subject to the exceptions in OAR 255-094-0010, and notify the Board of the status change.
 - (4) Upon revocation of supervision and rerelease to the community, the period of active supervision shall be as provided in OAR 255-094-0000(1 & 2) ~~or to the expiration of the sentence, whichever is longer~~ provided that the period of active supervision does not exceed the sentence expiration date.
 - (5) After a rereleased offender has completed the minimum active supervision period as provided in OAR 255-94-000 (1)(2) and has substantially fulfilled the conditions of supervision, the supervising officer may place the offender on inactive supervision.
 - (6) Inmate/offenders found to be sexually violent dangerous offenders pursuant to OAR 255-060-0008(6) shall be subject to intensive supervision for the full period of parole or post-prison supervision as defined in OAR 255-005.

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

History: (09/01/95, 03/14/97, 12-15-99, 02-15-00, 01-12-01, **02-15-05 - NOTICE**)

255-094-0010

Exceptions to Inactive Supervision and Return to Active Supervision

- (1) No sooner than thirty days prior to the expiration of the offender's active period of supervised parole or post-prison supervision or during a period of inactive supervision, the supervising officer or designee may send to the Board a report on offenders who have not substantially fulfilled the supervision conditions, or who have failed to complete payment of restitution. The supervising officer or designee may request continuation on active supervision, or return to active supervision if it is in the community's or the offender's best interest.

This report shall include:

- (a) an evaluation of the offender's compliance with supervision conditions;
 - (b) the status of the offender's court ordered monetary obligations, including fines and restitution, if any;
 - (c) the offender's employment status;
 - (d) the offender's address;
 - (e) treatment program outcome;
 - (f) any new criminal activity;
 - (g) other relevant information;
 - (h) a recommendation that the Board extend the active supervision period or return the offender to active supervision.
- (2) After reviewing the report, if the Board or it's designated representative finds the offender has not substantially fulfilled the supervision conditions, or it is in the offender's or the community's best interest, the Board may order that the offender remain on active supervision or return to active supervision for the remainder of the supervision period set by the sentencing court or set by law. The Board shall send the offender notice of the continuation or return to active supervision.
 - (3) Once extended or returned to active supervision, the supervising officer may place the offender on inactive supervision when the offender has substantially fulfilled the conditions of supervision and completed restitution payments, or active supervision is no longer in the best interest of the offender and the community.
 - (4) When an offender is on inactive supervision or is being supervised via Interstate Compact the general and special conditions of supervision shall remain in effect with the following exceptions for those offenders being supervised in the State of Oregon:
 - (a) General condition #1: Pay supervision fees (fines, restitution or other fees previously ordered by the Board remain in effect);
 - ~~(b) General condition #5: Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency;~~
 - ~~(c) General condition #7: Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency;~~
 - ~~(d)~~(b) Special Conditions specifically deleted by the Board.

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

History: (09/01/95- Notice, 03/14/97, **02-15-05 - NOTICE**)

255-094-0015

Return to Active Supervision

- (1) An offender is subject to arrest for violations of conditions of supervision while on either active or inactive supervision.
- (2) The Board may return an offender to active supervision for the remainder of the supervision period set by the sentencing court or set by law when the Board receives a report from the supervising agency showing good cause why the inactive status is no longer in the offender's best interest or the best interest or safety of the community.
- (3) If the supervising agency has good cause to return an offender to active supervision, and the whereabouts of the offender are unknown, the supervising agency may request a warrant from the Board.
- (4) When an offender is returned to active supervision status, all general conditions plus all previously imposed special conditions shall be in effect.

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

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

255-094-0020

Sentence Expiration

- (1) During the pendency of violation proceedings, the running of the supervision period both active and inactive, the sentence is stayed, and the Board retains jurisdiction over the offender until the proceedings are resolved. The Board may grant credit toward the sentence for time the offender serves incarcerated pending the violation proceedings.
- (2) These rules shall not preclude more than one extension or renewal of active parole or post-prison supervision, however an extension or renewal period may not exceed the maximum sentence.
- (3) After expiration of the sentence of an offender on parole or post-prison supervision, the Board shall send written notice of the expiration to the offender and the supervisory authority.
- (4) For offenders sentenced as sexually violent dangerous offenders pursuant to Chapter 163 (1999 OR Laws) for crimes committed on or after October 23, 1999, upon receipt of a court order resentencing the offender and terminating post-prison supervision, the Board shall send written notice of the termination of post-prison supervision to the offender and supervisory authority.

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

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

Perm

4-25-05

4-25

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on April 25, 2005 by the
Date prior to or same as filing date.

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

Michael R. Washington 503-945-9009
Rules Coordinator Telephone

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621
Address

to become effective April 25, 2005 Rulemaking Notice was published in the March 1, 2005 Oregon Bulletin.**
Date upon filing or later Month and Year

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

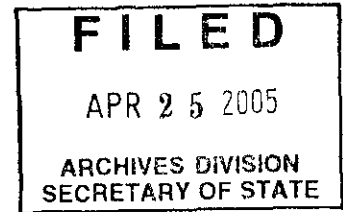
ADOPT:
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 255-094-0000, 255-094-0010

REPEAL:

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

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



ORS 144.050, 144.140
Stat. Auth.: ORS

Rule 2.110 of Interstate Compact for Adult Offender Supervision & OAR 291-180-170
Other Authority

None
Stats Implemented: ORS

RULE SUMMARY

The amendment of these rules is necessary for purposes of clarification and to bring one of the rules into conformity with federal law and other administrative rules regarding Interstate Compact.

Michael R. Washington April 25, 2005
Authorized Signer Date

Michael R. Washington
Printed name

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday
ARC 930-1997

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140

Other Authority: Rule 2.110 of Interstate Compact for Adult Offender Supervision & OAR 291-180-170

Statutes Implemented: ORS None

Need for the Rule(s): The amendment of these rules is necessary for purposes of clarification and to bring one of the rules into conformity with federal law and other administrative rules regarding Interstate Compact.

Documents Relied Upon: None

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

Administrative Rule Advisory Committee consulted?: No.

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

Michael R. Washington

Signer and Date

02-15-05

Michael R. Washington, Chair

Printed name

DIVISION 94

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

255-094-0000

Period of Active Parole or Post-Prison Supervision

- (1) The minimum periods of active parole and post-prison supervision shall be:
 - (a) six (6) months for offenders whose crimes were committed on or after November 1, 1989, and whose crimes fall within sentencing guidelines crime categories 1, 2 and 3;
 - (b) twelve (12) months for offenders whose crimes were committed on or after November 1, 1989, and whose crimes fall within sentencing guidelines crime categories 4, 5, 6, 7, 8, 9 and 10;
 - (c) for offenders whose crimes were committed after December 4, 1986, but prior to November 1, 1989, the period of active supervision shall be set by determining the equivalent sentencing guidelines crime category and applying sub-section (a) and (b) above, subject to the exceptions in section (2) below;
 - (d) for offenders whose crimes were committed prior to December 4, 1986, the Board shall apply the rules in effect at the time the crime was committed.

- (2) The following minimum periods of active parole and post-prison supervision are exceptions to section (1) of this rule:
 - (a) three (3) years for offenders sentenced as dangerous offenders under ORS 161.725 to 161.737;
 - (b) three (3) years for offenders sentenced for murder under ORS 163.115;
 - (c) three (3) years for offenders sentenced for aggravated murder under ORS 163.105;
 - (d) offenders sentenced for Rape I, Sodomy I, Sexual Penetration I, Sexual Penetration 2, Sex Abuse 2, and Attempts of these which occurred on or after September 29, 1991, shall serve active supervision to the expiration of the indeterminate sentence;
 - (e) offenders sentenced for Sex Abuse I or Attempted Sex Abuse I for crimes occurring on or after November 4, 1993, shall serve active supervision to the expiration of the indeterminate sentence;
 - (f) offenders sentenced for Sodomy II or Rape II for crimes occurring on or after October 23, 1999, shall serve active supervision to the expiration of the indeterminate sentence.

 - (g) offenders sentenced for Sex Abuse I or Attempted Sex Abuse I, for crimes which occurred on or after November 1, 1989, and prior to November 4, 1993, will serve active supervision in accordance with the period of post-prison supervision set by the sentencing court and the sentencing guidelines grid;

- (h) offenders sentenced for Rape I, Sodomy I, Sexual Penetration I, Sexual Penetration 2, or Sexual Abuse I, which occurred on or after December 4, 1986, and prior to November 1, 1989, shall serve a minimum of 36 months active supervision or to expiration of the sentence which ever comes first;
 - (i) offenders sentenced for Robbery in the First Degree under ORS 164.415 which occurred on or after June 30, 1995, shall serve a minimum period of 36 months active supervision; and
 - (j) offenders sentenced for Arson in the First Degree under ORS 164.325 which occurred on or after June 30, 1995, shall serve minimum period of 36 months active supervision; and.
 - (k) offenders sentenced as sexually violent dangerous offenders pursuant to Chapter 163 (1999 OR Laws) for crimes committed on or after October 23, 1999, shall serve active supervision for life.
- (3) Upon completion of the specified period of active parole or post-prison supervision, the supervisory authority shall place the offender on inactive supervision status subject to the exceptions in OAR 255-094-0010, and notify the Board of the status change.
 - (4) Upon revocation of supervision and rerelease to the community, the period of active supervision shall be as provided in OAR 255-094-0000(1 & 2) ~~or to the expiration of the sentence, whichever is longer~~ provided that the period of active supervision does not exceed the sentence expiration date.
 - (5) After a rereleased offender has completed the minimum active supervision period as provided in OAR 255-94-000 (1)(2) and has substantially fulfilled the conditions of supervision, the supervising officer may place the offender on inactive supervision.
 - (6) Inmate/offenders found to be sexually violent dangerous offenders pursuant to OAR 255-060-0008(6) shall be subject to intensive supervision for the full period of parole or post-prison supervision as defined in OAR 255-005.

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

History: (09/01/95, 03/14/97, 12-15-99, 02-15-00, 01-12-01, **04-25-05 - PERM**)

255-094-0010

Exceptions to Inactive Supervision and Return to Active Supervision

- (1) No sooner than thirty days prior to the expiration of the offender's active period of supervised parole or post-prison supervision or during a period of inactive supervision, the supervising officer or designee may send to the Board a report on offenders who have not substantially fulfilled the supervision conditions, or who have failed to complete payment of restitution. The supervising officer or designee may request continuation on active supervision, or return to active supervision if it is in the community's or the offender's best interest.

This report shall include:

- (a) an evaluation of the offender's compliance with supervision conditions;
 - (b) the status of the offender's court ordered monetary obligations, including fines and restitution, if any;
 - (c) the offender's employment status;
 - (d) the offender's address;
 - (e) treatment program outcome;
 - (f) any new criminal activity;
 - (g) other relevant information;
 - (h) a recommendation that the Board extend the active supervision period or return the offender to active supervision.
- (2) After reviewing the report, if the Board or it's designated representative finds the offender has not substantially fulfilled the supervision conditions, or it is in the offender's or the community's best interest, the Board may order that the offender remain on active supervision or return to active supervision for the remainder of the supervision period set by the sentencing court or set by law. The Board shall send the offender notice of the continuation or return to active supervision.
 - (3) Once extended or returned to active supervision, the supervising officer may place the offender on inactive supervision when the offender has substantially fulfilled the conditions of supervision and completed restitution payments, or active supervision is no longer in the best interest of the offender and the community.
 - (4) When an offender is on inactive supervision or is being supervised via Interstate Compact the general and special conditions of supervision shall remain in effect with the following exceptions for those offenders being supervised in the State of Oregon:
 - (a) General condition #1: Pay supervision fees (fines, restitution or other fees previously ordered by the Board remain in effect);
 - ~~(b) General condition #5: Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency;~~
 - ~~(c) General condition #7: Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency;~~
 - ~~(d)~~(b) Special Conditions specifically deleted by the Board.

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

History: (09/01/95- Notice, 03/14/97, **04-25-05 - PERM**)

255-094-0015

Return to Active Supervision

- (1) An offender is subject to arrest for violations of conditions of supervision while on either active or inactive supervision.
- (2) The Board may return an offender to active supervision for the remainder of the supervision period set by the sentencing court or set by law when the Board receives a report from the supervising agency showing good cause why the inactive status is no longer in the offender's best interest or the best interest or safety of the community.
- (3) If the supervising agency has good cause to return an offender to active supervision, and the whereabouts of the offender are unknown, the supervising agency may request a warrant from the Board.
- (4) When an offender is returned to active supervision status, all general conditions plus all previously imposed special conditions shall be in effect.

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

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

255-094-0020

Sentence Expiration

- (1) During the pendency of violation proceedings, the running of the supervision period both active and inactive, the sentence is stayed, and the Board retains jurisdiction over the offender until the proceedings are resolved. The Board may grant credit toward the sentence for time the offender serves incarcerated pending the violation proceedings.
- (2) These rules shall not preclude more than one extension or renewal of active parole or post-prison supervision, however an extension or renewal period may not exceed the maximum sentence.
- (3) After expiration of the sentence of an offender on parole or post-prison supervision, the Board shall send written notice of the expiration to the offender and the supervisory authority.
- (4) For offenders sentenced as sexually violent dangerous offenders pursuant to Chapter 163 (1999 OR Laws) for crimes committed on or after October 23, 1999, upon receipt of a court order resentencing the offender and terminating post-prison supervision, the Board shall send written notice of the termination of post-prison supervision to the offender and supervisory authority.

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

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

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on April 25, 2005 by the
Date prior to or same as filing date.

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

Chapter 255

Administrative Rules Chapter Number

Michael R. Washington
Rules Coordinator

503-945-9009
Telephone

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621
Address

to become effective April 25, 2005 Rulemaking Notice was published in the March 1, 2005 Oregon Bulletin.**
Date upon filing or later Month and Year

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

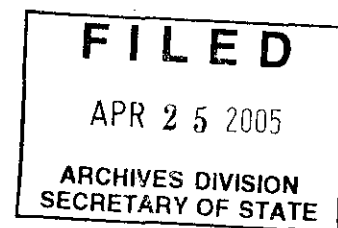
ADOPT:
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 255-005-0005

REPEAL:

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

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



ORS 144.050, 144.140

Stat. Auth.: ORS

Rule 2.110 of Interstate Compact for Adult Offender Supervision & OAR 291-180-170

Other Authority

None

Stats. Implemented: ORS

RULE SUMMARY

The amendment of this rule is necessary to bring it into conformity with federal law and other administrative rules regarding Interstate Compact.

Michael R. Washington

04-25-05

Authorized Signer

Date

Michael R. Washington

Printed name

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

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

STATEMENT OF NEED AND FISCAL IMPACT

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Statutory Authority: ORS 144.050, 144.140

Other Authority: Rule 2.110 of Interstate Compact for Adult Offender Supervision & OAR 291-180-170

Statutes Implemented: ORS None

Need for the Rule(s): This amendment is necessary to bring the definition of inactive supervision into conformity with federal law and the Administrative Rules of the Department of Corrections regarding Interstate Compact.

Documents Relied Upon: None

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

Administrative Rule Advisory Committee consulted?: No.

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

Michael R. Washington

02-15-05

Signer and Date

Michael R. Washington, Chair

Printed name

DIVISION 5

DEFINITIONS

This rule has been renumbered.

255-005-0005

Definitions

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

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

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

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

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

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

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

Statutory Authority: ORS 144.050, 144.140

History: (5/19/88; 12/6/88; 11/1/89; 10/5/90; 10/15/91; 10/9/92, 03/14/97, Temporary 11/14/97;
05/11/98, **04/25/05 - PERM**)

Notice

10-7-05

Secretary of State

NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

corrected

Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

Michael R. Washington

503-945-8978

Rules Coordinator

Telephone

2575 Center Street NE, Ste 100 - Salem, Oregon 97301-4621

Address

RULEMAKING ACTION

ADOPT:

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

AMEND: **255-075-0035**

REPEAL:

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

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

FILED
OCT 07 2005
ARCHIVES DIVISION
SECRETARY OF STATE

ORS144.050, 144.140, 144.343

Stat. Auth.: ORS

None

Other Authority

None

Stat. Implemented: ORS

RULE SUMMARY

The amendment of this rule is necessary in order that the rule be consistent with Oregon Revised Statutes.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

ORS 183.335(2)(b)(G) 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.

11/25/2005

Last Day for Public Comment

Michael R. Washington

Signature and Date

10-07-05

Michael R. Washington, Chair

Printed name

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday.
ARC 923-2003

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of: The proposed amendments to the rules of the Board of Parole & Post-Prison Supervision.

Statutory Authority: ORS 144,050, 144.140, 144.343

Other Authority: None

Statutes Implemented: ORS NONE

Need for the Rule(s): The amendment of this rule is necessary in order that the rule be consistent with the Oregon Revised Statutes.

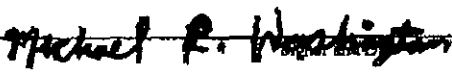
Documents Relied Upon: None

Fiscal and Economic Impact: There may be a positive fiscal and economic impact to the Board in that there will be a lesser number of Board appointed attorneys in violation hearings. The Board is unaware of any fiscal or economic impact this amendment will have on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

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

10-07-05



 Michael R. Washington, Chair
Printed name

255-075-0035

Representation/Ability to Pay Attorney Fees

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

Statutory Authority: ORS 144.343

History: (2/1/79; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 10/15/91; 10/9/92, temporary 11/14/97; 02/06/01, **10/07/05-NOTICE**)

Perm

12-29-05

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on December 16, 2005 by the
Date prior to or same as filing date

Oregon Board of Parole and Post-Prison Supervision

Agency and Division

Chapter 255

Administrative Rules Chapter Number

Michael R. Washington

Rules Coordinator

503-945-9009

Telephone

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621

Address

to become effective December 29, 2005 Rulemaking Notice was published in the November 1, 2005 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT:

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

AMEND: 255-075-0035

REPEAL:

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

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

ORS 144.050, 144.140, 144.343

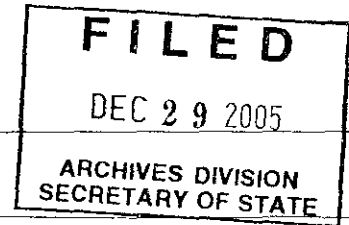
Stat. Auth.: ORS

None

Other Authority

None

Stats. Implemented: ORS



RULE SUMMARY

The amendment of this rule is necessary in order that the rule be consistent with Oregon Revised Statutes.

Michael R. Washington

Authorized Signer

12-29-2005

Date

Michael R. Washington

Printed name

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

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

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

Agency and Division

Administrative Rules Chapter Number

In the Matter of: The proposed amendments to the rules of the Board of Parole & Post-Prison Supervision.

Statutory Authority: ORS 144,050, 144.140, 144.343

Other Authority: None

Statutes Implemented: ORS NONE

Need for the Rule(s): The amendment of this rule is necessary in order that the rule be consistent with the Oregon Revised Statutes.

Documents Relied Upon: None

Fiscal and Economic Impact: There may be a positive fiscal and economic impact to the Board in that there will be a lesser number of Board appointed attorneys in violation hearings. The Board is unaware of any fiscal or economic impact this amendment will have on other agencies, local government, or identified public.

Administrative Rule Advisory Committee consulted?: No.

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

Michael R. Washington

10-07-05

Michael R. Washington, Chair

Printed name

DIVISION 75

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

255-075-0001

Definitions

- (1) Administrative Sanction means local, structured, or intermediate sanctions as those terms are used in OAR 291-58-010 et al, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.
- (2) Sanction Authority means:
 - (a) The Board or its designee for:
 - (1) Any felony offender who received a sentence of more than twelve (12) months in the custody of the Department of Corrections; or
 - (2) Any felony offender who received a sentence of twelve (12) months or less but who also has an additional sentence(s) of greater than twelve (12) months.
 - (A) If an offender is on post-prison supervision for multiple sentences which include a sentence that exceeds twelve (12) months ("Board case") and a less than twelve (12)-month sentence ("Local Supervisory Authority case"), the Board will maintain jurisdiction of the post-prison supervision of the Local Supervisory Authority case until the Board's active involvement in the Board case(s) expires. Following expiration of the Board's case(s), the Board will maintain jurisdiction over the post-prison supervision of the Local Supervisory Authority case(s) until an offender is re-released following revocation of the post-prison supervision for the Local Supervisory Authority case(s), or until the Local Supervisory Authority petitions to assume jurisdiction, whichever comes first.
 - (B) If the Board issued the order of post-prison supervision for an offender whose only sentence was twelve (12) months or less, jurisdiction will remain with the Board until petition by the Supervisory Authority to assume jurisdiction or upon re-release following revocation of the post-prison supervision for that sentence; whichever comes first.
- (b) The Local Supervisory Authority or its designee for any felony offender whose crime was committed after November 1, 1989, was sentenced by the court to twelve (12) months or less, and who does not have an additional sentence of more than twelve (12) months for a felony.

Statutory Authority: ORS 144.140

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

255-075-0002

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

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

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

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

255-075-0003

Criteria for Allowing Offender to Remain in Community Pending Hearing

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

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

Statutory Authority: ORS 144.331(2)

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

255-075-0004

Guidelines for "Best Interest" Return

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

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

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

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

255-075-0005

Hearing Requirement: Procedure

- (1) Except as otherwise provided by these rules, before the Board can revoke parole or extend active parole supervision for offenders whose crimes occurred on or after December 4, 1986, and before November 1, 1989 (BM10), the Board or Hearings Officer shall conduct a hearing.
- (2) When the offender waives the hearing and/or consents to the order, the Board need not conduct a hearing when the Board extends supervision for offenders whose crimes occurred on or after December 4, 1986 and before November 1, 1989 (BM10).
- (3) Except in the cases set forth in OAR 255-075-0015 and section (6) of this rule, the Sanction Authority shall impose administrative sanctions or shall initiate a hearing within fifteen (15) days of arrest or detention for the violation of parole or post-prison supervision conditions.
- (4) If an in-custody violation hearing and a final order cannot be accomplished within fifteen (15) days, a supervising officer or Hearings Officer shall request a non-bailable suspend and detain warrant from the Sanction Authority.
- (5) Before a Hearings Officer can order more than sixty (60) days of local confinement without the offender's consent, the Hearings Officer shall conduct a violation hearing. Unless the Hearings Officer recommends a sanction, which is beyond his or her authority to order, the Hearings Officer may issue a final order subject to approval of the Sanction Authority, but immediately effective. If the recommended sanction exceeds sixty (60) days, it must be approved by the Supervisory Authority.
- (6) A hearing is not required when an administrative sanction or intervention involves local confinement of ninety (90) days or less when the offender consents to the sanctions or interventions. If the offender contests the allegations, the offender may request a hearing.

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

255-075-0006

Method of Hearing

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

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

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

255-075-0007

Designated Representative Conducts Hearing

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

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

255-075-0008

Locations of Hearing

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

255-075-0010

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

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

255-075-0015

When Offender in Another Jurisdiction: Return

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

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

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

255-075-0020

Rights of a Parolee at a Formal Hearing

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

255-075-0025

12-29-2005 PERM

Conditions Violations

Rights at Hearing

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

Statutory Authority: ORS 144.343(3)

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

255-075-0026

Waiver of Hearing

- (1) In all cases, the offender may waive the right to a hearing by signing a Notice of Rights form. A refusal to participate in the hearings process shall also constitute a waiver of the right to a hearing.
- (2) When the purpose of a hearing is to consider a parole or post-prison supervision violation, the waiver of the right to a hearing acknowledges that the offender violated the conditions in whole or in part and that the Sanction Authority may order local sanctions, may modify conditions of supervision, may extend active supervision or that the Board may order return to prison, without further hearing.
- (3) When the purpose of the hearing is to modify parole or post-prison supervision conditions or, in the case of parole, to consider extending active supervision, the waiver of the hearing indicates acceptance of the modifications.
- (4) If the offender waives the right to a hearing, the offender may offer a written or verbal statement pertaining to the dispositional phase of the violation hearing.
- (5) If the hearing is conducted via teleconference or video conference, the offender shall submit written waiver of the right to a hearing to the Hearings Officer within five (5) days after the waiver.

- (6) The person delivering the Notice of Rights shall tape record or document in writing any statement made at the time of waiver.
- (7) If the offender waives the right to a hearing, the Hearings Officer or Supervising Officer shall submit to the Sanction Authority the following:
 - (a) a Notice of Rights form;
 - (b) any written offender statements and/or a summary of oral statements;
 - (c) the Hearing Summary, including a history of local interventions and sanctions ordered and a recommendation regarding disposition;
 - (d) any supporting information, including the supervising officer's report and other documentary evidence submitted.

Statutory Authority: ORS 144.050, 144.140; 144.343

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

255-075-0030

Rejection of Waiver

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

Statutory Authority: ORS 144.050, 144.140, 144.343

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

255-075-0031

Hearings Process

- (1) The Hearings Officer shall conduct the violation hearing reasonably near the place of the alleged violation or the place of confinement or may conduct the hearing by teleconference or video conference.
- (2) Unless the Hearings Officer finds good cause on the record, the parole and post-prison supervision officer shall present information and evidence at the hearing and arrange for the presence of witnesses for the state. The parole and post-prison supervision officer shall make dispositional recommendations.
- (3) The Hearings Officer shall make a tape recording of the hearing.

Statutory Authority: ORS 144.050, 144.106, 144.140, 144.343

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

255-075-0035

Representation/Ability to Pay Attorney Fees

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

Statutory Authority: ORS 144.343

History: (2/1/79; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 10/15/91; 10/9/92, temporary 11/14/97; 02/06/01, **12/29/05**)

255-075-0036

Subpoenas; Witnesses

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

Statutory Authority: ORS 144.347

12-29-2005 PERM

Conditions Violations

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

255-075-0040

Compelling of Witnesses: Contempt

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

Statutory Authority: ORS 144.347(4)

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

255-075-0042

Probable Cause; Preliminary Hearing; Deferral of Revocation Hearing

- (1) The Sanction Authority or Hearings Officer may use evidence received and the order of a court at a preliminary hearing or a conviction or other reliable, relevant information to establish that probable cause exists to believe that the offender has committed a violation of a condition of parole or post-prison supervision.
- (2) Should the offender waive the right to a preliminary hearing, the waiver shall constitute a waiver of a probable cause hearing.
- (3) When the Sanction Authority or Hearings Officer defers completion of a violation hearing until a trial is over and until the court or the parole and post-prison supervision officer notifies the Sanction Authority or Hearings Officer of the final disposition of the case, the Sanction Authority or Hearings Officer shall use a finding of probable cause to support the decision to suspend and detain an offender charged with the commission of a new crime.
- (4) Notwithstanding subsection (3) of this section, the Sanction Authority or Hearings Officer shall not extend a deferral following a finding of probable cause for a period greater than 120 days from the date of the preliminary hearing or waiver, unless the offender is released from jail pending final disposition of the case, or waives in writing further delay. Subsequent waivers shall not extend beyond 120 days.

Statutory Authority: ORS 144.050, 144.140, 144.343

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

255-075-0045

Evidence; Subpoena of Documents

- (1) The Sanction Authority or Hearings Officer may receive the following as evidence at a violation hearing:
 - (a) oral testimony under oath;
 - (b) affidavits or other sworn statements;
 - (c) letters;
 - (d) documents;
 - (e) reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole and post-prison supervision officers, doctors, psychologists, attorneys);

- (f) uncertified copies of letters, documents, or reports shall be admissible in a revocation hearing if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable;
 - (g) evidence of criminal activity even when charges have been dismissed, not brought, or the offender has been acquitted at trial;
 - (h) reliable hearsay evidence; or
 - (i) any evidence determined to be material, relevant, and reliable, regardless of its nature.
- (2) Upon the request of any party to the hearing, the Sanction Authority, or Hearings Officer, may issue a subpoena duces tecum upon a proper showing of relevant and reasonable scope of the documentary or physical evidence being sought. Otherwise, the offender shall make the offender's own arrangements for presenting evidence.
 - (3) The Sanction Authority or Hearings Officer may exclude documents or physical evidence upon making a finding that such evidence would pose a hazard to facility security or would not assist in the resolution of the allegation(s). The reason for exclusion shall be made part of the record.
 - (4) The Sanction Authority or Hearings Officer may classify documents or physical evidence as confidential upon making a finding that revealing such evidence would pose a threat to the safety of the person providing the evidence.
 - (3) The Sanction Authority or Hearings Officer shall make evidence received without disclosing the identity of the witness a sealed part of the record.
 - (6) When a witness is unavailable, the Sanction Authority or Hearings Officer may receive statements in the form of documentary evidence. The Sanction Authority or Hearings Officer shall determine at an in-camera hearing the reliability and relevance of the absent witness's statement.

Statutory Authority: ORS 144.343, 144.347

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

255-075-0046

Postponement

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

Statutory Authority: ORS 144.050, 144.140, 144.343

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

255-075-0050

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

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

255-075-0055

Reopening Hearings: Criteria; Procedure

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

Statutory Authority: ORS 144.050, 144.140, 144.343

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

255-075-0056
Hearings Record

- (1) The hearings record shall include:
 - (a) a Hearings Report Summary;
 - (b) a written statement of alleged violations;
 - (c) supporting materials, including documentary evidence admitted;
 - (d) a signed Notice of Rights;
 - (e) the Order of Parole or Post-Prison Supervision;
 - (f) a notice of time and place of hearing;
 - (g) a tape recording of the advice of rights and the hearing;
 - (h) the supervising officer's report, including recommended dispositions; [and]
 - (i) the history of supervision, local sanctions and modifications; and
 - (j) if any, the written waiver of the offender's right to three working days notice of the hearing.
- (2) The Hearings Officer shall retain the tape recording used in subsection (1)(g) of this rule for (4) four years.

Statutory Authority: ORS 144.343

History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98, 06-17-02, **10-10-03**)

255-075-0060
Record of Parole Revocation Hearing

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

255-075-0065
Ten Day Period for Offender's Evidence and Exceptions

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

Statutory Authority: ORS 144.343(7)

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

255-075-0067

12-29-2005 PERM

Conditions Violations

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

- 1) If an offender waives a hearing after receipt and review of the notice of rights, as provided in OAR 255-075-0005(6) a supervising officer may order administrative sanctions, including a local confinement sanction not exceeding thirty (30) days. The Local Supervisory Authority's designee may review the decision to order a local confinement sanction if the offender's underlying sentence was for 12 months or less. The Board may review the decision if the underlying sentence was more than 12 months.
- 2) After a hearing, or if an offender waives a hearing after receipt of the notice of rights, as provided in OAR 255-075-0005(6), a Hearings Officer or agency designee may order administrative sanctions, including a local confinement sanction not exceeding sixty (60) days. The Hearings Officer or agency designee shall send a copy of the final order and report to the Sanction Authority and, upon request, shall send the record of the hearing as described in OAR 255-075-0056. The Hearings Officer or agency designee shall retain the record for four (4) years.
- 3) After a hearing, or waiver, the Board may order administrative sanctions for offenders originally sentenced to more than 12 months, and a Local Supervisory Authority designee may order administrative sanctions for offenders originally sentenced to 12 months or less. The Board or a Local Supervisory Authority designee ordered local administrative confinement sanction may not exceed ninety (90) days.
- 4) The Board (for offenders originally sentenced to more than 12 months) or the Local Supervisory Authority designee (for offenders originally sentenced to 12 months or less) may override any sanction ordered by a supervising officer, agency designee or Hearings Officer.
- 5) Administrative Sanctions, including local confinement shall be applied in accordance with the Department of Corrections rules for structured, intermediate sanctions, OAR 291-58-010 et al., subject to jointly drafted revisions by the Department of Corrections and the Board.
- 6) If an administrative sanction is not sufficient to address the violation or to protect the public, the Sanction Authority may revoke supervision for a period(s) as set out in OAR 255-075-0079, or deny re-release for offenders on parole.
- 7) Conditions of supervision may be modified at any time by the Sanction Authority when necessary for the offender or public safety. If an offender objects to the modification, administrative review must be made within 45 days of the mailing date on the Board order or receipt of a written order by the Local Supervisory Authority.

Statutory Authority: ORS 144.106, 144.343

History: (4/30/92, temporary; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98,
5-13-03)

255-075-0070

Final Action: Procedure

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

Statutory Authority: 144.125, 144.343

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

255-075-0072

Re-release Order After Revocation

- (1) At the time of a revocation decision, the Sanction Authority shall make an order concerning re-release.
- (2) In the re-release order, the Sanction Authority may:
 - (a) continue parole or post-prison supervision pursuant to 255-075-0075 or 255-075-0080; or
 - (b) set the re-release date in accordance with rule 255-075-0079; or
 - (c) The Board may defer the re-release decision pending a future disposition hearing for offenders on parole.
- (3) Upon notification that parole or post-prison supervision has terminated by operation of ORS 144.345(2), the Board shall apply subsection (2) of this rule.
- (4) Revocation of post-prison supervision stops the period of post-prison supervision from running while the offender is serving time in custody for a revocation sanction. The re-release order following a revocation sanction shall include a re-calculation of the post-prison supervision expiration date to account for the time the offender was in custody serving the revocation sanction.

- (5) The sum of the time actually served on the original incarceration sentence, all days served as a revocation sanction, and the time served in the community on post-prison supervision cannot exceed the maximum indeterminate sentence for the offense(s) for which the offender is on post-prison supervision.

Statutory Authority: ORS 144.346, 144.395

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

Return to DOC for a Period of Greater than 12 months
255-075-0073

- (1) Post-prison supervision may be revoked and an offender returned to the custody of the Department of Corrections for a sanction that exceeds 12 months when:
- (a) The offender is currently in violation of a condition of supervision; and
 - (b) The offender scores at least a total of 44 points on the scale in Exhibit R of these rules; and
 - (c) The community corrections agency supervising the offender and/or a hearings officer recommend a return to the Department of Corrections for a sanction exceeding 12 months; and
 - (d) The Board finds that a sanction exceeding 12 months is appropriate.
- (2) This rule may only be applied to offenders serving a term of post-prison supervision for a felony crime committed on or after July 14, 1997, and the term of post-prison supervision:
- (a) follows completion of a sentence to a term of imprisonment that exceeds 12 months, or
 - (b) was imposed for a felony classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid, or
 - (c) was imposed as part of a sentence under ORS 137.700 or 137.707, or
 - (d) was imposed as part of a sentence as a dangerous offender under ORS 161.725 and 161.737, or
 - (e) is subject to ORS 144.103 (length of post-prison supervision for certain sex offenses).
- (3) A revocation hearing as described in OAR 255-075-0005 must be held when there is a recommendation under this rule.
- (4) A community corrections agency and/or hearing officer recommending a sanction under this rule must specifically state how the offender fits the requirements of this rule (including the score on the scale), what efforts have been made to manage the offender in the community and why the offender cannot be safely managed in the community. The recommendation may also contain any other information that may assist the board.

- (5) If a community corrections agency and/or hearing officer recommends a sanction under this rule, the board shall hold a hearing as described in OAR 255-075-0097 to determine whether a sanction exceeding 12 months is appropriate. After a hearing, the board can order a sanction of up to 24 months incarceration. The board must hold a subsequent hearing before it can order continued incarceration exceeding 24 months. The length of sanction imposed under this rule is determined by the board.
- (6) Subject to the requirements of this rule, an offender may be required to serve a sanction under this rule up to the post-prison supervision expiration date for any offense for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule. When an offender is released from a sanction imposed under this rule, the offender must serve the balance, if any, of any post-prison supervision remaining up to the post-prison supervision expiration date. If the offender is not released prior to the post-prison supervision expiration date, the post-prison supervision will expire. The periods of post-prison supervision for all offenses for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule continue to run while an offender is serving a sanction under this rule.
- (7) Board hearings under this rule will be conducted in the same manner that the board conducts future disposition hearings. The board may order a psychological evaluation for a hearing under this rule. The procedures for records, disclosure and notice outlined in Divisions 15 and 30 shall govern these hearings. A panel may conduct the hearing and the board shall make decisions pursuant to OAR 255-030-0015.
- (8) In determining whether a sanction exceeding 12 months is appropriate or whether continued incarceration exceeding 24 months is appropriate, the board must consider the recommendation by the community corrections agency or hearing officer and may also consider the following:
 - (a) the nature of the underlying conviction(s);
 - (b) the offender's criminal history;
 - (c) the history and nature of violations of post-prison supervision or parole;
 - (d) findings made by a psychologist in a psychological evaluation;
 - (e) conduct in institutions or jails;
 - (f) programs completed in custody and/or in the community;
 - (g) treatment available in the community;
 - (h) release plans;
 - (i) victim's statements, if any; and
 - (j) any indications of reformation and rehabilitation.

Statutory Authority: (ORS 144.107)

History: (03/12/01)

255-075-0075

Offenders Convicted of New Crime in This or Another Jurisdiction

- (1) If an offender has violated parole or post-prison supervision as a result of a conviction of a new crime and the court has ordered a prison term to the Department of Corrections, parole or post-prison supervision terminates without a violation hearing by operation of ORS 144.345(2).
- (2) Upon release from custody, if the Oregon sentence has not expired, Oregon supervision shall resume either in another jurisdiction under Interstate Compact or in Oregon. If, in preparing the re-release plan, the Department of Corrections cannot arrange supervision under Interstate Compact, the offender shall report to the appropriate Supervisory Authority for supervision.
- (3) The Sanction Authority shall make extradition decisions on a case-by-case basis in cooperation with the holding jurisdiction.
- (4) If the offender absconded supervision, the Sanction Authority shall count the inoperative time from the date the Sanction Authority issued its arrest and detention warrant to the arrest date in Oregon or if arrested out of state, upon return to Oregon custody. The Board shall forward the dates to the Department of Corrections for use in recalculating the sentence good time and expiration dates for those offenders under the Board's jurisdiction. For those not under the Board's authority, the inoperative time shall be calculated by the Supervisory Authority's designee.

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

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

255-075-0076

Designation of Parole Failure

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

255-075-0078

Commencement Date for Prison Term Following a Violation

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

Statutory Authority: ORS 144.346, 144.395, 144.780, 144.783

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

255-075-0079

Guidelines for Re-release

- (1) For technical violation(s):
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-011-0004.
- (2) For conduct constituting a crime:
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.
- (3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.
- (4) Offenders sentenced to life imprisonment or received a lifetime period of post-prison supervision for murder may serve further incarceration to the sentence expiration date. Offenders sentenced to life imprisonment for aggravated murder may serve further incarceration to the sentence expiration date.
- (5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.
- (7)
 - (a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.
 - (b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.
 - (c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.
- (8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.

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

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

History: (4/19/89, temporary; 11/1/89; 10/15/90, temporary; 1/16/91; 10/9/92; 10/29/93, temporary
11/14/97; 05/11/98, 01-25-00, 05-13-03,
06-14-04- temporary; **11-02-2004**)

255-075-0080

Continuance on Parole or Supervision

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

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

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

255-075-0082

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

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

255-075-0085

Parole Violators with No New Commitment; Action Required

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

255-075-0090

Guidelines for Reparole

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

255-075-0095

Variation From Guidelines for Aggravation/Mitigation Permitted

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

12-29-2005 PERM

Conditions Violations

255-075-0096

Denial of Re-release Consideration

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

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

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

255-075-0097

Time for Future Disposition Hearing

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

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

Statutory Authority: ORS 144.050, 144.140, 144.395

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

255-075-0098

Restoration of Statutory and Meritorious Goodtime

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

- (1) there is no violation of parole; or
- (2) parole is revoked on a best interest basis and there is no actual parole violation; or
- (3) parole is revoked on a technical violation; or
- (4) parolee is within 180 days of discharge; or

- (5) parole is revoked for new criminal activity which is a misdemeanor or non person-to-person class C felony and:
 - (a) the new criminal activity was already sanctioned at the local level;
or
 - (b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.

- (6) An offender ordered to serve a term of incarceration as a Revocation sanction for a post-prison supervision violation is not eligible for goodtime, earned-credit time, work release, transitional or temporary leave.

Statutory Authority: ORS 421.120, 144.108(3)

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

255-075-0100

Future Disposition Hearing Packet

The Future Disposition Hearing Packet shall contain:

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

Statutory Authority: ORS 144.185, 144.395

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

Notice

2-1-06

Corrected

Secretary of State

NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

Michael R. Washington

2575 Center Street NE, Ste 100, Salem, Oregon

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Rules Coordinator

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RULE CAPTION

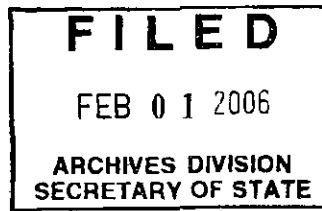
Extension of the period of time for retention of tape recordings of board hearings.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

AMEND: 255-015-0003



REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.050, 144.140, 144.335

Stat. Auth.

NONE

Other Authority

ORS NONE

Stats. Implemented

RULE SUMMARY

The amendment of this rule allows for the retention of the tape recording of Parole Board hearings for four years as opposed to two years. This is necessary to preserve the records for purposes of protecting the rights of the offender and reducing the liability of the Board in the appellate process.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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

Michael R. Washington

Signature

03/21/2006

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Michael R. Washington, Chair

Printed name

02-01-2006

Date

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STATEMENT OF NEED AND FISCAL IMPACT

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

Oregon Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action)

Extension of the period of time for retention of tape recordings of board hearings.

Statutory Authority: ORS 144.050, 144.140, 144.335

Other Authority: NONE

Stats. Implemented: ORS NONE

Need for the Rule(s): The amendment of this rule allows for the retention of the tape recording of Parole Board hearings for four years as opposed to two years. This is necessary to preserve the records for purposes of protecting the rights of the offender and reducing the liability of the Board in the appellate process.

Documents Relied Upon, and where they are available: NONE

Fiscal and Economic Impact, including Statement of Cost of Compliance:

This amendment will not have any fiscal or economic impact on other agencies, local government, or identified public. The minor fiscal and economic impact it would have on the Board has already been absorbed given that this has been a practice of the Board for several years.

How were small businesses involved in the development of this rule?

There was no involvement of small businesses in the making or developing of this rule.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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



Authorized Signer

Michael R. Washington, Chair

Printed name

02-01-2006

Date

DIVISION 15

REQUEST FOR BOARD RECORDS OR FILES

Board Records

255-015-0002

The Board shall maintain a separate file on each person under its jurisdiction which shall contain the materials obtained pursuant to ORS 144.185.

Statutory Authority: ORS 144.050, 144.140, 144.185

History: (12/2/86, temporary; 4/28/87; 5/19/88; 10/9/92; temporary 10/14/98, 1/15/99)

Oral Record of Hearing

255-015-0003

A tape of the oral proceedings of any hearing shall be kept by the Board for at least [two] four years.

Statutory Authority: ORS 144.050, 144.140

History: (12/2/86, temporary; 4/28/87; 5/19/88; temporary 10/14/98, 1/15/99, **2/1/06-NOTICE**)

Obtaining Information from Board Records

255-015-0005

- (1) Any interested party may apply for information from a selected record.
- (2) The request must be in writing, addressed to the chairperson of the Board and must specify the information requested.
- (3) The chairperson or designee shall review the record to determine what may be disclosed in accordance with OAR 255-015-0010, and within ten (10) working days shall advise the person or agency whether the requested information is available and may be disclosed.

Statutory Authority: ORS 144.050, 144.130, 144.140, 192.420, 192.502

History: (5/31/85; 12/2/86, temporary; 4/28/87; 5/19/88; 11/1/89; 10/9/92; temporary 10/14/98, 1/15/99)

Criteria for Denial of Disclosure of Records

255-015-0010

- (1) The Board shall disclose its records to any person or agency unless:
 - (a) Disclosure would interfere with the rehabilitation of the inmate/offender, *and* the public interest in confidentiality clearly outweighs the public interest in disclosure; or
 - (b) Disclosure would substantially prejudice or prevent the carrying out of the functions of the Board or the Department of Corrections, *and* the public interest in confidentiality clearly outweighs the public interest in disclosure; or.

- (c) The information was submitted to a public body in confidence, the information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, *and* the public interest will suffer by disclosure of the information; or
 - (d) The requested record is a presentence investigation report prepared pursuant to ORS 137.077 or 137.530; or
 - (e) The requested records constitute advisory communications within a public body *and* in this instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure; or
 - (f) The records comprise investigatory information compiled for criminal law purposes *and* the public interest does not require disclosure in this particular instance; or
 - (g) The requested records pertain to potential or pending litigation involving the Board *and* the public interest does not require disclosure in this particular instance; or
 - (h) The requested records are otherwise exempt from disclosure under the Public Records Law or other provisions of law; other reasons.
- (2) When the Board denies disclosure of information, the Board will provide the reasons for denial. The Board may provide a more detailed written statement of the reason(s) for denial which only the Attorney General and the courts may review.
- (3) When a document contains information that is exempt from disclosure, the Board shall separate exempt material from nonexempt material and disclose the nonexempt material.

Statutory Authority: ORS 144.050, 144.140, 192.502, 192.505

History: (5/31/85; 12/2/86, temporary; 4/28/87; 5/19/88; 11/1/89; 10/9/92, temporary 10/14/98, 1/15/99)

Fees for Board Records

255-015-0015

- (1) The fees for documents shall be as follows:
 - (a) Fifty cents per page, if the request is for specific, identified, disclosable information from the Board Review Packet; or
 - (b) Fifty cents per page, plus a charge for staff time, if the request requires a review of the Board Record and a determination of availability.
- (2) The fee for the duplication of oral records shall be \$5.00 per tape.
- (3) The Board chairperson, or designee, may waive or reduce all computed costs including staff time for review, reproduction, materials, and mailing costs.
- (4) Prior to reproduction of material, the Board shall receive payment, unless the chairperson, or designee, decides that the Board can bill the person or agency.
- (5) The Board shall deposit payments in the Miscellaneous Receipts account in accordance with Business Office instructions.

Statutory Authority: ORS 144.050, 144.140, 192.440

2-1-06-NOTICE

Request for Records or Files

History: (5/31/85; 12/2/86, temporary; 4/28/87, 5/19/88; 10/9/92, temporary 10/14/98, 1/15/99)

Victim and District Attorney Access to Board Review Packet
255-15-020

History: (4/28/87; 5/19/88, repealed)

Contents of Board Review Packet
255-15-030

History: (1/12/87; 5/19/88, repealed)

corrected

Secretary of State

NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

Michael R. Washington

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621

503-945-8978

Rules Coordinator

Address

Telephone

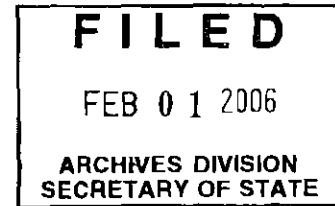
RULE CAPTION

Extension of time to conduct psychological or psychiatric evaluations in dangerous offender cases.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

AMEND: 255-036-0010, 255-037-0010



REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.050, 144.140, 144.226
Stat. Auth

House Bill 2323 (OR Laws 2005)
Other Authority

ORS NONE
Stats. Implemented

RULE SUMMARY

Establishes that the Board has 120 days prior to the offender's parole consideration date or the last day of the offender's incarceration term to give the offender a complete mental and psychiatric or psychological examination. These amendments are needed to bring the Board rules into conformity with House Bill 2323 passed into law the by 2005 Oregon Legislature.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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. The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Michael R. Washington
Signature

03/21/2006

Last Day for Public Comment
Last day to submit written comments to the Rules Coordinator

Michael R. Washington, Chair
Printed name

02-01-2006
Date

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STATEMENT OF NEED AND FISCAL IMPACT

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

Oregon Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)
Extension of time to conduct psychological or psychiatric evaluations in dangerous offender cases.

Statutory Authority: ORS 144,050, 144.140, 14.226

Other Authority: House Bill 2323 (OR Laws 2005)

Stats. Implemented: ORS NONE

Need for the Rule(s):

Establishes that the Board has 120 days prior to the offender's parole consideration date or the last day of the offender's incarceration term to give the offender a complete mental and psychiatric or psychological examination. These amendments are needed to bring the Board rules into conformity with House Bill 2323 passed into law the by 2005 Oregon Legislature.

Documents Relied Upon, and where they are available: NONE

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The Board is not aware of any fiscal of economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule?

There was no involvement of small businesses in the making or developing of this rule.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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

Michael R. Washington

Authorized Signer

Michael R. Washington, Chair

Printed name

02-01-2006

Date

- (6) At any hearing or review, the Board may consider:
- (a) the examining psychologist or psychiatrist's written report;
 - (b) a written report from the executive officer of Department of Corrections institution in which the inmate has been confined;
 - (c) a field analysis report and release plan, including verification that adequate supervision and mental health treatment are immediately available for the particular inmate;
 - (d) any other information regarding the inmate that the Board finds relevant.

Statutory Authority: ORS 144.226, 144.228

History: (7/26/93, temporary; 10/29/93, 8/26/98)

Evaluations
255-036-0010

- (1) Within ~~sixty (60)~~ one hundred twenty (120) days of the last day of the prison term and at least every two years thereafter, the Board shall order a complete mental and psychological or psychiatric examination of the inmate.
- (2) The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other information the psychologist or psychiatrist believes will aid the Board in determining whether the examined person is eligible for release.
- (3) The report of the psychologist or psychiatrist shall:
 - (a) include a statement as to whether the dangerous offender has any mental or emotional disturbance, deficiency, condition, or disorder predisposing him/her to the commission of any crime to a degree rendering the inmate a danger to the health or safety of others;
 - (b) any other information which would aid the Board in determining whether the inmate is eligible for release;
 - (c) state progress or changes in the condition of the examined inmate;
 - (d) contain recommendations for treatment or medication that would assist the inmate in performing satisfactorily in the community upon release;
 - (e) be filed with the Board within 60 days after the examination;
 - (f) be certified and sent to the inmate, the inmate's attorney, and to the institution superintendent.

Statutory Authority: ORS 144.226, 144.228

History: (7/26/93, temporary; 10/29/93; 8/15/94, 8/27/98, **02-01-2006-NOTICE**)

mental health treatment are immediately available for the particular inmate;

- (d) any other information regarding the inmate that the Board finds relevant.

Statutory Authority: ORS 144.226, 144.228, 144.232

History: (11/1/89; 7/1/91, temporary; 12/1/91; 7/26/93, temporary; 10/29/93, 8/27/98)

Evaluations

255-037-0010

- (1) Within ~~sixty (60)~~ one hundred twenty (120) days of the last day of the incarceration term and at least every two years thereafter, the Board shall order a complete mental and psychological or psychiatric examination of the inmate.
- (2) The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other information the psychologist or psychiatrist believes will aid the Board in determining whether the examined person is eligible for release.
- (3) The report of the psychologist or psychiatrist shall:
- (a) include a statement as to whether or not the dangerous offender has any mental or emotional disturbance, deficiency, condition, or disorder predisposing him/her to the commission of any crime to a degree rendering the inmate a danger to the health or safety of others;
- (b) any other information which would aid the Board in determining whether the inmate is eligible for release;
- (c) state progress or changes in the condition of the examined inmate;
- (d) contain recommendations for treatment or medication that would assist the inmate in performing satisfactorily in the community upon release;
- (e) be filed with the Board within 60 days after the examination;
- (f) be certified and sent to the inmate, the inmate's attorney, and to the institution superintendent.

Statutory Authority: ORS 144.226, 144.228

History: (11/1/89; 7/1/91, temporary; 12/1/91; 7/26/93, temporary; 10/29/93; 8/15/94, 8/27/98,

02-01-2006-NOTICE)

corrected

Secretary of State

NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

Michael R. Washington

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621

503-945-8978

Rules Coordinator

Address

Telephone

RULE CAPTION

Amendment of sex offender special conditions to comply with statutory changes.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

AMEND: 255-070-0001 (Exhibit J)

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.050, 144.102, 144.140, 144.270

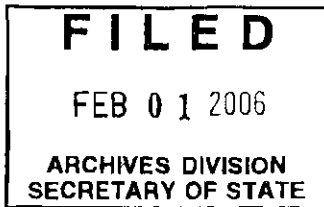
Stat. Auth.

House Bill 2050 (OR Laws 2005), Senate Bill 243
(OR Laws 2005), House Bill 3419 (OR Laws 2005)

Other Authority

ORS NONE

Stats. Implemented



RULE SUMMARY

HB 2050: This Exhibit is being amended to comply with statutory changes adding a special condition which prohibits a convicted sex offender or a person convicted of an Assault from living within three miles of the victim of their crimes.

SB 243: This Exhibit is being amended to comply with statutory changes adding a special condition which addresses the extent of contact a convicted sex offender may have with minor children without permission of their supervising officer.

HB 3419: This Exhibit is being amended to comply with statutory changes adding a special condition which prohibits convicted sex offenders from residing with each other without the prior approval of the supervising officer.

public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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

Michael R. Washington
Signature

03/21/2006

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Michael R. Washington, Chair

Printed name

02-01-2006

Date

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

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)
Amendment of sex offender special conditions to comply with statutory changes.

Statutory Authority: ORS 144.050, 144.102, 144.140, 144.270

Other Authority: House Bill 2050 (OR Laws 2005), Senate Bill 243 (OR Laws 2005), House Bill 3419 (OR Laws 2005)

Stats. Implemented: ORS NONE

Need for the Rule(s):

HB 2050: This Exhibit is being amended to comply with statutory changes adding a special condition which prohibits a convicted sex offender or a person convicted of an Assault from living within three miles of the victim of their crimes.

SB 243: This Exhibit is being amended to comply with statutory changes adding a special condition which addresses the extent of contact a convicted sex offender may have with minor children without permission of their supervising officer.

HB 3419: This Exhibit is being amended to comply with statutory changes adding a special condition which prohibits convicted sex offenders from residing with each other without the prior approval of the supervising officer.

Documents Relied Upon, and where they are available: NONE

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule?

There was no involvement of small businesses in the making or developing of this rule.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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

Michael R. Washington
Authorized Signer

Michael R. Washington, Chair
Printed name

02-01-2006
Date

DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions Not Limited by Exhibit J 255-070-0001

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

Statutory Authority: (ORS 144.096, 144.102, 144.270)

History: (5/31/85; 11/3/86, temporary; 4/1/87; 4/15/88, temporary; 5/19/88; 7/1/88;
10/18/88; 4/5/90; 4/30/92, temporary; 10/9/92; 10/15/93, 11/09/98,
9-15-99 Notice/Temp, 11-15-99, 05-22-00, 12/15/01-Notice/Temp,
01-29-02, 04-15-02 – Notice/Temp, 06-17-02, 06-13-03–notice/temp,
10-10-03, 01-14-04. **02-01-2006-NOTICE**)

Offender Return to County of Residence 255-070-0003

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

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

Statutory Authority: (ORS 144.270(5))

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

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

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

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

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

Establishing Conditions
255-070-0015

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

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

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

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

EXHIBIT J

(ORS 144.102, 144.270, 144.275, 181.595)
OAR 255-060-0008, 255-065-0005, 255-070-0001-0015, 255-075-0002, 255-075-0004)

GENERAL/SPECIAL PAROLE AND POST-PRISON SUPERVISION CONDITIONS

Parole/Post-Prison Supervision is subject to all listed General Conditions and the designated Special Conditions. Prior to release the Board may modify the conditions at any time. After parole/post-prison supervision has commenced, conditions may be added upon your signed consent or after opportunity to be heard, orally or in writing.

Parole or Post-Prison Supervision may be revoked for violation of any of these conditions and/or you may be returned when parole or post-prison supervision is not in your best interest or the best interest of society.

The Board may, at its discretion, sanction violations of Parole or Post-Prison Supervision Conditions; sanctions may include returning you to the Department of Corrections custody.

As used in this exhibit, the following words have the following meanings: "Offender" means persons released to parole or post-prison supervision. "Parole Officer" shall also mean the supervisory authority under the post-prison supervision system.

GENERAL CONDITIONS

1. Pay supervision fees, fines, restitution or other fees ordered by the Court.
2. Not use or possess controlled substances except pursuant to a medical prescription.
3. Submit to testing of breath or urine for controlled substance or alcohol use if the offender has a history of substance abuse or if there is a reasonable suspicion that the offender has illegally used controlled substances.
4. Participate in a substance abuse evaluation as directed by the supervising officer and follow the recommendations of the evaluator if there are reasonable grounds to believe there is a history of substance abuse.
5. Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency. Offender automatically waives extradition if offender absconds supervision out of State.
6. If physically able, find and maintain gainful full-time employment, approved schooling, or a full-time combination of both.
7. Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency.
8. Permit the supervising officer to visit the offender or the offender's residence or work site, and to conduct a walk-through of the common areas and of the rooms in the residence occupied by or under the control of the offender.
9. Consent to the search of person, vehicle or premises upon the request of a representative of the supervising officer if the supervising officer has reasonable grounds to believe that evidence of a violation will be found, and submit to fingerprinting or photographing, or both, when requested by

the Department of Corrections or a county community corrections agency for supervision purposes.

10. Obey all laws, municipal, county, state and federal.
11. Promptly and truthfully answer all reasonable inquiries by the Department of Corrections or a county community corrections agency.
12. Not possess weapons, firearms, or dangerous animals.
13. Report as required and abide by the direction of the supervising officer.

SPECIAL CONDITIONS

1. Offender shall be evaluated by a mental health evaluator and follow all treatment recommendations.
2. Offender shall continue to take any psychiatric or psychotropic medication that was prescribed prior to or at the time of release from custody until otherwise directed by a physician. At the direction of the parole officer, the offender shall undergo a psychiatric evaluation and take any medications recommended. The offender shall comply with a medication monitoring program at the request of the parole officer.
3. Offender shall have no contact with minor females and shall not frequent ~~any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades)~~ be present more than one time, without the prior written approval from their- the board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate. The offender shall also not be present, without the prior written approval of the board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.
4. Offender shall have no contact with minor males and shall not frequent ~~any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades)~~ be present more than one time, without the prior written approval from their- the board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate. The offender shall also not be present, without the prior written approval of the board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.
5. Offender shall submit to random polygraph tests as part of a sex offender surveillance program. Failure to submit to the tests may result in return to custody. Specific responses to the tests shall not be the sole basis for return to custody.
6. Offender shall enter and complete or be successfully discharged from a recognized and approved sex offender treatment program which may include polygraph and/or plethysmograph testing. The offender shall abide by all rules and conditions of the sex offender treatment program. Offender shall abide by a prohibition of sexually deviant materials, activities or behavior that the offender may use for the purpose of deviant sexual arousal, unless otherwise allowed by the Parole Officer in writing.
7. Offender shall pay court ordered restitution to the clerk of the court of the county of sentencing (ORS 137.106, OAR 255-065-0005).

8. If required to report as a sex offender under ORS 181.595, report with the Department of State Police, a Chief of Police, a county Sheriff, or the Supervising Agency when supervision begins, within 10 days of a change in residence and once a year within 10 days of the person's date of birth.
9. Offender shall not possess or use intoxicating beverages.
10. Other: Special conditions may be imposed that are not listed above when the Board of Parole and Post-Prison Supervision determines that such conditions are necessary.
11. Offender shall have no contact direct or indirect with those listed below:
12. Consent to search of computer or other electronic equipment upon the request of the supervising officer, or their representative, if the supervising officer has reasonable grounds to believe that evidence of a violation will be found.
13. Sex Offender Package:
 - (a) Agreement to comply with any curfew set by the board, the supervisory authority or the supervising officer.
 - (b) A prohibition against contacting a person under 18 years of age without the prior written approval of the board, supervisory authority or supervising officer.
 - (c) A prohibition against frequenting being present more than one time, without the prior written approval of the board, supervisory authority or supervising officer, a place where persons under 18 years of age regularly congregate.
 - (d) In addition to the prohibition under subparagraph (C) of this paragraph, a prohibition against being present, without the prior written approval of the board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.
 - [(d)](e) A prohibition against working or volunteering at a school, day care center, park, playground or other place where persons under 18 years of age regularly congregate.
 - [(e)](f) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board, supervisory authority or supervising officer. The offender shall abide by all rules and conditions of the sex offender treatment program. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.
 - [(f)](g) A prohibition against any contact with the victim, directly or indirectly, unless approved by the victim, the person's treatment provider and the board, supervisory authority or supervising officer.
 - [(g)](h) Unless otherwise indicated for the treatment required under subparagraph (E) of this paragraph, a prohibition against viewing, listening to, owning or possessing any sexually stimulating visual or auditory materials that are relevant to the person's deviant behavior.
 - [(h)](i) Agreement to consent to a search of the person or the vehicle or residence of the person upon the request of a representative of the board or supervisory authority if the representative has reasonable grounds to believe that evidence of a violation of a condition of post-prison supervision will be found.
 - [(i)](j) Participation in random polygraph examinations to obtain information for risk management and treatment. The person is responsible for paying the expenses of the examinations. The results of a polygraph examination under this subparagraph may not be used in evidence in a hearing to prove a violation of post-prison supervision.
 - [(j)](k) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.
 - [(k)](l) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.
 - (m) A prohibition against residing in any dwelling in which another sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or supervising officer, or in which more than one other sex offender who is on probation,

parole or post-prison supervision resides unless approved by the board or a designee of the board. As soon as practicable, the supervising officer of a person subject to the requirements of this subparagraph shall review the person's living arrangement with the persons' sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subparagraph:

(i) "Dwelling" has the meaning given that term in ORS 469.160.

(ii) "Dwelling" does not include a residential treatment facility or a halfway house.

(iii) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(n) If the person is in post-prison following conviction of a sex crime, as defined in ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the board or supervisory authority, if requested by the victim, shall include as a special condition of the person's post-prison supervision that the person not reside within three miles of the victim.

Notice / Temp

3-20-06

CORRECTED

Secretary of State

NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

Michael R. Washington

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621

503-945-9009

Rules Coordinator

Address

Telephone

RULE CAPTION

Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

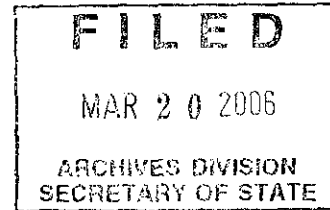
ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: OAR 255-060-0011 (Exhibit Q-V)

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.



ORS 144.050, 144.140, 181.585, 181.586

V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stat. Auth.

Other Authority

ORS NONE

Stats. Implemented

RULE SUMMARY

The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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

Michael R. Washington

Signature

05/21/2006

Last Day for Public Comment

Michael R. Washington, Chair

Printed name

03-20-2006

Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 3:00pm on the preceding workday.

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

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.) Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders

Statutory Authority: ORS 144.050, 144.140, 181.585, 181.586

Other Authority: V.L. Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Rule(s): The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005.

Documents Relied Upon, and where they are available: The Oregon Supreme Court Opinion in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? There was no involvement by small businesses in the development of this rule as this rule amendment will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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


Authorized Signer

Michael R. Washington, Chair
Printed name

03-20-2006
Date

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 03/20/2006 by the
Date prior to or same as filing date

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

Michael R. Washington 2575 Center Street NE, Ste 100-Salem, OR 97301-4621 503-945-9009
Rules Coordinator Address Telephone

to become effective 03/20/2006 through 09/15/2006
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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

AMEND: OAR 255-060-0011 (Exhibit Q-V)

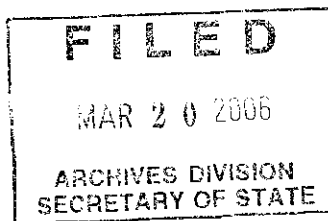
SUSPEND:

ORS 144.050, 144.140, 181.585, 181.586 V.L.Y v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)
Stat. Auth. Other Authority

ORS NONE
Stats. Implemented

RULE SUMMARY

The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)



Michael R. Washington
Authorized Signer

Michael R. Washington, Chair
Printed name

03-20-2006
Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

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

255
Administrative Rules Chapter Number

In the Matter of: **Oregon Board of Parole and Post-Prison Supervision Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders**

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Statutory Authority: ORS 144,050, 144,140, 181,585, 181,586

Other Authority: V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Temporary Rule(s): The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005.

Documents Relied Upon, and where they are available: The Oregon Supreme Court Opinion in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Justification of Temporary Rule(s): The Oregon Supreme Court ruling in V.L.Y. v. Board, 338 Or 44 (2005) rendered the board's current rule unconstitutional. In the interest of public safety, it is necessary that the board have the authority to designate sex offenders as predatory as soon as practicable.

Michael R. Washington

Authorized Signer

Michael R. Washington, Chair
Printed name

03-20-2006
Date

255-060-0011

Procedures for Predatory Sex Offender Designation

- (1) For purposes of this rule, [a person is] a predatory sex offender is defined as a person [if the person] who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use [only] the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider any other evidence that the inmate or the offender exhibits characteristics showing a tendency to victimize or injure others.
- (2) Predatory sex offender designations made by the board for inmates or offenders released from a Department of Corrections institution before [May 1, 2004] February 10, 2005, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a candidate for predatory sex offender designation, if the inmate or offender scores [four] six or more points on the STATIC-99.
- (4) Subject to the procedures set forth below, inmates or offenders who score [four] six or more points on the STATIC-99, and have been identified as a candidate for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before [a predatory sex offender finding is made.] an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.
 - (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate or offender before an evidentiary hearing is conducted or waived to determine [making] a predatory sex offender finding. The Board [shall] may find an inmate or offender is a candidate [make the] for predatory sex offender designation [finding] if there is evidence to support a score on the STATIC-99 of [four] six or more points.
 - (d) Inmates or offenders may elect to waive their right to submit written objections. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections, the Board may [make] find an inmate or offender is a candidate for [the] predatory sex offender designation [finding] if the inmate's or offender's score on the STATIC-99 is [four] six or more points. [An inmate's or offender's waiver of the right to submit written objections to the STATIC-99 score under this paragraph does not affect his or her right to challenge the score at an evidentiary hearing conducted under paragraph 6.]

- (5) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate or offender has participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.
- (6) The sole purpose of the evidentiary hearing will be to determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The Board may receive a written report from a supervising officer or a release counselor of any Department of Corrections institution indicating that an inmate or offender who has been determined to be a candidate for designation as a predatory sex offender under paragraphs (3) and (4) exhibits characteristics showing a tendency to victimize or injure others.
- (a) Upon receipt of a written report from a supervising officer or a release counselor, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate or offender should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will forward the report to its Hearing Officer, who will schedule an evidentiary hearing.
- (b) The Board's Hearing Officer will provide the inmate or offender with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate or offender may proceed with the evidentiary hearing or waive their right to the hearing. At the evidentiary hearing, the Hearings Officer will consider the written report submitted by the supervising officer or release counselor and the results of the STATIC-99 risk assessment scale, and may accept additional evidence supporting the STATIC-99 score or otherwise indicating that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The inmate or offender may present evidence rebutting claims made in the written report submitted by a supervising officer or release counselor, challenging the score on the STATIC-99, or rebutting other evidence that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. At the conclusion of the evidentiary hearing, the Hearing Officer will submit his report to the Board with a recommendation as to whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others.
- (c) Upon receipt of the report and recommendation from the Board's Hearing Officer, the Board will review the report and recommendation and determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others and is, therefore, a predatory sex offender.
- [(6)](7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: [Chapter 163 (1999 OR Laws)] ORS 144.050, ORS 144.140, ORS 181.585, ORS 181.586.

History: (02-15-00, 03-12-02, 06/13/03, 10-10-03, 01/14/04--Temp/Notice, 06-14-04, **3-20-06-TEMP/NOTICE**)

NOTICE OF RIGHTS - PREDATORY SEX OFFENDER DESIGNATION

SID# _____

Offender _____

Purpose of Hearing. You are entitled to a hearing to determine whether you meet the criteria of a "predatory sex offender" under ORS 181.585. If it is found that you meet those criteria, the Board of Parole & Post-Prison Supervision may make the determination that you are a "predatory sex offender" within the meaning of that statute.

Waiver of Hearing. You may waive the hearing in two ways: (1) in writing, by checking the appropriate box and signing the back of this form; or (2) by conduct, by failing or refusing to appear for or participate in your hearing.

If you waive the hearing by conduct:

- You do not contest that the criteria set forth in ORS 181.585 apply to you, and
- The Hearings Officer and, if applicable, the Board, will make findings based on the available record. There may be no other hearing.

If you waive the hearing in writing:

- At the time you submit your written waiver, you may also submit a written statement setting forth substantial reasons why the Hearings Officer or Board should find that the criteria of ORS 181.585 do not apply to you, and
- The Hearings Officer and, if applicable, the Board, will make findings based on the available record as supplemented by any information submitted to or brought before the Hearings Officer or, if applicable, the Board, to rebut your written statement. There may be no other hearing.

Result of Hearing. Unless you waive your right to a hearing, a Hearings Officer will conduct the hearing and will make findings, conclusions, and recommendations to the Board. If the Board finds that you meet the criteria in ORS 181.585, the Board may order that you are determined to be a predatory sex offender based upon the record of the hearing **without another hearing or personal appearance.**

Rights During Hearing. You have the right to:

- Present relevant oral and written information;
- Examine witnesses and information against you, unless the Hearings Officer finds that disclosure of the witness or informant could subject the witness or informant to risk of harm;
- Request the appearance of witnesses who have relevant information regarding the alleged violations, unless the Hearings Officer finds good cause for not allowing confrontation;
- Represent yourself or obtain an attorney at your own expense.

Rights After Hearing. You have the right to:

- Within 10 days after the hearing, submit to the Board written exceptions and arguments to the Hearings Officer's findings, conclusions and recommendations.
- Appeal the Hearings Officer's or Board's final order within 45 days of the date you sign the order or the date the supervisory authority acknowledges that you received the order, using an Administrative Appeal Request form (Exhibit O) or by letter stating "This is an administrative review request pursuant to Division 80 of Board rules."
- If relief is denied, you may appeal to the Court of Appeals within 60 days of the response to your request for administrative review.

DECISIONS ABOUT RIGHTS

I understand the rights contained in this notice and I:

- [] do want a hearing [] do not want a hearing

I should be notified of my rights, the date, time, and place of the hearing and the allegations against me at least three days prior to the hearing, unless I:

- [] waive the three days from the date the Notice of Rights is served and when the hearing is held

When the Hearings Officer makes findings, conclusions and recommendations to the Board, I understand I have ten (10) days to submit written exceptions to the findings of the Hearings Officer's report to the Chairperson of the Board of Parole and Post-Prison Supervision and I:

- [] do waive the 10-day waiting period to submit exceptions and arguments before the final Board decision
[] do not waive the 10-day waiting period

- [] I do want witnesses [] I do not want witnesses

Table with 4 columns: Allowed, Denied, Name, Address, Reason for Denial. Contains three rows of checkboxes for witness information.

[] Having waived my right to a hearing, I understand that the Board, in the exercise of its authority, and based on the available record, may order that I am determined to be a predatory sex offender under ORS 181.585 even if that decision overrides the recommendation of a Hearings Officer.

I have read, or have had read to me, and fully understand and acknowledge this Notice of Rights and the Decisions.

Hearing Officer Date Offender Date

Perm

4-5-06

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 04-04-06 by the
Date prior to or same as filing date

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

Michael R. Washington, Chair 2575 Center Street NE, Ste 100, Salem, OR 97301-4610 503-945-8978
Rules Coordinator Address Telephone

to become effective 04-05-06 Rulemaking Notice was published in the March 2006 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Amendment of sex offender special conditions to comply with statutory changes.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

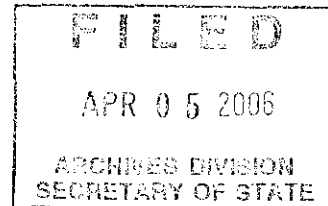
ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 255-070-0001 (Exhibit J)

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.



ORS 144.050, 144.102, 144.140, 144.270
Stat. Auth.

House Bill 2050 (Or Laws 2005), Senate Bill 243,
(Or Laws 2005), House Bill 3419 (Or Laws 2005)
Other Authority

ORS NONE
Stats. Implemented

RULE SUMMARY

HB 2050: This Exhibit is being amended to comply with statutory changes adding a special condition which prohibits a convicted sex offender or a person convicted of an Assault from living within three miles of the victim of their crimes.

SB 243: This Exhibit is being amended to comply with statutory changes adding a special condition which addresses the extent of contact a convicted sex offender may have with minor children without permission of their supervising officer.

HB 3419: This Exhibit is being amended to comply with statutory changes adding a special condition which prohibits convicted sex offenders from residing with each other without the prior approval of the supervising officer.

Michael R. Washington
Authorized Signer

Michael R. Washington, Chair
Printed name

04-05-06
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

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Date prior to or same as filing date

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

Michael R. Washington, Chair 2575 Center Street NE, Ste 100, Salem, OR 97301-4610 503-945-8978
Rules Coordinator Address Telephone

to become effective 04-05-06 Rulemaking Notice was published in the March 2006 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Extension of the period of time for retention of tape recordings of board hearings.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000 000-0000.

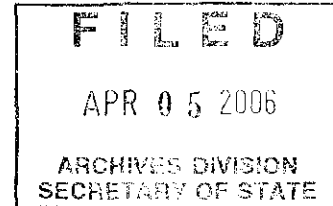
ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 255-015-0003

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.



ORS 144.050, 144.140, 144.335
NONE
Stat. Auth. Other Authority

ORS NONE
Stats. Implemented

RULE SUMMARY

The amendment of this rule allows for the retention of the tape recording of Parole Board hearings for four years as opposed to two years. This is necessary to preserve the records for purposes of protecting the rights of the offender and reducing the liability of the Board in the appellate process.

Michael R. Washington
Authorized Signer

Michael R. Washington, Chair
Printed name

04-05-06
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 04-04-06 by the
Date prior to or same as filing date

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

Michael R. Washington, Chair 2575 Center Street NE, Ste 100, Salem, OR 97301-4610 503-945-8978
Rules Coordinator Address Telephone

to become effective 04-05-06 Rulemaking Notice was published in the March 2006 Oregon Bulletin.**
Date upon filing or later Month and Year

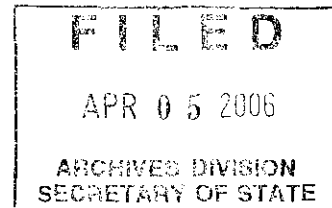
RULE CAPTION

Extension of time to conduct psychological or psychiatric evaluations in dangerous offender cases.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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



AMEND: 255-036-0010, 255-037-0010

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.050, 144.140, 144.226 House Bill 2323 (Or Laws 2005)
Stat. Auth. Other Authority

ORS NONE
Stats. Implemented

RULE SUMMARY

Establishes that the Board has 120 days prior to the offender's parole consideration date or the last day of the offender's incarceration term to give the offender a complete mental and psychiatric or psychological examination. These amendments are needed to bring the Board rules into conformity with House Bill 2323 passed into law the by 2005 Oregon Legislature.

Michael R. Washington

Authorized Signer

Michael R. Washington, Chair
Printed name

04-05-06
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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

Perm

6-14-06

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 05/22/06 by the
Date prior to or same as filing date

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

Michael R. Washington, Chair 2575 Center Street NE, Ste 100, Salem, OR 97301-4621 503-945-8978
Rules Coordinator Address Telephone

to become effective 06-14-2006 Rulemaking Notice was published in the May 2006 Oregon Bulletin.**
Date upon filing or later Month and Year

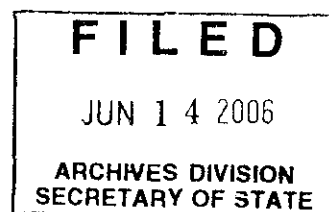
RULE CAPTION

Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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



AMEND: 255-060-0011 (Exhibit Q-V)

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.050, 144.140, 181.585, 181.586
Stat. Auth.

V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)
Other Authority

ORS NONE
Stats. Implemented

RULE SUMMARY

The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Michael R. Washington

Authorized Signer

Michael R. Washington, Chair
Printed name

06-14-06
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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

255-060-0011

Procedures for Predatory Sex Offender Designation

- (1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider any other evidence that the inmate or the offender exhibits characteristics showing a tendency to victimize or injure others.
- (2) Predatory sex offender designations made by the board for inmates or offenders released from a Department of Corrections institution before February 10, 2005, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a candidate for predatory sex offender designation, if the inmate or offender scores six or more points on the STATIC-99.
- (4) Subject to the procedures set forth below, inmates or offenders who score six or more points on the STATIC-99, and have been identified as a candidate for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.
 - (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate or offender before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate or offender is a candidate for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.
 - (d) Inmates or offenders may elect to waive their right to submit written objections. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections, the Board may find an inmate or offender is a candidate for predatory sex offender designation if the inmate's or offender's score on the STATIC-99 is six or more points.
- (5) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate or offender has participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.

- (6) The sole purpose of the evidentiary hearing will be to determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The Board may receive a written report from a supervising officer or a release counselor of any Department of Corrections institution indicating that an inmate or offender who has been determined to be a candidate for designation as a predatory sex offender under paragraphs (3) and (4) exhibits characteristics showing a tendency to victimize or injure others.
- (a) Upon receipt of a written report from a supervising officer or a release counselor, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate or offender should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will forward the report to its Hearing Officer, who will schedule an evidentiary hearing.
 - (b) The Board's Hearing Officer will provide the inmate or offender with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate or offender may proceed with the evidentiary hearing or waive their right to the hearing. At the evidentiary hearing, the Hearing Officer will consider the written report submitted by the supervising officer or release counselor and the results of the STATIC-99 risk assessment scale, and may accept additional evidence supporting the STATIC-99 score or otherwise indicating that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The inmate or offender may present evidence rebutting claims made in the written report submitted by a supervising officer or release counselor, challenging the score on the STATIC-99, or rebutting other evidence that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. At the conclusion of the evidentiary hearing, the Hearing Officer will submit his report to the Board with a recommendation as to whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others.
 - (c) Upon receipt of the report and recommendation from the Board's Hearing Officer, the Board will review the report and recommendation and determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others and is, therefore, a predatory sex offender.
- (7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: ORS 144.050, ORS 144.140, ORS 181.585, ORS 181.586.
History: (02-15-00, 03-12-02, 06/13/03, 10-10-03, 01/14/04–Temp/Notice, 06-14-04, 3-20-06 – Temp/Notice, 6-14-06)

Oregon Board of Parole and Post-Prison Supervision
Exhibit Q-V

Offender _____

SID# _____

NOTICE OF RIGHTS – PREDATORY SEX OFFENDER DESIGNATION

Purpose of Hearing. You are entitled to a hearing to determine whether you meet the criteria of a “predatory sex offender” under ORS 181.585. If it is found that you meet those criteria, the Board of Parole & Post-Prison Supervision may make the determination that you are a “predatory sex offender” within the meaning of that statute.

Waiver of Hearing. You may waive the hearing in two ways: (1) in writing, by checking the appropriate box and signing the back of this form; or (2) by conduct, by failing or refusing to appear for or participate in your hearing.

If you waive the hearing by conduct:

- You do not contest that the criteria set forth in ORS 181.585 apply to you, and
- The Hearings Officer and, if applicable, the Board, will make findings based on the available record. There may be no other hearing.

If you waive the hearing in writing:

- At the time you submit your written waiver, you may also submit a written statement setting forth substantial reasons why the Hearings Officer or Board should find that the criteria of ORS 181.585 do not apply to you, and
- The Hearings Officer and, if applicable, the Board, will make findings based on the available record as supplemented by any information submitted to or brought before the Hearings Officer or, if applicable, the Board, to rebut your written statement. There may be no other hearing.

Result of Hearing. Unless you waive your right to a hearing, a Hearings Officer will conduct the hearing and will make findings, conclusions, and recommendations to the Board. If the Board finds that you meet the criteria in ORS 181.585, the Board may order that you are determined to be a predatory sex offender based upon the record of the hearing **without another hearing or personal appearance.**

Rights During Hearing. You have the right to:

- Present relevant oral and written information;
- Examine witnesses and information against you, unless the Hearings Officer finds that disclosure of the witness or informant could subject the witness or informant to risk of harm;
- Request the appearance of witnesses who have relevant information regarding the alleged violations, unless the Hearings Officer finds good cause for not allowing confrontation;
- Represent yourself or obtain an attorney at your own expense.

Rights After Hearing. You have the right to:

- Within 10 days after the hearing, submit to the Board written exceptions and arguments to the Hearings Officer's findings, conclusions and recommendations.
- Appeal the Hearings Officer's or Board's final order within 45 days of the date you sign the order or the date the supervisory authority acknowledges that you received the order, using an Administrative Appeal Request form (Exhibit O) or by letter stating "This is an administrative review request pursuant to Division 80 of Board rules."
- If relief is denied, you may appeal to the Court of Appeals within 60 days of the response to your request for administrative review.

For further information see ORS Chapter 144 and OAR Chapter 255.

Temp / Notice

6-15-06

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 06/14/06 by the
Date prior to or same as filing date

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

Michael R. Washington 2575 Center Street NE, Ste 100-Salem, OR 97301-4621 503-945-9009
Rules Coordinator Address Telephone

to become effective 06/15/2006 through 12/11/2006
Date upon filing or later A maximum of 180 days including the effective date.

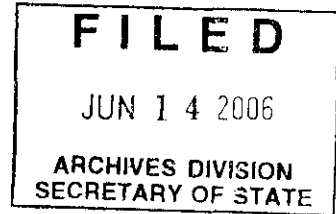
RULE CAPTION

Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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



AMEND: OAR 255-060-0011 (Exhibit Q-III)

SUSPEND:

ORS 144.050, 144.140, 181.585, 181.586 V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)
Stat. Auth. Other Authority

ORS NONE
Stats. Implemented

RULE SUMMARY

The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Michael R. Washington

Authorized Signer

Michael R. Washington, Chair
Printed name

Date

6-15-06

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole and Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)
Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders

Statutory Authority: ORS 144,050, 144.140, 181,585, 181,586

Other Authority: V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Temporary Rule(s): The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005.

Documents Relied Upon, and where they are available: The Oregon Supreme Court Opinion in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Justification of Temporary Rule(s): The Oregon Supreme Court ruling in V.L.Y. v. Board, 338 Or 44 (2005) rendered the board's current rule unconstitutional. In the interest of public safety, it is necessary that the board have the authority to designate sex offenders as predatory as soon as practicable.

Michael R. Washington

Authorized Signer

Michael R. Washington, Chair

Printed name

6-15-06

Date

CORRECTED

Secretary of State

NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

Michael R. Washington

Rules Coordinator

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621

Address

503-945-9009

Telephone

RULE CAPTION

Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

AMEND: OAR 255-060-0011 (Exhibit Q-III)

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.050, 144.140, 181.585, 181.586

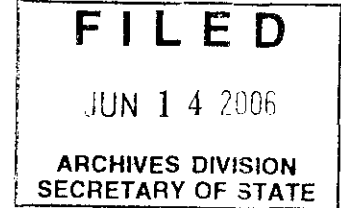
Stat. Auth.

V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Other Authority

ORS NONE

Stats. Implemented



RULE SUMMARY

The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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

Michael R. Washington

Signature

08/21/2006

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Michael R. Washington, Chair

Printed name

6-15-06

Date

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

Oregon Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.) **Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders**

Statutory Authority: Chapter 163 (1999 OR Laws), ORS 144.050, 144.140, 181.585, 181.586

Other Authority: V.L. Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Rule(s): The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005.

Documents Relied Upon, and where they are available: None

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? There was no involvement by small businesses in the development of this rule as this rule amendment will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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

Michael R. Washington

Authorized Signer

Michael R. Washington, Chair

Printed name

6-15-06

Date

255-060-0011

Procedures for Predatory Sex Offender Designation

- (1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider any other evidence that the inmate or the offender exhibits characteristics showing a tendency to victimize or injure others.
- (2) Predatory sex offender designations made by the board for inmates or offenders released from a Department of Corrections institution before February 10, 2005, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a candidate for predatory sex offender designation, if the inmate or offender scores six or more points on the STATIC-99.
- (4) Subject to the procedures set forth below, inmates or offenders who score six or more points on the STATIC-99, and have been identified as a candidate for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.
 - (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate or offender before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate or offender is a candidate for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.
 - (d) Inmates or offenders may elect to waive their right to submit written objections. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections, the Board may find an inmate or offender is a candidate for predatory sex offender designation if the inmate's or offender's score on the STATIC-99 is six or more points.
- (5) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate or offender has participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.

- (6) The sole purpose of the evidentiary hearing will be to determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The Board may receive a written report from a supervising officer or a release counselor of any Department of Corrections institution indicating that an inmate or offender who has been determined to be a candidate for designation as a predatory sex offender under paragraphs (3) and (4) exhibits characteristics showing a tendency to victimize or injure others.
- (a) Upon receipt of a written report from a supervising officer or a release counselor, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate or offender should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will forward the report to its Hearing Officer, who will schedule an evidentiary hearing.
 - (b) The Board's Hearing Officer will provide the inmate or offender with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate or offender may proceed with the evidentiary hearing or waive their right to the hearing. At the evidentiary hearing, the Hearing Officer will consider the written report submitted by the supervising officer or release counselor and the results of the STATIC-99 risk assessment scale, and may accept additional evidence supporting the STATIC-99 score or otherwise indicating that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The inmate or offender may present evidence rebutting claims made in the written report submitted by a supervising officer or release counselor, challenging the score on the STATIC-99, or rebutting other evidence that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. At the conclusion of the evidentiary hearing, the Hearing Officer will submit his report to the Board with a recommendation as to whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others.
 - (c) Upon receipt of the report and recommendation from the Board's Hearing Officer, the Board will review the report and recommendation and determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others and is, therefore, a predatory sex offender.
- (7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: ORS 144.050, ORS 144.140, ORS 181.585, ORS 181.586.
History: (02-15-00, 03-12-02, 06/13/03, 10-10-03, 01/14/04–Temp/Notice, 06-14-04, 3-20-06 – Temp/Notice, 6-14-06, **06-15-06-Temp/Notice**)

EXHIBIT Q-III

NOTICE OF RIGHTS TO FILE A WRITTEN OBJECTION TO SCORE ON STATIC-99 FOR PREDATORY SEX OFFENDER DESIGNATION

You have been provided with a copy of the STATIC-99 that the Board of Parole Board and Post-Prison Supervision (hereafter "the Board) will use to decide whether you should be designated a predatory sex offender pursuant to ORS 181.585, et seq. If you are designated a predatory sex offender, you may be subject to community notification.

The Board will designate you a predatory sex offender if you score six [four] or more points on the STATIC-99. You have a right to inform the Board in writing of the reasons you believe the score is wrong. You must fill out a form entitled "Written Objections to score on the STATIC-99 for Predatory Sex Offender Designation." This form is available through your counselor or supervising officer. You must clearly state on the form which risk factors you think were scored incorrectly and why. You must return the form to your counselor or supervising officer within three days of when you receive the form. Your counselor or supervising officer will send the form to the Board. The Board will consider your objections prior to making a predatory sex offender designation.

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

Inmate's Name (please print)

SID#

Inmate's Signature

Date

My score on the STATIC-99 is four or more points and:

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

_____ I do not wish to submit a written objection.

Witness

Date

Inmate's release date _____

Temp / Notice

8-7-06

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole & Post-Prison Supervision 255
Agency and Division Administrative Rules Chapter Number
Michael R. Washington 2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621 503-945-8978
Rules Coordinator Address Telephone

RULE CAPTION

Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

255-060-0016

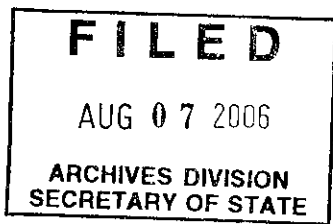
AMEND:

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Chapter 163 (1999 OR Laws) ORS 144.050, 144.140, 181.585, 181.586 V.L.Y. v. Board of Parole and Post-Prison Supervision 338 Or 44 (2005)
Stat. Auth. Other Authority
ORS NONE
Stats. Implemented



RULE SUMMARY

The adoption of this rule is necessary to cause the Board's procedure for designating sex offenders as predatory prior to being released from custody to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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

Michael R. Washington
Signature

September 21, 2006
Last Day for Public Comment
Last day to submit written comments to the Rules Coordinator

Michael R. Washington, Chair 8-7-06
Printed name Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Sumner Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 923-2005

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

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action) Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release.

Statutory Authority: ORS 144.050, 144.140, 181.585, 181.586

Other Authority: V.L. Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Rule(s): The adoption of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005, also to allow for a predatory sex offender designation to be made prior to the offender's release from custody.

Documents Relied Upon, and where they are available: None

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The fiscal and economic impact to the board by the adoption of this rule will be moderate. There may also be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? There was no involvement by small businesses in the development of this rule as this rule adoption will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

The Board of Parole & Post-Prison Supervision enacted this adoption and change during a business meeting and due to the nature of the adoption, felt it was not necessary to consult with the Administrative Rule Advisory Committee.

Michael R. Washington

Authorized Signer

Michael R. Washington, Chair

Printed name

8-7-06

Date

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 07-03-2006 by the
Date prior to or same as filing date

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

Michael R. Washington, Chair 2575 Center Street NE, Ste 100, Salem, OR 97301-4621 503-945-8978
Rules Coordinator Address Telephone

to become effective 08-07-2006 through 02-02-2007
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

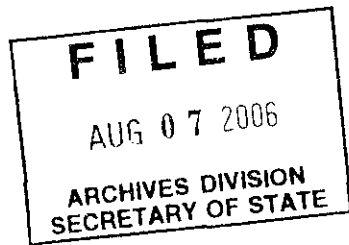
Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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

AMEND: RECEIVED
255-060-0016
AUG 11 2006
SUSPEND:

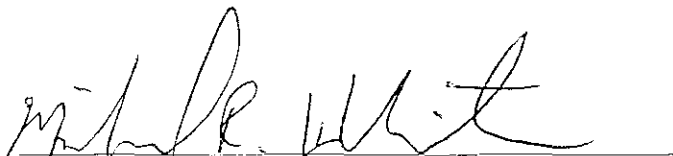


ORS Chapter 162 (1999 OR Laws) ORS 144.050, 144.140, 181.585, 181.586 V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)
Stat. Auth. Other Authority

ORS None
Stats. Implemented

RULE SUMMARY

The adoption of this rule is necessary to cause the Board's procedure for designating sex offenders as predatory prior to being released from custody to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)


Authorized Signer

Michael R. Washington, Chair
Printed name

8-7-06
Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole and Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release

Statutory Authority: ORS 144,050, 144.140, 181,585, 181,586

Other Authority: V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Temporary Rule(s): The adoption of this rule is necessary in order to be consistent with Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005, also the adoption of this rule is necessary to allow for a predatory sex offender designation to be made prior to the offender's release from custody.

Documents Relied Upon, and where they are available: The Oregon Supreme Court Opinion in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Justification of Temporary Rule(s): The Oregon Supreme Court ruling in V.L.Y. v. Board, 338 Or 44 (2005) rendered the board's procedure for designating sex offenders as predatory to be unconstitutional. In the interest of public safety, it is necessary that the board have the authority and a procedure to designate sex offenders as predatory prior to being released from custody as soon as practicable.

Michael R. Washington

Authorized Signer

Michael R. Washington, Chair

Printed name

8-7-06

Date

255-060-0016

Procedures for Predatory Sex Offender Designation for Inmates.

- (1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider evidence that the inmate is behaving in a manner that is consistent with exhibiting characteristics showing a tendency to victimize or injure others submitted in written reports prepared by an approved evaluator and a release counselor of any Department of Corrections institution.
- (2) Predatory sex offender designations made by the board for inmates released from a Department of Corrections institution before August 7, 2006, are not included in this rule. Those designations are governed by the rules in effect when the designation was made or when the inmate was released from custody.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate is eligible for predatory sex offender designation, if the inmate scores six or more points on the STATIC-99.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate has participated in a sex offender evaluation or refused participation in such an evaluation, and participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the offender's original order of supervision or an amended order of supervision.
- (5) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible for predatory designation are required to participate in a sex offender evaluation to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. Refusal to participate in such an evaluation will be used as evidence to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others.
- (6) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, or the Board within three days of the date the inmate signed the Notice of Rights (Exhibit Q-III).

- (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate refused to sign the Notice of Rights before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.
 - (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate is eligible for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.
 - (d) Inmates may elect to waive their right to submit written objections. Any such waiver must be in writing. When inmates waive their right to submit written objections, the Board may find an inmate or offender is eligible for predatory sex offender designation if the inmate's score on the STATIC-99 is six or more points.
- (7) The sole purpose of the evidentiary hearing will be to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. The Board shall receive the sex offender evaluation of the inmate, a copy of the STATIC-99, and any written objections from the inmate to consider at the hearing. The Board may receive a written report from a release counselor of any Department of Corrections institution indicating that the inmate is engaging in behavior that shows the inmate is exhibiting characteristics showing a tendency to victimize or injure others.
- (a) Upon receipt of the abovementioned information, including the written report from a release counselor of any Department of Corrections institution, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will schedule an evidentiary hearing.
 - (b) The Board will provide the inmate with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate may proceed with the evidentiary hearing or waive his or her right to the hearing. At the evidentiary hearing, the inmate will be given the opportunity to rebut claims made in the sex offender evaluation, STATIC-99, and any written report submitted by a release counselor. At the conclusion of the evidentiary hearing, the Board will make a determination as to whether the inmate should be designated as a predatory sex offender.
- (8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: [Chapter 163 (1999 OR Laws)] ORS 144.050, ORS 144.140, ORS 181.585, ORS 181.586.

History: 08-07-2006-Temp/Notice

Temp / Notice

8-30-06

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

Michael R. Washington

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621

503-945-8978

Rules Coordinator

Address

Telephone

RULE CAPTION

Clarification of the Violation Hearing Process

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

AMEND: 255-075-0005

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.050, 144.106(3), 144.108, 144.140, 144.331(2), 144.343, 144.350

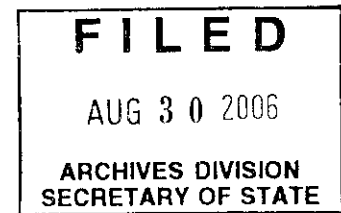
Stat. Auth.

NONE

Other Authority

ORS NONE

Stats. Implemented

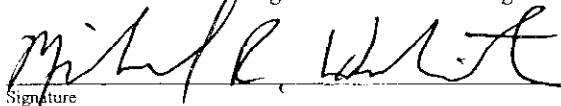


RULE SUMMARY

The amendment of these rules are necessary to clarify the requirements for the violation hearing process.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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


Signature

10/21/2006

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Michael R. Washington, Chair

Printed name

Date

8-30-06

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

ARC 923-2005

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

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.) Clarification of the Violation Hearing Process

Statutory Authority: ORS 144.050, 144.106(3), 144.108, 144.140, 144.331(2), 144.343, 144.350

Other Authority: NONE

Stats. Implemented: ORS NONE

Need for the Rule(s): These rules are necessary to clarify the requirements for the violation hearing process.

Documents Relied Upon, and where they are available: NONE

Fiscal and Economic Impact, including Statement of Cost of Compliance:

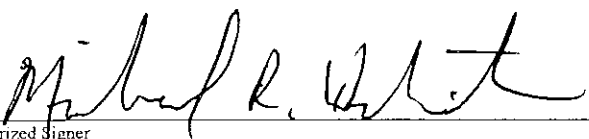
The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? No small businesses were involved in the amendment of these rules because the amendments will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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


Authorized Signer

Michael R. Washington, Chair
Printed name

8 30 06
Date

255-075-0005

Hearing Requirement: Procedure

- (1) Except as otherwise provided by these rules, before the Board can revoke parole or extend active parole supervision for offenders whose crimes occurred on or after December 4, 1986, and before November 1, 1989 (BM10), the Board or Hearings Officer shall conduct a hearing.
- (2) When the offender waives the hearing and/or consents to the order, the Board need not conduct a hearing when the Board extends supervision for offenders whose crimes occurred on or after December 4, 1986 and before November 1, 1989 (BM10).
- (3) Except in the cases set forth in OAR 255-075-0015 and section (6) of this rule, the Sanction Authority shall impose administrative sanctions or shall initiate a hearing within fifteen (15) days of arrest or detention for the violation of parole or post-prison supervision conditions.
- (4) If an in-custody violation hearing and a final order cannot be accomplished within fifteen (15) days, a supervising officer or Hearings Officer shall request a non-bailable suspend and detain warrant from the Sanction Authority
- (5) A Hearings Officer can impose up to sixty (60) days of local confinement after conducting a violation hearing or if an offender waives the hearing. In doing so, the Hearings Officer may issue a final order subject to the approval of the Sanction Authority, but immediately effective. If the Hearings Officer recommends a sanction that exceeds sixty (60) days, it must be approved by the Supervisory Authority before being considered by the Sanction Authority. [Before a Hearings Officer can order more than sixty (60) days of local confinement without the offender's consent, the Hearings Officer shall conduct a violation hearing. Unless the Hearings Officer recommends a sanction, which is beyond his or her authority to order, the Hearings Officer may issue a final order subject to approval of the Sanction Authority, but immediately effective. If the recommended sanction exceeds sixty (60) days, it must be approved by the Supervisory Authority.]
- (6) If an offender consents to a sanction, intervention, or the recommendation of a revocation, a violation hearing is not required. A revocation involving a return to prison will require a future disposition hearing. If the offender contests any of the allegations, the offender may request a hearing. [A hearing is not required when an administrative sanction or intervention involves local confinement of ninety (90) days or less when the offender consents to the sanctions or interventions. If the offender contests the allegations, the offender may request a hearing.]

Statutory Authority: ORS 144.050, 144.106(3), 144.108, 144.140 144.331(2), 144.343, 144.350, 144.370

History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92 temporary 11/14/97; 05/11/98, 08/30/06-NOTICE)

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

Michael R. Washington

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621

503-945-8978

Rules Coordinator

Address

Telephone

RULE CAPTION

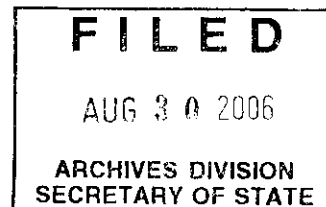
Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

AMEND: 255-060-0016 (Exhibit Q-V)



REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Chapter 163 (1999 OR Laws) ORS 144.050, 144.140, 181.585, 181.586

V.L.Y. v. Board of Parole and Post-Prison Supervision 338 Or 44 (2005)

Stat. Auth.

Other Authority

ORS NONE

Stats. Implemented

RULE SUMMARY

The adoption of this rule is necessary to cause the Board's procedure for designating sex offenders as predatory prior to being released from custody to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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

Signature

October 21, 2006

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Michael R. Washington, Chair

Printed name

08-30-06

Date

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

ARC 923-2005

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

Oregon Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.) Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release.

Statutory Authority: ORS 144.050, 144.140, 181.585, 181.586

Other Authority: V.L. Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Rule(s): The adoption of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L. Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005, also to allow for a predatory sex offender designation to be made prior to the offender's release from custody.

Documents Relied Upon, and where they are available: None

Fiscal and Economic Impact, including Statement of Cost of Compliance:

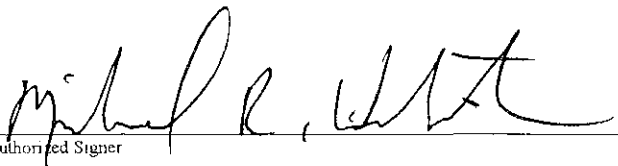
The fiscal and economic impact to the board by the adoption of this rule will be moderate. There may also be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? There was no involvement by small businesses in the development of this rule as this rule adoption will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

The Board of Parole & Post-Prison Supervision enacted this adoption and change during a business meeting and due to the nature of the adoption, felt it was not necessary to consult with the Administrative Rule Advisory Committee.


Authorized Signer

Michael R. Washington, Chair
Printed name

08-30-06
Date

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 08-17-2006 by the
Date prior to or same as filing date

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

Michael R. Washington, Chair 2575 Center Street NE, Ste 100, Salem, OR 97301-4621 503-945-8978
Rules Coordinator Address Telephone

to become effective 08-30-2006 through 02-28-2007
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

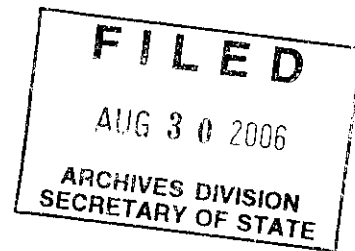
RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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

AMEND: 255-060-0016 (EXHIBIT Q-V)

SUSPEND: 255-060-0016(T)



ORS Chapter 162 (1999 OR Laws) ORS 144.050, 144.140, 181.585, 181.586 V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)
Stat. Auth. Other Authority

ORS None
Stats. Implemented

RULE SUMMARY

The adoption of this rule is necessary to cause the Board's procedure for designating sex offenders as predatory prior to being released from custody to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Authorized Signer

Michael R. Washington, Chair
Printed name

08-30-06
Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole and Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release

Statutory Authority: ORS 144,050, 144.140, 181,585, 181,586

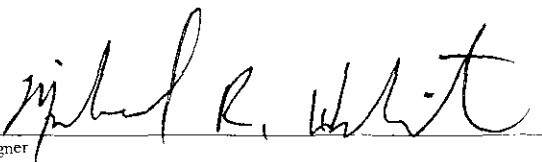
Other Authority: V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Temporary Rule(s): The adoption of this rule is necessary in order to be consistent with Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005, also the adoption of this rule is necessary to allow for a predatory sex offender designation to be made prior to the offender's release from custody.

Documents Relied Upon, and where they are available: The Oregon Supreme Court Opinion in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Justification of Temporary Rule(s): The Oregon Supreme Court ruling in V.L.Y. v. Board, 338 Or 44 (2005) rendered the board's procedure for designating sex offenders as predatory to be unconstitutional. In the interest of public safety, it is necessary that the board have the authority and a procedure to designate sex offenders as predatory prior to being released from custody as soon as practicable.


Authorized Signer

Michael R. Washington, Chair
Printed name

08-30-06
Date

255-060-0016

Procedures for Predatory Sex Offender Designation for Inmates.

- (1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider evidence that the inmate is behaving in a manner that is consistent with exhibiting characteristics showing a tendency to victimize or injure others submitted in written reports prepared by an approved evaluator and a release counselor of any Department of Corrections institution.
- (2) Predatory sex offender designations made by the board for inmates released from a Department of Corrections institution before August 7, 2006, are not included in this rule. Those designations are governed by the rules in effect when the designation was made or when the inmate was released from custody.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate is eligible for predatory sex offender designation, if the inmate scores six or more points on the STATIC-99.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate has participated in a sex offender evaluation or refused participation in such an evaluation, and participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the offender's original order of supervision or an amended order of supervision.
- (5) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible for predatory designation are required to participate in a sex offender evaluation to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. Refusal to participate in such an evaluation will be used as evidence to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others.
- (6) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.

 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, or the Board within three days of the date the inmate signed the Notice of Rights (Exhibit Q-III).

- (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate refused to sign the Notice of Rights before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.
 - (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate is eligible for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.
 - (d) Inmates may elect to waive their right to submit written objections. Any such waiver must be in writing. When inmates waive their right to submit written objections, the Board may find an inmate or offender is eligible for predatory sex offender designation if the inmate's score on the STATIC-99 is six or more points.
- (7) The sole purpose of the evidentiary hearing will be to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. The Board shall receive the sex offender evaluation of the inmate, a copy of the STATIC-99, and any written objections from the inmate to consider at the hearing. The Board may receive a written report from a release counselor of any Department of Corrections institution indicating that the inmate is engaging in behavior that shows the inmate is exhibiting characteristics showing a tendency to victimize or injure others.
 - (a) Upon receipt of the abovementioned information, including the written report from a release counselor of any Department of Corrections institution, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will schedule an evidentiary hearing.
 - (b) The Board will provide the inmate with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate may proceed with the evidentiary hearing or waive his or her right to the hearing. At the evidentiary hearing, the inmate will be given the opportunity to rebut claims made in the sex offender evaluation, STATIC-99, and any written report submitted by a release counselor. At the conclusion of the evidentiary hearing, the Board will make a determination as to whether the inmate should be designated as a predatory sex offender.
- (8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: [Chapter 163 (1999 OR Laws)] ORS 144.050, ORS 144.140, ORS 181.585, ORS 181.586.

History: 08-07-2006-temp/notice, 08-30-06-TEMP/NOTICE

Oregon Board of Parole and Post-Prison Supervision
Exhibit Q-V

Offender _____

SID# _____

NOTICE OF RIGHTS – PREDATORY SEX OFFENDER DESIGNATION

Purpose of Hearing. You are entitled to a hearing to determine whether you meet the criteria of a “predatory sex offender” under ORS 181.585. If it is found that you meet those criteria, the Board of Parole & Post-Prison Supervision may make the determination that you are a “predatory sex offender” within the meaning of that statute.

Waiver of Hearing. You may waive the hearing in two ways: (1) in writing, by checking the appropriate box and signing the back of this form; or (2) by conduct, by failing or refusing to appear for or participate in your hearing.

If you waive the hearing by conduct:

- You do not contest that the criteria set forth in ORS 181.585 apply to you, and
- The Board or the Hearings Officer and, if applicable, ~~the Board~~, will make findings based on the available record. There may be no other hearing.

If you waive the hearing in writing:

- At the time you submit your written waiver, you may also submit a written statement setting forth substantial reasons why the Hearings Officer or Board should find that the criteria of ORS 181.585 do not apply to you, and
- The Board or the Hearings Officer and, if applicable, ~~the Board~~, will make findings and conclusions based on the available record as supplemented by any information submitted to or brought before the Board or the Hearings Officer or, if applicable, ~~the Board~~, to rebut your written statement. There will ~~may~~ be no other hearing.

Result of Hearing. Unless you waive your right to a hearing, the Board or the a-Hearings Officer will conduct the hearing and will make findings, and conclusions, and recommendations to the Board. If the Board or Hearings Officer finds that you meet the criteria in ORS 181.585, the Board may order that you are determined to be a predatory sex offender based upon the record of the hearing **without another hearing or personal appearance**.

Rights During Hearing. You have the right to:

- Present relevant oral and written information;
- ~~Examine witnesses and information against you, unless the Hearings Officer finds that disclosure of the witness or informant could subject the witness or informant to risk of harm;~~
- ~~Request the appearance of witnesses who have relevant information regarding the alleged violations, unless the Hearings Officer finds good cause for not allowing confrontation;~~
- Represent yourself or obtain an attorney at your own expense.

Rights After Hearing. You have the right to:

- Within 10 days after the hearing, submit to the Board Chair written exceptions and arguments to the Hearings Officer's findings, conclusions and recommendations, or the Board's conclusions and findings.
- Appeal the ~~Hearings Officer's or Board's~~ final order within 45 days of the date you sign the order or the date the supervisory authority acknowledges that you received the order, using an Administrative Appeal Request form (Exhibit O) or by letter stating "This is an administrative review request pursuant to Division 80 of Board rules."
- If relief is denied, you may appeal to the Court of Appeals within 60 days of the response to your request for administrative review.

For further information see ORS Chapter 144 and OAR Chapter 255. - Page 1 -

DECISIONS ABOUT RIGHTS

I understand the rights contained in this notice and I:

- [] do want a hearing [] do not want a hearing

I should be notified of my rights, the date, time, and place of the hearing and the allegations against me at least three days prior to the hearing, unless I:

- [] waive the three days from the date the Notice of Rights is served and when the hearing is held

When the Board Hearings Officer makes findings, and conclusions or the Hearings Officer makes findings, conclusions, and recommendations to the Board, I understand I have ten (10) days to submit written exceptions to the findings of the Hearings Officer's report to the Chairperson of the Board of Parole and Post-Prison Supervision and I:

- [] do waive the 10-day waiting period to submit exceptions and arguments before the final Board decision
[] do not waive the 10-day waiting period

- [] I do want witnesses [] I do not want witnesses

Table with 4 columns: Allowed, Denied, Name, Address, Reason for Denial. Contains three rows of empty checkboxes and lines for data entry.

- [] Having waived my right to a hearing, I understand that the Board, in the exercise of its authority, and based on the available record, may order that I am determined to be a predatory sex offender under ORS 181.585 even if that decision overrides the recommendation of a Hearings Officer.

I have read, or have had read to me, and fully understand and acknowledge this Notice of Rights and the Decisions.

Hearing Officer Date

Offender Date

Perm

10-9-06

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 09-27-2006 by the
Date prior to or same as filing date:

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

Michael R. Washington, Chair 503-945-8978
Rules Coordinator Address Telephone

to become effective 10-09-2006 10-09-2006 Rulemaking Notice was published in the July 2006 July 2006 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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

AMEND: OAR 255-060-0011 (Exhibit Q-III)

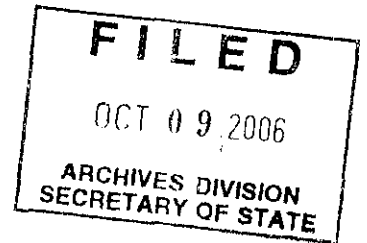
REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS: 144.050, 144.140, 181.585, 181.586 V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or.44 (2005)
Stat. Auth. Other Authority

ORS NONE
Stats. Implemented



RULE SUMMARY

The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Michael R. Washington
Authorized Signer

Michael R. Washington, Chair
Printed name

10-09-2006
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.
**The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.
ARC 930-2005

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole and Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)
Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders

Statutory Authority: ORS 144,050, 144,140, 181,585, 181,586

Other Authority: V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Temporary Rule(s): The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005.

Documents Relied Upon, and where they are available: The Oregon Supreme Court Opinion in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Justification of Temporary Rule(s): The Oregon Supreme Court ruling in V.L.Y. v. Board, 338 Or 44 (2005) rendered the board's current rule unconstitutional. In the interest of public safety, it is necessary that the board have the authority to designate sex offenders as predatory as soon as practicable.

Michael R. Washington

Michael R. Washington, Chair

6-15-06

Authorized Signer

Printed name

Date

STATEMENT OF NEED AND FISCAL IMPACT

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

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.) Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders

Statutory Authority: Chapter 163 (1999 OR Laws), ORS 144.050, 144.140, 181.585, 181.586

Other Authority: V.L. Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Rule(s): The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005.

Documents Relied Upon, and where they are available: None

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? There was no involvement by small businesses in the development of this rule as this rule amendment will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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

Michael R. Washington

Authorized Signer

Michael R. Washington, Chair

Printed name

6-15-06

Date

255-060-0011

Procedures for Predatory Sex Offender Designation

- (1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider any other evidence that the inmate or the offender exhibits characteristics showing a tendency to victimize or injure others.
- (2) Predatory sex offender designations made by the board for inmates or offenders released from a Department of Corrections institution before February 10, 2005, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a candidate for predatory sex offender designation, if the inmate or offender scores six or more points on the STATIC-99.
- (4) Subject to the procedures set forth below, inmates or offenders who score six or more points on the STATIC-99, and have been identified as a candidate for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.
 - (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate or offender before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate or offender is a candidate for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.
 - (d) Inmates or offenders may elect to waive their right to submit written objections. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections, the Board may find an inmate or offender is a candidate for predatory sex offender designation if the inmate's or offender's score on the STATIC-99 is six or more points.
- (5) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate or offender has participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.

- (6) The sole purpose of the evidentiary hearing will be to determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The Board may receive a written report from a supervising officer or a release counselor of any Department of Corrections institution indicating that an inmate or offender who has been determined to be a candidate for designation as a predatory sex offender under paragraphs (3) and (4) exhibits characteristics showing a tendency to victimize or injure others.
- (a) Upon receipt of a written report from a supervising officer or a release counselor, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate or offender should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will forward the report to its Hearing Officer, who will schedule an evidentiary hearing.
 - (b) The Board's Hearing Officer will provide the inmate or offender with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate or offender may proceed with the evidentiary hearing or waive their right to the hearing. At the evidentiary hearing, the Hearings Officer will consider the written report submitted by the supervising officer or release counselor and the results of the STATIC-99 risk assessment scale, and may accept additional evidence supporting the STATIC-99 score or otherwise indicating that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The inmate or offender may present evidence rebutting claims made in the written report submitted by a supervising officer or release counselor, challenging the score on the STATIC-99, or rebutting other evidence that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. At the conclusion of the evidentiary hearing, the Hearing Officer will submit his report to the Board with a recommendation as to whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others.
 - (c) Upon receipt of the report and recommendation from the Board's Hearing Officer, the Board will review the report and recommendation and determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others and is, therefore, a predatory sex offender.
- (7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: ORS 144.050, ORS 144.140, ORS 181.585, ORS 181.586.

History: (02-15-00, 03-12-02, 06/13/03, 10-10-03, 01/14/04–Temp/Notice, 06-14-04, 3-20-06 – Temp/Notice, 6-14-06, 06-15-06-Temp/Notice, **10-09-06**)

EXHIBIT Q-III

NOTICE OF RIGHTS TO FILE A WRITTEN OBJECTION TO SCORE ON STATIC-99 FOR PREDATORY SEX OFFENDER DESIGNATION

You have been provided with a copy of the STATIC-99 that the Board of Parole Board and Post-Prison Supervision (hereafter "the Board) will use to decide whether you should be designated a predatory sex offender pursuant to ORS 181.585, et seq. If you are designated a predatory sex offender, you may be subject to community notification.

The Board will designate you a predatory sex offender if you score six or more points on the STATIC-99. You have a right to inform the Board in writing of the reasons you believe the score is wrong. You must fill out a form entitled "Written Objections to score on the STATIC-99 for Predatory Sex Offender Designation." This form is available through your counselor or supervising officer. You must clearly state on the form which risk factors you think were scored incorrectly and why. You must return the form to your counselor or supervising officer within three days of when you receive the form. Your counselor or supervising officer will send the form to the Board. The Board will consider your objections prior to making a predatory sex offender designation.

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

Inmate's Name (please print)

SID#

Inmate's Signature

Date

My score on the STATIC-99 is six or more points and:

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

_____ I do not wish to submit a written objection.

Witness

Date

Inmate's release date _____

Perm

10-30-06

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on October 25, 2006 by the
Date prior to or same as filing date

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

Peggy Barber 2575 Center Street NE, Ste 100, Salem, OR 97301-4621 503-945-0914
Rules Coordinator Address Telephone

to become effective 10-30-06 Rulemaking Notice was published in the October 2006 Oregon Bulletin**
Date upon filing or later Month and Year

RULE CAPTION

Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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

AMEND: 255-060-0016 (Exhibit Q-V)

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS Chapter 162 (1999 OR Laws), ORS 144.050, 144.140, 181.585, 181.586 V.L.Y. v. Board of Parole and Post-Prison Supervision, 388 OR 44 (2005)
Stat. Auth. Other Authority

ORS: NONE
Stats. Implemented

RULE SUMMARY

The adoption of this rule is necessary to cause the Board's procedure for designating sex offenders as predatory prior to being released from custody to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Michael R. Washington
Authorized Signer

Michael R. Washington, Chair
Printed name

10-30-2006
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole and Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)
Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release

Statutory Authority: ORS 144,050, 144.140, 181,585, 181,586

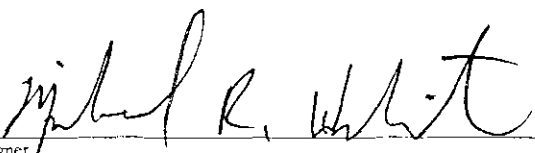
Other Authority: V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Temporary Rule(s): The adoption of this rule is necessary in order to be consistent with Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005, also the adoption of this rule is necessary to allow for a predatory sex offender designation to be made prior to the offender's release from custody.

Documents Relied Upon, and where they are available: The Oregon Supreme Court Opinion in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Justification of Temporary Rule(s): The Oregon Supreme Court ruling in V.L.Y. v. Board, 338 Or 44 (2005) rendered the board's procedure for designating sex offenders as predatory to be unconstitutional. In the interest of public safety, it is necessary that the board have the authority and a procedure to designate sex offenders as predatory prior to being released from custody as soon as practicable.


Authorized Signer

Michael R. Washington, Chair
Printed name

08-30-06
Date

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

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.) Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release.

Statutory Authority: ORS 144.050, 144.140, 181.585, 181.586

Other Authority: V.L. Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

Stats. Implemented: ORS None

Need for the Rule(s): The adoption of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005), which was issued on February 10, 2005, also to allow for a predatory sex offender designation to be made prior to the offender's release from custody.

Documents Relied Upon, and where they are available: None

Fiscal and Economic Impact, including Statement of Cost of Compliance:

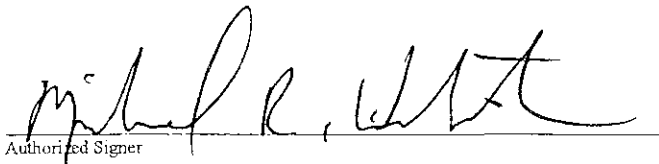
The fiscal and economic impact to the board by the adoption of this rule will be moderate. There may also be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? There was no involvement by small businesses in the development of this rule as this rule adoption will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

The Board of Parole & Post-Prison Supervision enacted this adoption and change during a business meeting and due to the nature of the adoption, felt it was not necessary to consult with the Administrative Rule Advisory Committee.


Authorized Signer

Michael R. Washington, Chair
Printed name

08-30-06
Date

255-060-0016

Procedures for Predatory Sex Offender Designation for Inmates.

- (1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider evidence that the inmate is behaving in a manner that is consistent with exhibiting characteristics showing a tendency to victimize or injure others submitted in written reports prepared by an approved evaluator and a release counselor of any Department of Corrections institution.
- (2) Predatory sex offender designations made by the board for inmates released from a Department of Corrections institution before August 7, 2006, are not included in this rule. Those designations are governed by the rules in effect when the designation was made or when the inmate was released from custody.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate is eligible for predatory sex offender designation, if the inmate scores six or more points on the STATIC-99.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate has participated in a sex offender evaluation or refused participation in such an evaluation, and participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the offender's original order of supervision or an amended order of supervision.
- (5) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible for predatory designation are required to participate in a sex offender evaluation to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. Refusal to participate in such an evaluation will be used as evidence to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others.
- (6) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, or the Board within three days of the date the inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate refused to sign the Notice of Rights before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.

- (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate is eligible for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.
 - (d) Inmates may elect to waive their right to submit written objections. Any such waiver must be in writing. When inmates waive their right to submit written objections, the Board may find an inmate or offender is eligible for predatory sex offender designation if the inmate's score on the STATIC-99 is six or more points.
- (7) The sole purpose of the evidentiary hearing will be to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. The Board shall receive the sex offender evaluation of the inmate, a copy of the STATIC-99, and any written objections from the inmate to consider at the hearing. The Board may receive a written report from a release counselor of any Department of Corrections institution indicating that the inmate is engaging in behavior that shows the inmate is exhibiting characteristics showing a tendency to victimize or injure others.
- (a) Upon receipt of the abovementioned information, including the written report from a release counselor of any Department of Corrections institution, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will schedule an evidentiary hearing.
 - (b) The Board will provide the inmate with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate may proceed with the evidentiary hearing or waive his or her right to the hearing. At the evidentiary hearing, the inmate will be given the opportunity to rebut claims made in the sex offender evaluation, STATIC-99, and any written report submitted by a release counselor. At the conclusion of the evidentiary hearing, the Board will make a determination as to whether the inmate should be designated as a predatory sex offender.
- (8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: [Chapter 163 (1999 OR Laws)] ORS 144.050, ORS 144.140, ORS 181.585, ORS 181.586.

History: 08-07-2006-temp/notice, 08-30-06-TEMP/NOTICE, **10-30-06**

Offender _____

SID# _____

NOTICE OF RIGHTS – PREDATORY SEX OFFENDER DESIGNATION

Purpose of Hearing. You are entitled to a hearing to determine whether you meet the criteria of a “predatory sex offender” under ORS 181.585. If it is found that you meet those criteria, the Board of Parole & Post-Prison Supervision may make the determination that you are a “predatory sex offender” within the meaning of that statute.

Waiver of Hearing. You may waive the hearing in two ways: (1) in writing, by checking the appropriate box and signing the back of this form; or (2) by conduct, by failing or refusing to appear for or participate in your hearing.

If you waive the hearing by conduct:

- You do not contest that the criteria set forth in ORS 181.585 apply to you, and
- The Hearings Officer and, if applicable, the Board, will make findings based on the available record. There may be no other hearing.

If you waive the hearing in writing:

- At the time you submit your written waiver, you may also submit a written statement setting forth substantial reasons why the Hearings Officer or Board should find that the criteria of ORS 181.585 do not apply to you, and
- The Hearings Officer and, if applicable, the Board, will make findings based on the available record as supplemented by any information submitted to or brought before the Hearings Officer or, if applicable, the Board, to rebut your written statement. There may be no other hearing.

Result of Hearing. Unless you waive your right to a hearing, a Hearings Officer will conduct the hearing and will make findings, conclusions, and recommendations to the Board. If the Board finds that you meet the criteria in ORS 181.585, the Board may order that you are determined to be a predatory sex offender based upon the record of the hearing **without another hearing or personal appearance.**

Rights During Hearing. You have the right to:

- Present relevant oral and written information;
- Examine witnesses and information against you, unless the Hearings Officer finds that disclosure of the witness or informant could subject the witness or informant to risk of harm;
- Request the appearance of witnesses who have relevant information regarding the alleged violations, unless the Hearings Officer finds good cause for not allowing confrontation;
- Represent yourself or obtain an attorney at your own expense.

Rights After Hearing. You have the right to:

- Within 10 days after the hearing, submit to the Board written exceptions and arguments to the Hearings Officer's findings, conclusions and recommendations.
- Appeal the Hearings Officer's or Board's final order within 45 days of the date you sign the order or the date the supervisory authority acknowledges that you received the order, using an Administrative Appeal Request form (Exhibit O) or by letter stating "This is an administrative review request pursuant to Division 80 of Board rules."
- If relief is denied, you may appeal to the Court of Appeals within 60 days of the response to your request for administrative review.

DECISIONS ABOUT RIGHTS

I understand the rights contained in this notice and I:

- [] do want a hearing [] do not want a hearing

I should be notified of my rights, the date, time, and place of the hearing and the allegations against me at least three days prior to the hearing, unless I:

- [] waive the three days from the date the Notice of Rights is served and when the hearing is held

When the Hearings Officer makes findings, conclusions and recommendations to the Board, I understand I have ten (10) days to submit written exceptions to the findings of the Hearings Officer's report to the Chairperson of the Board of Parole and Post-Prison Supervision and I:

- [] do waive the 10-day waiting period to submit exceptions and arguments before the final Board decision
[] do not waive the 10-day waiting period

- [] I do want witnesses [] I do not want witnesses

Table with 4 columns: Allowed, Denied, Name, Address, Reason for Denial. Contains three rows of checkboxes for each column.

[] Having waived my right to a hearing, I understand that the Board, in the exercise of its authority, and based on the available record, may order that I am determined to be a predatory sex offender under ORS 181.585 even if that decision overrides the recommendation of a Hearings Officer.

I have read, or have had read to me, and fully understand and acknowledge this Notice of Rights and the Decisions.

Hearing Officer Date Offender Date

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 10-25-2006 by the
Date prior to or same as filing date

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

Peggy Barber 2575 Center Street NE, Ste 100, Salem, OR 97301-4621 503-945-0914
Rules Coordinator Address Telephone

to become effective 10-30-2006 Rulemaking Notice was published in the October 2006 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Clarification of the Violation Hearing Process

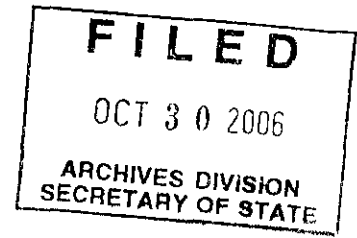
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000

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

AMEND: 255-075-0005



REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.050, 144.106(3), 144.108, 144.140, 144.331(2), 144.343, 144.350 NONE
Stat. Auth Other Authority

ORS NONE
Stats. Implemented

RULE SUMMARY

The amendment of these rules are necessary to clarify the requirements for the violation hearing process.

Michael R. Washington Michael R. Washington, Chair 10-30-2006
Authorized Signer Printed name Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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

STATEMENT OF NEED AND FISCAL IMPACT

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

Oregon Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.) Clarification of the Violation Hearing Process

Statutory Authority: ORS 144.050, 144.106(3), 144.108, 144.140, 144.331(2), 144.343, 144.350

Other Authority: NONE

Stats. Implemented: ORS NONE

Need for the Rule(s): These rules are necessary to clarify the requirements for the violation hearing process.

Documents Relied Upon, and where they are available: NONE

Fiscal and Economic Impact, including Statement of Cost of Compliance:

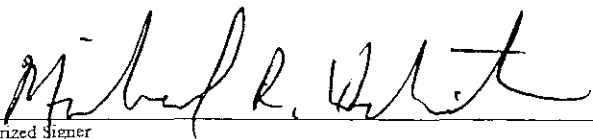
The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? No small businesses were involved in the amendment of these rules because the amendments will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

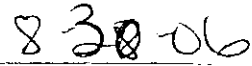
The Board of Parole & Post-Prison Supervision enacted these amendments and changes during a business meeting and due to the nature of the amendments, felt it was not necessary to consult with the Administrative Rule Advisory Committee.



Authorized Signer

Michael R. Washington, Chair

Printed name



Date

DIVISION 75

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

255-075-0001

Definitions

- (1) Administrative Sanction means local, structured, or intermediate sanctions as those terms are used in OAR 291-58-010 etal, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.
- (2) Sanction Authority means:
 - (a) The Board or its designee for:
 - (1) Any felony offender who received a sentence of more than twelve (12) months in the custody of the Department of Corrections; or
 - (2) Any felony offender who received a sentence of twelve (12) months or less but who also has an additional sentence(s) of greater than twelve (12) months.
 - (A) If an offender is on post-prison supervision for multiple sentences which include a sentence that exceeds twelve (12) months ("Board case") and a less than twelve (12)-month sentence ("Local Supervisory Authority case"), the Board will maintain jurisdiction of the post-prison supervision of the Local Supervisory Authority case until the Board's active involvement in the Board case(s) expires. Following expiration of the Board's case(s), the Board will maintain jurisdiction over the post-prison supervision of the Local Supervisory Authority case(s) until an offender is re-released following revocation of the post-prison supervision for the Local Supervisory Authority case(s), or until the Local Supervisory Authority petitions to assume jurisdiction, whichever comes first.
 - (B) If the Board issued the order of post-prison supervision for an offender whose only sentence was twelve (12) months or less, jurisdiction will remain with the Board until petition by the Supervisory Authority to assume jurisdiction or upon re-release following revocation of the post-prison supervision for that sentence; whichever comes first.
- (b) The Local Supervisory Authority or its designee for any felony offender whose crime was committed after November 1, 1989, was sentenced by the court to twelve (12) months or less, and who does not have an additional sentence of more than twelve (12) months for a felony.

Statutory Authority: ORS 144.140

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

255-075-0002

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

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

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

255-075-0003

Criteria for Allowing Offender to Remain in Community Pending Hearing

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

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

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

255-075-0004**Guidelines for "Best Interest" Return**

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

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

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

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

255-075-0005**Hearing Requirement: Procedure**

- (1) Except as otherwise provided by these rules, before the Board can revoke parole or extend active parole supervision for offenders whose crimes occurred on or after December 4, 1986, and before November 1, 1989 (BM10), the Board or Hearings Officer shall conduct a hearing.
- (2) When the offender waives the hearing and/or consents to the order, the Board need not conduct a hearing when the Board extends supervision for offenders whose crimes occurred on or after December 4, 1986 and before November 1, 1989 (BM10).
- (3) Except in the cases set forth in OAR 255-075-0015 and section (6) of this rule, the Sanction Authority shall impose administrative sanctions or shall initiate a hearing within fifteen (15) days of arrest or detention for the violation of parole or post-prison supervision conditions.
- (4) If an in-custody violation hearing and a final order cannot be accomplished within fifteen (15) days, a supervising officer or Hearings Officer shall request a non-bailable suspend and detain warrant from the Sanction Authority
- (5) A Hearings Officer can impose up to sixty (60) days of local confinement after conducting a violation hearing or if an offender waives the hearing. In doing so, the Hearings Officer may issue a final order subject to the approval of the Sanction Authority, but immediately effective. If the Hearings Officer recommends a sanction that exceeds sixty (60) days, it must be approved by the Supervisory Authority before being considered by the Sanction Authority.
- (6) If an offender consents to a sanction, intervention, or the recommendation of a revocation, a violation hearing is not required. A revocation involving a return to prison will require a future disposition hearing. If the offender contests any of the allegations, the offender may request a hearing.

Statutory Authority: ORS 144.050, 144.106(3), 144.108, 144.140 144.331(2), 144.343, 144.350, 144.370
History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 5/1/91, temporary; 10/15/91; 4/30/92, temporary; 10/9/92 temporary 11/14/97; 05/11/98, 08/30/06, **10-30-06**)

255-075-0006

Method of Hearing

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

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

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

255-075-0007

Designated Representative Conducts Hearing

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

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

255-075-0008

Locations of Hearing

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

255-075-0010

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

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

255-075-0015

When Offender in Another Jurisdiction: Return

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

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

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

255-075-0020

Rights of a Parolee at a Formal Hearing

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

255-075-0025

10-30-06 PERM

Conditions Violations

Rights at Hearing

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

Statutory Authority: ORS 144.343(3)

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

255-075-0026

Waiver of Hearing

- (1) In all cases, the offender may waive the right to a hearing by signing a Notice of Rights form. A refusal to participate in the hearings process shall also constitute a waiver of the right to a hearing.
- (2) When the purpose of a hearing is to consider a parole or post-prison supervision violation, the waiver of the right to a hearing acknowledges that the offender violated the conditions in whole or in part and that the Sanction Authority may order local sanctions, may modify conditions of supervision, may extend active supervision or that the Board may order return to prison, without further hearing.
- (3) When the purpose of the hearing is to modify parole or post-prison supervision conditions or, in the case of parole, to consider extending active supervision, the waiver of the hearing indicates acceptance of the modifications.
- (4) If the offender waives the right to a hearing, the offender may offer a written or verbal statement pertaining to the dispositional phase of the violation hearing.
- (5) If the hearing is conducted via teleconference or video conference, the offender shall submit written waiver of the right to a hearing to the Hearings Officer within five (5) days after the waiver.

- (6) The person delivering the Notice of Rights shall tape record or document in writing any statement made at the time of waiver.
- (7) If the offender waives the right to a hearing, the Hearings Officer or Supervising Officer shall submit to the Sanction Authority the following:
 - (a) a Notice of Rights form;
 - (b) any written offender statements and/or a summary of oral statements;
 - (c) the Hearing Summary, including a history of local interventions and sanctions ordered and a recommendation regarding disposition;
 - (d) any supporting information, including the supervising officer's report and other documentary evidence submitted.

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

255-075-0030
Rejection of Waiver

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

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

255-075-0031
Hearings Process

- (1) The Hearings Officer shall conduct the violation hearing reasonably near the place of the alleged violation or the place of confinement or may conduct the hearing by teleconference or video conference.
- (2) Unless the Hearings Officer finds good cause on the record, the parole and post-prison supervision officer shall present information and evidence at the hearing and arrange for the presence of witnesses for the state. The parole and post-prison supervision officer shall make dispositional recommendations.
- (3) The Hearings Officer shall make a tape recording of the hearing.

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

255-075-0035
Representation/Ability to Pay Attorney Fees

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

Statutory Authority: ORS 144.343

History: (2/1/79; 5/19/82; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 7/12/88, temporary; 9/20/88; 10/16/89; 10/15/91; 10/9/92, temporary 11/14/97; 02/06/01, **12/29/05**)

255-075-0036

Subpoenas; Witnesses

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

Statutory Authority: ORS 144.347

10-30-06 PERM

Conditions Violations

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

255-075-0040

Compelling of Witnesses: Contempt

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

Statutory Authority: ORS 144.347(4)

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

255-075-0042

Probable Cause; Preliminary Hearing; Deferral of Revocation Hearing

- (1) The Sanction Authority or Hearings Officer may use evidence received and the order of a court at a preliminary hearing or a conviction or other reliable, relevant information to establish that probable cause exists to believe that the offender has committed a violation of a condition of parole or post-prison supervision.
- (2) Should the offender waive the right to a preliminary hearing, the waiver shall constitute a waiver of a probable cause hearing.
- (3) When the Sanction Authority or Hearings Officer defers completion of a violation hearing until a trial is over and until the court or the parole and post-prison supervision officer notifies the Sanction Authority or Hearings Officer of the final disposition of the case, the Sanction Authority or Hearings Officer shall use a finding of probable cause to support the decision to suspend and detain an offender charged with the commission of a new crime.
- (4) Notwithstanding subsection (3) of this section, the Sanction Authority or Hearings Officer shall not extend a deferral following a finding of probable cause for a period greater than 120 days from the date of the preliminary hearing or waiver, unless the offender is released from jail pending final disposition of the case, or waives in writing further delay. Subsequent waivers shall not extend beyond 120 days.

Statutory Authority: ORS 144.050, 144.140, 144.343

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

255-075-0045

Evidence; Subpoena of Documents

- (1) The Sanction Authority or Hearings Officer may receive the following as evidence at a violation hearing:
 - (a) oral testimony under oath;
 - (b) affidavits or other sworn statements;
 - (c) letters;
 - (d) documents;
 - (e) reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole and post-prison supervision officers, doctors, psychologists, attorneys);

- (f) uncertified copies of letters, documents, or reports shall be admissible in a revocation hearing if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable;
 - (g) evidence of criminal activity even when charges have been dismissed, not brought, or the offender has been acquitted at trial;
 - (h) reliable hearsay evidence; or
 - (i) any evidence determined to be material, relevant, and reliable, regardless of its nature.
- (2) Upon the request of any party to the hearing, the Sanction Authority, or Hearings Officer, may issue a subpoena duces tecum upon a proper showing of relevant and reasonable scope of the documentary or physical evidence being sought. Otherwise, the offender shall make the offender's own arrangements for presenting evidence.
 - (3) The Sanction Authority or Hearings Officer may exclude documents or physical evidence upon making a finding that such evidence would pose a hazard to facility security or would not assist in the resolution of the allegation(s). The reason for exclusion shall be made part of the record.
 - (4) The Sanction Authority or Hearings Officer may classify documents or physical evidence as confidential upon making a finding that revealing such evidence would pose a threat to the safety of the person providing the evidence.
 - (3) The Sanction Authority or Hearings Officer shall make evidence received without disclosing the identity of the witness a sealed part of the record.
 - (6) When a witness is unavailable, the Sanction Authority or Hearings Officer may receive statements in the form of documentary evidence. The Sanction Authority or Hearings Officer shall determine at an in-camera hearing the reliability and relevance of the absent witness's statement.

Statutory Authority: ORS 144.343, 144.347

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

255-075-0046

Postponement

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

Statutory Authority: ORS 144.050, 144.140, 144.343

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

255-075-0050

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

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

255-075-0055

Reopening Hearings: Criteria; Procedure

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

Statutory Authority: ORS 144.050, 144.140, 144.343

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

255-075-0056
Hearings Record

- (1) The hearings record shall include:
 - (a) a Hearings Report Summary;
 - (b) a written statement of alleged violations;
 - (c) supporting materials, including documentary evidence admitted;
 - (d) a signed Notice of Rights;
 - (e) the Order of Parole or Post-Prison Supervision;
 - (f) a notice of time and place of hearing;
 - (g) a tape recording of the advice of rights and the hearing;
 - (h) the supervising officer's report, including recommended dispositions; [and]
 - (i) the history of supervision, local sanctions and modifications; and
 - (j) if any, the written waiver of the offender's right to three working days notice of the hearing.
- (2) The Hearings Officer shall retain the tape recording used in subsection (1)(g) of this rule for (4) four years.

Statutory Authority: ORS 144.343
History: (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89; 10/9/92, temporary 11/14/97; 05/11/98, 06-17-02, **10-10-03**)

255-075-0060
Record of Parole Revocation Hearing

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

255-075-0065
Ten Day Period for Offender's Evidence and Exceptions

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

Statutory Authority: ORS 144.343(7)
History: (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 4/19/89, temporary; 10/16/89; 10/15/91; 4/30/92, temporary; 10/9/92, temporary 11/14/97; **05/11/98**)

255-075-0067

10-30-06 PERM

Conditions Violations

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

- 1) If an offender waives a hearing after receipt and review of the notice of rights, as provided in OAR 255-075-0005(6) a supervising officer may order administrative sanctions, including a local confinement sanction not exceeding thirty (30) days. The Local Supervisory Authority's designee may review the decision to order a local confinement sanction if the offender's underlying sentence was for 12 months or less. The Board may review the decision if the underlying sentence was more than 12 months.
- 2) After a hearing, or if an offender waives a hearing after receipt of the notice of rights, as provided in OAR 255-075-0005(6), a Hearings Officer or agency designee may order administrative sanctions, including a local confinement sanction not exceeding sixty (60) days. The Hearings Officer or agency designee shall send a copy of the final order and report to the Sanction Authority and, upon request, shall send the record of the hearing as described in OAR 255-075-0056. The Hearings Officer or agency designee shall retain the record for four (4) years.
- 3) After a hearing, or waiver, the Board may order administrative sanctions for offenders originally sentenced to more than 12 months, and a Local Supervisory Authority designee may order administrative sanctions for offenders originally sentenced to 12 months or less. The Board or a Local Supervisory Authority designee ordered local administrative confinement sanction may not exceed ninety (90) days.
- 4) The Board (for offenders originally sentenced to more than 12 months) or the Local Supervisory Authority designee (for offenders originally sentenced to 12 months or less) may override any sanction ordered by a supervising officer, agency designee or Hearings Officer.
- 5) Administrative Sanctions, including local confinement shall be applied in accordance with the Department of Corrections rules for structured, intermediate sanctions, OAR 291-58-010 et al., subject to jointly drafted revisions by the Department of Corrections and the Board.
- 6) If an administrative sanction is not sufficient to address the violation or to protect the public, the Sanction Authority may revoke supervision for a period(s) as set out in OAR 255-075-0079, or deny re-release for offenders on parole.
- 7) Conditions of supervision may be modified at any time by the Sanction Authority when necessary for the offender or public safety. If an offender objects to the modification, administrative review must be made within 45 days of the mailing date on the Board order or receipt of a written order by the Local Supervisory Authority.

Statutory Authority: ORS 144.106, 144.343

History: (4/30/92, temporary; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98,
5-13-03)

255-075-0070

Final Action: Procedure

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

Statutory Authority: 144.125, 144.343

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

255-075-0072

Re-release Order After Revocation

- (1) At the time of a revocation decision, the Sanction Authority shall make an order concerning re-release.
- (2) In the re-release order, the Sanction Authority may:
 - (a) continue parole or post-prison supervision pursuant to 255-075-0075 or 255-075-0080; or
 - (b) set the re-release date in accordance with rule 255-075-0079; or
 - (c) The Board may defer the re-release decision pending a future disposition hearing for offenders on parole.
- (3) Upon notification that parole or post-prison supervision has terminated by operation of ORS 144.345(2), the Board shall apply subsection (2) of this rule.
- (4) Revocation of post-prison supervision stops the period of post-prison supervision from running while the offender is serving time in custody for a revocation sanction. The re-release order following a revocation sanction shall include a re-calculation of the post-prison supervision expiration date to account for the time the offender was in custody serving the revocation sanction.

- (5) The sum of the time actually served on the original incarceration sentence, all days served as a revocation sanction, and the time served in the community on post-prison supervision cannot exceed the maximum indeterminate sentence for the offense(s) for which the offender is on post-prison supervision.

Statutory Authority: ORS 144.346, 144.395

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

Return to DOC for a Period of Greater than 12 months
255-075-0073

- (1) Post-prison supervision may be revoked and an offender returned to the custody of the Department of Corrections for a sanction that exceeds 12 months when:
- (a) The offender is currently in violation of a condition of supervision; and
 - (b) The offender scores at least a total of 44 points on the scale in Exhibit R of these rules; and
 - (c) The community corrections agency supervising the offender and/or a hearings officer recommend a return to the Department of Corrections for a sanction exceeding 12 months; and
 - (d) The Board finds that a sanction exceeding 12 months is appropriate.
- (2) This rule may only be applied to offenders serving a term of post-prison supervision for a felony crime committed on or after July 14, 1997, and the term of post-prison supervision:
- (a) follows completion of a sentence to a term of imprisonment that exceeds 12 months, or
 - (b) was imposed for a felony classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid, or
 - (c) was imposed as part of a sentence under ORS 137.700 or 137.707, or
 - (d) was imposed as part of a sentence as a dangerous offender under ORS 161.725 and 161.737, or
 - (e) is subject to ORS 144.103 (length of post-prison supervision for certain sex offenses).
- (3) A revocation hearing as described in OAR 255-075-0005 must be held when there is a recommendation under this rule.
- (4) A community corrections agency and/or hearing officer recommending a sanction under this rule must specifically state how the offender fits the requirements of this rule (including the score on the scale), what efforts have been made to manage the offender in the community and why the offender cannot be safely managed in the community. The recommendation may also contain any other information that may assist the board.

- (5) If a community corrections agency and/or hearing officer recommends a sanction under this rule, the board shall hold a hearing as described in OAR 255-075-0097 to determine whether a sanction exceeding 12 months is appropriate. After a hearing, the board can order a sanction of up to 24 months incarceration. The board must hold a subsequent hearing before it can order continued incarceration exceeding 24 months. The length of sanction imposed under this rule is determined by the board.
- (6) Subject to the requirements of this rule, an offender may be required to serve a sanction under this rule up to the post-prison supervision expiration date for any offense for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule. When an offender is released from a sanction imposed under this rule, the offender must serve the balance, if any, of any post-prison supervision remaining up to the post-prison supervision expiration date. If the offender is not released prior to the post-prison supervision expiration date, the post-prison supervision will expire. The periods of post-prison supervision for all offenses for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule continue to run while an offender is serving a sanction under this rule.
- (7) Board hearings under this rule will be conducted in the same manner that the board conducts future disposition hearings. The board may order a psychological evaluation for a hearing under this rule. The procedures for records, disclosure and notice outlined in Divisions 15 and 30 shall govern these hearings. A panel may conduct the hearing and the board shall make decisions pursuant to OAR 255-030-0015.
- (8) In determining whether a sanction exceeding 12 months is appropriate or whether continued incarceration exceeding 24 months is appropriate, the board must consider the recommendation by the community corrections agency or hearing officer and may also consider the following:
 - (a) the nature of the underlying conviction(s);
 - (b) the offender's criminal history;
 - (c) the history and nature of violations of post-prison supervision or parole;
 - (d) findings made by a psychologist in a psychological evaluation;
 - (e) conduct in institutions or jails;
 - (f) programs completed in custody and/or in the community;
 - (g) treatment available in the community;
 - (h) release plans;
 - (i) victim's statements, if any; and
 - (j) any indications of reformation and rehabilitation.

Statutory Authority: (ORS 144.107)

History: (03/12/01)

255-075-0075

Offenders Convicted of New Crime in This or Another Jurisdiction

- (1) If an offender has violated parole or post-prison supervision as a result of a conviction of a new crime and the court has ordered a prison term to the Department of Corrections, parole or post-prison supervision terminates without a violation hearing by operation of ORS 144.345(2).
- (2) Upon release from custody, if the Oregon sentence has not expired, Oregon supervision shall resume either in another jurisdiction under Interstate Compact or in Oregon. If, in preparing the re-release plan, the Department of Corrections cannot arrange supervision under Interstate Compact, the offender shall report to the appropriate Supervisory Authority for supervision.
- (3) The Sanction Authority shall make extradition decisions on a case-by-case basis in cooperation with the holding jurisdiction.
- (4) If the offender absconded supervision, the Sanction Authority shall count the inoperative time from the date the Sanction Authority issued its arrest and detention warrant to the arrest date in Oregon or if arrested out of state, upon return to Oregon custody. The Board shall forward the dates to the Department of Corrections for use in recalculating the sentence good time and expiration dates for those offenders under the Board's jurisdiction. For those not under the Board's authority, the inoperative time shall be calculated by the Supervisory Authority's designee.

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

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

255-075-0076

Designation of Parole Failure

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

255-075-0078

Commencement Date for Prison Term Following a Violation

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

Statutory Authority: ORS 144.346, 144.395, 144.780, 144.783

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

255-075-0079

Guidelines for Re-release

- (1) For technical violation(s):
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-011-0004.
- (2) For conduct constituting a crime:
 - (a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.
 - (b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-11-004.
- (3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.
- (4) Offenders sentenced to life imprisonment or received a lifetime period of post-prison supervision for murder may serve further incarceration to the sentence expiration date. Offenders sentenced to life imprisonment for aggravated murder may serve further incarceration to the sentence expiration date.
- (5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.
- (7)
 - (a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.
 - (b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.
 - (c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.
- (8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.

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

Statutory Authority: ORS 144.107, 144.108, 144.120(4), 144.125, 144.232, 144.345, 144.346, 144.395, 161.735
 History: (4/19/89, temporary; 11/1/89; 10/15/90, temporary; 1/16/91; 10/9/92; 10/29/93, temporary 11/14/97; 05/11/98, 01-25-00, 05-13-03, 06-14-04- temporary; **11-02-2004**)

255-075-0080
Continuance on Parole or Supervision

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

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

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

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

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

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

255-075-0090
Guidelines for Reparole

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

255-075-0095
Variation From Guidelines for Aggravation/Mitigation Permitted

History: (11/19/84, temporary; 2/28/85; 5/19/88; 7/1/88; 4/19/89, suspended; 10/16/89, repealed)
10-30-06 PERM Conditions Violations

255-075-0096

Denial of Re-release Consideration

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

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

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

255-075-0097

Time for Future Disposition Hearing

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

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

Statutory Authority: ORS 144.050, 144.140, 144.395

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

255-075-0098

Restoration of Statutory and Meritorious Goodtime

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

- (1) there is no violation of parole; or
- (2) parole is revoked on a best interest basis and there is no actual parole violation; or
- (3) parole is revoked on a technical violation; or
- (4) parolee is within 180 days of discharge; or

- (5) parole is revoked for new criminal activity which is a misdemeanor or non person-to-person class C felony and:
 - (a) the new criminal activity was already sanctioned at the local level;
or
 - (b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.
- (6) An offender ordered to serve a term of incarceration as a Revocation sanction for a post-prison supervision violation is not eligible for goodtime, earned-credit time, work release, transitional or temporary leave.

Statutory Authority: ORS 421.120, 144.108(3)

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

255-075-0100

Future Disposition Hearing Packet

The Future Disposition Hearing Packet shall contain:

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

Statutory Authority: ORS 144.185, 144.395

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

Notice

11-9-06

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

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

255

Administrative Rules Chapter Number

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Rules Coordinator

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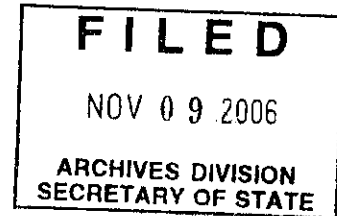
RULE CAPTION

Clarification of the residency requirements for offenders released onto Parole & Post-Prison Supervision.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

AMEND: 255-070-0003



REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.102, 144.050, 144.140, 144.270
Stat. Auth.

NONE
Other Authority

NONE
Stats. Implemented

RULE SUMMARY

The amendment of this rule is necessary to bring it into conformity with Oregon Revised Statutes.

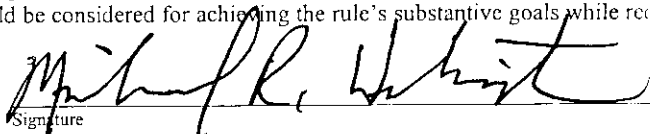
A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date Notice was sent to people on the agency mailing list, 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.

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

12-28-2006

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator


Signature

Michael R. Washington, Chair

Printed name

11-09-06

Date

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

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

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Clarification of the residency requirements for offenders released onto Parole & Post-Prison Supervision.

Statutory Authority: ORS 144.102, 144.050, 144.140, 144.270

Other Authority: NONE

Stats. Implemented: ORS NONE

Need for the Rule(s):

The amendment of this rule is necessary to bring it into conformity with Oregon Revised Statutes.

Documents Relied Upon, and where they are available: NONE

Fiscal and Economic Impact, including Statement of Cost of Compliance:

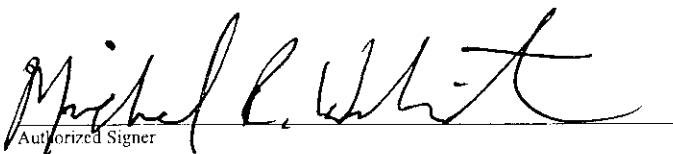
The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? No small businesses were involved in the development of this rule because the amendment of this rule will have no effect on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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


Authorized Signer

Michael R. Washington, Chair
Printed name

11-09-06
Date

Offender Return to County of Residence
255-070-0003

- (1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the first six months in the county where the offender resided [on the date of the last arrest for a crime resulting in imprisonment] at the time of the offense that resulted in the imprisonment.

- (2)
 - (a) The Board or the Department of Corrections may establish the county of residency by obtaining the last address of record at the time of the offense from all of the available information in the following records:
 - (A) An Oregon driver's license, regardless of its validity;
 - (B) The Department of Revenue;
 - (C) The Department of State Police, Bureau of Criminal Identification;
 - (D) The Department of Human Resources; or
 - (E) The Department of Corrections.

 - (b) If the records do not disclose the county of residency, the Board or the Department shall find the offender resided in the county where she or he committed the crime.

 - (c) If the offender is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.

 - (d) In determining the offender's county of residence for purposes of this rule, the Board may not consider offenses committed by the offender while the offender was incarcerated in a Department of Corrections facility.

- (3) Upon motion of the Board, an offender, a victim, or a district attorney, the Board may waive the residency requirement after finding:
 - (a) the offender provided proof of a job with no set ending date in a county other than the established county of residence;

 - (b) the offender poses a significant danger to the victim;

 - (c) the victim or victim's family poses a significant danger to the offender residing in the county of residence.

 - (d) the offender has a spouse or biological or adoptive family, residing in other than the county of residence, who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole or post-prison supervision period;

 - (e) the Board requires that the offender participate in a treatment program which is not available in the county of residence;

 - (f) the offender desires release to another state or another state has a detainer; or

 - (g) other good cause.

Statutory Authority: (ORS 144.270(5))

History: (11/1/89; 10/15/91; 10/9/92, 9-15-99 – NOTICE/TEMP, 11-15-99,
11-09-06-NOTICE)

Perm

2-1-07

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on January 31, 2007 by the
Date prior to or same as filing date

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

Peggy Barber _____ 2575 Center Street NE, Ste 100, Salem, OR 97301-4621 _____ 503-945-0914
Rules Coordinator Address Telephone

to become effective 02-01-07 Rulemaking Notice was published in the December 1, 2006 _____ Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Clarification of the residency requirements for offenders released onto Parole & Post-Prison Supervision
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

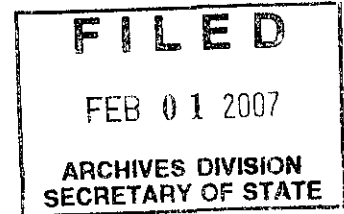
ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 255-070-0003

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.



ORS 144.102, 144.050, 144.140, 144.270 _____ NONE
Stat. Auth. Other Authority

ORS NONE _____
Stats. Implemented

RULE SUMMARY

The amendment of this rule is necessary to bring it into conformity with Oregon Revised Statutes.

Candace E. Wheeler
Authorized Signer

Candace Wheeler, Board Member
Printed name

02-01-07
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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

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

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Clarification of the residency requirements for offenders released onto Parole & Post-Prison Supervision.

Statutory Authority: ORS 144.102, 144.050, 144.140, 144.270

Other Authority: NONE

Stats. Implemented: ORS NONE

Need for the Rule(s):

The amendment of this rule is necessary to bring it into conformity with Oregon Revised Statutes.

Documents Relied Upon, and where they are available: NONE

Fiscal and Economic Impact, including Statement of Cost of Compliance:

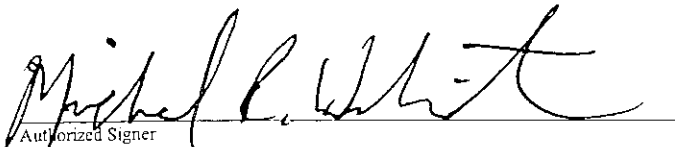
The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? No small businesses were involved in the development of this rule because the amendment of this rule will have no effect on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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


Authorized Signer

Michael R. Washington, Chair
Printed name

11-09-06
Date

Offender Return to County of Residence
255-070-0003

- (1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the first six months in the county where the offender resided [on the date of the last arrest for a crime resulting in imprisonment] at the time of the offense that resulted in the imprisonment.

 - (2) (a) The Board or the Department of Corrections may establish the county of residency by obtaining the last address of record at the time of the offense from all of the available information in the following records:
 - (A) An Oregon driver's license, regardless of its validity;
 - (B) The Department of Revenue;
 - (C) The Department of State Police, Bureau of Criminal Identification;
 - (D) The Department of Human Resources; or
 - (E) The Department of Corrections.

 - (b) If the records do not disclose the county of residency, the Board or the Department shall find the offender resided in the county where she or he committed the crime.

 - (c) If the offender is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.

 - (d) In determining the offender's county of residence for purposes of this rule, the Board may not consider offenses committed by the offender while the offender was incarcerated in a Department of Corrections facility.
-
- (3) Upon motion of the Board, an offender, a victim, or a district attorney, the Board may waive the residency requirement after finding:
 - (a) the offender provided proof of a job with no set ending date in a county other than the established county of residence;
 - (b) the offender poses a significant danger to the victim;
 - (c) the victim or victim's family poses a significant danger to the offender residing in the county of residence.
 - (d) the offender has a spouse or biological or adoptive family, residing in other than the county of residence, who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole or post-prison supervision period;
 - (e) the Board requires that the offender participate in a treatment program which is not available in the county of residence;
 - (f) the offender desires release to another state or another state has a detainer; or
 - (g) other good cause.

Statutory Authority: (ORS 144.270(5))

History: (11/1/89; 10/15/91; 10/9/92, 9-15-99 – NOTICE/TEMP, 11-15-99, **02-01-07-PERM**)

LA-1-e
30.40N / 3131

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 12/27/06 by the
Date prior to or same as filing date

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

Peggy Barber 2575 Center Street NE, Ste 100-Salem, OR 97301-4621 503-945-0914
Rules Coordinator Address Telephone

to become effective 02/01/2007 through 07/30/2007
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Amendment of Rules Regarding Procedure for Conducting Murder Review Hearings pursuant to the Larsen decision.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

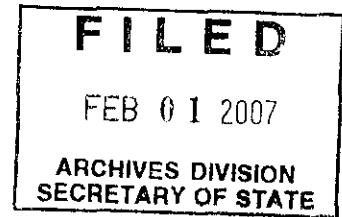
List each rule number separately, 000-000-0000.

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

OAR 255-032-0022, 255-032-0027, 255-032-0029, 255-032-0030, 255-032-0031, 255-032-0032

AMEND: OAR 255-032-0025

SUSPEND:



ORS 144.025, 144.050, 144.120, 163.105, 163.115, 183.335, 183.341, 183.415, 183.440, 183.450, 183.470, 192.410-505.
Stat. Auth.

Larsen v. Board of Parole and Post-Prison Supervision, 206 Or App 353 (2006)
Other Authority

ORS NONE
Stats. Implemented

RULE SUMMARY

The amendment of this rule is necessary in order to be consistent with the Oregon Court of Appeals ruling in *Larsen v. Board of Parole, 206 Or App 353 (2006)*.

Candace E. Wheeler
Authorized Signer

Candace Wheeler, Board Member
Printed name

2/1/07
Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole and Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Amendment of Rules Regarding Procedure for Conducting Murder Review Hearings pursuant to the *Larsen* decision.

Statutory Authority: ORS 144.025, 144.050, 144.120, 163.105, 163.115, 183.335, 183.341, 183.415, 183.440, 183.450, 183.470, 192.410-505.

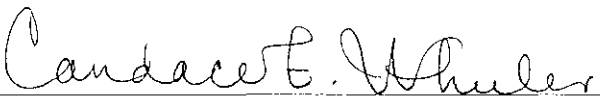
Other Authority: *Larsen v. Board of Parole*, 206 Or App 353 (2006).

Stats. Implemented: ORS None

Need for the Temporary Rule(s): The amendment of this rule is necessary in order to be consistent with the Oregon Court of Appeals ruling in *Larsen v. Board of Parole*, 206 Or App 353 (2006), which was issued on June 14, 2006.

Documents Relied Upon, and where they are available: : The Oregon Court of Appeals Opinion in *Larsen v. Board of Parole*, 206 Or App 353 (2006).

Justification of Temporary Rule(s): The Oregon Court of Appeals ruling in *Larsen v. Board of Parole*, 206 Or App 353 (2006), requires the Board to conduct Aggravated Murder Review hearings in the manner prescribed for a contested case hearing under the Administrative Procedures Act pursuant to ORS 163.105.


Authorized Signer

Candace Wheeler, Board Member
Printed name

02-01-07
Date

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

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

255
Administrative Rules Chapter Number

Peggy Barber
Rules Coordinator

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621
Address

503-945-0914
Telephone

RULE CAPTION

Amendment of Rules Regarding Procedure for Conducting Murder Review Hearings pursuant to the Larsen decision.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

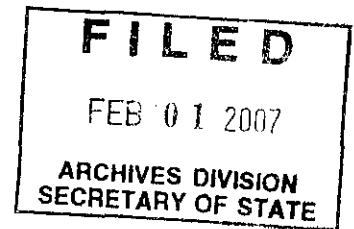
OAR 255-032-0022, 255-032-0027, 255-032-0029, 255-032-0030, 255-032-0031, 255-032-0032

AMEND: **OAR 255-032-0025**

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.



ORS 144.025, 144.050, 144.120, 163.105, 163.115, 183.335, 183.341, 183.415, 183.440, 183.450, 183.470, 192.410-505.

Stat. Auth.

Larsen v. Board of Parole, 206 Or App 353 (2006).
Other Authority

ORS NONE
Stats. Implemented

RULE SUMMARY

The amendment of this rule is necessary in order to be consistent with the Oregon Court of Appeals ruling in *Larsen v. Board of Parole*, 206 Or App 353 (2006).

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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

Candace E. Wheeler
Signature

03/21/07

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Candace Wheeler, Board Member
Printed name

2/1/07
Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 923-2005

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

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.) Amendment of Rules Regarding Procedure for Conducting Murder Review Hearings pursuant to the *Larsen* decision.

Statutory Authority: ORS 144.025, 144.050, 144.120, 163.105, 163.115, 183.335, 183.341, 183.415, 183.440, 183.450, 183.470, 192.410-505.

Other Authority: *Larsen v. Board of Parole*, 206 Or App 353 (2006).

Stats. Implemented: ORS None

Need for the Rule(s): The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in *Larsen v. Board of Parole*, 206 Or App 353 (2006), which was issued June 14, 2006.

Documents Relied Upon, and where they are available: The Oregon Supreme Court Opinion in *Larsen v. Board of Parole*, and Post-Prison Supervision, 91 Or App 642 (1988).

Fiscal and Economic Impact, including Statement of Cost of Compliance:

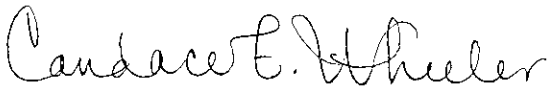
There will be a minimal fiscal and economic effect on the Board by this amendment over the last six months of the 2005-07 biennium. Current projections for the 2007-09 biennium are estimated at an additional \$44,000 in Professional Services expenses.

How were small businesses involved in the development of this rule? There was no involvement by small businesses in the development of this rule as this rule amendment will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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


Authorized Signer

Candace Wheeler, Board Member
Printed name

02-01-07
Date

DIVISION 32

**AGGRAVATED MURDER AND MURDER COMMITTED AFTER 10-23-99
ORS 163.105 and ORS 163.115**

Prison Term Hearing to be Held
255-032-0005

- (1) An adult person convicted of Aggravated Murder under ORS 163.095 shall receive a hearing within one year of sentencing. A person convicted of Murder under ORS 163.115 that was committed on or after June 30, 1995, and who was sentenced to life with a twenty-five (25) year minimum shall receive a hearing within one year of sentencing. At the hearing the Board shall set a review date congruent with the minimum terms set forth in OAR 255-032-0010 rather than a parole release date.
- (2) Adult persons sentenced to death or life without the possibility of release or parole shall not receive a hearing.
- (3) Adult persons sentenced to life with a twenty (20) or thirty (30) year minimum for aggravated murder shall receive a prison term hearing pursuant to ORS 144.120 if they also have a sentence to the Department of Corrections' custody for a crime other than aggravated murder.
- (4) Inmates, who were juveniles and waived to adult court pursuant to ORS 419C.340 through 419C.364, and were under the age of 17 years at the time of their crime(s), and were convicted of Aggravated Murder, per ORS 163.095, and whose crimes were committed after October 31, 1989 and prior to April 1, 1995, shall receive a prison term hearing. At the hearing, the Board shall set a review date consistent with the terms set forth in OAR 255-032-0011 rather than a projected parole release date.

Statutory Authority: (ORS 144.120, 163.095, 163.115, 419c.340, 419c.364)
History: (5/31/85; 11/1/89; 1/16/91; 10/9/92; 5/18/99, 01-04-00,
05-13-03)

Minimum Period of Confinement Pursuant to ORS 163.105 or ORS 163.115
255-032-0010

- (1) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(1) shall be thirty (30) years.
- (2) The minimum period of confinement for an adult person convicted of Aggravated Murder as defined by ORS 163.105(2) prior to December 6, 1984, shall be twenty (20) years.
- (3) The minimum period of confinement for a person sentenced to life for Murder under ORS 163.115 committed on or after June 30, 1995, shall be twenty-five (25) years.

Statutory Authority: (ORS 144.110, 163.105, 163.115)
History: (5/31/85; 5/19/88, 5/18/99, 01-04-00, **05-13-03**)

255-032-0011

Schedule of Initial Parole Consideration for Inmates Described in OAR 255-032-0005(4)

- (1) The Board shall conduct a hearing pursuant to OAR 255-030-0013, 255-030-0015, 255-030-0021, 255-030-0023 and 255-030-0025 through -0055.
- (2) The Board shall set a review date pursuant to Exhibit P-III, or deny parole, pursuant to OAR 255-035-0030.
- (3) The method established by sections (1) to (3) of OAR 255-035-0021 shall not apply to inmates described in OAR 255-032-0005(4). To determine the unified range for inmates described in OAR 255-032-0005(4) with consecutive sentences for aggravated murder, the Board shall establish the matrix range for each crime by using the inmate's history/risk score pursuant to Exhibit P-III. The unified range shall be the sum of the ranges established under this section.
- (4) The Board may depart from the appropriate matrix range for inmates described in OAR 255-032-0005(4) only upon making a specific finding that there is aggravation or mitigation which justifies departure from the range pursuant to Exhibits E-1 and E-2. The Board shall clearly state on the record the facts and specific reasons for its finding. The Board may give items of aggravation and mitigation different weight and not necessarily balance them one for one. Exhibit D does not apply to inmates described in OAR 255-032-0005(4). The Board cannot apply aggravating or mitigating factors to adjust an inmate's matrix range more than one level up or down. Mitigating factors cannot reduce an inmate's matrix range below the lowest possible range on the matrix.
- (5) If the Board denies parole, the inmate may petition for review after 480 months from the adjusted inception date. If the Board determines, following a review of the inmate's petition and institutional record, there is reasonable grounds to believe that rehabilitation may have occurred and that the possibility of parole should be considered, a review hearing shall be scheduled.
- (6) If the Board sets a review date pursuant to Exhibit P-III, the Board shall conduct a progress review five years prior to the established review date. The progress review does not require a hearing with the inmate; however, the inmate may submit materials to be considered. The purpose of the progress review is to determine the inmate's institutional conduct and rehabilitation efforts since the prison term hearing.
- (7) The Board may determine a parole release date or future review dates any time after the established review date. The Board may order a psychological evaluation. Refusal to submit to an evaluation if one is ordered will be grounds for automatic deferral of the hearing for up to five years or a lesser time if deemed appropriate by the Board. If parole was previously denied, that decision will remain in effect and further petitions for review will not be considered at less than two (2) year intervals.

Petition/Purpose for Review Hearing
255-032-0015

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after thirty (30) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after October 23, 1999; or
- (2) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or between June 30, 1995 through October 22, 1999; or
- (3) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before June 30, 1995; or
- (4) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2); or
- (5) Anytime after twenty-five (25) years from the date of imposition of confinement pursuant to OAR 255-032-0010(3).

Statutory Authority: (ORS 163.115)

History: (5/31/85; 5/19/88; 1/16/91, 03/01/97, 5/18/99, 01-04-00, 05-13-03,
04-15-04—Notice/Temp, **06-14-04**)

Purpose of Review Hearing
255-032-0020

- (1) The sole issue of the hearing described in OAR 255-032-0015 shall be to determine whether or not the inmate is likely to be rehabilitated within a reasonable period of time. Criteria indicating whether the inmate is likely to be rehabilitated prior to release include:
 - (a) the inmate's involvement in correctional treatment, medical care, educational, vocational or other training in the institution which will substantially enhance his/her capacity to lead a law-abiding life when released;
 - (b) the inmate's institutional employment history;
 - (c) the inmate's institutional disciplinary conduct;
 - (d) the inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate personality which may promote or hinder conformity to law;
 - (e) the inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcoholic liquor;
 - (f) the inmate's prior criminal history, including the nature and circumstances of previous offenses;
 - (g) the inmate's conduct during any previous period of probation or parole;

02-01-2007-NOTICE/TEMP

Aggravated Murder

- (8) At the review hearing, the Board will consider, but is not limited to, the following:
- (a) the inmate's involvement in correctional treatment, medical care, educational, vocational or other training in the institution which will substantially enhance his/her capacity to lead a law-abiding life when released;
 - (b) the inmate's institutional employment history;
 - (c) the inmate's institutional disciplinary conduct;
 - (d) the inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate's personality which may promote or hinder conformity to law;
 - (e) the inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcohol;
 - (f) the inmate's prior criminal history, including the nature and circumstances of previous offenses;
 - (g) the inmate's conduct during any previous period of probation or parole;
 - (h) the inmate does/does not have a mental or emotional disturbance, deficiency, condition or disorder predisposing them to the commission of a crime to a degree rendering them a danger to the health and safety of the community;
 - (i) the adequacy of the inmate's parole plan including community support from family, friends, treatment providers, and others in the community; type of residence, neighborhood or community in which the inmate plans to live;
 - (j) there is a reasonable probability that the inmate will remain in the community without violating the law, and there is substantial likelihood that the inmate will conform to the conditions of parole.

The decision for the Board shall be whether there are significant indications of reformation and rehabilitation such that the offender does not represent a risk to the community and that it is in the offender's and the community's best interest that he/she be released to the community under conditions of supervision.

If the Board does not make the above finding, the Board shall set a subsequent review hearing date not to exceed five (5) years from the present review.

Statutory Authority: (ORS 163.105)

History: (5/18/99)

- (h) the inmate does/does not have a mental or emotional disturbance, deficiency, condition or disorder predisposing them to the commission of a crime to a degree rendering them a danger to the health and safety of the community;
- (i) the adequacy of the inmate's parole plan including community support from family, friends, treatment providers, and others in the community; type of residence, neighborhood or community in which the inmate plans to live;
- (j) there is a reasonable probability that the inmate will remain in the community without violating the law, and there is substantial likelihood that the inmate will conform to the conditions of parole.

Statutory Authority: (ORS 163.115)

History: (5/31/85; 10/29/93; **5/18/99**)

Murder Review Hearings Notice
255-032-0022

- (1) The Board's contested case notice issued pursuant to ORS 183.415 must include:
 - (a) A statement that the sole issue to be considered shall be whether or not the inmate is likely to be rehabilitated within a reasonable period of time, and that the inmate shall have the burden of proof, by a preponderance of the evidence.
 - (b) A statement of the inmate's right to be represented by counsel; and if the inmate is without sufficient funds, counsel will be appointed by the Board at Board expense;
 - (c) A statement that the Board has authority and jurisdiction to hold a hearing on the issue pursuant to ORS 163.105(2) or 163.115(5); and
 - (d) A statement of rights of the inmate at the hearing.

Stat. Auth.: ORS 183.415; ORS 163.105(2), 163.115(5)

History: **02-01-07-NOTICE/TEMP**

Manner of Review Hearing
255-032-0025

- (1) The Board shall conduct the proceeding in the manner prescribed for a contested case hearing under ORS Chapter 183 [310 to 183.550] except that:
 - (a) The inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) If the inmate is without sufficient funds to employ an attorney, the inmate shall have the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$100 [75] per hour and \$1000 [750] per case. The attorney shall send the Board a billing within 90 days of the hearing.

- (2) During hearings of the Board, the chairperson or designated board member shall preside. The presiding member shall designate the order of presentation and questioning. The presiding member shall also determine the scope of questioning and may set time limits and cut off irrelevant questions and irrelevant or unresponsive answers. [If upon hearing all the evidence, the Full Board upon a unanimous vote of all members finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.]
- (3) At the commencement of the hearing, the presiding board member shall explain the issues involved in the hearing and that the inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time. [When an inmate has a consecutive sentence for a crime other than aggravated murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentence(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the aggravated murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.]
- (4) Testimony at the hearing shall be taken upon oath or affirmation of the witness from whom it is received. The presiding board member shall administer oaths or affirmations to witnesses.
- (5) The initial testimony of each witness shall not exceed three minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the board's decision. The presiding Board member may exclude or limit irrelevant, immaterial or unduly repetitious testimony and evidence.
- (6) The record in a Murder Review Hearing must include:
- (a) Evidence received or considered;
 - (b) Stipulations;
 - (c) Questions and offers of proof, objections and rulings thereon;
 - (d) Proposed findings and exceptions; and
 - (e) Any proposed, intermediate, or final order prepared by the Board.
- (7) If upon hearing all the evidence, the [F]full Board, upon a unanimous vote of all members, finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.
- (8) When an inmate has a consecutive sentence for a crime other than [a]Aggravated [m]Murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentence(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the [a]Aggravated [m]Murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Stat. Auth: (ORS 144.120, ORS 163.105, ORS 163.115, ORS 183.415)

History: (5/31/85; 5/19/88; 11/1/89; 1/16/91; 5/1/91, temporary; 10/15/91;
10/29/93, 01-04-00, 02-06-01, **02-01-07-NOTICE/TEMP**)

Inmate's Right to Review Record; Exceptions

255-032-0027

- (1) Except as provided in OAR 255-015-0010, all exhibits to be considered by the Board shall be disclosed to the inmate's attorney or the inmate, if proceeding *pro se*, within a reasonable period of time before the hearing:
 - (a) Exhibits not available prior to the hearing shall be made available to the inmate's attorney or to the inmate, if not represented, at the hearing.
 - (b) All material relevant and pertinent to issues before the Board shall be made a part of the record.
 - (c) Any material not made part of the record shall be separated and a statement to that effect shall be placed in the record. The board shall follow the criteria for denial or disclosure of records set out in OAR 255-015-0010.

Stat. Auth.: (ORS 183.335, ORS 192.410 – ORS 192.505, ORS 144.025(3) & ORS 144.050)
History: (02-01-07-NOTICE/TEMP)

Subpoenas for a Murder Review Hearing

255-032-0029

- (1) Inmates must make their own arrangements for calling and presenting witnesses. However, upon the request of an inmate, and upon a proper showing of general relevance and reasonable scope of the evidence being sought, the Board may issue subpoenas requiring the attendance and testimony of witnesses.
 - (a) Witnesses are not required to appear in person, but may participate via teleconference.
- (2) Witnesses appearing pursuant to subpoena, other than inmates, state officers, or employees of the Board, must receive fees and mileage payable by the Board as prescribed by law for witnesses in ORS 44.415(2), provided the Board certifies that the witness's testimony was relevant and material to the hearing.

Stat. Auth: (ORS 44.415, ORS 183.440)
History: (02-01-07-NOTICE/TEMP)

Evidence in a Murder Review Hearing

255-032-0030

- (1) Irrelevant, immaterial, or unduly repetitious evidence will be excluded, and privileges afforded by Oregon law shall be recognized by the presiding member. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs will be admissible. All offered evidence, not objected to, will be received by the presiding member subject to the presiding member's power to exclude irrelevant, immaterial, or unduly repetitious matter.
- (2) In determining whether the evidence is material, relevant or reliable, the Board shall consider the following:
 - (a) The age and source of the documents;

02-01-2007-NOTICE/TEMP

Aggravated Murder

- (b) The ability of the witness to have observed and had personal knowledge of the incidents;
- (c) The credibility of the witness and whether the witness has bias or interest in the matter.
- (3) The inmate, the inmate's attorney, or the Board, may object to any evidence. Objections to evidence being introduced by the Board or the inmate may be made and will be noted in the record. The presiding board member must accept an offer of proof for excluded evidence. The offer of proof must contain sufficient detail to allow the Board or a court to determine whether the evidence was properly excluded. The presiding member shall have discretion to decide whether the offer of proof is to be oral or written and at what stage of the proceeding it will be made. The presiding member may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer. The Board may decide the following:
 - (a) To sustain the objection and deny the admission and consideration of the evidence on the grounds that it is not material, relevant or reliable; or
 - (b) To overrule the objection and admit the evidence and in considering the weight given to that evidence, consider the reason for the objection.
- (4) The Board will consider all available relevant evidence for purposes of determining the inmate's likelihood of rehabilitation within a reasonable period of time.
- (5) The Board and the inmate will have the right of cross-examination of each witness that testifies, and will have the right to submit rebuttal evidence.

Stat. Auth: (ORS 163.105, ORS 163.115, ORS 183.450)

History: (02-01-07-NOTICE/TEMP)

Final Orders in Murder Review Hearings **255-032-0031**

- (1) Final orders in Murder Review hearings must be in writing, and if adverse to the inmate include the following:
 - (a) Findings of fact – a concise statement of those matters that are either agreed as fact or that, when disputed, are determined by the Board to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based; and
 - (b) Conclusion(s) of law -- applications of the controlling law to the facts found and the legal results of the application.
- (2) If the Board finds that the inmate has proven by a preponderance of the evidence that the inmate is likely to be rehabilitated within a reasonable period of time, then it is not necessary that the final order include findings of fact or conclusions of law.
- (3) The Board may also issue its decision orally on the record at the hearing.

Stat. Auth: (ORS 163.105, ORS 163.115, ORS 183.470)

History: (02-01-07-NOTICE/TEMP)

02-01-2007-NOTICE/TEMP

Aggravated Murder

Continuance of Hearings: Cancellation of Hearings
255-032-0032

- (1) Upon the request of any party or on its own motion, the Board may, for good cause, continue a hearing for a reasonable period of time not to exceed 60 days to obtain additional information required to assist the Board in its decision.
- (2) If an inmate asks for cancellation of a hearing, it must be for good cause, in writing, and with seven days advance notice. If the board finds that the cancellation request does not fulfill these requirements, the inmate shall not be eligible to request another hearing for 90 days from the date of the scheduled hearing.

Stat. Auth: (ORS 183.341(2))
History: (02-01-07-NOTICE/TEMP)

Effect of Denying Relief Request
255-032-0035

If the Board finds that the inmate is not capable of rehabilitation, the Board shall deny the relief sought in the inmate petition. Not less than two years after the denial the inmate may petition again for a change in the terms of confinement. Further petitions for a change may be made at intervals of not less than two years thereafter.

Statutory Authority: (ORS 163.115)
History: (5/31/85; 5/19/88, 03/01/97)

Record/Notice
255-032-0040

Provisions for maintaining a record of the hearings and providing notice of decision shall be those set forth in Divisions 15 and 30 of these rules.

Statutory Authority: (ORS 183.335, 183.360)
History: (5/31/85)

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form

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

Peggy Barber _____ 2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621 _____ 503-945-0914 _____
Rules Coordinator Address Telephone

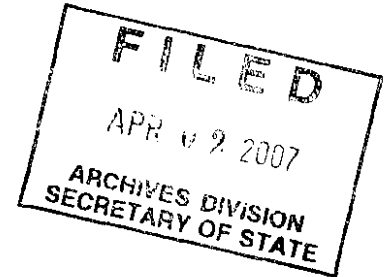
RULE CAPTION

Procedures for Predatory Sex Offender Designation for Inmates _____
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

AMEND: 255-060-0016



REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing

Chapter 163 (1999 OR Laws) ORS 144.050, 144.140, 181.585, 181.594 _____ NONE _____
Stat Auth Other Authority

ORS NONE _____
Stats Implemented

RULE SUMMARY

Amend rule to conform language to ORS 181.585.

RECEIVED
107 APR 4 PM 1 26
BOARD OF PAROLE

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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

Candace E. Wheeler
Signature

05-21/2007
Last Day for Public Comment
Last day to submit written comments to the Rules Coordinator

Candace Wheeler, Board Member _____ 04-02-2007 _____
Printed name Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 923-2005

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

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action) Procedure for Designation of Predatory Sex Offenders prior for inmates.

Statutory Authority: ORS 144.050, 144.140, 181.585, 181.594

Other Authority: NONE

Stats. Implemented: ORS None

Need for the Rule(s):

Amend rule to conform language to ORS 181.585.

Documents Relied Upon, and where they are available: None

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? There was no involvement by small businesses in the development of this rule as this rule adoption will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

The Board of Parole & Post-Prison Supervision enacted this adoption and change during a business meeting and due to the nature of the adoption, felt it was not necessary to consult with the Administrative Rule Advisory Committee.

Candace Wheeler
Authorized Signer

Candace Wheeler, Board Member
Printed name

04-02-2007
Date

255-060-0016

Procedures for Predatory Sex Offender Designation for Inmates.

- (1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree, or has been convicted of attempting to commit one of these crimes or has been found guilty except for insanity of one of these crimes. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider evidence that the inmate is behaving in a manner that is consistent with exhibiting characteristics showing a tendency to victimize or injure others submitted in written reports prepared by an approved evaluator and a release counselor of any Department of Corrections institution.
- (2) Predatory sex offender designations made by the board for inmates released from a Department of Corrections institution before August 7, 2006, are not included in this rule. Those designations are governed by the rules in effect when the designation was made or when the inmate was released from custody.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate is eligible for predatory sex offender designation, if the inmate scores six or more points on the STATIC-99.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate has participated in a sex offender evaluation or refused participation in such an evaluation, and participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the offender's original order of supervision or an amended order of supervision.
- (5) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible for predatory designation are required to participate in a sex offender evaluation to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. Refusal to participate in such an evaluation will be used as evidence to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others.
- (6) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, or the Board within three days of the date the inmate signed the Notice of Rights (Exhibit Q-III).

- (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate refused to sign the Notice of Rights before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.
 - (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate is eligible for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.
 - (d) Inmates may elect to waive their right to submit written objections. Any such waiver must be in writing. When inmates waive their right to submit written objections, the Board may find an inmate or offender is eligible for predatory sex offender designation if the inmate's score on the STATIC-99 is six or more points.
- (7) The sole purpose of the evidentiary hearing will be to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. The Board shall receive the sex offender evaluation of the inmate, a copy of the STATIC-99, and any written objections from the inmate to consider at the hearing. The Board may receive a written report from a release counselor of any Department of Corrections institution indicating that the inmate is engaging in behavior that shows the inmate is exhibiting characteristics showing a tendency to victimize or injure others.
- (a) Upon receipt of the abovementioned information, including the written report from a release counselor of any Department of Corrections institution, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will schedule an evidentiary hearing.
 - (b) The Board will provide the inmate with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate may proceed with the evidentiary hearing or waive his or her right to the hearing. At the evidentiary hearing, the inmate will be given the opportunity to rebut claims made in the sex offender evaluation, STATIC-99, and any written report submitted by a release counselor. At the conclusion of the evidentiary hearing, the Board will make a determination as to whether the inmate should be designated as a predatory sex offender.
- (8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: [Chapter 163 (1999 OR Laws)] ORS 144.050, ORS 144.140, ORS 181.585, ORS 181.586.

History: 08-07-2006-temp/notice, 08-30-06-TEMP/NOTICE, 10-30-06, **04-02-07-NOTICE**

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Board of Parole & Post-Prison Supervision Administrative Rules Chapter Number 255
Agency and Division
Peggy Barber 2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621 503-945-0914
Rules Coordinator Address Telephone

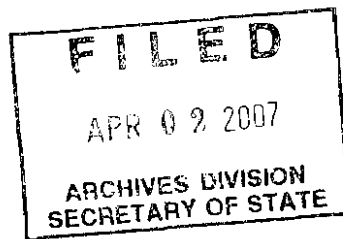
RULE CAPTION

Return to DOC for a Period of Greater than 12 months
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

AMEND: 255-075-0073 (Exhibit R)



REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing

RS 144 107 NONE
stat. Auth. Other Authority
OR, NONE
Stats. Implemented

RULE SUMMARY

Add language to Exhibit R to clarify the restriction on the qualifying crime in order to be eligible for consideration under this rule.

RECEIVED
APR 02 4 PM 1 26
BOARD OF PAROLE

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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

Candace E. Wheeler
Signature

05/21/2007
Last Day for Public Comment
Last day to submit written comments to the Rules Coordinator

Candace Wheeler, Board Member 04-02-2007
Printed name Date

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ARC 923-2005

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

Oregon Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action)

Return to DOC for a Period of Greater than 12 months

Statutory Authority: ORS 144.107

Other Authority: NONE

Stats. Implemented: ORS NONE

Need for the Rule(s):

Add language to Exhibit R to clarify the restriction on the qualifying crime in order to be eligible for consideration under this rule.

Documents Relied Upon, and where they are available: NONE.

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.


How were small businesses involved in the development of this rule?

There was no involvement by small businesses in the development of this rule as this rule amendment will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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



Authorized Signer

Candace Wheeler, Board Member

Printed name

04-02-2007

Date

Return to DOC for a Period of Greater than 12 months
255-075-0073

- (1) Post-prison supervision may be revoked and an offender returned to the custody of the Department of Corrections for a sanction that exceeds 12 months when:
 - (a) The offender is currently in violation of a condition of supervision; and
 - (b) The offender scores at least a total of 44 points on the scale in Exhibit R of these rules, and
 - (c) The community corrections agency supervising the offender and/or a hearings officer recommend a return to the Department of Corrections for a sanction exceeding 12 months; and
 - (d) The Board finds that a sanction exceeding 12 months is appropriate.
- (2) This rule may only be applied to offenders serving a term of post-prison supervision for a felony crime committed on or after July 14, 1997, and the term of post-prison supervision:
 - (a) follows completion of a sentence to a term of imprisonment that exceeds 12 months, or
 - (b) was imposed for a felony classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid, or
 - (c) was imposed as part of a sentence under ORS 137.700 or 137.707, or
 - (d) was imposed as part of a sentence as a dangerous offender under ORS 161.725 and 161.737, or
 - (e) is subject to ORS 144.103 (length of post-prison supervision for certain sex offenses).
- (3) A revocation hearing as described in OAR 255-075-0005 must be held when there is a recommendation under this rule.
- (4) A community corrections agency and/or hearing officer recommending a sanction under this rule must specifically state how the offender fits the requirements of this rule (including the score on the scale), what efforts have been made to manage the offender in the community and why the offender cannot be safely managed in the community. The recommendation may also contain any other information that may assist the board.
- (5) If a community corrections agency and/or hearing officer recommends a sanction under this rule, the board shall hold a hearing as described in OAR 255-075-0097 to determine whether a sanction exceeding 12 months is appropriate. After a hearing, the board can order a sanction of up to 24 months incarceration. The board must hold a subsequent hearing before it can order continued incarceration exceeding 24 months. The length of sanction imposed under this rule is determined by the board.

- (6) Subject to the requirements of this rule, an offender may be required to serve a sanction under this rule up to the post-prison supervision expiration date for any offense for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule. When an offender is released from a sanction imposed under this rule, the offender must serve the balance, if any, of any post-prison supervision remaining up to the post-prison supervision expiration date. If the offender is not released prior to the post-prison supervision expiration date, the post-prison supervision will expire. The periods of post-prison supervision for all offenses for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule continue to run while an offender is serving a sanction under this rule.
- (7) Board hearings under this rule will be conducted in the same manner that the board conducts future disposition hearings. The board may order a psychological evaluation for a hearing under this rule. The procedures for records, disclosure and notice outlined in Divisions 15 and 30 shall govern these hearings. A panel may conduct the hearing and the board shall make decisions pursuant to OAR 255-030-0015.
- (8) In determining whether a sanction exceeding 12 months is appropriate or whether continued incarceration exceeding 24 months is appropriate, the board must consider the recommendation by the community corrections agency or hearing officer and may also consider the following:
 - (a) the nature of the underlying conviction(s);
 - (b) the offender's criminal history;
 - (c) the history and nature of violations of post-prison supervision or parole;
 - (d) findings made by a psychologist in a psychological evaluation;
 - (e) conduct in institutions or jails;
 - (f) programs completed in custody and/or in the community;
 - (g) treatment available in the community;
 - (h) release plans;
 - (i) victim's statements, if any; and
 - (j) any indications of reformation and rehabilitation.

Statutory Authority: (ORS 144.107)

History: (03/12/01, **04-02-2007-NOTICE**)

Exhibit R
(of OAR 255-075-0073)
Return to DOC for a Period of Greater than 12 months

Assessment Scale

1. The following point scale corresponds with the highest sentencing guidelines grid classification for any felony for which the offender is on post-prison supervision at the time a sanction is sought under this rule. This rule may only be applied to offenders serving a term of post-prison supervision for a felony crime committed on or after July 14, 1997, and otherwise qualifying under OAR 255-075-0073(2).

Sentencing Guidelines Grid	Points for this Scale
11A	20
11B	20
11C	20
11D	20
10A	20
10B	18
10C	16
10D	14
9A	18
9B	16
9C	14
9D	12
8A	16
8B	14
8C	12
8D	10

Points _____

If the offense(s) for which the offender is on post-prison supervision is below an 8-D, score zero points for this item and move on to the next items on the scale.

2. Since initial release from a DOC institution to the current post-prison supervision, the offender threatens physical harm to another person and has some ability or capacity to carry out the threat.

Score 10 points

Points _____

3. Since initial release from a DOC institution to the current post-prison supervision, the offender fails to comply with a condition of supervision requiring participation in a psychiatric or psychotropic medication program.

Score 10 points

Points _____

4. Since initial release from a DOC institution to the current post-prison supervision, the offender engaged in conduct constituting a crime that has a crime seriousness rating of 4 or higher on the sentencing guidelines grid, or the offender engaged in conduct constituting a person-to-person crime as defined by the sentencing guidelines rule, or the offender engaged in any type of sexual crime.

Score 10 points

Points _____

5. Since initial release from a DOC institution to the current post-prison supervision, the offender had unauthorized contact with a minor, victim or survivor in violation of a condition of the post-prison supervision

Score 10 points

Points _____

6. Since initial release from a DOC institution to the current post-prison supervision, the offender failed to comply with the conditions of a treatment program ordered as a general or special condition of post-prison supervision.

Score 10 points

Points _____

7. Since initial release from a DOC institution to the current post-prison supervision, the offender has received any type of sanction for supervision violations on eight or more occasions. This is not limited to revocation sanctions but does not include interventions.

Score 10 points

Points _____

Total number of points for this offender _____

***Note:** Do not score both #2 and #4 for the same conduct. Do not score both #3 and #6 unless the offender is required to be engaged in regular mental health treatment beyond merely taking prescription medications (e.g., attending counseling sessions).

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on June 25, 2007 by the
Date prior to or same as filing date

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

Peggy Barber 2575 Center Street NE, Ste 100, Salem, OR 97301-4621 503-945-0914
Rules Coordinator Address Telephone

to become effective 07/17/2007 Rulemaking Notice was published in the May 2007 Oregon Bulletin **
Date upon filing or later Month and Year

RULE CAPTION

Procedures for Predatory Sex Offender Designation for Inmates
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000

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

AMEND: 255-060-0016

REPEAL:

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

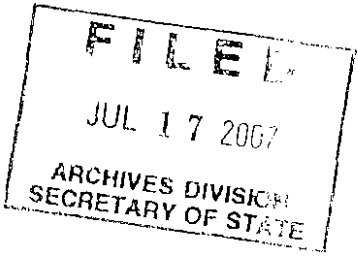
AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing

Chapter 163 (1999 OR Laws), ORS 144.050, 144.140, 181.585, 181.594 NONE
Stat Auth Other Authority

ORS NONE
Stats Implemented

RULE SUMMARY

Amend rule to conform language to ORS 181.585.



BO
07 JUL 25 P 4:06

Candace E. Wheeler
Authorized Signer

Candace Wheeler, Board Member
Printed name

07-17-07
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules
The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the
Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a
Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday
ARC 930 2005

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

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

Oregon Board of Parole & Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action) Procedure for Designation of Predatory Sex Offenders prior for inmates.

Statutory Authority: ORS 144.050, 144.140, 181.585, 181.594

Other Authority: NONE

Stats. Implemented: ORS None

Need for the Rule(s):

Amend rule to conform language to ORS 181.585.

Documents Relied Upon, and where they are available: None

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? There was no involvement by small businesses in the development of this rule as this rule adoption will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

The Board of Parole & Post-Prison Supervision enacted this adoption and change during a business meeting and due to the nature of the adoption, felt it was not necessary to consult with the Administrative Rule Advisory Committee.

Candace Wheeler

Authorized Signer

Candace Wheeler, Board Member

Printed name

04-02-2007

Date

DIVISION 60

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

255-060-0016

Procedures for Predatory Sex Offender Designation for Inmates.

- (1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree, or has been convicted of attempting to commit one or has been found guilty except for insanity or one of these crimes. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider evidence that the inmate is behaving in a manner that is consistent with exhibiting characteristics showing a tendency to victimize or injure others submitted in written reports prepared by an approved evaluator and a release counselor of any Department of Corrections institution.
- (2) Predatory sex offender designations made by the board for inmates released from a Department of Corrections institution before August 7, 2006, are not included in this rule. Those designations are governed by the rules in effect when the designation was made or when the inmate was released from custody.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate is eligible for predatory sex offender designation, if the inmate scores six or more points on the STATIC-99.
- (4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate has participated in a sex offender evaluation or refused participation in such an evaluation, and participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the offender's original order of supervision or an amended order of supervision.
- (5) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible for predatory designation are required to participate in a sex offender evaluation to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. Refusal to participate in such an evaluation will be used as evidence to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others.
- (6) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, or the Board within three days of the date the inmate signed the Notice of Rights (Exhibit Q-III).

PERMANENTLY ADOPTED 7/17/07

PAGE 1 OF 2

DIVISION 60

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

- (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate refused to sign the Notice of Rights before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.
 - (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate is eligible for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.
 - (d) Inmates may elect to waive their right to submit written objections. Any such waiver must be in writing. When inmates waive their right to submit written objections, the Board may find an inmate or offender is eligible for predatory sex offender designation if the inmate's score on the STATIC-99 is six or more points.
- (7) The sole purpose of the evidentiary hearing will be to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. The Board shall receive the sex offender evaluation of the inmate, a copy of the STATIC-99, and any written objections from the inmate to consider at the hearing. The Board may receive a written report from a release counselor of any Department of Corrections institution indicating that the inmate is engaging in behavior that shows the inmate is exhibiting characteristics showing a tendency to victimize or injure others.
- (a) Upon receipt of the abovementioned information, including the written report from a release counselor of any Department of Corrections institution, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will schedule an evidentiary hearing.
 - (b) The Board will provide the inmate with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate may proceed with the evidentiary hearing or waive his or her right to the hearing. At the evidentiary hearing, the inmate will be given the opportunity to rebut claims made in the sex offender evaluation, STATIC-99, and any written report submitted by a release counselor. At the conclusion of the evidentiary hearing, the Board will make a determination as to whether the inmate should be designated as a predatory sex offender.
- (8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority: [Chapter 163 (1999 OR Laws)] ORS 144.050, ORS 144.140, ORS 181.585, ORS 181.586.

History: 08-07-2006-temp/notice, 08-30-06-TEMP/NOTICE, 10-30-06, **07-17-07**

PERMANENTLY ADOPTED 7/17/07
PAGE 2 OF 2

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on June 25, 2007 by the
Date prior to or same as filing date

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

Peggy Barber 2575 Center Street NE, Ste 100, Salem, OR 97301-4621 503-945-0914
Rules Coordinator Address Telephone

to become effective 07/17/2007 Rulemaking Notice was published in the May 2007 Oregon Bulletin.**
Date upon filing or later Month and Year

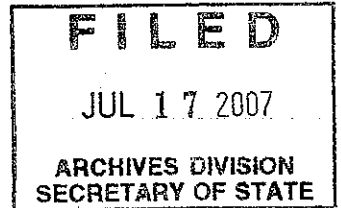
RULE CAPTION

Return to DOC for a Period of Greater than 12 months.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

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

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

AMEND: 255-075-0073 (Exhibit R)



REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.107 NONE
Stat. Auth. Other Authority

ORS NONE 07
Stats. Implemented

RULE SUMMARY

Add language to Exhibit R to clarify the restriction on the qualifying crime in order to be eligible for consideration under this rule.

BOP

07
JUL 25 P 4:05

RECEIVED

Candace E. Wheeler
Authorized Signer

Candace Wheeler, Board Member
Printed name

07-17-07
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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Return to DOC for a Period of Greater than 12 months
255-075-0073

- (1) Post-prison supervision may be revoked and an offender returned to the custody of the Department of Corrections for a sanction that exceeds 12 months when:
 - (a) The offender is currently in violation of a condition of supervision; and
 - (b) The offender scores at least a total of 44 points on the scale in Exhibit R of these rules; and
 - (c) The community corrections agency supervising the offender and/or a hearings officer recommend a return to the Department of Corrections for a sanction exceeding 12 months; and
 - (d) The Board finds that a sanction exceeding 12 months is appropriate.
- (2) This rule may only be applied to offenders serving a term of post-prison supervision for a felony crime committed on or after July 14, 1997, and the term of post-prison supervision:
 - (a) follows completion of a sentence to a term of imprisonment that exceeds 12 months, or
 - (b) was imposed for a felony classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid, or
 - (c) was imposed as part of a sentence under ORS 137.700 or 137.707, or
 - (d) was imposed as part of a sentence as a dangerous offender under ORS 161.725 and 161.737, or
 - (e) is subject to ORS 144.103 (length of post-prison supervision for certain sex offenses).
- (3) A revocation hearing as described in OAR 255-075-0005 must be held when there is a recommendation under this rule.
- (4) A community corrections agency and/or hearing officer recommending a sanction under this rule must specifically state how the offender fits the requirements of this rule (including the score on the scale), what efforts have been made to manage the offender in the community and why the offender cannot be safely managed in the community. The recommendation may also contain any other information that may assist the board.
- (5) If a community corrections agency and/or hearing officer recommends a sanction under this rule, the board shall hold a hearing as described in OAR 255-075-0097 to determine whether a sanction exceeding 12 months is appropriate. After a hearing, the board can order a sanction of up to 24 months incarceration. The board must hold a subsequent hearing before it can order continued incarceration exceeding 24 months. The length of sanction imposed under this rule is determined by the board.

- (6) Subject to the requirements of this rule, an offender may be required to serve a sanction under this rule up to the post-prison supervision expiration date for any offense for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule. When an offender is released from a sanction imposed under this rule, the offender must serve the balance, if any, of any post-prison supervision remaining up to the post-prison supervision expiration date. If the offender is not released prior to the post-prison supervision expiration date, the post-prison supervision will expire. The periods of post-prison supervision for all offenses for which an offender was on post-prison supervision at the time the board ordered a sanction under this rule continue to run while an offender is serving a sanction under this rule.
- (7) Board hearings under this rule will be conducted in the same manner that the board conducts future disposition hearings. The board may order a psychological evaluation for a hearing under this rule. The procedures for records, disclosure and notice outlined in Divisions 15 and 30 shall govern these hearings. A panel may conduct the hearing and the board shall make decisions pursuant to OAR 255-030-0015.
- (8) In determining whether a sanction exceeding 12 months is appropriate or whether continued incarceration exceeding 24 months is appropriate, the board must consider the recommendation by the community corrections agency or hearing officer and may also consider the following:
- (a) the nature of the underlying conviction(s);
 - (b) the offender's criminal history;
 - (c) the history and nature of violations of post-prison supervision or parole;
 - (d) findings made by a psychologist in a psychological evaluation;
 - (e) conduct in institutions or jails;
 - (f) programs completed in custody and/or in the community;
 - (g) treatment available in the community;
 - (h) release plans;
 - (i) victim's statements, if any; and
 - (j) any indications of reformation and rehabilitation.

Statutory Authority: (ORS 144.107)

History: (03/12/01, 07/17/07)

Exhibit R
(of OAR 255-075-0073)
Return to DOC for a Period of Greater than 12 months

Assessment Scale

1. The following point scale corresponds with the highest sentencing guidelines grid classification for any felony for which the offender is on post-prison supervision at the time a sanction is sought under this rule. This rule may only be applied to offenders serving a term of post-prison supervision for a felony crime committed on or after July 14, 1997, and otherwise qualifying under OAR 255-075-0073(2).

Sentencing Guidelines Grid	Points for this Scale
11A	20
11B	20
11C	20
11D	20
10A	20
10B	18
10C	16
10D	14
9A	18
9B	16
9C	14
9D	12
8A	16
8B	14
8C	12
8D	10

Points _____

If the offense(s) for which the offender is on post-prison supervision is below an 8-D, score zero points for this item and move on to the next items on the scale.

2. Since initial release from a DOC institution to the current post-prison supervision, the offender threatens physical harm to another person and has some ability or capacity to carry out the threat.

Score 10 points

Points _____

3. Since initial release from a DOC institution to the current post-prison supervision, the offender fails to comply with a condition of supervision requiring participation in a psychiatric or psychotropic medication program.

Score 10 points

Points _____

4. Since initial release from a DOC institution to the current post-prison supervision, the offender engaged in conduct constituting a crime that has a crime seriousness rating of 4 or higher on the sentencing guidelines grid, or the offender engaged in conduct constituting a person-to-person crime as defined by the sentencing guidelines rule, or the offender engaged in any type of sexual crime.

Score 10 points

Points _____

5. Since initial release from a DOC institution to the current post-prison supervision, the offender had unauthorized contact with a minor, victim or survivor in violation of a condition of the post-prison supervision.

Score 10 points

Points _____

6. Since initial release from a DOC institution to the current post-prison supervision, the offender failed to comply with the conditions of a treatment program ordered as a general or special condition of post-prison supervision.

Score 10 points

Points _____

7. Since initial release from a DOC institution to the current post-prison supervision, the offender has received any type of sanction for supervision violations on eight or more occasions. This is not limited to revocation sanctions but does not include interventions.

Score 10 points

Points _____

Total number of points for this offender _____

***Note:** Do not score both #2 and #4 for the same conduct. Do not score both #3 and #6 unless the offender is required to be engaged in regular mental health treatment beyond merely taking prescription medications (e.g., attending counseling sessions).

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on July 23, 2007 by the
Date prior to or same as filing date

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

Peggy Barber 2575 Center Street NE, Ste 100, Salem, OR 97301-4621 503-945-0914
Rules Coordinator Address Telephone

to become effective 07-30-07 Rulemaking Notice was published in the March 1, 2007 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Amendment of Rules Regarding Procedure for Conducting Murder Review Hearings pursuant to the Larsen decision.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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

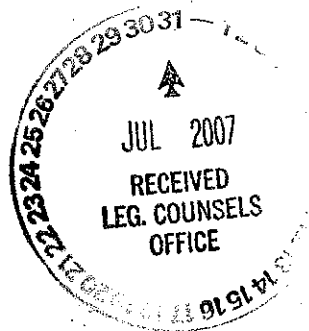
OAD 255-032-0022, 255-032-0026, 255-032-0027, 255-032-0029, 255-032-0030, 255-032-0031, 255-032-0032

AMEND: 255-032-0025

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.



ORS 144.025, 144.050, 144.120, 163.105, 163.115, 183.335, 183.341, 183.415, 183.440, 183.470, 192.410-505.

Stat. Auth.

Larsen v. Board of Parole and Post-Prison Supervision, 206 Or App 353 (2006)
Other Authority

ORS NONE
Stats. Implemented

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LEG. COUNSELS
OFFICE
OCT -5 AMO 50

RULE SUMMARY

The amendment of this rule is necessary in order to be consistent with the Oregon Court of Appeals ruling in Larsen v. Board of Parole, 206 Or App 353 (2006).

Candace Wheeler
Authorized Signer

Candace Wheeler, Board Member
Printed name

07-30-07
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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Murder Review Hearings Notice
255-032-0022

The Board's contested case notice issued pursuant to ORS 183.415 must include:

- (1) A statement that the sole issue to be considered shall be whether or not the inmate is likely to be rehabilitated within a reasonable period of time, and that the inmate shall have the burden of proof, by a preponderance of the evidence;
- (2) A statement of the inmate's right to be represented by counsel; and if the inmate is without sufficient funds, counsel will be appointed by the Board at Board expense;
- (3) A statement that the Board has authority and jurisdiction to hold a hearing on the issue pursuant to ORS 163.105(2) or 163.115(5); and
- (4) A statement of rights of the inmate at the hearing.

Stat. Auth.: ORS 183.415, 163.105(2), 163.115(5)
Hist.: 02-01-07-Temp, **07-30-07**

Manner of Review Hearing
255-032-0025

- (1) The proceeding shall be governed by the procedures for records, disclosure, and notice outlined in Divisions 15 and 30.
- (2) At the hearing, the inmate has:
 - (a) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) If the inmate is without sufficient funds to employ an attorney, the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$[75] 100 per hour and \$[750] 1000 per case. The attorney shall send the Board a billing within 90 days of the hearing.
 - (c) The right to a subpoena issued by the Board upon a showing of the general relevance and reasonable scope of the evidence sought, and pursuant to Board rules.
- (3[2]) If upon hearing all the evidence, the full Board, upon a unanimous vote of all members, finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition. The Board's final order granting or denying relief shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Board's order.
- (4[3]) When an inmate has a consecutive sentence for a crime other than Aggravated Murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentences(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release

BOPPPS

07 OCT -5 AM 5:55

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date on the Aggravated Murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Stat. Auth.: ORS 144.120, 163.105, 163.115, 183.415
History: (5/31/85; 5/19/88; 11/1/89; 1/16/91; 5/1/91, temporary; 10/15/91; 10/29/93, 01-04-00, 02-06-01, 02-01-07-TEMP, **07-30-07**)

Manner of Review Hearing For Hearings Requested Before June 28, 2007
255-032-0026

- (1) OAR 255-032-0022 to 255-032-0032 apply only to hearings conducted for inmates who:
 - (a) were eligible for a murder review hearing prior to June 28, 2007; and
 - (b) petitioned the Board for a hearing under ORS 163.105 or 163.115 prior to June 28, 2007; and
 - (c) were not granted a hearing on the petition that was filed prior to June 28, 2007.
- (2)[(1)] The Board shall conduct the proceeding in the manner prescribed for a contested case hearing under ORS Chapter 183 [310 to 183.550] except that:
 - (a) The inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) If the inmate is without sufficient funds to employ an attorney, the inmate shall have the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$100 [75] per hour and \$1000 [750] per case. The attorney shall send the Board a billing within 90 days of the hearing.
- (3)[(2)] During hearings of the Board, the chairperson or designated board member shall preside. The presiding member shall designate the order of presentation and questioning. The presiding member shall also determine the scope of questioning and may set time limits and cut off irrelevant questions and irrelevant or unresponsive answers.
- (4)[(3)] At the commencement of the hearing, the presiding board member shall explain the issues involved in the hearing and that the inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time.
- (5)[(4)] Testimony at the hearing shall be taken upon oath or affirmation of the witness from whom it is received. The presiding board member shall administer oaths or affirmations to witnesses.
- (6)[(5)] The initial testimony of each witness shall not exceed three minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the board's decision. The presiding Board member may exclude or limit irrelevant, immaterial or unduly repetitious testimony and evidence.
- (7)[(6)] The record in a Murder Review Hearing must include:
 - (a) Evidence received or considered;
 - (b) Stipulations;
 - (c) Questions and offers of proof, objections and rulings thereon;
 - (d) Proposed findings and exceptions; and

(e) Any proposed, intermediate, or final order prepared by the Board.

(8)[(7)] If upon hearing all the evidence, the full Board, upon a unanimous vote of all members, finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.

(9)[(8)] When an inmate has a consecutive sentence for a crime other than Aggravated Murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentence(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the Aggravated Murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Stat. Auth.: ORS 144.120, 163.105, 163.115, 183.415

History: (5/31/85; 5/19/88; 11/1/89; 1/16/91; 5/1/91, temporary; 10/15/91; 10/29/93, 01-04-00, 02-06-01, 02-01-07-TEMP, **07-30-07**)

Inmate's Rights to Review Records; Exceptions **255-032-0027**

- (1) Except as provided in OAR 255-015-0010, all exhibits to be considered by the Board shall be disclosed to the inmate's attorney or the inmate, if proceeding *pro se*, within a reasonable period of time before the hearing:
 - (a) Exhibits not available prior to the hearing shall be made available to the inmate's attorney or to the inmate, if not represented, at the hearing.
 - (b) All material relevant and pertinent to issues before the Board shall be made a part of the record.
 - (c) Any material not made part of the record shall be separated and a statement to that effect shall be placed in the record. The board shall follow the criteria for denial or disclosure of records set out in OAR 255-015-0010.

Stat. Auth.: (ORS 183.335, ORS 192.410 – ORS 192.505, ORS 144.025(3) & ORS 144.050)
History: (02-01-07-TEMP, **07-30-07**)

Subpoenas for a Murder Review Hearing **255-032-0029**

- (1) Inmates must make their own arrangements for calling and presenting witnesses. However, upon the request of an inmate, and upon a proper showing of general relevance and reasonable scope of the evidence being sought, the Board may issue subpoenas requiring the attendance and testimony of witnesses.
- (2) Witnesses are not required to appear in person, but may participate via teleconference.
- (3) Witnesses appearing pursuant to subpoena, other than inmates, state officers, or employees of the Board, must receive fees and mileage payable by the Board as

255-032-0031

- (1) Final orders in Murder Review hearings must be in writing, and if adverse to the inmate include the following:
 - (a) Findings of fact -- a concise statement of those matters that are either agreed as fact or that, when disputed, are determined by the Board to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based; and
 - (b) Conclusion(s) of law -- applications of the controlling law to the facts found and the legal results of the application.
- (2) If the Board finds that the inmate has proven by a preponderance of the evidence that the inmate is likely to be rehabilitated within a reasonable period of time, then it is not necessary that the final order include findings of fact or conclusions of law.
- (3) The Board may also issue its decision orally on the record at the hearing.

Stat. Auth.: ORS 163.105, 163.115, 183.470
History: (02-01-07-Temp, **07-30-07**)

Continuance of Hearings: Cancellation of Hearings
255-032-0032

- (1) Upon the request of any party or on its own motion, the Board may, for good cause, continue a hearing for a reasonable period of time not to exceed 60 days to obtain additional information required to assist the Board in its decision.
- (2) If an inmate asks for cancellation of a hearing, it must be for good cause, in writing, and with seven days advance notice. If the board finds that the cancellation request does not fulfill these requirements, the inmate shall not be eligible to request another hearing for 90 days from the date of the scheduled hearing.

Stat. Auth.: ORS 183.341(2)
History: (02-01-07-Temp, **07-30-07**)

Effect of Denying Relief Request
255-032-0035

If the Board finds that the inmate is not capable of rehabilitation, the Board shall deny the relief sought in the inmate petition. Not less than two years after the denial the inmate may petition again for a change in the terms of confinement. Further petitions for a change may be made at intervals of not less than two years thereafter.

Stat. Auth.: ORS 163.105
History: (5/31/85, 5/19/88, **03/01/97**)

Record/Notice
255-032-0040

Provisions for maintaining a record of the hearings and providing notice of decision shall be those set forth in Divisions 15 and 30 of these rules.

Stat. Auth.: ORS 144
History: (05/31/85)

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form

Oregon Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

Peggy Barber

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621

503-945-0914

Rules Coordinator

Address

Telephone

RULE CAPTION

Procedures for Predatory Sex Offender Designation for Inmates

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

AMEND: 255-060-0011

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing

Chapter 163 (1999 OR Laws) ORS 144.050, 144.140, 181.585, 181.594

NONE

Stat. Auth.

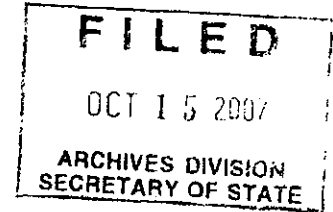
Other Authority

ORS NONE

Stats. Implemented

RULE SUMMARY

Amend rule to conform language to ORS 181.585.



RECEIVED
07 OCT 18 AM 10:15
BOPPPS

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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

Candace E. Wheeler

Signature

12/03/2007

Last Day for Public Comment

Candace Wheeler, Board Member

Printed name

10-15-07

Date

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

STATEMENT OF NEED AND FISCAL IMPACT

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

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

255
Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.) **Procedure for Designation of Predatory Sex Offenders for inmates.**

Statutory Authority: ORS 144.050, 144.140, 181.585, 181.594

Other Authority: NONE

Stats. Implemented: ORS None

Need for the Rule(s):

Amend rule to conform language to ORS 181.585.

Documents Relied Upon, and where they are available: None

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? There was no involvement by small businesses in the development of this rule as this rule adoption will have no impact on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

The Board of Parole & Post-Prison Supervision enacted this adoption and change during a business meeting and due to the nature of the adoption, felt it was not necessary to consult with the Administrative Rule Advisory Committee.

Candace E. Wheeler

Authorized Signer

Candace Wheeler, Board Member
Printed name

10-15-07
Date

255-060-0011

Procedures for Predatory Sex Offender Designation

- (1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree, or has been convicted of attempting to commit one or has been found guilty except for insanity or one of these crimes. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider any other evidence that the inmate or the offender exhibits characteristics showing a tendency to victimize or injure others.
- (2) Predatory sex offender designations made by the board for inmates or offenders released from a Department of Corrections institution before February 10, 2005, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.
- (3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a candidate for predatory sex offender designation, if the inmate or offender scores six or more points on the STATIC-99.
- (4) Subject to the procedures set forth below, inmates or offenders who score six or more points on the STATIC-99, and have been identified as a candidate for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.
 - (a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).
 - (b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.
 - (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate or offender before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate or offender is a candidate for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.
 - (d) Inmates or offenders may elect to waive their right to submit written objections. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections, the Board may find an inmate or offender is a candidate for predatory sex offender designation if the inmate's or offender's score on the STATIC-99 is six or more

- (5) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate or offender has participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.
- (6) The sole purpose of the evidentiary hearing will be to determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The Board may receive a written report from a supervising officer or a release counselor of any Department of Corrections institution indicating that an inmate or offender who has been determined to be a candidate for designation as a predatory sex offender under paragraphs (3) and (4) exhibits characteristics showing a tendency to victimize or injure others.
- (a) Upon receipt of a written report from a supervising officer or a release counselor, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate or offender should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will forward the report to its Hearing Officer, who will schedule an evidentiary hearing.
- (b) The Board's Hearing Officer will provide the inmate or offender with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate or offender may proceed with the evidentiary hearing or waive their right to the hearing. At the evidentiary hearing, the Hearings Officer will consider the written report submitted by the supervising officer or release counselor and the results of the STATIC-99 risk assessment scale, and may accept additional evidence supporting the STATIC-99 score or otherwise indicating that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The inmate or offender may present evidence rebutting claims made in the written report submitted by a supervising officer or release counselor, challenging the score on the STATIC-99, or rebutting other evidence that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. At the conclusion of the evidentiary hearing, the Hearing Officer will submit his report to the Board with a recommendation as to whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others.
- (c) Upon receipt of the report and recommendation from the Board's Hearing Officer, the Board will review the report and recommendation and determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others and is, therefore, a predatory sex offender.
- (7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority:

History:

ORS 144.050, ORS 144.140, ORS 181.585, ORS 181.586.

(02-15-00, 03-12-02, 06/13/03, 10-10-03, 01/14/04-Temp/Notice, 06-14-04, 3-20-06 - Temp/Notice, 6-14-06, 06-15-06-Temp/Notice, 10-09-06, 10-03-07-NOTICE)

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on December 17, 2007 by the
Date prior to or same as filing date

Board of Parole and Post-Prison Supervision

Agency and Division

255

Administrative Rules Chapter Number

Peggy Barber

Rules Coordinator

2575 Center Street NE, Ste 100, Salem, OR 97301-4621

Address

503-945-0914

Telephone

to become effective January 11, 2008

Date upon filing or later

Rulemaking Notice was published in the November 2007

Oregon Bulletin.**
Month and Year

RULE CAPTION

Procedures for Predatory Sex Offender Designation for Inmates

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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

AMEND: 255-060-0011

FILED

JAN 11 2008

REPEAL:

**ARCHIVES DIVISION
SECRETARY OF STATE**

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Chapter 163 (1999 OR Laws), ORS 144.050, 144.140, 181.585, 181.594
Stat. Auth.

NONE
Other Authority

ORS NONE
Stats. Implemented

RULE SUMMARY

Amend rule to conform language to ORS 181.585.

BOPPPS

**08
JAN 15 AM 11:34**

RECEIVED

Candace E. Wheeler

Authorized Signer

Candace Wheeler, Board Member

Printed name

01-11-2008

Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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ARC 930-2005

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

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Date prior to or same as filing date

Board of Parole and Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

Peggy Barber

2575 Center Street NE, Ste 100, Salem, OR 97301-4621

503-945-0914

Rules Coordinator

Address

Telephone

to become effective January 11, 2008 Rulemaking Notice was published in the November 2007

Date upon filing or later

Oregon Bulletin.**
Month and Year

RULE CAPTION

Procedures for Predatory Sex Offender Designation for Inmates

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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

AMEND: 255-060-0011

REPEAL:

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



AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Chapter 163 (1999 OR Laws), ORS 144.050, 144.140, 181.585, 181.594
Stat. Auth.

NONE

Other Authority

ORS NONE

Stats. Implemented

RULE SUMMARY

Amend rule to conform language to ORS 181.585.

RECEIVED
08 JAN 28 P12:43
BOPPPS

Candace E. Wheeler

Authorized Signer

Candace Wheeler, Board Member

Printed name

01-11-2008

Date

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255-060-0011

Procedures for Predatory Sex Offender Designation

- (1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree, or has been convicted of attempting to commit one or has been found guilty except for insanity of one of these crimes. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider any other evidence that the inmate or the offender exhibits characteristics showing a tendency to victimize or injure others.
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 - (c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate or offender before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate or offender is a candidate for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.
 - (d) Inmates or offenders may elect to waive their right to submit written objections. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections, the Board may find an inmate or offender is a candidate for predatory sex offender designation if the inmate's or offender's score on the STATIC-99 is six or more points.
- (5) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate or offender has participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.

- (6) The sole purpose of the evidentiary hearing will be to determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The Board may receive a written report from a supervising officer or a release counselor of any Department of Corrections institution indicating that an inmate or offender who has been determined to be a candidate for designation as a predatory sex offender under paragraphs (3) and (4) exhibits characteristics showing a tendency to victimize or injure others.
- (a) Upon receipt of a written report from a supervising officer or a release counselor, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate or offender should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will forward the report to its Hearing Officer, who will schedule an evidentiary hearing.
 - (b) The Board's Hearing Officer will provide the inmate or offender with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate or offender may proceed with the evidentiary hearing or waive their right to the hearing. At the evidentiary hearing, the Hearings Officer will consider the written report submitted by the supervising officer or release counselor and the results of the STATIC-99 risk assessment scale, and may accept additional evidence supporting the STATIC-99 score or otherwise indicating that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The inmate or offender may present evidence rebutting claims made in the written report submitted by a supervising officer or release counselor, challenging the score on the STATIC-99, or rebutting other evidence that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. At the conclusion of the evidentiary hearing, the Hearing Officer will submit his report to the Board with a recommendation as to whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others.
 - (c) Upon receipt of the report and recommendation from the Board's Hearing Officer, the Board will review the report and recommendation and determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others and is, therefore, a predatory sex offender.
- (7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

Statutory Authority:

ORS 144.050, ORS 144.140, ORS 181.585, ORS 181.586.

History:

(02/15/00, 03/01/02, 06/13/03, 10/10/03, 01/14/04--Temp/Notice, 06/14/04, 03/20/06 – Temp/Notice, 06/14/06, 06/15/06-Temp/Notice, 10/09/06, 01/11/08)

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

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

255
Administrative Rules Chapter Number

Peggy Barber
Rules Coordinator

2575 Center Street NE, Ste 100, Salem, Oregon 97301-4621
Address

503-945-0914
Telephone

RULE CAPTION

Clarification of the residency requirements for offenders released onto Parole & Post-Prison Supervision.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

FILED

JAN 11 2008

**ARCHIVES DIVISION
SECRETARY OF STATE**

AMEND: 255-070-0003

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.050, 144.096, 144.098,
SB 2 (2007) (codified at 2007 OR Laws Chap 100),
HB2007 (2007) (codified at 2007 Or Laws Chap 99)
Stat. Auth.

NONE
Stats. Implemented

NONE
Other Authority

RECEIVED
JAN 15 AM 11:34
BOPPPS

RULE SUMMARY

The amendment of this rule is necessary to implement the policy choices made in SB 2 and HB 2007 (2007).

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date 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.

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

Candace E. Wheeler
Signature

02/29/2008

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Candace Wheeler, Board Member

Printed name

01-11-2008

Date

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

Oregon Board of Parole & Post-Prison Supervision

255

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Oregon Board of Parole & Post-Prison Supervision

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Clarification of the residency requirements for offenders released onto Parole & Post-Prison Supervision.

Statutory Authority: ORS 144.050, 144.096, 144.098,
SB 2 (2007) (codified at 2007 OR Laws Chap 100),
HB2007 (2007) (codified at 2007 Or Laws Chap 99)

Other Authority: NONE

Stats. Implemented: ORS NONE

Need for the Rule(s):

The amendment of this rule is necessary to implement the policy choices made in SB 2 and HB 2007 (2007).

Documents Relied Upon, and where they are available: NONE

Fiscal and Economic Impact, including Statement of Cost of Compliance:

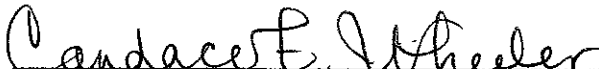
The Board is not aware of any fiscal or economic effect this amendment will have on the Board. There may be some effect on other agencies, local government, or identified public.

How were small businesses involved in the development of this rule? No small businesses were involved in the development of this rule because the amendment of this rule will have no effect on small businesses.

Administrative Rule Advisory Committee consulted?: NO

If not, why?:

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


Authorized Signer

Candace Wheeler, Board Member
Printed name

01-11-2008
Date

Offender Return to County of Residence
255-070-0003

- (1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the first six months in the county where the offender resided at the time of the offense that resulted in the imprisonment.
- (2) (a) The Board or the Department of Corrections may establish the county of residency by obtaining the last address of record at the time of the offense from all of the available information in the following records:
 - (A) An Oregon driver's license, regardless of its validity;
 - (B) The Department of Revenue;
 - (C) The Department of State Police, Bureau of Criminal Identification;
 - (D) The Department of Human Resources; or
 - (E) The Department of Corrections.
- (b) If the records do not disclose the county of residency, the Board or the Department shall find the offender resided in the county where she or he committed the crime.
- (c) If the offender is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.
- (d) In determining the offender's county of residence for purposes of this rule, the Board may not consider offenses committed by the offender while the offender was incarcerated in a Department of Corrections facility.
- (3) Upon motion of the Board, an offender, a victim, or a district attorney, the Board may waive the residency requirement after finding:
 - (a) the offender provided proof of a job with no set ending date in a county other than the established county of residence;
 - (b) the offender poses a significant danger to the victim;
 - (c) the victim or victim's family poses a significant danger to the offender residing in the county of residence.
 - (d) the offender has a spouse, registered domestic partnership, or biological or adoptive family, residing in other than the county of residence, who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole or post-prison supervision period;
 - (e) the Board requires that the offender participate in a treatment program which is not available in the county of residence;
 - (f) the offender desires release to another state or another state has a detainer; or
 - (g) other good cause.

Statutory Authority: (ORS 144.270(5))

History: (11/01/89; 10/15/91; 10/09/92, 09/15/99 – notice/temp, 11/1599, 02/01/07,
01-11-08-notice)

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on March 17, 2008 by the
Date prior to or same as filing date

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

Peggy Barber, Management Assistant 2575 Center Street NE, Ste 100, Salem, OR 97301-4621 503-945-0914
Rules Coordinator Address Telephone

to become effective April 9, 2008 Rulemaking Notice was published in the February 2008 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Clarification of the residency requirements for offenders released onto parole and post-prison supervision.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

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

AMEND: 255-070-0003

REPEAL:

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

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.050, 144.096, 144.098
SB 2 (2007) (codified at 2007 OR Laws Chap 100)
HB 2007 (2007) (codified at 2007 OR Laws Chap 99)
Stat. Auth.


None
Other Authority

ORS None
Stats. Implemented

RECEIVED
LEG. COUNSELS
OFFICE
APR 2008
08 APR 14 AM 05:53
BOPPPS

RULE SUMMARY

The amendment of this rule is necessary to implement policy choices made in SB 2 and HB 2007 (2007).


Authorized Signer

Steven R. Powers, Chairperson
Printed name

04-09-2008
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.
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ARC 930-2005

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on March 17, 2008 by the
Date prior to or same as filing date

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

Peggy Barber, Management Assistant 2575 Center Street NE, Ste 100, Salem, OR 97301-4621 503-945-0914
Rules Coordinator Address Telephone

to become effective April 9, 2008 Rulemaking Notice was published in the February 2008 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Clarification of the residency requirements for offenders released onto parole and post-prison supervision.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

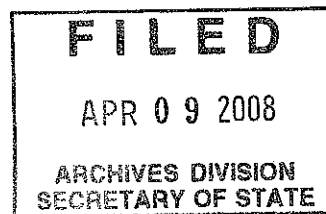
List each rule number separately, 000-000-0000.

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

AMEND: 255-070-0003

REPEAL:

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



AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 144.050, 144.096, 144.098

SB 2 (2007) (codified at 2007 OR Laws Chap 100)

HB 2007 (2007) (codified at 2007 OR Laws Chap 99)

Stat. Auth.

None
Other Authority

ORS None

Stats. Implemented


BOPPPS

08 APR 11 AM 57

RECEIVED

RULE SUMMARY

The amendment of this rule is necessary to implement policy choices made in SB 2 and HB 2007 (2007).


Authorized Signer

Steven R. Powers, Chairperson
Printed name

04-09-2008
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions Not Limited by Exhibit J

255-070-0001

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

Statutory Authority: (ORS 144.096, 144.102, 144.270)

History: (5/31/85; 11/3/86, temporary; 4/1/87; 4/15/88, temporary; 5/19/88; 7/1/88; 10/18/88; 4/5/90; 4/30/92, temporary; 10/9/92; 10/15/93, 11/09/98, 9-15-99 Notice/Temp, 11-15-99, 05-22-00, 12/15/01-Notice/Temp, 01-29-02, 04-15-02 – Notice/Temp, 06-17-02, 06-13-03–notice/temp, 10-10-03, 01-14-04. 4/5/06)

Offender Return to County of Residence

255-070-0003

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

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

Statutory Authority: (ORS 144.270(5))

History: (11/1/89; 10/15/91; 10/9/92, 9-15-99 – NOTICE/TEMP, 11-15-99, 02-01-07, 04-09-08)

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

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

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

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

Establishing Conditions
255-070-0015

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

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

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

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