

Black Binder

Board Rules

1979 - 1982

eff

2-1-79

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Board of Parole on February 1, 1979
(Agency) (Date)
to become effective February 1, 1979
(Date)

The within matter having come before the _____ Board of Parole after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted: 254-105-001; 254-105-005; 254-105-010; 254-105-015;
(New Rules) 254-105-020; 254-105-025; 254-105-030; 254-105-035;
(see attachment for continuation)

Temp. Perm.

Amended: _____
(Existing Rules) _____

Suspended: _____
(Temporary Only) _____

Repealed: All rules formerly adopted by the Board of Parole
(Existing Rules) _____

as Administrative Rules of the _____ Board of Parole
(Agency)
DATED this 1st day of February, 1979.

By: Bill H. Cogswell
(Authorized Signer)
Title: Chairperson, Board of Parole

Statutory Authority: ORS Chapter 144

Subject Matter: See attachment

Statement of Need Attached: Yes No

For Further Information Contact: Marc Sussman or Bill Cogswell Phone: 378-2334

Certificate and Order for Filing Administrative Rules (Continued)

ADOPTED RULES (Continued)

254-105-040; 254-105-045; 254-105-050; 254-105-055

254-110-005; 254-110-010;

254-120-005; 254-120-010; 254-120-015

254-130-001; 254-130-005; 254-130-010; 254-130-012; 254-130-015; 254-130-020;
254-130-025; 254-130-030; 254-130-035; 254-130-040; 254-130-045

254-135-001; 254-135-005; 254-135-010; 254-135-015; 254-135-020; 254-135-025;
254-135-030; 254-135-035

254-138-005

254-140-005; 254-140-010; 254-140-015; 254-140-020; 254-140-025; 254-140-030;
254-140-035

254-150-005; 254-150-010; 254-150-015; 254-150-020

254-160-005; 254-160-010; 254-160-015; 254-160-020; 254-160-025

254-165-005; 254-165-010; 254-165.015

254-170-005; 254-170-010

254-175-005; 254-175-010; 254-175-015; 254-175-020; 254-175-025; 254-175-030;
254-175-035; 254-175-040; 254-175-045; 254-175-050; 254-175-055; 254-175-060;
254-175-065; 254-175-070; 254-175-075; 254-175-080; 254-175-085; 254-175-090

254-180-005; 254-180-010

254-190-005; 254-190-010; 254-190-015

254-195-005

Exhibit A Exhibit E Exhibit I

Exhibit B Exhibit F

Exhibit C Exhibit G

Exhibit D Exhibit H

Certificate and Order for Filing Administrative Rules (Continued)

SUBJECT MATTER:

1. Rule making procedures.
2. Organization of the Board of Parole.
3. Conduct of Board of Parole business meetings.
4. Procedures for conducting prison term hearings at which the Board of Parole establishes a term of imprisonment for each prisoner by establishing a parole release date or denying parole by refusing to set a parole release date. Procedures include: when the full Board decides cases; when hearings will be conducted; number of votes for decisions; type of information to be considered; disclosure and non-disclosure of information considered; and the type of record and notice.
5. The guidelines to be used in setting a prison term and how they are applied. Guidelines are based on a range of months to be determined by rating the seriousness of a person's crime and prior criminal history and risk on future parole. The rules show how offenses are rated, how the criminal history/risk assessment score is calculated, and the ranges of months or years to be served for each. Variations from the ranges are permitted for aggravation or mitigation and guidelines establish when and how much variation is permitted. The guidelines explain how prison terms are set when a judge imposes concurrent or consecutive sentences and the effect of judicial findings of fact and reasons for sentencing. Rules cover when and how the Board may deny parole by choosing not to set a parole release date.
6. Setting prison terms for persons sentenced as dangerous offenders.
7. Procedures for reviewing or reopening cases.
8. Standards and procedures for reducing a prison term or extending a prison term for serious institutional misconduct or rescinding parole once ordered.
9. Procedures for affirming or delaying parole release and guidelines for deferring parole release.
10. Guidelines for payment of restitution by parolees when ordered by the court and supervision of the payments.
11. Standards for conditions of parole, including rules on placing parolees in Community Corrections Centers and returning parolees to prison in the best interest of society or the individual.

Certificate and Order for Filing Administrative Rules (Continued)

SUBJECT MATTER (Continued)

12. Procedures for revocation of parole and guidelines for rerelease of parole violators. Procedures include: hearing requirement before revocation; rights at the hearing; notice requirements; waiver of hearings; content of record; report by presiding officer; final decision by the Board.
13. Criteria and method for administrative appeals.
14. Preparation of Presentence Reports.
15. Guidelines for period of parole supervision and procedures for discharge of an individual from parole.

ADMINISTRATIVE RULES OF
OREGON STATE BOARD OF PAROLE

CHAPTER 254

Effective Date: February 1, 1979

NOTE: These rules were filed with the Secretary of State on February 1, 1979 and will correspond to rules to be published in the Secretary of State's Bulletin as 2PB 1-79. The numbering of the rules will be different in official form. A cross reference will be provided.

OREGON ADMINISTRATIVE RULES

BOARD OF PAROLE

CHAPTER 254

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DIVISION 105
RULE MAKING PROCEDURE

254-105-001 NOTICE OF RULE MAKING: Time and Manner

Prior to the proposed action (i.e., adoption, amendment, or repeal of any rule), the chairperson of the Board shall give notice of the proposed action at least 15 days prior to the effective date:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360.
- (2) By mailing a copy of the notice to persons on the Board mailing list established pursuant to ORS 183.335(6).
- (3) By mailing a copy of the notice to the following persons, organizations or publications:
 - (a) Oregon State Bar Bulletin
 - (b) United Press International and Associated Press
 - (c) Release Services, Field Services and Regional Offices, State of Oregon Corrections Division
 - (d) Oregon District Attorneys Association
 - (e) Oregon Criminal Defense Attorneys Association
 - (f) Multnomah County Public Defender
 - (g) Washington County Public Defender
 - (h) Lane County Public Defender
 - (i) Douglas County Public Defender
 - (j) Coos County Public Defender
 - (k) State Public Defender
 - (l) Oregon Prisoners Legal Services
 - (m) University of Oregon Law School
 - (n) Northwestern College of Law, Lewis & Clark College
 - (o) College of Law, Willamette University

254-105-001 (Continued)

- (p) American Civil Liberties Union
 - (q) The Oregonian, Portland, Oregon
 - (r) The Oregon Journal, Portland, Oregon
 - (s) The Oregon Statesman, Salem, Oregon
 - (t) The Capitol Journal, Salem, Oregon
 - (u) The Register Guard, Eugene, Oregon
 - (v) Superintendents of State Correctional Institutions
 - (w) Administrator, Corrections Division
 - (x) Oregon Public Defenders Association
 - (y) Others upon formal written request of the Board
- (4) By posting on bulletin boards, placing in the general reading section of the libraries of the institutions of the Corrections Division, and publishing in bulletins of the Corrections Division.

254-105-005 CONTENTS OF NOTICE OF RULE MAKING WHEN PUBLIC HEARINGS ARE HELD

- (1) Notice of a public hearing on proposed action shall include the following:
- (a) A description of the Board's proposed action and, where practicable and appropriate, the verbatim rule proposed to be adopted, amended or repealed. Lengthy rules may be summarized and not set out verbatim.
 - (b) The subject matter and purpose of the proposed action in sufficient detail to inform a person that his/her interest may be affected.
 - (c) The time and place of the public hearing and the manner in which interested persons may present their views.
 - (d) The address of the office of the Board of Parole where inspection during regular business hours may be made of the written statement required by ORS 183.335(7).
 - (e) A designation of the officer or governing body of the Board or other person who will preside at and conduct the hearing.
- (2) If the proposed rule is not set forth verbatim, the notice shall state the time, place and manner in which a copy of the proposed rule may be obtained.

254-105-010 CONTENTS OF NOTICE OF RULE MAKING WHEN PUBLIC HEARING WILL BE HELD ONLY IF REQUESTED

- (1) Notice that the Board of Parole plans to hold a public hearing on proposed rule making only if sufficient requests are received shall include the following:
 - (a) A description of the Board's proposed action and, where practicable and appropriate, the verbatim rule proposed to be adopted, amended or repealed. Lengthy rules may be summarized and not set out verbatim. If the proposed rule, amendment or repeal thereof is not set forth verbatim, the notice shall state the time, place and manner in which the rule or amendment may be obtained.
 - (b) The subject matter and purpose of the proposed action in sufficient detail to inform a person that his/her interest may be affected.
 - (c) The time and place at which data or views may be submitted in writing to the Board.
 - (d) The address of the office of the Board where public inspection during regular business hours may be made of the written statement required by ORS 183.335(7).
 - (e) A statement that any interested person desiring to express or submit his/her data or views at a public hearing must request the opportunity to do so.
 - (f) A designation and address of the person to whom a request for public hearing must be submitted and time by which the request must be submitted to be considered.
 - (g) A statement that a public hearing will be held if the agency receives a request for public hearing within 15 days after agency notice from 10 or more persons or an association having not less than 10 members.
- (2) If 10 persons or an association having more than 10 members request a public hearing, the Board shall provide such hearing after giving notice pursuant to rule 254-105-005.

254-105-015 SUBMITTING DRAFT OF RULE TO LEGISLATIVE COUNSEL

Prior to the proposed action, including temporary rules, the Board shall submit a draft of the proposed action to Legislative Counsel.

254-105-020 POSTPONING INTENDED ACTION

- (1) The Board shall postpone its intended action upon request of an interested person received within 15 days after Board notice to allow the requesting

254-105-025 (Continued)

- (6) There shall be no rebuttals or additional statements given by any witness unless requested by the presiding officer. However, when such additional statement is given, the presiding officer shall allow an equal opportunity for reply.
- (7) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses present and desiring to make a statement have had an opportunity to do so.
- (8) The presiding officer shall, where practicable, receive all physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witness offering the exhibit. The exhibits shall be preserved by the Board for one year or, in the discretion of the Board, returned to the witness offering the exhibit.
- (9) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.
- (10) A verbatim oral, written or mechanical record may be made of all the proceedings or, in the alternative, a record in the form of minutes.

254-105-030 PRESIDING OFFICER'S REPORT

Upon request by the Board, the presiding officer shall, within a reasonable time after the hearing, provide the Board with a written summary of statements given and exhibits received and a report of his/her observations of physical experiments, demonstrations or exhibits. The presiding officer may make recommendations, but such recommendations are not binding upon the Board.

254-105-035 ACTION OF THE BOARD

At the conclusion of the hearing or after receipt of the presiding officer's requested report and recommendation, if any, the Board may adopt, amend or repeal rules covered by the statement of intended action.

254-105-040 NOTICE OF BOARD ACTION: Certification to Secretary of State;
Submitting Copy to Legislative Counsel

- (1) The Board shall file in the office of the Secretary of State a certified copy of each rule adopted or amended, or notice of repeal of any rule together with the written statement required by ORS 183.335(7).

254-105-045 (Continued)

- (d) Shall, within 30 days after date of submission of the petition, either deny the petition or initiate rule making proceedings.
- (4) In the case of a denial of a petition to adopt, amend or repeal a rule, the Board shall issue an order setting forth its reasons in detail for denying the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

254-105-050 TEMPORARY RULES

- (1) The Board may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that is practicable, to adopt a rule without the notice otherwise required by rules 254-105-005 and 254-105-010. In such case, the Board shall:
 - (a) Submit a draft of the rule to Legislative Counsel.
 - (b) Prepare a statement that the rule is necessary for the public interest or the interest of the parties concerned and the reasons therefor.
 - (c) Take appropriate measures to make the temporary rule known to the persons who may be affected.
- (2) A temporary rule adopted in compliance with this rule becomes effective immediately upon filing the rule with the Secretary of State with a designated later date. The statement required in subsection (1)(b) of this rule must be filed with the rule.
- (3) Within 30 days following the adoption of a temporary rule, the Board shall prepare the statement required by ORS 183.335(7) and file the statement with the Secretary of State.
- (4) The statement required by ORS 183.335(7), including the full text of any material cited in the statement, shall be available for public inspection during regular business hours at the office of the Board of Parole.
- (5) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed prior to the expiration of the temporary period.
- (6) A temporary rule may be effective for no longer than 120 days. No temporary rule may be renewed after it has been in effect 120 days. The Board may, however, adopt an identical rule on notice in accordance with this division.

254-105-005 JOINTLY ADOPTED RULES: Adoption, Designation and Changes of Rules
With Other Agencies

- (1) The Board shall adopt rules jointly with other administrative agencies as required by statute.
- (2) The Board may adopt rules jointly with another administrative agency when necessary to implement its own rules.
- (3) Rules adopted jointly shall be specifically identified as joint rules with the appropriate agency designated.
- (4) Jointly adopted rules shall not be changed without prior notice, consultation and agreement with the jointly adopting agency.

DIVISION 110

ORGANIZATION

254-110-005 MEMBERSHIP

The Board of Parole shall consist of five voting members, appointed by the Governor, and the Administrator of the Corrections Division, who shall have no vote but act as an advisor.

254-110-010 CHAIRPERSON: Term; Removal

The chairperson shall be a voting member of the Board selected by a majority of the Board. The chairperson shall have a minimum term of one year and may be removed prior to the end of his/her term by a unanimous vote of the voting Board members.

254-110-015 CHAIRPERSON: Powers and Duties

The chairperson shall have the powers and duties established by law and rules necessary for the performance of the office and administration of the Board, and shall:

- (1) Assign voting Board members to panels and designate the presiding members.
- (2) Apportion matters to the panels and full Board for decision.
- (3) Reassign matters to different panels when required by rule, law or procedure.
- (4) Schedule business meetings and establish the agenda.
- (5) Inform the sentencing judge, district attorney, sheriff or arresting agency of the scheduled release of each prisoner.
- (6) Review administrative appeals.
- (7) Designate members to conduct hearings and reviews.
- (8) Appoint persons to assist prisoners in parole proceedings, when appropriate.

DIVISION 120
BUSINESS MEETINGS

254-120-005 SCHEDULING

Business meetings shall be held as scheduled by the chairperson or upon the request of at least two members.

254-120-010 QUORUM

A business meeting requires the presence of at least three voting members of the Board.

254-120-015 MATTERS FOR CONSIDERATION; MAJORITY VOTE

The business meeting shall consider matters relating to Board policy and administration raised by the agenda presented by the chairperson or by Board members. Three affirmative votes are required to make a Board decision at a business meeting.

254-130-010 PANELS: When a Two-Member Panel Conducts a Prison Term Hearing;
When Full Board is Required; Procedures for Full Board Decision

- (1) Except as provided in this rule, all prison term hearings shall be heard by a panel of two voting members of the Board.
- (2) The following cases shall be decided by the full Board (i.e., all five voting members) according to the procedures in rule 254-130-012.
 - (a) Any cases involving a prisoner sentenced to life imprisonment, 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, sentenced under ORS 161.725 and 161.735 as a dangerous offender;
 - (b) Whenever a panel recommends a decision to exceed the allowable variation from the matrix permitted to the panel or to deny parole;
 - (c) Whenever a minimum sentence imposed by a judge pursuant to ORS 144.110 exceeds the applicable matrix guideline range in Exhibit C plus the maximum variation from the range shown in Exhibit D;
 - (d) Whenever a panel or member recommends a decision below a judicially set minimum sentence;
 - (e) Whenever an extension of a prison term due to institutional misconduct for more than one year is recommended.

254-130-012 PROCEDURES FOR FULL BOARD DECISIONS

The following procedures shall apply to cases decided by the full Board:

- (1) A hearing shall be conducted by the Board with at least a quorum present when:
 - (a) Setting a prison term for prisoners falling under rule 254-130-010(2)(a);
 - (b) The Board considers exceeding the normal variations permitted to the full Board in rule 254-135-030;
 - (c) The Board considers denying parole, except when denial is because the guideline range exceeds the good time date on a sentence;
 - (d) Extending a prison term, in any case, for longer than one year.
- (2) Prisoners in custody in another jurisdiction may be heard by a conference call or returned to Oregon for the hearing.

254-130-012 (Continued)

- (3) If a Board member is not present at a hearing, he/she shall vote after reviewing the record of the hearing.
- (4) In all other cases, the Board may:
 - (a) Circulate the record to be considered with a copy of the proposed action for comment and voting by the individual Board members; or
 - (b) Decide the matter at a business meeting at which a quorum is present.
- (5) A simple majority vote of the Board shall be required to reach a decision except when a vote of four members is required by statute or rule.

254-130-015 WHO MAY APPEAR AT A PRISON TERM HEARING

- (1) The prisoner shall appear at the prison term hearing unless he/she waives appearance in writing.
- (2) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to language barriers, mental or emotional incapacity or educational deficiency. Assistance shall be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the chairperson of the Board.

254-130-020 PANEL DECISIONS: Use of Guidelines; Unanimity Requirement

- (1) The panel shall consider the case in accordance with the guidelines in Division 135.
- (2) The decision of a panel of two or three members must be unanimous. In the absence of a unanimous decision, each panel member shall forward his/her recommendation to the chairperson for reassignment. No matter so reassigned shall be decided by fewer than three affirmative votes. This may be done by another two-member panel reaching a unanimous decision in agreement with a member of the prior panel. The decision becomes the decision of the Board. The provisions of rules 254-130-010(2) and 254-130-012 shall govern full Board cases.

254-130-025 INFORMATION THE BOARD MUST CONSIDER AT A PRISON TERM HEARING: Parole Analysis Report; Other Material

- (1) The Corrections Division will provide a Parole Analysis Report to the Board prior to the prisoner's prison term hearing. This report shall be prepared according to the sectional outline attached (Exhibit F). Any transcripts forwarded by the sentencing judge shall be attached to the Parole Analysis Report.

254-130-025 (Continued)

- (2) Additional information and recommendations from police, district attorney, defense attorney and others with a special interest in the case shall be considered if available. Such information shall be subject to disclosure to the prisoner.
- (3) Transcripts forwarded by the sentencing judge shall be considered if available. The Board may continue a hearing to request the transcript if not received.

Jointly adopted with Corrections Division

254-130-030 INMATE ACCESS TO WRITTEN MATERIALS CONSIDERED AT PAROLE BOARD HEARINGS AND INTERVIEWS

Prior to any hearing affecting his/her parole status, any prisoner shall have access to the written material the Board considers with respect to his/her release on parole under rule 254-130-025. Verbal communication which the Board considers shall be reduced to writing and subject to disclosure as written material.

Jointly adopted with Corrections Division

254-130-035 EXEMPTIONS FROM DISCLOSURE

- (1) Prisoners shall have access to written materials, including psychiatric and psychological reports prepared solely for Board use, which the Board considers, with the following exceptions:
 - (a) Information or records of the Corrections Division, to the extent that disclosure thereof would interfere with the rehabilitation of the person;
 - (b) Information or records, the disclosure of which would substantially prejudice or prevent the Corrections Division from carrying out its normal functions; or
 - (c) If the public interest in confidentiality clearly outweighs the public interest in disclosure.
- (2) Prisoners shall have access to psychiatric and psychological reports not prepared solely for the Board's use that are considered in a hearing concerned with the release or parole of a prisoner, except when:
 - (a) Release of the information would constitute an immediate and grave danger to the prisoner;

254-130-035 (Continued)

- (b) The information relates to an individual other than the prisoner seeking it;
 - (c) The release of the information would constitute a danger to another person; or
 - (d) The release of the information would compromise the privacy of an individual source.
- (3) Disclosure of medical, psychiatric and/or psychological records may be in the form of an accurate, representative summary of the complete contents of the written materials.
 - (4) When disclosure of information is denied, a written statement of the reasons for denial must be entered into the record.
 - (5) Written materials subject to disclosure to be considered by the Board shall be sent to the inmate at the same time the material is made available to the Board.
 - (6) Where a particular document contains information that is exempt from disclosure, exempt material shall be separated from non-exempt material and the non-exempt material must be disclosed.

Jointly adopted with Corrections Division

254-130-040 RECORD OF HEARING: Content; Time to be Maintained

Record of the prison term hearing and any other hearings shall be kept by the Board for at least two years. The record shall contain:

- (1) Documents considered by the Board at the hearings, which shall be kept in a separate file; documents considered but not disclosed shall be specifically noted as undisclosed.
- (2) A statement of the facts and specific reasons for actions taken by the Board and the individual votes of the Board members.
- (3) A record of the oral proceedings of the hearing, with the exception of the deliberations of the Board. (This record may be kept by any manual or electronic means which is capable of being transcribed. Once transcribed, the transcript may be substituted for the original record.)

254-130-045 NOTIFICATION OF DECISION: Parties Notified; Content

- (1) Following a Board decision, the prisoner, sentencing court, district attorney, Corrections Division, and upon request the prisoner's counsel shall be notified in writing of the Board action.

254-130-045 (Continued)

- (2) Such notification shall state the specific facts and reasons for the Board decision, including the history/risk score, offense severity rating, range and date set, the specific facts and reasons for a Board decision to go outside the applicable guideline range or to deny parole, and the votes of the individual Board members.
- (3) The prisoner shall be given written notice of his/her right to administrative appeal of the decision.

DIVISION 135

APPLICATION OF THE GUIDELINES
TO ESTABLISH A PRISON TERM

254-135-001 DEFINITIONS

- (1) Offense severity rating: the classification given to a prisoner's commitment offense according to the seriousness of the crime, used as one dimension in establishing the prison term to be served. A rating of seven is most serious; a rating of one is least serious. Some broad offenses, which include various types of criminal behavior (e.g., burglary, theft, robbery, et al), are separated into different categories on the basis of actual criminal conduct.
- (2) History/risk score: refers to the Criminal History/Risk Assessment; it is a rating, from a high of 11 to a low of Zero points, used as the second dimension in establishing the prison term to be served. The rating emphasizes both the seriousness of the prior record and factors reflecting likelihood of success on parole.
- (3) Guideline ranges: ranges of months to be served as a prison term before parole release for each offense severity rating and history/risk score. A parole release date will normally be set within the applicable guideline range. The Board may only vary from the ranges if it finds the presence of aggravation or mitigation.
- (4) Guideline matrix: refers to the table of guideline ranges displayed at the intersection of the appropriate offense severity rating and history/risk score illustrated in Exhibit C.
- (5) Parole release date: a fixed date, by month and year, assigned to a prisoner for parole release based on the guideline range for his/her particular offense severity rating and history/risk score. A parole release date can only be changed following a hearing for reasons specified in Division 160 and ORS 144.126. The parole release date ends on the last day of the designated month and year.
- (6) Particularly violent or otherwise dangerous criminal conduct: conduct which is not merely unpleasant or offensive, but exceeds aggravation listed in rule 254-135-025(a). This is conduct of a type which manifests indifference to the value of human safety or property (e.g., actions which terrorize or inflict serious mental distress on a victim, as the rapist who telephones the victim and threatens to repeat the crime; unusual or protracted cruelty; multiple victims in a single or separate incident; extremely high harm-loss, as the burglar who takes a stereo and proceeds to destroy a large number of items left in the house with an axe; infliction of serious physical injury, if not an element of the crime).

254-135-001 (Continued)

- (7) Parole consideration hearing: the hearing scheduled for a prisoner when parole release has been deferred at the prison term hearing.
- (8) Serious physical injury: an injury which creates or causes substantial risk of death, or serious and protracted disfigurement or protracted impairment of health or the protracted loss or impairment of the function of any bodily organ.
- (9) Harm-loss: the actual or immediately threatened injury associated with particular criminal conduct, whether to person or property.

254-135-005 RATING OFFENSE SEVERITY: Generally; For Multiple Concurrent Convictions, Attempts, Solicitation, Conspiracy, Crimes not Listed and Consecutive Sentences

- (1) The Board shall assign an offense severity rating from one to seven, according to Exhibit A, for each prisoner's crime of commitment.
- (2) Special Situations:
 - (a) Multiple convictions with concurrent sentences shall be classified according to the crime bearing the highest rating.
 - (b) Attempt (ORS 161.405) and Solicitation (ORS 161.435) shall be assigned a rating one category less than the criminal activity intended; but Conspiracy shall be assigned the same severity as the actual crime.
 - (c) Crimes not listed shall be rated by comparison to crimes listed on this table.
 - (d) When consecutive sentences have been imposed, a rating shall be assigned for each offense, except as provided in rule 254-135-015(2)(e)(i).
- (3) The Board shall make a formal finding of fact of offense severity in the prisoner's presence at the prison term hearing.

254-135-010 CRIMINAL HISTORY/RISK ASSESSMENT

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

254-135-015 OTHER CONSIDERATIONS IN ESTABLISHING A PRISON TERM: Time on
Escape; Consecutive Sentences; Judicial Sentences

(1) Inoperable Time on Escape:

In establishing the parole release date for a person convicted of escape, time on escape shall not count toward the completion of the prison term. The time on escape prior to the parole release date shall be added to the prison term.

(2) Consecutive Sentences:

When consecutive sentences have been imposed, the following shall apply:

- (a) The Board shall sum the ranges established for each consecutive offense; however, when the range exceeds the good time date on the corresponding sentence, the ranges established in rule 254-135-020(2) apply to that sentence in the series.
- (b) For purposes of establishing a parole release date, the Board shall consider the summed ranges for consecutive sentences as a single, unified range. Any minimum sentences shall be considered a single, unified minimum.
- (c) Because aggravation was considered in imposing consecutive sentences, a panel shall not set a prison term above the lower half of the summed range for Category 5, 6 and 7 offenses. If a panel makes a specific finding that aggravation exists which justifies a set in the upper half of the range, it shall refer the matter to the full Board for consideration. The Board may set a prison term in the top half of the range by a majority vote. The Board shall not go above the top of the summed ranges unless the variation is approved by at least four voting members following a hearing under rule 254-135-030(2).
- (d) The maximum downward variation from the ranges shown in Exhibit D shall be summed.
- (e) When a sentence has been imposed consecutive to one already being served by a parolee, the range for the first sentence shall be the time served prior to revocation.
 - (i) If a single consecutive sentence is imposed, the prison term shall be established as for a single new sentence and the provisions of this rule shall not apply.
 - (ii) If more than one new sentence is imposed consecutively, the provisions of this rule shall be followed as to all new sentences.

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

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

254-135-015 (Continued)

- (b) The Board shall consider the court's reasons for the sentence imposed. The Board shall rely upon any findings of fact determined in open court before counsel for the state and defendant to make its determinations relating to offense severity, history/risk score and aggravation and mitigation, unless:
 - (i) The court applied the rules governing the establishment of the guideline ranges incorrectly;
 - (ii) Information is available that was not considered at the time of sentencing;
 - (iii) The court's finding, while technically correct, leads to an inequitable result.
- (c) When making a finding contrary to the court, the Board shall state the specific facts and reasons for its action and notify the sentencing judge of the decision and its reasons.

254-135-020 SETTING A PAROLE RELEASE DATE: Guideline Ranges; Where Range Exceeds Good Time Date

- (1) The Board shall establish a prison term by setting a parole release date within the range for the appropriate offense severity rating and history/risk score shown in the guideline matrix, Exhibit C, unless it finds aggravation or mitigation sufficient to justify variation from the range pursuant to rule 254-135-030 or takes action according to subsection (2) of this rule, or elects to deny parole according to rule 254-135-025.
- (2) When the Board chooses to set a parole release date on a sentence with a statutory good time date shorter than the guideline range, the guideline range shall be as follows in order to allow a period of parole supervision:
 - (a) Up to the statutory good time date on a sentence of one year or less;
 - (b) Six months from the statutory good time date on a sentence of more than one year and less than three years;
 - (c) Nine months from the statutory good time date on a sentence of three years up to six years;
 - (d) Twelve months from the statutory good time date on a sentence of six or more years.

254-135-025 PAROLE DENIAL: When Parole May be Denied; Action by the Full Board
Necessary

- (1) The Board may choose not to set a parole release date (i.e., the prisoner shall serve to the end of his/her sentence pursuant to ORS 144.120) when:
 - (a) The offense of commitment included particularly violent or otherwise dangerous criminal conduct as defined by rule 254-135-001(6), or
 - (b) The offense was preceded by two or more convictions of a class A or class B felony, or
 - (c) The prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance.
 - (d) The prisoner's guideline range is longer than the statutory good time date on the sentence imposed.
- (2) If a two-member panel decides that parole should be denied, it shall refer the matter to the full Board for consideration with its recommendation.
- (3) When the guideline range for an offense, not including maximum allowable variations, exceeds the good time date on the sentence, the Board may deny parole by a vote of three members of the Board after a file pass. In all other cases, affirmative votes of at least four members of the Board are required to deny parole.
- (4) When the Board chooses not to set a parole release date, it shall clearly state on the record the facts and specific reasons for that decision.

254-135-030 VARIATIONS FROM THE RANGES FOR AGGRAVATION OR MITIGATION: Findings
Necessary; Disclosure of Information; When not Justified; Effect of
Plea Bargained Sentences; Sentence as Aggravating or Mitigating;
Variation by a Panel of Two; Variation by the Full Board

- (1) The Board may depart from the appropriate range only upon making a specific finding, by a preponderance of the evidence, that there is aggravation or mitigation which justifies departure from the range. The Board shall clearly state on the record the facts and specific reasons for its finding.
 - (a) Information considered by the Board in determining whether aggravation or mitigation exists shall be disclosed prior to the hearing to permit the prisoner an opportunity to respond before the Board finds aggravation or mitigation.
 - (b) Any aggravating or mitigating circumstances which constitute a defining element of the crime or subcategory of the crime being rated, or which resulted in a lower history/risk score, shall not justify variation from the guidelines.

(c) Plea Bargained Sentences:

The Board may deem it an aggravating circumstance if the prisoner has pleaded guilty to the crime of commitment and:

- (i) The prisoner has admitted or stipulated to facts either in court or before the Board which show the occurrence of more serious charges or other charges which have not been brought or have been dismissed; or
- (ii) The court or the Board finds, by a preponderance of the evidence, that the prisoner's actual criminal conduct was of a different degree of seriousness than the crime of which he/she was convicted according to the rankings in Exhibit A. In such cases, the Board shall state the actual criminal conduct on the record.

(d) Sentence as Aggravating or Mitigating:

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

- (i) The presence of any aggravating or mitigating circumstances described in subsections (1) and (2) above or in Exhibit E;
 - (ii) Other reasons showing enhanced or reduced harm or risk of harm involved in the criminal conduct, or enhanced or reduced culpability on the part of the prisoner when committing such conduct.
- (e) Usual, but not exclusive, factors in aggravation or mitigation are shown in Exhibit E. The Board may consider circumstances not listed in Exhibit E.
- (f) Maximum upward or downward variations from a range permitted to a panel are shown in Exhibit D.
- (2) When a panel, based upon its findings, is of the opinion that the aggravating or mitigating circumstances are so substantial that a greater departure from the guideline range is required than is permitted to a panel in Exhibit D, it shall refer the matter to the full Board for consideration.
- (a) The sole issue the full Board shall consider is whether the aggravating or mitigating circumstances found by the panel are of such consequence as to require departure from the variations permitted a panel in Exhibit D, or choosing not to set a parole release date.

DIVISION 138
DANGEROUS OFFENDERS

254-138-005 PERMISSIBLE ACTION: When a Parole Release Date May Not be Set;
Procedures When a Parole Release Date is not Set

- (1) Notwithstanding the provisions of Division 130, the Board shall not set a parole release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender if the record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance (e.g., severe personality disorder).
- (2) The Board shall set a date for a parole consideration hearing within the matrix guidelines in Exhibit C and provisions for variations under rule 254-135-030.
- (3) At any hearing or review, the Board shall consider the report of the executive officer of the facility in which the prisoner is confined regarding the prisoner's conduct, attitude and work record as defined in ORS 144.228(2) and a psychiatric or psychological report made within two months of the hearing.
 - (a) The Board shall not set a parole release date unless the psychiatric or psychological report reveals that the severe emotional disturbance which has made the prisoner dangerous is no longer present.
 - (b) If the disturbance is present, the Board may defer release to a specified future time or deny parole under rule 254-135-025.
- (4) Periodic reviews shall be given dangerous offenders pursuant to rule 254-140-005. If, at the review, the psychiatric or psychological reports and the executive officer's report reveal that the severe emotional disturbance which has made the prisoner dangerous is no longer present, the Board shall review the matter and set a parole release date according to Divisions 130 and 135.

DIVISION 140
REVIEWS, REOPENING CASES, AND
REDUCTIONS IN PRISON TERMS

254-140-005 SCHEDULING OF PERIODIC REVIEWS

- (1) Periodic reviews shall be conducted after the prisoner has served five years of his prison term and every three years thereafter, starting with the date the prisoner's sentence begins to run.
 - (a) Dangerous offenders sentenced under ORS 161.725 and 161.735 shall be seen every two years as required by statute.
 - (b) Prisoners convicted of murder shall be seen as required by statute.
- (2) Reviews that have been scheduled prior to January 26, 1977 shall be conducted as scheduled. Reviews scheduled subsequent to January 26, 1977 shall be rescheduled to comply with this rule.

254-140-010 PROCEDURE FOR PERIODIC REVIEWS

An interview shall be conducted by one or more voting members of the Board. In the event an interviewer determines that modification of the prison term is appropriate, the matter shall be referred with recommendations to the full Board for review. No other action shall be taken by the interviewer.

254-140-015 PURPOSE

Periodic reviews shall be conducted to determine if anything exceptional has occurred that would warrant a reduction in the prison term.

254-140-020 REOPENING CASES: When; What Showing is Necessary

The Board may reopen any case for reconsideration upon formal written request of a prisoner to the chairperson or motion of a Board member (including the Administrator) if:

- (1) Substantial new information which was unknown at the time of the prison term hearing or could not be contemplated at that time has been received;

254-140-020 (Continued)

- (2) Substantial information that a prisoner, or any other person, willfully concealed or misrepresented information material to a prior Board action has been received;
- (3) Statutory changes have reclassified the criminal conduct involved (e.g., reduction of certain categories of murder to manslaughter, creation of degrees of manslaughter).
- (4) Rule changes have resulted in a shorter range.
- (5) The Board shall state the specific reasons for denial of a request to reopen a hearing.

254-140-025 REDUCTIONS IN PRISON TERMS: Effect of Minimum Terms; Criteria; Limitations

- (1) An established prison term as defined in rule 254-130-001(2) may be reset to an earlier time upon application for review to the chairperson of the Board and after concurrence of a voting majority of the Board, unless the prisoner has a statutory minimum term for murder. Parole release date resets falling below a judicially imposed minimum sentence shall require concurring votes of four members.
 - (a) Reductions in prison terms will ordinarily be granted only in cases where a prisoner can show an extended course of conduct indicating outstanding reformation. Cases will be determined on individual merits; however, the usual criteria will include:
 - (i) A five-year period of good conduct, and
 - (ii) Demonstrable achievement in dealing with problems present at incarceration and associated with criminal conduct (e.g., psychological disorder, drug or alcohol dependency, lack of educational or vocational skills).
 - (b) A prisoner's exercise of recognized constitutional rights or legitimate use of legal process shall not be construed as lack of good conduct.
 - (c) Cooperation with authorities is not sufficient in itself to justify a reduction.
 - (d) Reductions in prison terms may be considered where the prisoner is suffering from a terminal illness or a unique opportunity is available and the reduction of the prison term is not excessive.
- (2) Overall, reductions shall be limited to a maximum of 20% of the prison term under review unless a majority of the Board approves a further reduction.

254-140-025 (Continued)

- (a) Reductions shall customarily be considered at periodic reviews under rule 254-140-005.
- (b) Special interviews to consider a reduction will only be granted in cases approved by at least three Board members following a file pass.
- (3) A recommendation shall be requested from the institution superintendent on each application considered by the Board.
- (4) The prisoner shall have the burden of establishing that his/her conduct meets the criteria for a date reduction.

254-140-030 WHO MAY APPEAR

- (1) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to illiteracy, language barriers or lack of mental capacity. Assistance will be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the chairperson of the Board.
- (2) The prisoner may waive the personal appearance in writing or by voluntary absence from the institution.

254-140-035 NOTICE; DISCLOSURE; RECORD

The notice, disclosure and record making provisions of Division 130 shall apply to all hearings and interviews in this division.

DIVISION 150

EXTENDING A PAROLE RELEASE DATE FOR SERIOUS MISCONDUCT

254-150-005 PROCEDURE FOR EXTENSION OF PAROLE RELEASE DATES: Required Recommendations and Guidelines; Classification of Conduct; Amount of Time; When Parole Release Date is Set; If After Parole Ordered

A parole release date may be reset to a later date for serious misconduct according to the following procedure:

- (1) The institution disciplinary committee or the Corrections Division Hearings Officer may recommend an extension of a prisoner's parole release date as a disciplinary sanction.
- (2) Recommendation to extend a parole release date shall be made according to the following guidelines:
 - (a) The prisoner must be given an opportunity for a disciplinary hearing and have been found to have violated an adopted rule governing conduct. The recommendation must be approved by the institutional superintendent or Regional Manager and the Administrator of the Corrections Division before the Board can consider an extension.
 - (b) In no instance shall an extension of a parole release date be recommended unless all other disciplinary options have been specifically considered and deemed to be, individually and in combination, inadequate to the seriousness of the misconduct in terms of the following factors:
 - (i) Effectiveness of the sanction as a disciplinary measure, both to the prisoner and to the general prisoner population;
 - (ii) Degree of hazard posed by the misconduct to human health and/or life, facility security, or to property;
 - (iii) Seriousness of the misconduct had it been committed in the wider community;
 - (iv) Circumstances of the misconduct; and
 - (v) The prisoner's prior record of conduct.
- (3) A parole release date shall not be extended unless the misconduct can be classified within one of the four following categories. The extension must be set within the range for the category of misconduct unless the Board finds aggravation or mitigation based on those factors listed in rule 254-135-030, Exhibit E.

If a basis for aggravation or mitigation is found by the Board, the maximum variation allowed to a majority of the Board would be 25 percent of the sanction recommended. Any greater variation than 25 percent or resets in excess of two years will require concurrence by at least four voting members of the Board.

<u>CATEGORY</u>	<u>AMOUNT OF TIME</u>	
	<u>MINIMUM</u>	<u>MAXIMUM</u>
(a) Hazard to Human Life/ Health	50% of the prison term	100% of the prison term. In no instance may the extension exceed five years.
(b) Hazard to Security	25% of the prison term	50% of the prison term. In no instance may the extension exceed two years.
(c) Hazard to Property	10% of the prison term	20% of the prison term. In no instance may the extension exceed one year.
(d) Third in a series of rule violations within a three-month period, while assigned to any Corrections Division program	5% of the prison term	10% of the prison term. In no instance may the extension exceed six months.

- (4) When the amount of time recommended for the parole release date extension exceeds the prisoner's sentence or statutory good time date, the effect is to deny parole. An extension in the parole release date may not be beyond the prisoner's maximum statutory release date.
- (5) If serious misconduct occurs before a prisoner's parole release date has been set and an extension of the parole release date would be justified, the term for misconduct will be added to the release date at the time of the misconduct.
- (6) If serious misconduct occurs after a parole has been ordered and an extension of the parole release date would be otherwise justified, the chairperson of the Board may take immediate steps to suspend release and order a rescission hearing to consider resetting the release date upon receiving notice from an institution superintendent, Regional Manager or a Board member.

254-150-005 (Continued)

- (7) Upon recommendation of the disciplinary committee or hearings officer, the Board may suspend imposition of the reset subject to a period of acceptable conduct.

Jointly adopted with Corrections Division

254-150-010 RESET PROCEDURES: Hearing by Board; Board Action

- (1) When the Board is notified by the Administrator of the Corrections Division that an extension of a prisoner's parole release date has been recommended, a duly constituted panel of the Board shall conduct a hearing to determine whether the misconduct was serious.
 - (a) The prisoner shall be given notice of the hearing and its purpose; the provisions of Division 130 as to appearance, disclosure and record shall apply.
 - (b) A prisoner may waive his/her right to appear in writing or by voluntary absence from the institution.
 - (c) A prisoner may not relitigate facts which he/she has had a full opportunity to contest and have been decided against him/her in another forum.
- (2) Serious misconduct is misconduct which the Board classifies within one of the four categories listed in rule 254-150-005.
- (3) The Board may request the prisoner be given another hearing before the disciplinary committee originating the recommendation for reset, or choose not to extend a parole release date if the Board does not find that all other disciplinary options are inadequate to the seriousness of the misconduct, considering the following factors:
 - (a) Effectiveness of the sanction as a disciplinary measure, both to the inmate and to the general institution population;
 - (b) Degree of hazard posed by the misconduct to human health and/or life, institution security, or to property;
 - (c) Seriousness of the misconduct had it been committed in the wider community;
 - (d) The prisoner's prior record of conduct.
- (4) The Board may continue the reset hearing and order a psychiatric examination when it appears that a severe emotional disturbance is present. If there is a psychiatric or psychological diagnosis of present severe emotional disturbance, the Board may defer release to a specified future date. In choosing not to set a parole release date, rule 254-135-025 shall control.

254-150-010 (Continued)

- (5) If the Board resets a parole release date, the prisoner shall be given:
- (a) A written statement of the facts and specific reasons for the decision, including the individual votes of the Board members, and
 - (b) Notice of the right to administrative appeal under Division 180.

Jointly adopted with Corrections Division

254-150-015 RESCISSION OF PAROLE: Hearing; Suspension of Release

- (1) The chairperson may, on his/her own motion or upon notification by the Chief of Release Services, suspend the release date of a prisoner when there is reason to believe the person has engaged in serious misconduct. Suspension shall be for such time as is reasonably necessary to conduct the rescission hearing and make a decision.
- (2) The Board may rescind a parole after it has been ordered but prior to release from custody by conducting a rehearing under the procedures of Division 130, upon recommendation of an institution superintendent, Regional Manager or a Board member, and with the concurrence of three voting members of the Board.
- (3) The parole order of a prisoner who is voluntarily absent from a facility shall be voided by the chairperson. A rescission hearing shall be scheduled when the prisoner is available.

254-150-020 BASIS FOR RESCISSION

At the hearing, the Board will take relevant, material and reliable information of the prisoner's misconduct which causes the hearing to be held. The Board shall clearly state the facts and specific reasons, including a statement of misconduct, for its decision to rescind and reset the parole release date or deny parole.

DIVISION 160
PAROLE RELEASE

254-160-005 PAROLE RELEASE INTERVIEWS: Purpose; Review of Parole Plan;
Procedure if Plan is Inadequate; Maximum Deferred

- (1) A prisoner who has been given a parole release date shall be interviewed prior to his/her parole release.
- (2) Interviews shall be conducted by one or more voting members of the Board.
- (3) The purpose of the interview shall be to examine the prisoner's parole plan, his/her psychological report, if any, and the record of his/her conduct during confinement.
- (4) The interviewer shall examine the prisoner's plans for residence, employment or other situation in the community to determine whether the parole plan is adequate.
 - (a) An acceptable plan includes employment, school or other situation (e.g., retirement income) and suitable residence; it may require treatment programs and prescribed medication.
 - (b) If any portion of the plan is deficient or unverified, the Board may order deferred release to a verified plan approved by a panel, or to a plan approved by the Administrator of the Corrections Division.
 - (c) Parole release may be deferred up to 90 days from the parole release date when a plan is deficient or unverified in order to obtain verification of a satisfactory plan from the Corrections Division. A report shall be presented to the Board after 60 days by the Corrections Division, according to its letter of agreement with the Board.
- (5) A prisoner requesting an out-of-state parole waives the 90-day limitation on postponements for developing an adequate parole plan.
- (6) The Board shall clearly state the facts and specific reasons for its decision if parole release is deferred. The individual votes of the Board members shall be listed.

254-160-010 DEFERRING PAROLE RELEASE FOLLOWING AN INTERVIEW: Basis; Procedure

- (1) Should the interview indicate that
 - (a) A psychiatric or psychological diagnosis of the prisoner reveals a present severe emotional disturbance, or

254-160-025 PAROLE CONSIDERATION FOR PRISONERS IN A LOCAL JAIL

- (1) A prisoner confined in a jail facility as defined in ORS 144.050 with a sentence of at least six months shall be given a hearing to determine whether parole will be granted when:
 - (a) Written application is submitted to the Board, and
 - (b) The prisoner has served at least four months of the sentence.
- (2) Hearings shall be conducted by one voting member of the Board.
- (3) The Board member may order parole, establish a parole release date, continue the hearing for a reasonable period of time, or deny parole.
- (4) The procedures in rule 254-160-015 shall be followed.

- (a) Any applicable schedule shall be clearly stated on the Order of Parole.
 - (b) Payments shall be made to the clerk of the court of the county of sentencing, or as directed by the Board.
 - (c) The method and manner of payment shall be supervised by the individual's parole officer.
- (2) When a parolee defaults on any scheduled payment, the supervising parole officer shall notify the Board. The default shall be grounds for revocation of parole unless the parolee shows:
- (a) The default was not due to an intentional refusal to make the payment.
 - (b) The default occurred despite a good faith effort to make the payment.
- (3) If payment of restitution has not been completed by the parolee's tentative discharge date, the parolee shall be continued on parole until completion of payment or the expiration of his/her sentence, whichever is first.

DIVISION 170
CONDITIONS OF PAROLE

254-170-005 PAROLEE PLACEMENT IN COMMUNITY CORRECTIONS CENTERS: Standards;
Limitations

- (1) A parolee who is in danger of having his/her parole revoked because of difficulty in meeting the conditions of parole or a breakdown in his/her parole program may be placed in a community corrections center upon his/her written consent pursuant to Corrections Division rule on placement and ORS 144.420(3).
- (2) A quorum of the Board must approve the placement when the parolee is to remain in a community corrections center more than 30 days or before a second placement in a community corrections center during a 12-month period. A quorum of the Board may overrule any placement and order the parolee's release.
- (3) Voluntary termination of a parolee's placement in a community corrections center shall not be grounds for revocation of parole.

Subject to letter of agreement with Corrections Division

254-170-010 GUIDELINES ON STANDARD CONDITION RELATING TO "BEST INTEREST" RETURN

As used in the standard conditions of the Order of Parole, revocation of parole when it is "in my best interest or in the best interest of society" shall refer to the following situations:

- (1) The parolee is suffering from an emotional or psychological disturbance which makes him/her substantially dangerous to self or others if left in the community and which may be indicated by threatening behavior in the form of:
 - (a) Some overt act showing a present capacity to carry out any statements or threats of violence; or
 - (b) The substantial duplication of circumstances and conduct surrounding previous acting out of dangerous behavior; and
- (2) The parolee's behavior cannot be adequately controlled if left in the community (e.g., demonstrated failure to follow through on a previously accepted mental health treatment program).

DIVISION 175

PROCEDURES FOR REVOCATION OF PAROLE

254-175-005 HEARING REQUIREMENT: Time; Place; Presiding Officer

Before the Board can revoke parole, it shall conduct a hearing according to the procedures in this division.

- (1) The hearing shall be held within a reasonable time after the Board is notified of the alleged violations and reasonably near the place of the alleged violations or the place of confinement.
- (2) The hearing may be conducted by a Parole Board Hearings Officer.

254-175-010 BOARD ACTION UPON NOTIFICATION OF ALLEGED PAROLE VIOLATION:
Criteria for; Release of Parolee Pending Hearing

- (1) When the Board is informed of reasonable grounds to believe a person has violated the conditions of his/her parole and that revocation of parole may be justified, the Board may:
 - (a) Suspend parole and order the parolee arrested and detained pending a parole revocation hearing.
 - (b) Suspend parole pending a parole revocation hearing without detaining the parolee.
 - (c) Continue parole and order a parole revocation hearing.
- (2) In determining whether to allow a parolee to remain in the community pending the parole revocation hearing, the Board shall consider:
 - (a) The risk presented by the parolee in light of the nature and seriousness of the allegations;
 - (b) The risk of the parolee absconding or failing to appear for the hearing;
 - (c) The availability of bail when applicable;
 - (d) The availability of resources or special situations in the community, including employment or school, evaluation or placement in a treatment program, medical emergencies or work release;
 - (e) Any recommendation by the parole officer.

254-175-015 PROCEDURES WHEN PAROLEE IS IN ANOTHER JURISDICTION: Return of Parolee; Hearing Requirement

- (1) The Board may suspend a parole and order the parolee's return to prison in Oregon without first conducting a hearing when:
 - (a) The parolee has left the state to which he/she was paroled without permission and is in custody in another jurisdiction.
 - (b) The parolee is in federal custody.
 - (c) The parolee has absconded from supervision and his/her whereabouts are unknown.
 - (d) The parolee has been convicted of a new crime in another jurisdiction.
- (2) After the parolee is returned to prison in Oregon, he/she shall be given a parole revocation hearing according to the provisions of this division.

254-175-020 RIGHTS OF A PAROLEE AT A FORMAL HEARING

- (1) The parolee shall have the rights listed in ORS 144.343(4) at a parole revocation hearing.

254-175-025 NOTICE OF ALLEGED PAROLE VIOLATION AND HEARING

- (1) The parolee shall be given written notice, as required by ORS 144.343(3), within a reasonable time before a hearing which may result in revocation of parole.
- (2) Notice shall be given at a personal interview with the parolee or by other means which will assure that the parolee has received and understood the required notice.

254-175-030 WAIVER OF PAROLE REVOCATION HEARING: When; Rejection of Waiver; Record Submitted to Board When Hearing Waived

- (1) After receiving notice and a full explanation of his/her rights, a parolee may waive the parole revocation hearing and the rights provided in rule 254-175-025. The parolee may submit a statement to the Board to accompany his/her waiver.
- (2) If the Board is not satisfied that the waiver was made knowingly and intelligently or if it believes more information is necessary before making its decision, it may order a hearing.
- (3) The record submitted to the Board shall consist of:

254-175-030 (Continued)

- (a) Notice forms properly executed,
- (b) A statement by the parolee that he/she has waived a parole revocation hearing and understands the significance of that waiver,
- (c) Evidence supporting the alleged violations, and
- (d) Any statements made by the parolee.

254-175-035 APPOINTMENT OF COUNSEL: Criteria; Case by Case; Affidavit of Indigency

- (1) If requested, the Board shall appoint counsel to represent indigent parolees at parole revocation hearings if the parolee makes a timely and colorable claim that:
 - (a) He/she has not committed the alleged violation; or
 - (b) There are substantial complex mitigating circumstances which make revocation inappropriate even if violation is admitted or a matter of record; or
 - (c) The parolee appears incapable of speaking effectively in his/her behalf.
- (2) Cases shall be reviewed individually to determine whether the criteria have been met.
- (3) Parolees shall be required to submit an affidavit of indigency at the hearing.

254-175-040 COMPELLING APPEARANCE OF WITNESSES: If Subpoena Requested; Board Motion; Failure to Obey

- (1) As provided in ORS 144.347, the Board has the power to subpoena witnesses and documents to a parole revocation hearing.
- (2) The Board shall issue a subpoena for any witness whose appearance at a hearing is requested.
- (3) At any time before a hearing has begun, the Board, on its own motion, may subpoena any witness or documents it feels are necessary to the full examination of the issues raised at the hearing. A hearing may be postponed to obtain the presence of a material witness or document.
- (4) The Board or party requesting a subpoena may seek contempt proceedings in the circuit court of any county against any person refusing to honor the subpoena.

254-175-045 EVIDENCE AT PAROLE REVOCATION HEARING: What May Be Received

The following evidence may be received at a parole revocation hearing:

- (1) Oral testimony under oath;
- (2) Affidavits or other sworn statements;
- (3) Evidence determined to be material, relevant and reliable, regardless of its nature, including
 - (a) Letters,
 - (b) Documents,
 - (c) Reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole officers, doctors, psychologists, attorneys);
- (4) Evidence of criminal activity even when charges have been dismissed, not brought, or the parolee has been acquitted at trial.
- (5) Hearsay evidence, although admissible, cannot alone form the evidentiary basis for revocation if objection is raised.

254-175-050 PROCEDURE FOR RECEIVING EVIDENCE IF GOOD CAUSE EXISTS NOT TO REQUIRE CONFRONTATION OR DISCLOSURE OF AN INFORMANT'S IDENTITY

- (1) When the Board receives material evidence from a witness who is likely to be subject to an actual threat of physical or psychological harm if his/her identity is disclosed to the parolee, the Board may receive the evidence provided by the witness without requiring confrontation or disclosure of the witness' identity.
- (2) The determination whether to disclose the identity of a witness shall be made at an in-camera hearing.
 - (a) If the Hearings Officer decides good cause does not exist, the evidence shall be disclosed unless withdrawn.
 - (b) If the Hearings Officer decides good cause does exist, he/she shall state the reasons for the decision and conduct an independent examination of the witness on the record.
- (3) Evidence received without disclosing the identity of the witness shall be made a sealed part of the record.
- (4) When a witness is unavailable, his/her statements may be received in the form of documentary evidence, following the procedures in this rule, when

254-175-050 (Continued)

the Hearings Officer determines at an in-camera hearing that good cause for non-disclosure exists and supporting evidence establishes the reliability of the absent witness' statements.

254-175-055 REOPENING HEARINGS FOR NEW INFORMATION: Criteria; Procedure

- (1) After completion of a parole revocation hearing and before a final decision, the Board 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 parolee shall be given notice of the decision to reopen the hearing and the new information to be considered. The hearing shall conform to the procedures of this division.

254-175-060 RECORD OF PAROLE REVOCATION HEARING

- (1) A record shall be made of the parole revocation hearing, including all evidence received and considered and a manual or mechanical recording of all oral testimony and presentations.
- (2) The record shall include evidence presented at the parole revocation hearing. Upon request, the presiding officer may hold the record open for a specified period of time to receive further evidence deemed material to the proceeding.

254-175-065 HEARINGS OFFICER'S REPORT: Content; Copy to Parolee; Ten-Day Waiting Period for Parolee's Arguments and Exceptions

- (1) After the hearing, the record of the hearing shall be given to the Board along with the report of the Hearings Officer, which shall include:
 - (a) Grounds for denial of a request for Board-appointed counsel, if applicable;
 - (b) Findings of fact;
 - (c) A recommendation as to disposition of the case, with reasons for the recommendation; and
 - (d) A proposed order.

254-175-065 (Continued)

The report may also include any exhibits submitted and a summary of the record.

- (2) Within a reasonable time after the hearing, the Hearings Officer's report shall be provided to the parolee. Unless the right is waived, the parolee shall have 10 days from the date the report is mailed to make written exceptions and arguments to the report for the Board's consideration.

254-175-070 FINAL ACTION BY THE BOARD: Quorum to Decide; Final Order; Notice of Decision

- (1) The Board shall consider the record, Hearings Officer's report, and exceptions and arguments. A quorum of the Board shall enter a final order including findings of fact, the decision, reasons for the decision, and the individual votes of the Board members. The Board may choose to adopt the findings and recommendation with reasons of the Hearings Officer as its own when entering the final order.
- (2) A copy of the final order shall be forwarded to the parolee with notice of his/her right to administrative review under Division 180 of these rules and judicial review under ORS 144.335.

254-175-075 PAROLEES CONVICTED OF A NEW CRIME IN ANOTHER JURISDICTION: Return; Jurisdictional Reinstatement

If a parolee has violated his/her parole as a result of a conviction of a new crime in another jurisdiction and has been sentenced to a term in prison, the Board may:

- (1) Suspend parole and order the parolee returned to Oregon for a parole revocation hearing after serving the new sentence; or
- (2) Reinstate parole to the prison sentence in the other jurisdiction in order to consolidate jurisdiction over the parolee and allow the Oregon sentence to run concurrently. Reinstatement under these circumstances is not a recommendation for parole release.

254-175-080 REINSTATEMENT BASED ON TIME SERVED: Necessary Findings by Board; Effect on History/Risk Score

- (1) If the Board finds that a parolee has committed a violation of parole conditions which is sufficiently serious to require revocation of parole and the time

254-175-080 (Continued)

the parolee has spent in custody pending final action on the parole revocation hearing is an adequate punishment for the violation, the Board may reinstate parole.

- (2) Reinstatement of parole under this rule shall be counted as a parole failure in computing a criminal history/risk assessment score under rule 254-135-010.

254-175-085 FUTURE DISPOSITION HEARING: Procedures; Scheduling; Board Action

- (1) After parole is revoked, the Board shall conduct a hearing to establish future disposition of the prisoner within 90 days after his/her return. This hearing shall follow the procedures of a prison term hearing as provided in Division 130.
- (2) At the future disposition hearing, the Board may:
 - (a) Set a new parole release date according to the guidelines in rule 254-175-085 and choose not to give credit for statutory good time earned until suspension of parole; or
 - (b) Deny further parole consideration, according to the guidelines in rule 254-175-090, and return all or part of the statutory good time to which the prisoner is entitled.

254-175-090 GUIDELINES FOR RERELEASE OF PAROLE VIOLATORS: Technical Violators; New Convictions; Denial of Further Parole

- (1) Parole violators returned with a technical violation and no prison commitment for a new conviction shall be given an additional prison term based on the following guidelines:
 - (a) If the violations did not involve a finding at the parole revocation hearing of new criminal activity, the prisoner shall serve from four to eight months unless the Board decides that the aggravation or mitigation found at the parole revocation hearing is sufficient to justify variation from this range. Variation shall not exceed two months without concurrence of at least four voting members of the Board.
 - (b) If the violation involved a finding at the parole revocation hearing that new criminal activity has occurred, the prisoner shall serve from eight to 12 months unless the Board decides that the aggravation or mitigation found at the parole revocation hearing is sufficient to justify variation from this range. Variation shall not exceed four months without concurrence of at least four voting members of the Board.

- (c) Usual, but not exclusive, factors in aggravation and mitigation are shown in Exhibit G. When applicable, the factors shown in Exhibit E may be consulted.
 - (d) In setting a rerelease date, the Board may consider the seriousness of the parole violator's original offense and history/risk score.
- (2) Parole violators returned with a new prison commitment shall be given a prison term according to the guidelines in Division 135.
- (a) A history/risk score reflecting the new conviction shall be calculated. When applicable, the original conviction and incarceration and the parole failure shall result in lost points.
 - (b) If the sentence on the new conviction is imposed consecutive to the original commitment offense, the provisions of rule 254-135-015(2)(e) shall govern the credit given for time served.
- (3) The Board may deny reparole consideration and require the parole violator to serve to the end of his/her sentence upon affirmative vote of at least four voting members. In cases where setting a parole violator within the guidelines of this rule would require the parole violator to serve to the end of his/her sentence, four votes are not required.

DIVISION 180
ADMINISTRATIVE APPEAL

254-180-005 METHOD OF APPEAL

- (1) Administrative appeal may be requested by a prisoner or a Board member. If the chairperson of the Board determines the request is consistent with the Board's criteria as defined in rule 254-180-010, the chairperson shall remand the case for rehearing, where practicable, to the original panel.
- (2) When the chairperson was a member of a panel from which an appeal is generated and finds the request does not meet the Board's criteria, he/she shall refer the matter to a member who was not on the panel for review. In such case, that member may concur or call for a rehearing.
- (3) The chairperson shall inform the prisoner in writing of the specific reasons for denial of the appeal and leaving the prior decision in effect.

254-180-010 CRITERIA FOR APPEAL

The criteria for meritorious appeal are:

- (1) The Board action is not supported by the written findings, or the written findings are inaccurate; or
- (2) Pertinent information was available at the time of the original hearing which, through no fault of the prisoner, was not considered; or
- (3) The action of the Board is inconsistent with its rules or policies or is contrary to law; and
- (4) The matters raised on appeal may have an effect on the original decision.

DIVISION 190

DISCHARGE

254-190-005 DISCHARGE GENERALLY

The guidelines set forth in Exhibit H shall govern the establishment of tentative discharge dates. The date shall be set at the parole release interview and shall be written on the Order of Parole. For the discharge date to become effective, the parolee must display acceptable parole performance during the term of active parole.

254-190-010 PROCEDURE: Approving and Denying Discharge; Further Proceedings

- (1) A minimum of 30 days prior to the tentative discharge date on the Order of Parole, the supervising parole officer shall send to the Board a supervisory report. This report shall recommend one of two courses:
 - (a) That the parolee be discharged on the tentative date.
 - (i) Upon approval by the Board, the supervising officer shall be forwarded the discharge certificate for presentation to the parolee on the tentative discharge date or the first prior business day.
 - (ii) Provided that no facts are discovered between the submission of the supervising officer's report and the discharge date which indicate discharge should not occur, the supervising officer shall present the certificate in person or by certified mail at a confirmed address and shall return proof of presentation directly to the Board;
 - (b) That the discharge not be granted on the tentative date.
 - (i) In this case, the supervisory report shall contain information showing why discharge is not warranted and recommend a new discharge date.
 - (ii) The case shall receive a Board review under the procedures of rule 254-130-010(3).
 - (iii) After consideration of the parole officer's recommendation, the Board shall either forward a discharge certificate or a written explanation for denial of the request.

254-190-010 (Continued)

- (iv) The supervising officer shall either present the discharge certificate as in (a) above or shall notify the parolee of the new discharge date and reasons, whichever is applicable.
- (2) If the Board desires further information on which to base its decision, it may conduct a hearing according to the procedures in Division 175.
- (3) Notwithstanding subsection (1) above, the supervising officer may submit a recommendation with written reasons for early discharge at any time after one year active parole.

254-190-015 EXTENSION OF TENTATIVE PAROLE DISCHARGE DATES: When Good Time Under Forfeiture

Tentative discharge dates may be extended according to the following procedures:

- (1) An extension of a tentative discharge date shall be made by the Board when notified that an inmate has good time under forfeiture at the time of parole release.
- (2) A prisoner with good time under forfeiture shall have his/her tentative discharge date extended by the amount of good time under forfeiture.
- (3) The Order of Parole will specify the amount of good time under forfeiture.
- (4) The Board may rescind the extension upon recommendation of the supervising parole officer after six months of satisfactory parole adjustment.

Jointly adopted with Corrections Division

EXHIBIT A

Part I

OFFENSE SEVERITY UNDER RULE 254-135-005

OFFENSE	RATING	FELONY CLASS
163.095 - Aggravated Murder	7	A
163.115 - Murder	7	A
166.005 - Treason	7	A
163.118 - Manslaughter I	6	A
163.235 - Kidnapping I	6	A
163.375 - Rape I (Subcategory 1)	6	A
163.405 - Sodomy I (Subcategory 1)	6	A
164.415 - Robbery I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 1)	6	A
164.325 - Arson I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 2)	5	A
164.325 - Arson I (Subcategory 2)	5	A
164.415 - Robbery I (Subcategory 2)	5	A
162.165 - Escape I	5	B
164.225 - Burglary I (Subcategory 1)	5	A
163.175 - Assault II	4	B
163.225 - Kidnapping II	4	B
163.365 - Rape II (Subcategory 1)	4	B
163.395 - Sodomy II	4	B
164.225 - Burglary I (Subcategory 2)	4	A
167.017 - Compelling Prostitution	4	B
164.405 - Robbery II	4	B
167.207(4) - Criminal Activity in Drugs (Subcategory 1)	4	A
163.275 - Coercion (Subcategory 1)	4	C
164.075 - Theft by Extortion (Subcategory 1)	4	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 1)	4	A
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 1)	4	A,B
163.125 - Manslaughter II	3	B
162.015 - Bribe Giving	3	B
162.025 - Bribe Receiving	3	B
167.207(1) - Criminal Activity in Drugs (Subcategory 1)	3	B
163.425 - Sexual Abuse I	3	C

OFFENSE	RATING	FELONY CLASS
167.278 - Obtaining Drugs Unlawfully	2	B
496.992(3) - Poaching (Subcategory 1)	2	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 3)	2	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 2)	2	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 1)	2	B,C
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 3)	2	C
162.185 - Supplying Contraband	1	C
162.325 - Hindering Prosecution	1	C
163.515 - Bigamy	1	C
163.525 - Incest	1	C
163.555 - Criminal Nonsupport	1	C
164.065 - Theft: Lost, Mislaid	1	C
164.075 - Theft by Deception (Subcategory 3)	1	C
164.125 - Theft of Services (Subcategory 3)	1	A -\$200 (Misd.) C +\$200
164.365 - Criminal Mischief I	1	C
165.022 - Forged Instrument I	1	C
165.032 - Forgery Device	1	C
165.055 - Fraudulent Use of a Credit Card	1	A -\$200 (Misd.) C +\$200
165.070 - Fraudulent Communication Device	1	C
167.127 - Promoting Gambling	1	C
167.137 - Possession of Gambling Records I	1	C
167.212 - Tampering with Drug Records	1	C
- Welfare Fraud	1	C
- Felony Traffic	1	C
133.723 - Interception of Communication	1	C
496.992(3) - Poaching (Subcategory 2)	1	C
167.207(1) - Criminal Activity in Drugs (Subcategory 3)	1	A
164.215 - Burglary II (Subcategory 3)	1	C
164.135 - Unauthorized Use of a Motor Vehicle (Subcategory 2)	1	C
162.155 - Escape II (Subcategory 2)	1	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 4)	1	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 3)	1	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 2)	1	B,C
475.993 - Violation of Controlled Substance Act by Registrants	1	C

Conspiracy has the same offense severity as the crime conspired to.

ROBBERY I -- ORS 164.415

Felony Class: A

Statutory Elements: Robbery involved either:
armed with a deadly weapon; or
uses or attempts to use dangerous weapon; or
causes or attempts to cause serious injury

Subcategory 1 - rating of 6

...All cases of Robbery I except those fitting Subcategory 2

Subcategory 2 - rating of 5

Cases of robbery where the crime does not involve

...Discharge of a firearm; or
...Use of any other dangerous weapon; or
...Explicit and immediate threats, by word or gesture (e.g., cocking hammer
of gun), of death or serious bodily harm; or
...Serious injury

ASSAULT I -- ORS 163.185

Felony Class: A

Statutory Elements: Intentional serious injury to another by means of
a deadly or dangerous weapon

Subcategory 1 - rating of 6

...All cases of Assault I except those fitting Subcategory 2

Subcategory 2 - rating of 5

...Cases of Assault I in which the victim or victims provoked the crime to
a substantial degree, or other evidence that misconduct by victim con-
tributed substantially to the criminal episode.

ARSON I -- ORS 164.325

Felony Class: A

Statutory Elements: Arson involving either:
property of another which is customarily occupied by
people; or own property, if persons are endangered or
if other customarily occupied property is also endangered

RAPE II (Continued)

Statutory Elements: Nonforcible intercourse involving:
incapacitated (e.g., mentally defective) female; or
female under 14 (i.e., 12 or 13)

Subcategory 1 - rating of 4

...All cases of Rape II except those fitting Subcategory 2

Subcategory 2 - rating of 3

...Not both under 16 and incapacitated; and
...No coercion or undue influence (e.g., father, step-father); and
...No position of trust (e.g., counselor, doctor)

BURGLARY II -- ORS 164.215

Felony Class: C

Statutory Elements: Any illegal entry, if not a Burglary I, with intent to
commit a crime therein

Subcategory 1 - rating of 3

...Theft or destruction of over \$5,000

Subcategory 2 - rating of 2

...Theft or destruction of between \$1,000 and \$5,000

Subcategory 3 - rating of 1

Theft or destruction of less than \$1,000

THEFT I -- ORS 164.055

Felony Class: C

Statutory Elements: Theft involving:
more than \$200; or
during a riot or catastrophe; or
theft by receiving; or
of a livestock animal; or
of a firearm or explosive

Subcategory 1 - rating of 3

...Theft or receiving of over \$5,000

COERCION (Continued)

Subcategory 2 - rating of 3

...All others

UNAUTHORIZED USE OF A MOTOR VEHICLE -- ORS 164.135

Felony Class: C

Statutory Elements: Joyriding, unauthorized exercise of control over vehicle

Subcategory 1 - rating of 2

...Loss, destruction or severe damage to vehicle or to property; or
...Injury to others

Subcategory 2 - rating of 1

...Other

FORGERY I -- ORS 165.013

Felony Class: C

The breakdown should be based on the amounts involved in the same manner as theft.

Note: For this crime and other theft crimes, the amounts involved would be based on the amounts for which each defendant has been convicted or has admitted.

POACHING -- ORS 496.992(3)

Felony Class: C

Statutory Elements: Second and each subsequent conviction within a 10-year period for taking of game fish or game mammals with a value of \$200

Subcategory 1 - rating of 2

...Poaching of game valued over \$3,000; or
...Commercial operation

MANUFACTURE OR DELIVERY OF A CONTROLLED SUBSTANCE (Continued)

Subcategory 1 - rating of 4

...Manufacture or delivery of heroin or opiate derivatives for compensation of \$2,000 or more

Subcategory 2 - rating of 3

...Manufacture or delivery of heroin or opiate derivatives without compensation or for compensation of less than \$2,000;
...Manufacture or delivery of cocaine for compensation of \$2,000 or more and other drugs for compensation of \$1,000 or more

Subcategory 3 - rating of 2

...Manufacture or delivery of cocaine for compensation of less than \$2,000 and other drugs for compensation of less than \$1,000

Subcategory 4 - rating of 1

...Manufacture exclusively for own use;
...Delivery without compensation, except heroin or opiate derivatives

UNLAWFUL CREATION OR DELIVERY OF COUNTERFEIT SUBSTANCE -- ORS 475.992(3)

Statutory Elements: Unlawful creation or delivery of counterfeit substance

Felony Class: Schedule 1 drugs - Class A Felony
Schedule 2 drugs - Class B Felony
Schedule 3 drugs - Class C Felony

Subcategory 1 - rating of 3

...Schedule 1 drugs, except marijuana

Subcategory 2 - rating of 2

...Schedule 2 drugs, plus PCP

Subcategory 3 - rating of 1

...Schedule 3 drugs, plus marijuana

POSSESSION OF CONTROLLED SUBSTANCE -- ORS 475.992(4)

Statutory Elements: Knowing or intentional possession of controlled substance not obtained by prescription or valid doctor's order

CRIMINAL ACTIVITY IN DRUGS (INVOLVING MINORS) (Continued)

Subcategory 2 - rating of 3

...Furnishing any other drug except those fitting in Subcategory 3

Subcategory 3 - rating of 2

...Furnishing less than 1 ounce of marijuana

NOTE: Applies to crimes committed before July 1, 1978.

CRIMINAL ACTIVITY IN DRUGS (OTHER) -- ORS 167.207(1)

Felony Class: B

Statutory Elements: Manufacture, cultivation, sale or possession of any narcotic or dangerous drug (other than possession of less than one ounce of marijuana)

Subcategory 1 - rating of 3

...Manufacture, cultivation or sale for profit, or possession with intent to sell for profit of any heroin or opiate derivatives

Subcategory 2 - rating of 2

...Manufacture, cultivation, or sale for profit, or possession with intent to sell for profit, of any other drug

Subcategory 3 - rating of 1

...Manufacture for own use or possession for own use

NOTE: Applies to crimes committed before July 1, 1978.

EXHIBIT C

TIME TO BE SERVED UNDER RULE 254-135-020

CRIMINAL HISTORY/RISK ASSESSMENT SCORE

11-9	8-6	5-3	2-0
Excellent	Good	Fair	Poor

OFFENSE SEVERITY RATING	(All ranges in Categories 1-6 shown in months)			
Category 1	-6	-6	6-12 (4-8)*	12-22 (8-18)
Category 2	-6	6-10 (4-8)	10-18 (8-14)	18-28 (14-24)
Category 3	6-10 (4-8)	10-16 (8-12)	16-24 (12-20)	24-36 (20-32)
Category 4	10-16 (8-12)	16-22 (12-18)	22-30 (16-24)	30-48 (24-42)
Category 5	18-24 (12-20)	24-30 (20-26)	30-48 (26-40)	48-72 (40-62)
Category 6	36-48	48-60	60-86	86-144
Category 7**				
Subcategory 2	8-10 yrs	10-13 yrs	13-16 yrs	16-20 yrs
Subcategory 1	10-14 yrs	14-19 yrs	19-24 yrs	24-Life

*Months in parentheses represent range for youthful offenders (21 or younger at time of conviction).

**The range for murders committed after December 7, 1978 shall be 25 years as required by ORS 163.115.

EXHIBIT D
GUIDELINES MATRIX

MAXIMUM VARIATIONS FROM THE RANGES UNDER RULE 254-135-030

CRIMINAL HISTORY/RISK ASSESSMENT SCORE

11-9	8-6	5-3	2-0
Excellent	Good	Fair	Poor

OFFENSE SEVERITY RATING	(All ranges in Categories 1-6 shown in months)				
Category 1	Panel Full Board	+2 <u>+4*</u>	+2 <u>+4</u>	+3 <u>+6</u>	+4 <u>+8</u>
Category 2	Panel Full Board	+2 <u>+4</u>	+3 <u>+6</u>	+4 <u>+8</u>	+6 <u>+12</u>
Category 3	Panel Full Board	+3 <u>+6</u>	+4 <u>+8</u>	+6 <u>+12</u>	+8 <u>+16</u>
Category 4	Panel Full Board	+4 <u>+8</u>	+6 <u>+12</u>	+8 <u>+16</u>	+10 <u>+20</u>
Category 5	Panel Full Board	+6 <u>+12</u>	+8 <u>+16</u>	+10 <u>+20</u>	+14 <u>+26</u>
Category 6	Panel Full Board	+12 <u>+24</u>	+14 <u>+26</u>	+18 <u>+30</u>	+24 <u>+36</u>
Category 7	Full Board	<u>+3 yrs</u>	<u>+3 yrs</u>	<u>+3 yrs</u>	<u>+3 yrs/NA</u>

*This figure indicates maximum upward or downward variations that may ordinarily be imposed by the full Board.

EXHIBIT E

AGGRAVATION/MITIGATION UNDER RULE 254-135-030

AGGRAVATION

Production or use of any weapon during the criminal episode.

Threat or violence toward witness(es) or victim(s).

The prisoner knew or had reason to know the victims were particularly vulnerable (i.e., aged, handicapped or very young).

Ability to make restitution or reparation and failure to do so.

Violation of position of public trust or of recognized professional ethics.

The degree of property loss, personal injury or threatened personal injury was substantially greater than is characteristic for the crime.

There is a single conviction for a crime involving multiple victims.

More than one concurrently imposed conviction, not arising out of the same criminal episode.

Verified instances of repetitive assaultive conduct.

Judge's sentence and reasons under rule 254-135-030(1)(d) and plea bargained offenses under rule 254-135-030(1)(c) may be considered as either an aggravating or mitigating circumstance.

Any aggravating or mitigating circumstances which constitute a defining element of the crime or subcategory of the crime of which the prisoner was convicted, or resulted in a lower history/risk score, shall not justify variation from the guidelines.

MITIGATION

Victim(s) provoked the crime to a substantial degree, or other evidence that misconduct by victim contributed substantially to criminal episode.

Cooperation with criminal justice agencies in resolution of other criminal activity.

Effort to make restitution or reparation, particularly before required to do so by sentencing.

The degree of property loss, personal injury or threatened personal injury was substantially less than is characteristic for the crime.

Special efforts on the part of the perpetrator to minimize the harm and risk involved in the crime.

Peripheral involvement in the criminal episode (e.g., passive accessory).

Evidence of withdrawal, duress, necessity, lack of sustained criminal intent, or diminished mental capacity, e.g., mental retardation, which is insufficient to constitute a defense but is indicative of reduced culpability.

Sentence to pay restitution after a term of imprisonment.

EXHIBIT G

AGGRAVATION/MITIGATION IN PAROLE VIOLATION CASES UNDER RULE 254-175-085

AGGRAVATION

Prior parole revocation.

Prior Board reprimand, revocation hearing, or like difficulty on present parole.

Less than 3 months to first difficulty.

Repetition of type conduct associated with commitment offense or past conditions (return to drug or alcohol abuse, assaultiveness, involvement in same type criminal activity).

MITIGATION

No evidence of new criminal activity.

No prior parole difficulty.

More than 9 months to first difficulty.

Efforts to deal with problems associated with past criminal conduct.

Evidence of reduced responsibility or lack of mental capacity.

EXHIBIT I

OUTLINE FOR PRESENTENCE REPORT AND EXHIBITS UNDER RULE 254-195-005

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A. Present Crime Synopsis:

1. Summary of offense(s)
2. Official version
3. Defendant's version
4. Victim's damages
5. Co-defendant's status

B. Evaluation:

1. Assets
2. Liabilities
3. Summary

C. Recommendation

D. Attachment I -- Criminal History/Risk Assessment

E. Attachment II -- Aggravation and Mitigation

II. Exhibits: (To be attached as ordered)

A. EXHIBIT 1 -- FAMILY BACKGROUND

B. EXHIBIT 2 -- MARITAL HISTORY

C. EXHIBIT 3 -- SUBSTANCE ABUSE PROBLEMS

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4-1-79

OREGON ADMINISTRATIVE RULES

BOARD OF PAROLE

CHAPTER 255

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DIVISION 1

RULEMAKING PROCEDURE

Notice of Rulemaking: Time and Manner

255-01-005 Prior to the proposed action (i.e., adoption, amendment, or repeal of any rule), the chairperson of the Board shall give notice of the proposed action at least 15 days prior to the effective date:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360.
- (2) By mailing a copy of the notice to persons on the Board mailing list established pursuant to ORS 183.335(6).
- (3) By mailing a copy of the notice to the following persons, organizations, or publications:
 - (a) Oregon State Bar Bulletin;
 - (b) United Press International and Associated Press;
 - (c) Release Services, Field Services, and Regional Offices, State of Oregon Corrections Division;
 - (d) Oregon District Attorneys Association;
 - (e) Oregon Criminal Defense Attorneys Association;
 - (f) Multnomah County Public Defender;
 - (g) Washington County Public Defender;
 - (h) Lane County Public Defender;
 - (i) Douglas County Public Defender;
 - (j) Coos County Public Defender;
 - (k) State Public Defender;
 - (l) Oregon Prisoners Legal Services;
 - (m) University of Oregon Law School;
 - (n) Northwestern College of Law, Lewis and Clark College;
 - (o) College of Law, Willamette University;
 - (p) American Civil Liberties Union;
 - (q) The Oregonian, Portland, Oregon;
 - (r) The Oregon Journal, Portland, Oregon;
 - (s) The Oregon Statesman, Salem, Oregon;
 - (t) The Capitol Journal, Salem, Oregon;
 - (u) The Register Guard, Eugene, Oregon;
 - (v) Superintendents of state correctional institutions;
 - (w) Administrator, Corrections Division;
 - (x) Oregon Public Defenders Association;
 - (y) Others upon formal written request of the Board.
- (4) By posting on bulletin boards, placing in the general reading section of the libraries of the institutions of the Corrections Division, and publishing in bulletins of the Corrections Division.

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

Contents of Notice of Rulemaking When Public Hearings Are Held

255-01-010 (1) Notice of a public hearing on proposed action shall include the following:

- (a) A description of the Board's proposed action and, where practicable and appropriate, the verbatim rule proposed to be adopted, amended, or repealed. Lengthy rules may be summarized and not set out verbatim.
- (b) The subject matter and purpose of the proposed action in sufficient detail to inform a person that his/her interest may be affected.
- (c) The time and place of the public hearing and the manner in which interested persons may present their views.
- (d) The address of the office of the Board of Parole where inspection during regular business hours may be made of the written statement required by ORS 183.335(7).
- (e) A designation of the officer or governing body of the Board or other person who will preside at and conduct the hearing.

(2) If the proposed rule is not set forth verbatim, the notice shall state the time, place, and manner in which a copy of the proposed rule may be obtained.

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

Contents of Notice of Rulemaking When Public Hearing Will be Held Only if Requested

255-01-015 (1) Notice that the Board of Parole plans to hold a public hearing on proposed rulemaking only if sufficient requests are received shall include the following:

(a) A description of the Board's proposed action and, where practicable and appropriate, the verbatim rule proposed to be adopted, amended, or repealed. Lengthy rules may be summarized and not set out verbatim. If the proposed rule, amendment, or repeal thereof is not set forth verbatim, the notice shall state the time, place, and manner in which the rule or amendment may be obtained.

(b) The subject matter and purpose of the proposed action in sufficient detail to inform a person that his/her interest may be affected.

(c) The time and place at which data or views may be submitted in writing to the Board.

(d) The address of the office of the Board where public inspection during regular business hours may be made of the written statement required by ORS 183.335(7).

(e) A statement that any interested person desiring to express or submit his/her data or views at a public hearing must request the opportunity to do so.

(f) A designation and address of the person to whom a request for public hearing must be submitted and time by which the request must be submitted to be considered.

(g) A statement that a public hearing will be held if the agency receives a request for public hearing within 15 days after agency notice from 10 or more persons or an association having not less than 10 members.

(2) If 10 persons or an association having more than 10 members request a public hearing, the Board shall provide such hearing after giving notice pursuant to rule 255-01-010.

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

Submitting Draft of Rule to Legislative Counsel

255-01-020 Prior to the proposed action, including temporary rules, the Board shall submit a draft of the proposed action to Legislative Counsel.

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

Postponing Intended Action

255-01-025 (1) The Board shall postpone its intended action upon request of an interested person received within 15 days after Board notice to allow the requesting person an opportunity to submit data, views, or arguments concerning the proposed action.

(2) Postponement of the date of intended action shall be no less than 10 nor more than 90 days. In determining the length of postponement, the Board shall consider the time necessary to give reasonable notice of the postponement and the complexity of the subject and issues of intended action.

(3) The Board shall give notice of the postponement pursuant to rule 255-01-005, except that publication in the Secretary of State's Bulletin is only required when the publication date of the Bulletin precedes the postponement date of the intended action.

(4) The rule does not apply to the Board adopting a temporary rule pursuant to rule 255-01-055.

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(b) Prepare a statement that the rule is necessary for the public interest or the interest of the parties concerned and the reasons therefor.

(c) Take appropriate measures to make the temporary rule known to the persons who may be affected.

(2) A temporary rule adopted in compliance with this rule becomes effective immediately upon filing the rule with the Secretary of State with a designated later date. The statement required in subsection (1)(b) of this rule must be filed with the rule.

(3) Within 30 days following the adoption of a temporary rule, the Board shall prepare the statement required by ORS 183.335(7), and file the statement with the Secretary of State.

(4) The statement required by ORS 183.335(7), including the full text of any material cited in the statement, shall be

available for public inspection during regular business hours at the office of the Board of Parole.

(5) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed prior to the expiration of the temporary period.

(6) A temporary rule may be effective for no longer than 120 days. No temporary rule may be renewed after it has been in effect 120 days. The Board may, however, adopt an identical rule on notice in accordance with this division.

Stat. Auth.: ORS Ch. 144

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255. DIVISION 10 — BOARD OF PAROLE

DIVISION 10

ORGANIZATION

Membership

255-10-005 The Board of Parole shall consist of five voting members, appointed by the Governor, and the Administrator of the Corrections Division, who shall have no vote but act as an advisor.

Stat. Auth.: ORS Ch. 144

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

Chairperson: Term; Removal

255-10-010 The chairperson shall be a voting member of the Board selected by a majority of the Board. The chairperson shall have a minimum term of one year and may be removed prior to the end of his/her term by a unanimous vote of the voting Board members.

Stat. Auth.: ORS Ch. 144

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

Chairperson: Powers and Duties

255-10-015 The chairperson shall have the powers and duties established by law and rules necessary for the performance of the office and administration of the Board, and shall:

(1) Assign voting Board members to panels and designate the presiding members.

(2) Apportion matters to the panels and full Board for decision.

(3) Reassign matters to different panels when required by rule, law, or procedure.

(4) Schedule business meetings and establish the agenda.

(5) Inform the sentencing judge, district attorney, sheriff, or arresting agency of the scheduled release of each prisoner.

(6) Review administrative appeals.

(7) Designate members to conduct hearings and reviews.

(8) Appoint persons to assist prisoners in parole proceedings, when appropriate.

Stat. Auth.: ORS Ch. 144

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

Jointly Adopted Rules: Adoption, Designation, and Changes of Rules With Other Agencies

255-10-020 (1) The Board shall adopt rules jointly with other administrative agencies as required by statute.

(2) The Board may adopt rules jointly with another administrative agency when necessary to implement its own rules.

(3) Rules adopted jointly shall be specifically identified as joint rules with the appropriate agency designated.

(4) Jointly adopted rules shall not be changed without prior notice, consultation, and agreement with the jointly adopting agency.

Stat. Auth.: ORS Ch. 144

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

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DIVISION 20

BUSINESS MEETINGS

Scheduling

255-20-005 Business meetings shall be held as scheduled by the chairperson or upon the request of at least two members.

Stat. Auth.: ORS Ch. 144

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

Quorum

255-20-010 A business meeting requires the presence of at least three voting members of the Board.

Stat. Auth.: ORS Ch. 144

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

Matters for Consideration; Majority Vote

255-20-015 The business meeting shall consider matters relating to Board policy and administration raised by the agenda presented by the chairperson or by Board members. Three affirmative votes are required to make a Board decision at a business meeting.

Stat. Auth.: ORS Ch. 144

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

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CHAPTER 255, DIVISION 30 — BOARD OF PAROLE

DIVISION 30

PRISON TERM HEARING PROCEDURE

Definitions

255-30-005 (1) "Prison term hearing": The hearing given a prisoner within six months of admission to a correctional institution at which the Board establishes a prison term to be served according to the guideline ranges.

(2) "Prison term": The actual amount of time the Board determines a prisoner will serve when it sets a parole release date or chooses not to set a parole release date, i.e., denies parole.

Stat. Auth.: ORS Ch. 144

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

Scheduling, Notice, and Deferral of Prison Term Hearings

255-30-010 (1) Every prisoner initially incarcerated at any institution of the Corrections Division shall be given a hearing for the purpose of establishing a prison term as follows:

(a) A prisoner incarcerated at any institution of the Corrections Division with a sentence of up to one year shall be scheduled for a hearing within two months of admission or as soon thereafter as possible.

(b) A prisoner with a sentence of one to three years shall be scheduled for a hearing within three months of admission or as soon thereafter as possible.

(c) A prisoner with a sentence of over three years shall be scheduled for a hearing within four months of admission or as soon thereafter as possible.

(d) In no case shall a prisoner be scheduled for a hearing more than six months after admission.

(2) The prisoner shall be notified in writing of the hearing and its purpose within a reasonable time of the hearing date.

(3) Prior to making a decision, the Board may continue the hearing for a reasonable period of time, if necessary, to obtain additional information. The continuance may not extend past six months from admission plus 30 days.

Stat. Auth.: ORS Ch. 144

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

Panels: When a Two-Member Panel Conducts a Prison Term Hearing; When Full Board is Required; Procedures for Full Board Decision

255-30-015 (1) Except as provided in this rule, all prison term hearings shall be heard by a panel of two voting members of the Board.

(2) The following cases shall be decided by the full Board (i.e., all five voting members) according to the procedures in rule 255-30-020:

(a) Any cases involving a prisoner sentenced to life imprisonment, 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, sentenced under ORS 161.725 and 161.735 as a dangerous offender;

(b) Whenever a panel recommends a decision to exceed the allowable variation from the matrix permitted to the panel or deny parole;

(c) Whenever a minimum sentence imposed by a judge pursuant to ORS 144.110 exceeds the applicable matrix guideline range in Exhibit C plus the maximum variation from the range shown in Exhibit D;

(d) Whenever a panel or member recommends a decision below a judicially set minimum sentence;

(e) Whenever an extension of a prison term due to institutional misconduct for more than one year is recommended.

Stat. Auth.: ORS Ch. 144

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

Procedures for Full Board Decisions

255-30-020 The following procedures shall apply to cases decided by the full Board:

(1) A hearing shall be conducted by the Board with at least a quorum present when:

(a) Setting a prison term for prisoners falling under subsection 255-30-015(2)(a);

(b) The Board considers exceeding the normal variations permitted to the full Board in rule 255-35-035;

(c) The Board considers denying parole, except when denial is because the guideline range exceeds the good time date on a sentence;

(d) Extending a prison term, in any case, for longer than one year.

(2) Prisoners in custody in another jurisdiction may be heard by a conference call or returned to Oregon for the hearing.

(3) If a Board member is not present at a hearing, he/she shall vote after reviewing the record of the hearing.

(4) In all other cases, the Board may:

(a) Circulate the record to be considered with a copy of the proposed action for comment and voting by the individual Board members; or

(b) Decide the matter at a business meeting at which a quorum is present.

(5) A simple majority vote of the Board shall be required to reach a decision except when a vote of four members is required by statute or rule.

Stat. Auth.: ORS Ch. 144

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

Who May Appear at a Prison Term Hearing

255-30-025 (1) The prisoner shall appear at the prison term hearing unless he/she waives appearance in writing.

(2) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to language barriers, mental or emotional incapacity, or educational deficiency. Assistance shall be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the chairperson of the Board.

Stat. Auth.: ORS Ch. 144

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

Panel Decisions: Use of Guidelines; Unanimity Requirement

255-30-030 (1) The panel shall consider the case in accordance with the guidelines in division 35.

(2) The decision of a panel of two or three members must be unanimous. In the absence of a unanimous decision, each panel member shall forward his/her recommendation to the chairperson for reassignment. No matter so reassigned shall be decided by fewer than three affirmative votes. This may be done by another two-member panel reaching a unanimous decision in agreement with a member of the prior panel. The decision becomes the decision of the Board. The provisions of section 255-30-015(2) and rule 255-30-020 shall govern full Board cases.

Stat. Auth.: ORS Ch. 144

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

Information the Board Must Consider at a Prison Term Hearing: Parole Analysis Report; Other Material

255-30-035 (1) The Corrections Division will provide a Parole Analysis Report to the Board prior to the prisoner's

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CHAPTER 255, DIVISION 35 — BOARD OF PAROLE

DIVISION 35

APPLICATION OF THE GUIDELINES
TO ESTABLISH A PRISON TERM

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

(2) Special Situations:

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

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

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

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

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

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

Criminal History/Risk Assessment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Resetting Pre-Guideline Parole Hearing Dates for Category 1 Offenders

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

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 38 — BOARD OF PAROLE

DIVISION 38

DANGEROUS OFFENDERS

**Permissible Action: When a Parole Release Date May Not be Set;
Procedures When a Parole Release Date is Not Set**

255-38-005 (1) Notwithstanding the provisions of division 30, the Board shall not set a parole release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender if the record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance (e.g., severe personality disorder).

(2) The Board shall set a date for a parole consideration hearing within the matrix guidelines in Exhibit C and provisions for variations under rule 255-35-035.

(3) At any hearing or review, the Board shall consider the report of the executive officer of the facility in which the prisoner is confined regarding the prisoner's conduct, attitude, and work record as defined in ORS 144.228(2) and a psychiatric

or psychological report made within two months of the hearing:

(a) The Board shall not set a parole release date unless the psychiatric or psychological report reveals that the severe emotional disturbance which has made the prisoner dangerous is no longer present.

(b) If the disturbance is present, the Board may defer release to a specified future time or deny parole under rule 255-35-030.

(4) Periodic reviews shall be given dangerous offenders pursuant to rule 255-40-005. If, at the review, the psychiatric or psychological reports and the executive officer's report reveals that the severe emotional disturbance which has made the prisoner dangerous is not longer present, the Board shall review the matter and set a parole release date according to divisions 30 and 35.

Stat. Auth.: ORS Ch. 144

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 40 — BOARD OF PAROLE

DIVISION 40

REVIEWS, REOPENING CASES, AND
REDUCTIONS IN PRISON TERMS

Scheduling of Periodic Reviews

255-40-005 (1) Periodic reviews shall be conducted after the prisoner has served five years of his prison term and every three years thereafter, starting with the date the prisoner's sentence begins to run.

(a) Dangerous offenders sentenced under ORS 161.725 and 161.735 shall be seen every two years as required by statute.

(b) Prisoners convicted of murder shall be seen as required by statute.

(2) Reviews that have been scheduled prior to January 26, 1977 shall be conducted as scheduled. Reviews scheduled subsequent to January 26, 1977 shall be rescheduled to comply with this rule.

Stat. Auth.: ORS Ch. 144

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

Procedure for Periodic Reviews

255-40-010 An interview shall be conducted by one or more voting members of the Board. In the event an interviewer determines that modification of the prison term is appropriate, the matter shall be referred with recommendations to the full Board for review. No other action shall be taken by the interviewer.

Stat. Auth.: ORS Ch. 144

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

Purpose

255-40-015 Periodic reviews shall be conducted to determine if anything exceptional has occurred that would warrant a reduction in the prison term.

Stat. Auth.: ORS Ch. 144

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

Reopening Cases: When; What Showing is Necessary

255-40-020 The Board may reopen any case for reconsideration upon formal written request of a prisoner to the chairperson or motion of a Board member (including the Administrator) if:

(1) Substantial new information which was unknown at the time of the prison term hearing or could not be contemplated at that time has been received;

(2) Substantial information that a prisoner, or any other person, willfully concealed or misrepresented information material to a prior Board action has been received;

(3) Statutory changes have reclassified the criminal conduct involved (e.g., reduction of certain categories of murder to manslaughter, creation of degrees of manslaughter).

(4) Rule changes have resulted in a shorter range.

(5) The Board shall state the specific reasons for denial of a request to reopen a hearing.

Stat. Auth.: ORS Ch. 144

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

Reductions in Prison Terms: Effect of Minimum Term Criteria; Limitations

255-40-025 (1) An established prison term as defined in section 255-30-005(2) may be reset to an earlier time upon application for review to the chairperson of the Board and after concurrence of a voting majority of the Board, unless the prisoner has a statutory minimum term for murder. Parol release date resets falling below a judicially imposed minimum sentence shall require concurring votes of four members:

(a) Reductions in prison terms will ordinarily be granted only in cases where a prisoner can show an extended course of conduct indicating outstanding reformation. Cases will be determined on individual merits; however, the usual criteria will include:

(A) A five-year period of good conduct, and

(B) Demonstrable achievement in dealing with problems present at incarceration and associated with criminal conduct (e.g., psychological disorder, drug or alcohol dependency, lack of educational or vocational skills).

(b) A prisoner's exercise of recognized constitutional rights or legitimate use of legal process shall not be construed as lack of good conduct.

(c) Cooperation with authorities is not sufficient in itself to justify a reduction.

(d) Reductions in prison terms may be considered when the prisoner is suffering from a terminal illness or a unique opportunity is available and the reduction of the prison term is not excessive.

(2) Overall, reductions shall be limited to a maximum of 20% of the prison term under review unless a majority of the Board approves a further reduction:

(a) Reductions shall customarily be considered at periodic reviews under rule 255-40-005.

(b) Special interviews to consider a reduction will only be granted in cases approved by at least three Board members following a file pass.

(3) A recommendation shall be requested from the institution superintendent on each application considered by the Board.

(4) The prisoner shall have the burden of establishing that his/her conduct meets the criteria for a date reduction.

Stat. Auth.: ORS Ch. 144

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

Who May Appear

255-40-030 (1) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to illiteracy, language barriers, or lack of mental capacity. Assistance will be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the chairperson of the Board.

(2) The prisoner may waive the personal appearance by writing or by voluntary absence from the institution.

Stat. Auth.: ORS Ch. 144

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

Notice; Disclosure; Record

255-40-035 The notice, disclosure, and record making provisions of division 30 shall apply to all hearings and interviews in this division.

Stat. Auth.: ORS Ch. 144

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 50 — BOARD OF PAROLE

DIVISION 50

**EXTENDING A PAROLE RELEASE
DATE FOR SERIOUS MISCONDUCT**

Procedure for Extension of Parole Release Dates: Required Recommendations and Guidelines; Classification of Conduct; Amount of Time; When Parole Release Date is Set; If After Parole Ordered

255-50-005 A parole release date may be reset to a later date for serious misconduct according to the following procedure:

(1) The institution disciplinary committee or the Corrections Division Hearings Officer may recommend an extension of a prisoner's parole release date as a disciplinary sanction.

(2) Recommendation to extend a parole release date shall be made according to the following guidelines:

(a) The prisoner must be given an opportunity for a disciplinary hearing and have been found to have violated an adopted rule governing conduct. The recommendation must be approved by the institutional superintendent or Regional Manager and the Administrator of the Corrections Division before the Board can consider an extension.

(b) In no instance shall an extension of a parole release date be recommended unless all other disciplinary options have been specifically considered and deemed to be, individually and in combination, inadequate to the seriousness of the misconduct in terms of the following factors:

(A) Effectiveness of the sanction as a disciplinary measure, both to the prisoner and to the general prisoner population;

(B) Degree of hazard posed by the misconduct to human health and/or life, facility security, or to property;

(C) Seriousness of the misconduct had it been committed in the wider community;

(D) Circumstances of the misconduct; and

(E) The prisoner's prior record of conduct.

(3) A parole release date shall not be extended unless the misconduct can be classified within one of the four following categories. The extension must be set within the range for the category of misconduct unless the Board finds aggravation or mitigation based on those factors listed in rule 255-35-035, Exhibit E.

If a basis for aggravation or mitigation is found by the Board, the maximum variation allowed to a majority of the Board would be 25 percent of the sanction recommended. Any greater variation than 25 percent or resets in excess of two years will require concurrence by at least four voting members of the Board. (See Table 1 at the end of this division.)

(4) When the amount of time recommended for the parole release date extension exceeds the prisoner's sentence or statutory good time date, the effect is to deny parole. An extension in the parole release date may not be beyond the prisoner's maximum statutory release date.

(5) If serious misconduct occurs before a prisoner's parole release date has been set and an extension of the parole release date would be justified, the term for misconduct will be added to the release date at the time of the misconduct.

(6) If serious misconduct occurs after a parole has been ordered and an extension of the parole release date would be otherwise justified, the chairperson of the Board may take immediate steps to suspend release and order a rescission hearing to consider resetting the release date upon receiving notice from an institution superintendent, Regional Manager, or a Board member.

(7) Upon recommendation of the disciplinary committee or hearings officer, the Board may suspend imposition of the reset subject to a period of acceptable conduct.

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

Reset Procedures: Hearing by Board; Board Action

255-50-010 (1) When the Board is notified by the Administrator of the Corrections Division that an extension of a prisoner's parole release date has been recommended, a duly constituted panel of the Board shall conduct a hearing to determine whether the misconduct was serious.

(a) The prisoner shall be given notice of the hearing and its purpose; the provisions of division 30 as to appearance, disclosure, and record shall apply.

(b) A prisoner may waive his/her right to appear in writing or by voluntary absence from the institution.

(c) A prisoner may not relitigate facts which he/she has had a full opportunity to contest and have been decided against him/her in another forum.

(2) Serious misconduct is misconduct which the Board classified within one of the four categories listed in rule 255-50-005.

(3) The Board may request the prisoner be given another hearing before the disciplinary committee originating the recommendation for reset, or choose not to extend a parole release date if the Board does not find that all other disciplinary options are inadequate to the seriousness of the misconduct, considering the following factors:

(a) Effectiveness of the sanction as a disciplinary measure, both to the inmate and to the general institution population;

(b) Degree of hazard posed by the misconduct to human health and/or life, institution security, or to property;

(c) Seriousness of the misconduct had it been committed in the wider community;

(d) The prisoner's prior record of conduct.

(4) The Board may continue the reset hearing and order a psychiatric examination when it appears that a severe emotional disturbance is present. If there is a psychiatric or psychological diagnosis of present severe emotional disturbance, the Board may defer release to a specified future date. In choosing not to set a parole release date, rule 255-35-025 shall control.

(5) If the Board resets a parole release date, the prisoner shall be given:

(a) A written statement of the facts and specific reasons for the decision, including the individual votes of the Board members; and

(b) Notice of the right to administrative appeal under division 80.

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

Rescission of Parole: Hearing; Suspension of Release

255-50-015 (1) The chairperson may, on his/her own motion or upon notification by the Chief of Release Services, suspend the release date of a prisoner when there is reason to believe the person has engaged in serious misconduct. Suspension shall be for such time as is reasonably necessary to conduct the rescission hearing and make a decision.

(2) The Board may rescind a parole after it has been ordered but prior to release from custody by conducting a rehearing under the procedures of division 30, upon recommendation of an institution superintendent, Regional Manager, or a Board member, and with the concurrence of three voting members of the Board.

(3) The parole order of a prisoner who is voluntarily absent from a facility shall be voided by the chairperson. A rescission hearing shall be scheduled when the prisoner is available.

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 50 — BOARD OF PAROLE

TABLE 1
(255-50-005)

AMOUNT OF TIME

<u>CATEGORY</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
(a) Hazard to Human Life/ Health	50% of the prison term	100% of the prison term. In no instance may the extension exceed five years.
(b) Hazard to Security	25% of the prison term	50% of the prison term. In no instance may the extension exceed two years.
(c) Hazard to Property	10% of the prison term	20% of the prison term. In no instance may the extension exceed one year.
(d) Third in a series of rule violations within a three-month period, while assigned to any Corrections Division program	5% of the prison term	10% of the prison term. In no instance may the extension exceed six months.

**OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 60 — BOARD OF PAROLE**

DIVISION 60

PAROLE RELEASE

Parole Release Interviews: Purpose; Review of Parole Plan; Procedure if Plan is Inadequate; Maximum Deferred

255-60-005 (1) A prisoner who has been given a parole release date shall be interviewed prior to his/her parole release.

(2) Interviews shall be conducted by one or more voting members of the Board.

(3) The purpose of the interview shall be to examine the prisoner's parole plan, his/her psychological report, if any, and the record of his/her conduct during confinement.

(4) The interviewer shall examine the prisoner's plans for residence, employment, or other situation in the community to determine whether the parole plan is adequate:

(a) An acceptable plan includes employment, school, or other situation (e.g., retirement income), and suitable residence; it may require treatment programs and prescribed medication.

(b) If any portion of the plan is deficient or unverified, the Board may order deferred release to a verified plan approved by a panel, or to a plan approved by the Administrator of the Corrections Division.

(c) Parole release may be deferred up to 90 days from the parole release date when a plan is deficient or unverified in order to obtain verification of a satisfactory plan from the Corrections Division. A report shall be presented to the Board after 60 days by the Corrections Division, according to its letter of agreement with the Board.

(5) A prisoner requesting an out-of-state parole waives the 90-day limitation on postponements for developing an adequate parole plan.

(6) The Board shall clearly state the facts and specific reasons for its decision if parole release is deferred. The individual votes of the Board members shall be listed.

Stat. Auth.: ORS Ch. 144

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

Deferring Parole Release Following an Interview: Basis; Procedure

255-60-010 (1) Should the interview indicate that:

(a) A psychiatric or psychological diagnosis of the prisoner reveals a present severe emotional disturbance; or

(b) The prisoner has engaged in serious institutional misconduct, a hearing shall be conducted by the Board to consider deferring the parole release date. The procedure for hearings in division 30 shall apply.

(2) Following the hearing, a panel may order postponement of the scheduled release of a prisoner found to have a present emotional disturbance until a specified future date or until the prisoner or institution presents evidence that the emotional disturbance is over or in remission.

(3) If the prisoner has engaged in serious institutional misconduct, the provisions of division 50 shall apply.

(4) The Board shall clearly state the facts and specific reasons for its decision. The individual votes of the Board members shall be indicated.

Stat. Auth.: ORS Ch. 144

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

Instate Parole Release Interview Procedures

255-60-015 (1) Notice: At a reasonable time prior to a parole release interview, the prisoner shall be notified at his/her place of confinement of the scheduled parole release interview and shall be advised that information may be provided to the Board in writing or by persons sending written information to the Board.

(2) Disclosure of information considered by the Board shall be governed by division 30.

(3) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to language barriers or lack of mental capacity. Assistance will be provided to prisoners meeting these criteria by persons recommended by the superintendent and appointed by the chairperson of the Board.

(4) The prisoner shall receive notice of the interview results, including the facts and specific reasons for the decision and the individual votes of the Board members.

Stat. Auth.: ORS Ch. 144

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

Out-Of-State Parole Release Interview Procedures

255-60-020 A prisoner who is in the custody of the Corrections Division who is housed in an out-of-state facility shall receive a parole release interview in conformance with rule 255-60-015. However, all proceedings may be conducted by conference telephone call.

Stat. Auth.: ORS Ch. 144

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

Parole Consideration for Prisoners in a Local Jail

255-60-025 (1) A prisoner confined in a jail facility as defined in ORS 144.050 with a sentence of at least six months shall be given a hearing to determine whether parole will be granted when:

(a) Written application is submitted to the Board; and

(b) The prisoner has served at least four months of the sentence.

(2) Hearings shall be conducted by one voting member of the Board.

(3) The Board member may order parole, establish a parole release date, continue the hearing for a reasonable period of time, or deny parole.

(4) The procedures in rule 255-60-015 shall be followed.

Stat. Auth.: ORS Ch. 144

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

**OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 65 — BOARD OF PAROLE**

DIVISION 65

RESTITUTION

When Restitution is Ordered After Parole Release: Establishing a Payment Schedule; Limitations

255-65-005 When a person has been sentenced pursuant to ORS 137.106 to pay restitution for a crime committed after October 4, 1977, and any portion of that payment is deferred until after release from imprisonment, the Board shall establish a schedule of payments.

(1) In establishing and supervising a schedule of payments, the Board shall consider:

(a) The prisoner's financial resources, including salary, savings, and liquid assets;

(b) The burden that it will impose in light of the person's overall obligations (e.g., family and necessary living expenses);

(c) Ability to pay on an installment or other conditional basis;

(d) The rehabilitative effect of the payment and the method of payment.

(2) Normal payments shall range from 10 to 20 percent of a person's take-home salary without voluntary payroll deductions, unless significant savings or liquid assets permit larger amounts.

Stat. Auth.: ORS Ch. 144

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

Sentence Including Restitution as Mitigation

255-65-010 Restitution is a form of punishment which requires an offender to assume responsibility for his/her

criminal conduct by assuming the costs of compensating the actual victim of the crime, or the state when it has provided compensation to the victim, under ORS 147.005 to 147.365. The Board shall consider a sentence to pay restitution after a term of imprisonment as mitigation in setting a parole release date.

Stat. Auth.: ORS Ch. 144

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

Supervision of Payments: Conditions of Parole; Default by Parolee; Effect on Discharge

255-65-015 (1) Payment of restitution shall be included as a special condition of parole:

(a) Any applicable schedule shall be clearly stated on the Order of Parole.

(b) Payments shall be made to the clerk of the court of the county of sentencing, or as directed by the Board.

(c) The method and manner of payment shall be supervised by the individual's parole officer.

(2) When a parolee defaults on any scheduled payment, the supervising parole officer shall notify the Board. The default shall be grounds for revocation of parole unless the parolee shows:

(a) The default was not due to an intentional refusal to make the payment.

(b) The default occurred despite a good faith effort to make the payment.

(3) If payment of restitution has not been completed by the parolee's tentative discharge date, the parolee shall be continued on parole until completion of payment or the expiration of his/her sentence, whichever is first.

Stat. Auth.: ORS Ch. 144

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 70 — BOARD OF PAROLE

DIVISION 70

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

CONDITIONS OF PAROLE

Parolee Placement in Community Corrections Centers: Standards; Limitations

255-70-005 (1) A parolee who is in danger of having his/her parole revoked because of difficulty in meeting the conditions of parole or a breakdown in his/her parole program may be placed in a community corrections center upon his/her written consent pursuant to Corrections Division rule on placement and ORS 144.420(3).

(2) A quorum of the Board must approve the placement when the parolee is to remain in a community corrections center more than 30 days or before a second placement in a community corrections center during a 12-month period. A quorum of the Board may overrule any placement and order the parolee's release.

(3) Voluntary termination of a parolee's placement in a community corrections center shall not be grounds for revocation of parole.

(Subject to letter of agreement with Corrections Division)

Guidelines on Standard Condition Relating to "Best Interest" Return

255-70-010 As used in the standard conditions of the Order of Parole, revocation of parole when it is "in my best interest or in the best interest of society" shall refer to the following situations:

(1) The parolee is suffering from an emotional or psychological disturbance which makes him/her substantially dangerous to self or others if left in the community and which may be indicated by threatening behavior in the form of:

(a) Some overt act showing a present capacity to carry out any statements or threats of violence; or

(b) The substantial duplication of circumstances and conduct surrounding previous acting out of dangerous behavior; and

(2) The parolee's behavior cannot be adequately controlled if left in the community (e.g., demonstrated failure to follow through on a previously accepted mental health treatment program).

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

**OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 75 — BOARD OF PAROLE**

DIVISION 75

PROCEDURES FOR REVOCATION OF PAROLE

Hearing Requirement: Time; Place; Presiding Officer

255-75-005 Before the Board can revoke parole, it shall conduct a hearing according to the procedures in this division.

(1) The hearing shall be held within a reasonable time after the Board is notified of the alleged violations and reasonably near the place of the alleged violations or the place of confinement.

(2) The hearing may be conducted by a Parole Board Hearings Officer.

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

Board Action Upon Notification of Alleged Parole Violation: Criteria for; Release of Parolee Pending Hearing

255-75-010 (1) When the Board is informed of reasonable grounds to believe a person has violated the conditions of his/her parole and that revocation of parole may be justified, the Board may:

(a) Suspend parole and order the parolee arrested and detained pending a parole revocation hearing.

(b) Suspend parole pending a parole revocation hearing without detaining the parolee.

(c) Continue parole and order a parole revocation hearing.

(2) In determining whether to allow a parolee to remain in the community pending the parole revocation hearing, the Board shall consider:

(a) The risk presented by the parolee in light of the nature and seriousness of the allegations;

(b) The risk of the parolee absconding or failing to appear for the hearing;

(c) The availability of bail when applicable;

(d) The availability of resources or special situations in the community, including employment or school, evaluation or placement in a treatment program, medical emergencies or work release;

(e) Any recommendation by the parole officer.

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

Procedures When Parolee is in Another Jurisdiction: Return of Parolee; Hearing Requirement

255-75-015 (1) The Board may suspend a parole and order the parolee's return to prison in Oregon without first conducting a hearing when:

(a) The parolee has left the state to which he/she was paroled without permission and is in custody in another jurisdiction.

(b) The parolee is in federal custody.

(c) The parolee has absconded from supervision and his/her whereabouts are unknown.

(d) The parolee has been convicted of a new crime in another jurisdiction.

(2) After the parolee is returned to prison in Oregon, he/she shall be given a parole revocation hearing according to the provisions of this division.

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

Rights of a Parolee at a Formal Hearing

255-75-020 The parolee shall have the rights listed in ORS 144.343(4) at a parole revocation hearing.

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

Notice of Alleged Parole Violation and Hearing

255-75-025 (1) The parolee shall be given written notice, as required by ORS 144.343(3), within a reasonable time before a hearing which may result in revocation of parole.

(2) Notice shall be given at a personal interview with the parolee or by other means which will assure that the parolee has received and understood the required notice.

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

Waiver of Parole Revocation Hearing: When; Rejection of Waiver; Record Submitted to Board When Hearing Waived

255-75-030 (1) After receiving notice and a full explanation of his/her rights, a parolee may waive the parole revocation hearing and the rights provided in rule 255-75-025. The parolee may submit a statement to the Board to accompany his/her waiver.

(2) If the Board is not satisfied that the waiver was made knowingly and intelligently or if it believes more information is necessary before making its decision, it may order a hearing.

(3) The record submitted to the Board shall consist of:

(a) Notice forms properly executed;

(b) A statement by the parolee that he/she has waived a parole revocation hearing and understands the significance of that waiver;

(c) Evidence supporting the alleged violations; and

(d) Any statements made by the parolee.

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

Appointment of Counsel: Criteria; Case by Case; Affidavit of Indigency

255-75-035 (1) If requested, the Board shall appoint counsel to represent indigent parolees at parole revocation hearings if the parolee makes a timely and colorable claim that:

(a) He/she has not committed the alleged violation; or

(b) There are substantial complex mitigating circumstances which make revocation inappropriate even if violation is admitted or a matter of record; or

(c) The parolee appears incapable of speaking effectively in his/her behalf.

(2) Cases shall be reviewed individually to determine whether the criteria have been met.

(3) Parolees shall be required to submit an affidavit of indigency at the hearing.

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

Compelling Appearance of Witnesses: If Subpoena Requested; Board Motion; Failure to Obey

255-75-040 (1) As provided in ORS 144.347, the Board has the power to subpoena witnesses and documents to a parole revocation hearing.

(2) The Board shall issue a subpoena for any witness whose appearance at a hearing is requested.

(3) At any time before a hearing has begun, the Board, on its own motion, may subpoena any witness or documents it feels are necessary to the full examination of the issues raised at the hearing. A hearing may be postponed to obtain the presence of a material witness or document.

(4) The Board or party requesting a subpoena may seek contempt proceedings in the circuit court of any county against any person refusing to honor the subpoena.

**OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 75 — BOARD OF PAROLE**

revocation hearing is an adequate punishment for the violation, the Board may reinstate parole.

(2) Reinstatement of parole under this rule shall be counted as a parole failure in computing a criminal history/risk assessment score under rule 255-35-015.

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

Future Disposition Hearing; Procedures; Scheduling; Board Action

255-75-085 (1) After parole is revoked, the Board shall conduct a hearing to establish future disposition of the prisoner within 90 days after his/her return. This hearing shall follow the procedures of a prison term hearing as provided in division 30.

(2) At the future disposition hearing, the Board may:

(a) Set a new parole release date according to the guidelines in rule 255-75-085 and choose not to give credit for statutory good time earned until suspension of parole; or

(b) Deny further parole consideration, according to the guidelines in rule 255-75-090, and return all or part of the statutory good time to which the prisoner is entitled.

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

Guidelines for Re-Release of Parole Violators; Technical Violators; New Convictions; Denial of Further Parole

255-75-090 (1) Parole violators returned with a technical violation and no prison commitment for a new conviction shall be given an additional prison term based on the following guidelines:

(a) If the violations did not involve a finding at the parole revocation hearing of new criminal activity, the prisoner shall serve from four to eight months unless the Board decides that the aggravation or mitigation found at the parole revocation

hearing is sufficient to justify variation from this range. Variation shall not exceed two months without concurrence of at least four voting members of the Board.

(b) If the violation involved a finding at the parole revocation hearing that new criminal activity has occurred, the prisoner shall serve from eight to 12 months unless the Board decides that the aggravation or mitigation found at the parole revocation hearing is sufficient to justify variation from this range. Variation shall not exceed four months without concurrence of at least four voting members of the Board.

(c) Usual, but not exclusive, factors in aggravation and mitigation are shown in Exhibit G. When applicable, the factors shown in Exhibit E may be consulted.

(d) In setting a re-release date, the Board may consider the seriousness of the parole violator's original offense and history/risk score.

(2) Parole violators returned with a new prison commitment shall be given a prison term according to the guidelines in division 35:

(a) A history/risk score reflecting the new conviction shall be calculated. When applicable, the original conviction and incarceration and the parole failure shall result in lost points.

(b) If the sentence on the new conviction is imposed consecutive to the original commitment offense, the provisions of subsection 255-35-020(2)(e) shall govern the credit given for time served.

(3) The Board may deny reparole consideration and require the parole violator to serve to the end of his/her sentence upon affirmative vote of at least four voting members. In cases where setting a parole violator within the guidelines of this rule would require the parole violator to serve to the end of his/her sentence, four votes are not required.

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 80 — BOARD OF PAROLE

DIVISION 80

Stat. Auth.: ORS Ch. 144
Hist: 2PB 1-979, f. & ef. 2-1-79

ADMINISTRATIVE APPEAL

Method of Appeal

255-80-005 (1) Administrative appeal may be requested by a prisoner or a Board member. If the chairperson of the Board determines the request is consistent with the Board's criteria as defined in rule 255-80-010, the chairperson shall remand the case for rehearing, where practicable, to the original panel.

(2) When the chairperson was a member of a panel from which an appeal is generated and finds the request does not meet the Board's criteria, he/she shall refer the matter to a member who was not on the panel for review. In such case, that member may concur or call for a rehearing.

(3) The chairperson shall inform the prisoner in writing of the specific reasons for denial of the appeal and leaving the prior decision in effect.

Criteria for Appeal

255-80-010 The criteria for meritorious appeal are:

(1) The Board action is not supported by the written findings, or the written findings are inaccurate; or

(2) Pertinent information was available at the time of the original hearing which, through no fault of the prisoner, was not considered; or

(3) The action of the Board is inconsistent with its rules or policies or is contrary to law; *and*

(4) The matters raised on appeal may have an effect on the original decision.

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

**OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 90 — BOARD OF PAROLE**

DIVISION 90

DISCHARGE

Discharge Generally

255-90-005 The guidelines set forth in Exhibit H shall govern the establishment of tentative discharge dates. The date shall be set at the parole release interview and shall be written on the Order of Parole. For the discharge date to become effective, the parolee must display acceptable parole performance during the term of active parole.

Stat. Auth.: ORS Ch. 144

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

Procedure: Approving and Denying Discharge; Further Proceedings

255-90-010 (1) A minimum of 30 days prior to the tentative discharge date on the Order of Parole, the supervising parole officer shall send to the Board a supervisory report. This report shall recommend one of two courses:

(a) That the parolee be discharged on the tentative date:

(A) Upon approval by the Board, the supervising officer shall be forwarded the discharge certificate for presentation to the parolee on the tentative discharge date or the first prior business day.

(B) Provided that no facts are discovered between the submission of the supervising officer's report and the discharge date which indicate discharge should occur, the supervising officer shall present the certificate in person or by certified mail at a confirmed address and shall return proof of presentation directly to the Board.

(b) That the discharge not be granted on the tentative date.

(A) In this case, the supervisory report shall contain information showing why discharge is not warranted and recommend a new discharge date.

(B) The case shall receive a Board review under the procedures of section 255-30-015(3).

(C) After consideration of the parole officer's recommendation, the Board shall either forward a discharge certificate or a written explanation for denial of the request.

(D) The supervising officer shall either present the discharge certificate as in (a) above or shall notify the parolee of the new discharge date and reasons, whichever is applicable.

(2) If the Board desires further information on which to base its decision, it may conduct a hearing according to the procedures in division 75.

(3) Notwithstanding section (1) above, the supervising officer may submit a recommendation with written reasons for early discharge at any time after one year active parole.

Stat. Auth.: ORS Ch. 144

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

Extension of Tentative Parole Discharge Dates: When Good Time Under Forfeiture

255-90-015 Tentative discharge dates may be extended according to the following procedures:

(1) An extension of a tentative discharge date shall be made by the Board when notified that an inmate has good time under forfeiture at the time of parole release.

(2) A prisoner with good time under forfeiture shall have his/her tentative discharge date extended by the amount of good time under forfeiture.

(3) The Order of Parole will specify the amount of good time under forfeiture.

(4) The Board may rescind the extension upon recommendation of the supervising parole officer after six months of satisfactory parole adjustment.

Stat. Auth.: ORS Ch. 144

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

**OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 95 — BOARD OF PAROLE**

DIVISION 95

MISCELLANEOUS

Uniform Presentence Report

255-95-005 (1) Presentence Reports furnished pursuant to ORS 144.785 shall be prepared according to the format outlined in Exhibit I.

(2) The Board of Parole and the Corrections Division shall issue policy statements, as necessary, to supplement this rule.

(3) Each presentence report shall include the Basic Data

(present crime synopsis; evaluation; recommendation; and Attachments I, II, and III) listed in Exhibit I. The presentence report may include additional exhibits listed in Exhibit I as ordered by the judge in an individual case.

(4) For offenders sentenced to imprisonment in state institutions, the presentence report and all of the exhibits will be completed and forwarded to the Board of Parole within 60 days of sentencing.

Stat. Auth.: ORS Ch. 144

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

**OREGON ADMINISTRATIVE RULES
CHAPTER 255 -- BOARD OF PAROLE**

EXHIBIT A

Part I

OFFENSE SEVERITY UNDER RULE 255-35-010

OFFENSE	RATING	FELONY CLASS
163.095 - Aggravated Murder	7	A
163.115 - Murder	7	A
166.005 - Treason	7	A
163.118 - Manslaughter I	6	A
163.235 - Kidnapping I	6	A
163.375 - Rape I (Subcategory 1)	6	A
163.405 - Sodomy I (Subcategory 1)	6	A
164.415 - Robbery I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 1)	6	A
164.325 - Arson I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 2)	5	A
164.325 - Arson I (Subcategory 2)	5	A
164.415 - Robbery I (Subcategory 2)	5	A
162.165 - Escape I	5	B
164.225 - Burglary I (Subcategory 1)	5	A
163.175 - Assault II	4	B
163.225 - Kidnapping II	4	B
163.365 - Rape II (Subcategory 1)	4	B
163.395 - Sodomy II	4	B
164.225 - Burglary I (Subcategory 2)	4	A
167.017 - Compelling Prostitution	4	B
164.405 - Robbery II	4	B
167.207(4) - Criminal Activity in Drugs (Subcategory 1)	4	A
163.275 - Coercion (Subcategory 1)	4	C
164.075 - Theft by Extortion (Subcategory 1)	4	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 1)	4	A
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 1)	4	A,B
163.125 - Manslaughter II	3	B
162.015 - Bribe Giving	3	B
162.025 - Bribe Receiving	3	B
167.207(1) - Criminal Activity in Drugs (Subcategory 1)	3	B
163.425 - Sexual Abuse I	3	C

**OREGON ADMINISTRATIVE RULES
CHAPTER 255 — BOARD OF PAROLE**

OFFENSE	RATING	FELONY CLASS
167.278 - Obtaining Drugs Unlawfully	2	B
496.992(3) - Poaching (Subcategory 1)	2	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 3)	2	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 2)	2	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 1)	2	B,C
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 3)	2	C
162.185 - Supplying Contraband	1	C
162.325 - Hindering Prosecution	1	C
163.515 - Bigamy	1	C
163.525 - Incest	1	C
163.555 - Criminal Nonsupport	1	C
164.065 - Theft: Lost, Mislaid	1	C
164.075 - Theft by Deception (Subcategory 3)	1	C
164.125 - Theft of Services (Subcategory 3)	1	A -\$200 (Misd.) C +\$200
164.365 - Criminal Mischief I	1	C
165.022 - Forged Instrument I	1	C
165.032 - Forgery Device	1	C
165.055 - Fraudulent Use of a Credit Card	1	A -\$200 (Misd.) C +\$200
165.070 - Fraudulent Communication Device	1	C
167.127 - Promoting Gambling	1	C
167.137 - Possession of Gambling Records I	1	C
167.212 - Tampering with Drug Records	1	C
- Welfare Fraud	1	C
- Felony Traffic	1	C
133.723 - Interception of Communication	1	C
496.992(3) - Poaching (Subcategory 2)	1	C
167.207(1) - Criminal Activity in Drugs (Subcategory 3)	1	A
164.215 - Burglary II (Subcategory 3)	1	C
164.135 - Unauthorized Use of a Motor Vehicle (Subcategory 2)	1	C
162.155 - Escape II (Subcategory 2)	1	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 4)	1	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 3)	1	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 2)	1	B,C
475.993 - Violation of Controlled Substance Act by Registrants	1	C

Conspiracy has the same offense severity as the crime conspired to.

OREGON ADMINISTRATIVE RULES
CHAPTER 255 — BOARD OF PAROLE

ROBBERY I -- ORS 164.415

Felony Class: A

Statutory Elements: Robbery involved either:
armed with a deadly weapon; or
uses or attempts to use dangerous weapon; or
causes or attempts to cause serious injury

Subcategory 1 - rating of 6

...All cases of Robbery I except those fitting Subcategory 2

Subcategory 2 - rating of 5

Cases of robbery where the crime does not involve

...Discharge of a firearm; or
...Use of any other dangerous weapon; or
...Explicit and immediate threats, by word or gesture (e.g., cocking hammer
of gun), of death or serious bodily harm; or
...Serious injury

ASSAULT I -- ORS 163.185

Felony Class: A

Statutory Elements: Intentional serious injury to another by means of
a deadly or dangerous weapon

Subcategory 1 - rating of 6

...All cases of Assault I except those fitting Subcategory 2

Subcategory 2 - rating of 5

...Cases of Assault I in which the victim or victims provoked the crime to
a substantial degree, or other evidence that misconduct by victim con-
tributed substantially to the criminal episode.

ARSON I -- ORS 164.325

Felony Class: A

Statutory Elements: Arson involving either:
property of another which is customarily occupied by
people; or own property, if persons are endangered or
if other customarily occupied property is also endangered

OREGON ADMINISTRATIVE RULES
CHAPTER 255 — BOARD OF PAROLE

RAPE II (Continued)

Statutory Elements: Nonforcible intercourse involving:
incapacitated (e.g., mentally defective) female; or
female under 14 (i.e., 12 or 13)

Subcategory 1 - rating of 4

...All cases of Rape II except those fitting Subcategory 2

Subcategory 2 - rating of 3

...Not both under 16 and incapacitated; and
...No coercion or undue influence (e.g., father, step-father); and
...No position of trust (e.g., counselor, doctor)

BURGLARY II -- ORS 164.215

Felony Class: C

Statutory Elements: Any illegal entry, if not a Burglary I, with intent to
commit a crime therein

Subcategory 1 - rating of 3

...Theft or destruction of over \$5,000

Subcategory 2 - rating of 2

...Theft or destruction of between \$1,000 and \$5,000

Subcategory 3 - rating of 1

Theft or destruction of less than \$1,000

THEFT I -- ORS 164.055

Felony Class: C

Statutory Elements: Theft involving:
more than \$200; or
during a riot or catastrophe; or
theft by receiving; or
of a livestock animal; or
of a firearm or explosive

Subcategory 1 - rating of 3

...Theft or receiving of over \$5,000

OREGON ADMINISTRATIVE RULES
CHAPTER 255 -- BOARD OF PAROLE

COERCION (Continued)

Subcategory 2 - rating of 3

...All others

UNAUTHORIZED USE OF A MOTOR VEHICLE -- ORS 164.135

Felony Class: C

Statutory Elements: Joyriding, unauthorized exercise of control over
vehicle

Subcategory 1 - rating of 2

...Loss, destruction or severe damage to vehicle or to property; or
...Injury to others

Subcategory 2 - rating of 1

...Other

FORGERY I -- ORS 165.013

Felony Class: C

The breakdown should be based on the amounts involved in the same manner
as theft.

Note: For this crime and other theft crimes, the amounts involved would be
based on the amounts for which each defendant has been convicted or has
admitted.

POACHING -- ORS 496.992(3)

Felony Class: C

Statutory Elements: Second and each subsequent conviction within a
10-year period for taking of game fish or game mammals
with a value of \$200

Subcategory 1 - rating of 2

...Poaching of game valued over \$3,000; or
...Commercial operation

**OREGON ADMINISTRATIVE RULES
CHAPTER 255 -- BOARD OF PAROLE**

MANUFACTURE OR DELIVERY OF A CONTROLLED SUBSTANCE (Continued)

Subcategory 1 - rating of 4

...Manufacture or delivery of heroin or opiate derivatives for compensation of \$2,000 or more

Subcategory 2 - rating of 3

...Manufacture or delivery of heroin or opiate derivatives without compensation or for compensation of less than \$2,000;
...Manufacture or delivery of cocaine for compensation of \$2,000 or more and other drugs for compensation of \$1,000 or more

Subcategory 3 - rating of 2

...Manufacture or delivery of cocaine for compensation of less than \$2,000 and other drugs for compensation of less than \$1,000

Subcategory 4 - rating of 1

...Manufacture exclusively for own use;
...Delivery without compensation, except heroin or opiate derivatives

UNLAWFUL CREATION OR DELIVERY OF COUNTERFEIT SUBSTANCE -- ORS 475.992(3)

Statutory Elements: Unlawful creation or delivery of counterfeit substance

Felony Class: Schedule 1 drugs - Class A Felony
Schedule 2 drugs - Class B Felony
Schedule 3 drugs - Class C Felony

Subcategory 1 - rating of 3

...Schedule 1 drugs, except marijuana

Subcategory 2 - rating of 2

...Schedule 2 drugs, plus PCP

Subcategory 3 - rating of 1

...Schedule 3 drugs, plus marijuana

POSSESSION OF CONTROLLED SUBSTANCE -- ORS 475.992(4)

Statutory Elements: Knowing or intentional possession of controlled substance not obtained by prescription or valid doctor's order

OREGON ADMINISTRATIVE RULES
CHAPTER 255 — BOARD OF PAROLE

CRIMINAL ACTIVITY IN DRUGS (INVOLVING MINORS) (Continued)

Subcategory 2 - rating of 3

...Furnishing any other drug except those fitting in Subcategory 3

Subcategory 3 - rating of 2

...Furnishing less than 1 ounce of marijuana

NOTE: Applies to crimes committed before July 1, 1978.

CRIMINAL ACTIVITY IN DRUGS (OTHER) — ORS 167.207(1)

Felony Class: B

Statutory Elements: Manufacture, cultivation, sale or possession of any narcotic or dangerous drug (other than possession of less than one ounce of marijuana)

Subcategory 1 - rating of 3

...Manufacture, cultivation or sale for profit, or possession with intent to sell for profit of any heroin or opiate derivatives

Subcategory 2 - rating of 2

...Manufacture, cultivation, or sale for profit, or possession with intent to sell for profit, of any other drug

Subcategory 3 - rating of 1

...Manufacture for own use or possession for own use

NOTE: Applies to crimes committed before July 1, 1978.

**OREGON ADMINISTRATIVE RULES
CHAPTER 255 — BOARD OF PAROLE**

EXHIBIT C

TIME TO BE SERVED UNDER RULE 255-35-025

CRIMINAL HISTORY/RISK ASSESSMENT SCORE

11-9	8-6	5-3	2-0
Excellent	Good	Fair	Poor

OFFENSE SEVERITY RATING	(All ranges in Categories 1-6 shown in months)			
Category 1	<6	<6	6-12 (4-8)*	12-22 (8-18)
Category 2	<6	6-10 (4-8)	10-18 (8-14)	18-28 (14-24)
Category 3	6-10 (4-8)	10-16 (8-12)	16-24 (12-20)	24-36 (20-32)
Category 4	10-16 (8-12)	16-22 (12-18)	22-30 (16-24)	30-48 (24-42)
Category 5	18-24 (12-20)	24-30 (20-26)	30-48 (26-40)	48-72 (40-62)
Category 6	36-48	48-60	60-86	86-144
Category 7**				
Subcategory 2	8-10 yrs	10-13 yrs	13-16 yrs	16-20 yrs
Subcategory 1	10-14 yrs	14-19 yrs	19-24 yrs	24-Life

*Months in parentheses represent range for youthful offenders (21 or younger at time of conviction).

**The range for murders committed after December 7, 1978 shall be 25 years as required by ORS 163.115.

OREGON ADMINISTRATIVE RULES
CHAPTER 255 -- BOARD OF PAROLE

EXHIBIT E

AGGRAVATION/MITIGATION UNDER RULE 255-35-035

AGGRAVATION

Production or use of any weapon during the criminal episode.

Threat or violence toward witness(es) or victim(s).

The prisoner knew or had reason to know the victims were particularly vulnerable (i.e., aged, handicapped or very young).

Ability to make restitution or reparation and failure to do so.

Violation of position of public trust or of recognized professional ethics.

The degree of property loss, personal injury or threatened personal injury was substantially greater than is characteristic for the crime.

There is a single conviction for a crime involving multiple victims.

More than one concurrently imposed conviction, not arising out of the same criminal episode.

Verified instances of repetitive assaultive conduct.

Judge's sentence and reasons under rule 254-135-030(1)(d) and plea bargained offenses under rule 254-135-030(1)(c) may be considered as either an aggravating or mitigating circumstance.

Any aggravating or mitigating circumstances which constitute a defining element of the crime or subcategory of the crime of which the prisoner was convicted, or resulted in a lower history/risk score, shall not justify variation from the guidelines.

MITIGATION

Victim(s) provoked the crime to a substantial degree, or other evidence that misconduct by victim contributed substantially to criminal episode.

Cooperation with criminal justice agencies in resolution of other criminal activity.

Effort to make restitution or reparation, particularly before required to do so by sentencing.

The degree of property loss, personal injury or threatened personal injury was substantially less than is characteristic for the crime.

Special efforts on the part of the perpetrator to minimize the harm and risk involved in the crime.

Peripheral involvement in the criminal episode (e.g., passive accessory).

Evidence of withdrawal, duress, necessity, lack of sustained criminal intent, or diminished mental capacity, e.g., mental retardation, which is insufficient to constitute a defense but is indicative of reduced culpability.

Sentence to pay restitution after a term of imprisonment.

EXHIBIT G

AGGRAVATION/MITIGATION IN PAROLE VIOLATION CASES UNDER RULE 255-75-090

AGGRAVATION

Prior parole revocation.

Prior Board reprimand, revocation hearing, or like difficulty on present parole.

Less than 3 months to first difficulty.

Repetition of type conduct associated with commitment offense or past conditions (return to drug or alcohol abuse, assaultiveness, involvement in same type criminal activity).

MITIGATION

No evidence of new criminal activity.

No prior parole difficulty.

More than 9 months to first difficulty.

Efforts to deal with problems associated with past criminal conduct.

Evidence of reduced responsibility or lack of mental capacity.

EXHIBIT I

OUTLINE FOR PRESENTENCE REPORT AND EXHIBITS UNDER RULE 255-95-005

I. Basic Data: (Minimum information required)

A. Present Crime Synopsis:

1. Summary of offense(s)
2. Official version
3. Defendant's version
4. Victim's damages
5. Co-defendant's status

B. Evaluation:

1. Assets
2. Liabilities
3. Summary

C. Recommendation

D. Attachment I -- Criminal History/Risk Assessment

E. Attachment II -- Aggravation and Mitigation

II. Exhibits: (To be attached as ordered)

A. EXHIBIT 1 -- FAMILY BACKGROUND

B. EXHIBIT 2 -- MARITAL HISTORY

C. EXHIBIT 3 -- SUBSTANCE ABUSE PROBLEMS

D. EXHIBIT 4 -- MENTAL HEALTH

E. EXHIBIT 5 -- EDUCATION

F. EXHIBIT 6 -- ECONOMIC STATUS

1. Employment
2. Transportation
3. Financial

off

5-1-80

2PB 1-1980(Temp)

F 4-7-80

E-5-1-80

CERTIFICATE AND ORDER
for

FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

FILED
APR 7 1980
NORMA PAULINE
SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Board of Parole _____ on _____ January 29, 1980 _____
to become effective _____ May 1, 1980 _____
(Agency) (Date)

The within matter having come before the _____ Board of Parole _____ after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules)

Temp. Per

Amended:
(Existing Rules)

Chapter 255, Exhibit B(Criminal History/Risk Assessment
under Rule 255-35-015) Exhibit C(Time to be Served under
Rule 255-35-025) and Exhibit D(Maximum Variations from the
Ranges under Rule 255-35-035).

Suspended:
(Temporary Only)

Repealed:
(Existing Rules)

as Administrative Rules of the _____ Board of Parole _____
(Agency)

DATED this _____ 1st _____ day of _____ April _____, 19 _____ 80

By: *Palmer Jones*
(Authorized Signer)
Title: Chairperson Board of Parole
Acting

Statutory Authority: ORS 144.120, 144.140, and 183.335(5)

Subject Matter: See attachment

Statement of Need Attached: Yes No

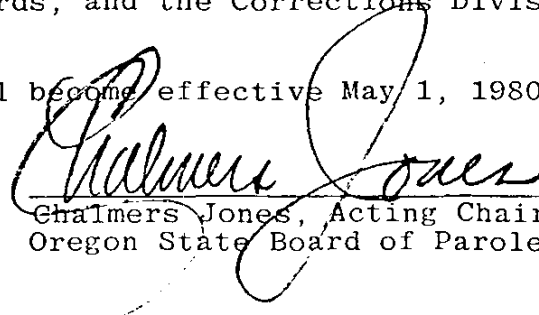
For Further Information Contact: Elizabeth Browne or Dwight L. Ferris Phone: 378-2334

STATE BOARD OF PAROLE

In the Matter of Board of)
Parole Rules and Amending)
Chapter 255 of the Oregon) Notice of Intent to Amend
Administrative Rules, Ex-) Rules on a Temporary Basis;
hibit B (Criminal History/) Statement of Findings, Authority
Risk Assessment under Rule) Need and Sources Relied Upon.
255-35-015); Exhibit C (Time)
to be Served under Rule 255-35-025))
Exhibit D (Maximum Variations)
from the Ranges under Rule)
255-35-035).)

- (1) Statement of Findings; It is found by the Board that failure to act promptly in the adoption of the above amendments will result in serious prejudice to the parties affected due to the impact on ranges set for prison terms which will necessitate rehearing.
- (2) Legal Authority: ORS 144.120, 144.140, 183.335(5). OAR 255-01-005, OAR 255-01-055, OAR 255-35-015, OAR 255-35-025, OAR 255-35-035.
- (3) Statement of Need: The amendment of Exhibits B, C, and D of Chapter 255 of the Oregon Administrative Rules which, respectively, pertain to the criminal history/risk assessment under Rule 255-35-015, time to be served under Rule 255-35-025, and maximum variations from the ranges under Rule 255-35-035, is needed to narrow the discretionary function of the Board in setting prison terms, provide a more equitable application of the aforementioned rules and bring them into compliance with practical realities for establishment of release dates.
- (4) Documents, reports and studies relied upon by the Board in preparing the rule: The Board has acted in response to suggestions and recommendations of the Advisory Commission on Prison Terms and Parole Standards, and the Corrections Division of the State of Oregon.
- (5) The above rule amendments shall become effective May 1, 1980.

April 1, 1980
DATE


Chalmers Jones, Acting Chairman
Oregon State Board of Parole

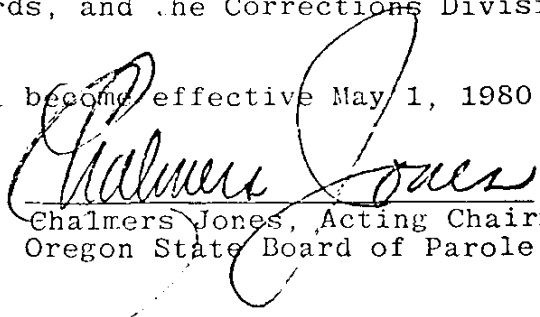
ITEM 7

STATE BOARD OF PAROLE

In the Matter of Board of)
Parole Rules and Amending)
Chapter 255 of the Oregon) Notice of Intent to Amend
Administrative Rules, Ex-) Rules on a Temporary Basis;
hibit B (Criminal History/) Statement of Findings, Author
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to be Served under Rule 255-35-025))
Exhibit D (Maximum Variations)
from the Ranges under Rule)
255-35-035).)

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- (2) Legal Authority: ORS 144.120, 144.140, 183.335(5) OAR 255-01-005, OAR 255-01-055, OAR 255-35-015, OAR 255-35-025, OAR 255-35-035.
- (3) Statement of Need: The amendment of Exhibits B, C, and D of Chapter 255 of the Oregon Administrative Rules which, respectively, pertain to the criminal history/risk assessment under Rule 255-35-015, time to be served under Rule 255-35-025, and maximum variations from the ranges under Rule 255-35-035, is needed to narrow the discretionary function of the Board in setting prison terms, provide a more equitable application of the aforementioned rules and bring them into compliance with practical realities for establishment of release dates.
- (4) Documents; reports and studies relied upon by the Board in preparing the rule: The Board has acted in response to suggestions and recommendations of the Advisory Commission on Prison Terms and Parole Standards, and the Corrections Division of the State of Oregon.
- (5) The above rule amendments shall become effective May 1, 1980.

April 1, 1980
DATE


Chalmers Jones, Acting Chairman
Oregon State Board of Parole

ITEM 7

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OREGON ADMINISTRATIVE RULES
CHAPTER 255-BOARD OF PAROLE

EXHIBIT B
CRIMINAL HISTORY/RISK ASSESSMENT UNDER RULE 255-35-015

ITEM	SCORE
A. No prior felony or misdemeanor convictions as an adult or juvenile:*	3
One prior conviction:	2
Two or three prior convictions:	1
Four or more prior convictions:	0
B. No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile:	2
One or two prior incarcerations:	1
Three or more prior incarcerations:	0
C. Age at first commitment of 90 days or more:**	
26 or older:	2
21 to under 26	1
Under 21	0
D. Never escaped, failed parole or probation:***	2
One incident of the above:	1
Any two or more incidents of the above	0
E. Has no admitted or documented heroin or opiate derivative abuse problem, or has no admitted or documented alcohol problem	1
One or more of the above	0
F. Verified period of 3 years conviction free in the community prior to present offense:	1
Otherwise	0
TOTAL HISTORY/RISK ASSESSMENT SCORE:	<u> </u>

*Do not count convictions over 20 years old, convictions that have been pardoned, or juvenile or adult "status offenses" (runaway, truancy, incorrigibility, drunk in public).

**If no prior commitment, use age at present conviction.

***Count probation failure only if it resulted from an executed sentence of 90 days or more; count any parole failure, including parole reinstatement under rule 254-175-080.

ITEM 7

OREGON ADMINISTRATIVE RULES
CHAPTER 255-BOARD OF PAROLE

EXHIBIT C of Oregon Administrative Rules, Chapter 255, shall be amended to read as follows:

EXHIBIT C

TIME TO BE SERVED UNDER RULE 255-35-025

OFFENSE SEVERITY RATING	CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
	11-9 EXCELLENT	8-6 GOOD	5-3 FAIR	2-0 POOR
	(All ranges in Categories 1-6 shown in months)			
Category 1	6	6	6-10	12-18
Category 2	6	6-10	10-14	16-24
Category 3	6-10	10-14	14-20	22-38 ³⁻
Category 4	10-16	16-22	22-30	32-44
Category 5	16-24	24-36	40-52	56-72
Category 6	30-40	44-56	60-80	90-130
* Category 7				
Subcategory 2	8-10 yrs.	10-13 yrs.	13-16 yrs.	16-20 yr
Subcategory 1	10-14 yrs.	14-19 yrs.	19-24 yrs.	24-lifey

* The Minimum Term for murders committed after December 7, 1978, shall be twenty-five (25) years, as required by ORS 163.115.

ITEM 7
 OREGON ADMINISTRATIVE RULES
 CHAPTER 255-BOARD OF PAROLE

EXHIBIT D - GUIDELINES MATRIX

MAXIMUM VARIATIONS FROM THE RANGES UNDER RULE 255-35-035

		CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
		11-9 EXCELLENT	8-6 GOOD	5-3 FAIR	2-0 POOR
<u>CRIME CATEGORY</u>					
1	PANEL	3*	3	3	3
2	PANEL	3	3	3	4
3	PANEL	3	3	3	6
4	PANEL	3	3	4	6
5	PANEL	4	6	6	8
6	PANEL	5	6	10	12
7	FULL BOARD	3 yrs**	3 yrs	3 yrs	3 yrs/NA

* All numbers in categories 1 - 6 represent allowed panel variations in months. Board variations may be twice the panel variation.

** Crime category 7 is subject to full Board action only.

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S-20-88

19

NOTICE
OF PUBLIC
HEARINGS

**CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE**

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole _____ on _____

to become effective May 20, 1980 _____
(Date) (Agency) (Date)

The within matter having come before the _____ Oregon State Board of Parole _____ after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted: _____
(New Rules) 255-90-002, 255-90-003 _____

Temp.

Amended: _____
(Existing Rules) 255-35-010, 255-40-020; 255-50-015; 255-60-005;
255-60-010; 255-90-005; 255-90-010; 255-90-015;

Suspended: _____
(Temporary Only) Exhibit A, Part I & II, Exhibit B, Exhibit C, Exhibit D

Repealed: _____
(Existing Rules) Exhibit H, Chapter 255

as Administrative Rules of the _____ Oregon State Board of Parole _____
(Agency)

DATED this 20th day of May, 19 80

By: [Signature]
(Authorized Signer)

Title: [Signature]

Statutory Authority: _____

Subject Matter: _____

Statement of Need Attached: Yes No

For Further Information Contact: Dwight Ferris or Elizabeth W. Browne Phone: 378-2334

In the Matter of Amending the Administrative)
 Rules of the Board of Parole, to wit:)
 255-35-010; 255-40-020; 255-50-015; 255-60-)
 005; 255-60-010; 255-90-005; 255-90-010;)
 255-90-015; Exhibit A, Part I & II (Offense)
 Severity Under Rule 255-30-010); Exhibit B)
 (Criminal History/Risk Assessment under)
 Rule 255-35-015); Exhibit C (Time to be)
 Served under Rule 255-35-025); Exhibit D)
 (Maximum variations from the Ranges under)
 Rule 255-35-035); Adopting 255-90-002 and)
 255-90-003; Exhibit H-1; and Repealing)
 Exhibit H.)

NOTICE OF HEARING AND
 INTENDED ACTION TO AMEN
 ADOPT, AND REPEAL;
 AUTHORITY, NEED, SOURCE
 RELIED UPON, AND FISCAL
 IMPACT STATEMENT

TIME AND PLACE OF PUBLIC HEARING:

On June 23, 1980, at 1:30 p.m., a public hearing will be held in Room 107 of the Dome Building, 2575 Center Street N.E., Salem, Oregon. The hearing will be held to receive input from persons interested in items 1 through 7 below. Individuals may submit their data, views, and arguments orally; however, oral presentations will be subject to being limited in time, depending upon the number of individuals wishing to make oral presentations. Written comments will also be considered, if received by mail no later than June 23, 1980. Written comments on the rules to be adopted, amended or repealed should be addressed to:

Elizabeth W. Browne, Chairperson
 Oregon Board of Parole
 2575 Center Street, N.E.
 Salem, Oregon 97310
 ATTENTION: Admin.Rules Comment

Elizabeth Browne shall preside and conduct the hearing.

INTENDED ACTION AND NEED:

- Item 1 The proposed amendment of Rule 255-35-010 to rate the crime severity of Conspiracy to Commit Murder a six (6) rather than seven (7) is needed to further the Board's policy of providing just punishment deserved for the crime committed.
- Item 2 The proposed amendment of Rule 255-40-020 to provide for re-consideration of a case where a clerical error or incorrect computation of the release date has occurred is needed to respond to a practical reality of occasional human error which was not addressed by the original rule. The rule amendment will serve to clarify the prisoner's and Board's right to review in such cases.
- Item 3 The proposed amendment of Rule 255-50-015 to provide for rescission of parole after a person's release on parole if the person has violated a law prior to his release date without knowledge of the Board is needed to respond to the practical reality that occasionally individuals on temporary leave from

the institution engage in new criminal conduct. Such conduct would be a factor for the Board's reconsideration for parole release when such conduct comes into its knowledge after release from custody.

- Item 4 The proposed amendment of rules 255-60-005 and 255-60-010 is to provide for a narrowed discretionary function of the Board in respect to a postponement of scheduled release dates for individuals having an existing emotional disturbance. The rule amendments are needed to provide a more equitable application of its existing rules pertaining to parole release and to bring its rules into conformity with the decision rendered by the United States District Court in the case of Daniels, et.al vs Cogswell, Case 79-651.
- Item 5 The proposed amendments to Exhibit A, Part I and Part II, (Offense Severity Under Rule 255-35-010) are needed to further the Board's policy of providing just punishment deserved for the crime committed. The amendment which will enhance punishment for the crime of Supplying Contraband is intended to respond to the hazard to human life and safety effected by the introduction of certain substances or items into a jail or institution. Amending the language on Part I pertaining to "Conspiracy" is needed to conform Exhibit A to the provisions of the proposed amendment of rule 255-35-010 as specified in item 1 above.
- Item 6 The proposed adoption of rules 255-90-002 and 255-90-003 and amendment of rules 255-90-005, 255-90-010, and 255-90-015 pertaining to the discharge of parolees from supervised parole and final discharge are needed to narrow Board discretion in matters pertaining to parole discharge. The adoption of the rule, including Exhibit H-1, will in most instances, result in a longer supervised parole period for inmates released on parole. In addition, a parolee will be placed on unsupervised parole and will not be given final discharge until five years after his placement on unsupervised parole or until the occurrence of his good time date, whichever first occurs.
- Item 7 The purpose and need for the amendment of Exhibits B, C, and D of Chapter 255 of the Oregon Administrative Rules was previously submitted to the Secretary of State on April 5, 1980, and published in the Secretary of State's Administrative Rules Bulletin on April 15, 1980. It is noted that the amendments of the exhibits were temporarily adopted on May 1, 1980.

Copies of the above items may be obtained upon request from Dwight Ferris, at 2575 Center Street N.E., Salem, Oregon, 97310, Hearings Office, or by phoning 378-2171, or toll-free 1-800-452-7813, extension 2171.

LEGAL AUTHORITY RELIED UPON: (Items 1-7 respectively)

The Board relies upon the authority granted it in ORS Chapter 144 for the adoption and amendment of the rules specified in items 1 through 7. In addition, item 4 is proposed for adoption to meet the criteria of the decision of the United States District Court in Daniels, et.al vs Cogswell, Case No. 79-651.

DOCUMENTS, REPORTS AND STUDIES RELIED UPON:

The rule amendments and proposed adoption of Exhibit H-1 and rule 255-90-002 and 255-90-003 were largely in response to suggestions and recommendations of the Advisory Commission on Prison Terms and Parole Standards. Item 3 is as a result of the Board's own initiation.

STATEMENT OF FISCAL IMPACT

Items 1, 2, 3, 4, and 5 are not expected to economically affect any state agency or the public to any significant degree.

Adoption of the rule specified in items 6 and 7 pertaining to parole discharge, and release to parole supervision, can be expected to impact the Corrections Division as follows:

- (a) Assuming parole population turnover is not 19.5 months and parole turnover under the new matrix (Exhibit H-1) would be approximately 25.2 months, parole population should increase 29.2% within four years, resulting in budgetary increase of \$800,000 per biennium. The projected increase per biennium is as follows: \$200,000, 79-81; \$600,000, 81-83; \$800,000, 83-85.*
- (b) Assuming a shift in institution time from 28.8 to 25.8 months by adoption of the new matrix, a reduction of bed use by 358 bodies over the next eight year period is anticipated, provided new commitments remain at 134 per month and the Corrections Division maintains an 11% "out-count". This will result in a savings of approximately \$2,613,000. It should be noted, however, that an increase of 358 on parole could require the hiring of additional parole officers and clerical staff at an estimated total cost of \$560,000. Thus, net savings of approximately \$2,000,000 per biennium would occur after approximately eight years. The projected savings per biennium is as follows:
\$1.0 million - 81-83 \$1.5 million - 83-85
\$1.8 million - 85-87 \$2.0 million - 87-89*

* Constant 1980 dollars.

ITEM 1

AMENDMENT TO 255-35-010

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

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

255-35-010 Shall be amended as follows:

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

STAT.AUTH.:ORS Ch.144

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

ITEM 2

AMENDMENT TO 255-40-020

Amending OAR 255-40-020 to read as follows:

Reopening Cases: When; What Showing is Necessary

255-40-020 The Board may reopen any case for reconsideration upon formal written request of a prisoner to the Chairperson or motion of a Board member [(including the Administrator)] if:

- (1) Substantial new information which was unknown at the time of the prison term hearing or could not be contemplated at that time has been received;
- (2) Substantial information that a prisoner, or any other person, willfully concealed or misrepresented information material to a prior Board action has been received;
- (3) Statutory changes have reclassified the criminal conduct involved (e.g., reduction of certain categories of murder to manslaughter, creation of degrees of manslaughter).
- (4) Rule changes have resulted in a shorter range.
- (5) An error in applying the Board rules has occurred by clerical error or incorrect computation of the release date.
- (6) [5] The Board shall state the specific reasons for denial of a request to reopen a hearing.

ITEM 3

AMENDMENT TO 255-50-015

Amending OAR 255-50-015 to provide for rescission of parole after a person's release on parole.

255-50-015(1) The chairperson may, on his own motion or upon notification by the Chief of Release Services, suspend the release date of a prisoner when there is reason to believe the person has engaged in serious misconduct. Suspension shall be for such time as is reasonably necessary to conduct the rescission hearing and make a decision.

- (2) The Board may rescind a parole after it has been ordered but prior to release from custody by conducting a rehearing under the procedures of division 30, upon recommendation of an institution superintendent, Regional Manager, or a Board member, and with the concurrence of three voting members of the Board.
- (3) The Board may rescind a parole after it has been ordered and after release from custody when the Board is informed of reasonable grounds to believe a person has violated a law prior to his parole release date and knowledge of the law violation was not known by the Board on the date of the Order of Parole. Upon concurrence of three Board members, a fact finding hearing shall be held pursuant to the procedures set forth in Division 75 of these rules pertaining to revocation of parole to determine if the law violation did occur.
- (4)[(3)] The parole order of a prisoner who is voluntarily absent from a facility shall be voided by the chairperson. A rescission hearing shall be scheduled when the prisoner is available.

ITEM 4

AMENDMENT TO 255-60-005

Amending 255-60-005(1) to read as follows:

Parole Release interviews: Purpose; Review of Parole Plan; Procedure if Plan is Inadequate; Maximum Deferred

255-60-005(1) A prisoner who has been given a parole release date shall be interviewed prior to his/her parole release.

- (2) Interviews shall be conducted by one or more voting members of the Board.
- (3) The purpose of the interview shall be to examine the prisoner's Parole Plan, his/her psychological report, if any, and the record of his/her conduct during confinement.
- (4) The interviewer shall examine the prisoner's plans for residence, employment, or other situation in the community to determine whether the parole is adequate:
 - (a) An acceptable plan includes employment, school, or other situation (e.g., retirement income), and suitable residence; it may require treatment programs and prescribed medication.
 - (b) If any portion of the plan is deficient or unverified, the Board may order deferred release to a verified plan approved by a panel, or to a plan approved by the Administrator of the Corrections Division.
 - (c) If the prisoner's record includes a psychiatric or psychological diagnosis of severe emotional disturbance, the Board may order a psychological evaluation to determine the prisoner's rehabilitation potential.
The evaluation shall consist of a diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural,

social, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes, and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed.

The evaluation should include recommendations for treatment or medication if necessary to assist in the rehabilitation of the prisoner or to protect the health and safety of the community. After considering the evaluation, the Board may require that the prisoner include in his plan provisions which are recommended in the evaluation.

- [(c)](d) Parole release may be deferred up to 90 days from the parole release date when a plan is deficient or unverified in order to obtain verification of a satisfactory plan from the Corrections Division. A report shall be presented to the Board after 60 days by the Corrections Division, according to its letter of agreement with the Board.
- (5) A prisoner requesting an out-of-state parole waives the 90-day limitation on postponements for developing an adequate parole plan.
- (6) The Board shall clearly state the facts and specific reasons for its decision if parole release is deferred. The individual votes of the Board members shall be listed.

ITEM 4

AMENDMENT TO 255-60-010(1)

Amending 255-60-010 to read as follows

255-60-010(1) Should the interview indicate that:

- (a) A psychiatric or psychological diagnosis of the prisoner reveals a present severe emotional disturbance [; or] which the Board finds based upon the crime of committal and/or behavior in the institution poses a threat to the health and/or safety of the community; or
 - (b) The prisoner has engaged in serious institutional misconduct, a hearing shall be conducted by the Board to consider deferring the parole release date. The procedure for hearings in division 30 shall apply.
- (2) Following the hearing, a panel may order postponement of the scheduled release of a prisoner found to have a present emotional disturbance which the Board finds poses a threat to the health or safety of the community until after a specified future date not to exceed one year or until the prisoner or institution presents evidence that the emotional disturbance is over or in remission.
- (3) The Board may not deny release on parole solely because of a prisoner's severe emotional disturbance. Should the prisoner be diagnosed as a danger to himself or others or unable to provide for the basic personal needs necessary for his health or safety, the Board may initiate the civil commitment procedure as provided in ORS Chapter 426.
- (4)[(3)] If the prisoner has engaged in serious institutional misconduct, the provisions of division 50 shall apply.

AMENDING 255-60-010(1)

Page two

(5)[4] The Board shall clearly state the facts and specific reasons for its decision. The individual votes of the Board members shall be indicated.

STAT. AUTH. ORS Ch. 144

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

ITEM 5

AMENDMENT TO EXHIBIT A, PART I

Exhibit A, Part I, Chapter #255, Oregon Administrative Rules is Amended as follows:

EXHIBIT A

Part I

OFFENSE SEVERITY UNDER RULE 255-35-010

OFFENSE	RATING	FELONY CLASS
163.095 - Aggravated Murder	7	A
163.115 - Murder	7	A
166.005 - Treason	7	A
163.118 - Manslaughter I	6	A
163.235 - Kidnapping I	6	A
163.375 - Rape I (Subcategory 1)	6	A
163.405 - Sodomy I (Subcategory 1)	6	A
164.415 - Robbery I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 1)	6	A
164.325 - Arson I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 2)	5	A
164.325 - Arson I (Subcategory 2)	5	A
164.415 - Robbery I (Subcategory 2)	5	A
162.165 - Escape I	5	B
164.225 - Burglary I (Subcategory 1)	5	A
162.185 - <u>Supplying Contraband (Subcategory 1)</u>	5	C
163.175 - Assault II	4	B
163.225 - Kidnapping II	4	B
163.365 - Rape II (Subcategory 1)	4	B
163.395 - Sodomy II	4	B
164.225 - Burglary I (Subcategory 2)	4	A
167.017 - Compelling Prostitution	4	B
164.405 - Robbery II	4	B
167.207(4) - Criminal Activity in Drugs (Subcategory 1)	4	A
163.275 - Coercion (Subcategory 1)	4	C
164.075 - Theft by Extortion (Subcategory 1)	4	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 1)	4	A
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 1)	4	A,B
163.125 - Manslaughter II	3	B
162.015 - Bribe Giving	3	B
162.025 - Bribe Receiving	3	B
167.207(1) - Criminal Activity in Drugs (Subcategory 1)	3	B
163.425 - Sexual Abuse I	3	C
162.185 - <u>Supplying Contraband (Subcategory 2)</u>	3	C

OFFENSE	RATING	FELONY CLASS
164.225 - Burglary I (Subcategory 3)	3	A
163.365 - Rape II (Subcategory 2)	3	B
164.215 - Burglary II (Subcategory 1)	3	C
164.055 - Theft I (Subcategory 1)	3	C
164.125 - Theft of Services (Subcategory 1)	3	C
164.085 - Theft by Deception (Subcategory 1)	3	C
165.013 - Forgery I (Subcategory 1)	3	C
475.992(1) - Manufacture or Delivery of Controlled Substance (Subcategory 2)	3	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 1)	3	A
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 2)	3	A,B
162.065 - Perjury	2	C
162.155 - Escape II (Subcategory 1)	2	C
162.205 - Failure to Appear I	2	C
162.265 - Bribing a Witness	2	C
162.275 - Witness Receiving Bribe	2	C
163.145 - Criminally Negligent Homicide	2	C
163.205 - Criminal Mistreatment	2	C
163.257 - Custodial Interference I	2	C
163.275 - Theft by Coercion (Subcategory 2)	2	C
163.355 - Rape III	2	C
163.385 - Sodomy III	2	C
163.535 - Abandon Child	2	C
164.055 - Theft I (Subcategory 2)	2	C
164.095 - Theft by Receiving	2	C
164.135 - Unauthorized Use of a Motor Vehicle (Subcategory 1)	2	C
164.215 - Burglary II (Subcategory 2)	2	C
164.315 - Arson II	2	C
[164.395 - Robbery III	2	C]
165.013 - Forgery I (Subcategory 2)	2	C
167.207(4) - Criminal Activity in Drugs (Subcategory 3)	2	A
167.207(1) - Criminal Activity in Drugs (Subcategory 2)	2	A
164.125 - Theft of Services (Subcategory 2)	2	C
164.075 - Theft by Deception (Subcategory 2)	2	C
165.095 - Sports Bribery	2	C
165.090 - Sports Bribe Receiving	2	C
162.185 - <u>Supplying Contraband (Subcategory 3)</u>	2	C
166.270 - Ex-Convict in Possession	2	C
166.410 - Sale related (firearms)	2	C
166.220 - Carrying a Weapon With Intent to Use	2	C
167.012 - Promoting Prostitution	2	C

OFFENSE	RATING	FELONY CLASS
167.278 - Obtaining Drugs Unlawfully	2	B
496.992(3) - Poaching (Subcategory 1)	2	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 3)	2	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 2)	2	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 1)	2	B,C
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 3)	2	C
162.185 - Supplying Contraband (Subcategory 4)	1	C
162.325 - Hindering Prosecution	1	C
163.515 - Bigamy	1	C
163.525 - Incest	1	C
163.555 - Criminal Nonsupport	1	C
164.065 - Theft; Lost, Mislaid	1	C
164.075 - Theft by Deception (Subcategory 3)	1	C
164.125 - Theft of Services (Subcategory 3)	1	A -\$200(Mis C +\$200
164.365 - Criminal Mischief I	1	C
165.022 - Forged Instrument I	1	C
165.032 - Forgery Device	1	C
165.055 - Fraudulent Use of a Credit Card	1	A -\$200(Mis C +\$200
165.070 - Fraudulent Communication Device	1	C
167.127 - Promoting Gambling	1	C
167.137 - Possession of Gambling Records I	1	C
167.212 - Tampering with Drug Records	1	C
- Welfare Fraud	1	C
- Felony Traffic	1	C
133.723 - Interception of Communication	1	C
496.992(3) - Poaching (Subcategory 2)	1	C
167.207(1) - Criminal Activity in Drugs (Subcategory 3)	1	A
164.215 - Burglary II (Subcategory 3)	1	C
164.135 - Unauthorized Use of a Motor Vehicle (Subcategory 2)	1	C
162.155 - Escape II (Subcategory 2)	1	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 4)	1	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 3)	1	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 2)	1	B,C
475.993 - Violation of Controlled Substance Act by Registrants	1	C

Conspiracy has the same offense severity as the crime conspired to, except that Conspiracy to Commit Murder shall be given a rating of 6.

ITEM 5

AMENDMENT TO EXHIBIT A, PART II

Exhibit A, Part II, Chapter 255, Oregon Administrative Rules, is amended to add the subcategorization of Supplying Contraband, as follows:

SUPPLYING CONTRABAND ORS 162.185

Felony Class - C

Statutory Elements: Person knowingly introduces contraband into a correctional facility, juvenile training school or state hospital, or being confined in a correctional facility, juvenile training school or state hospital, he knowingly makes, obtains or possesses any contraband.

Subcategory 1 - Rating of 5

...All cases of supplying contraband which involve the supplying or possession of any explosive substance, pistol, revolver or other firearm or ammunition.

Subcategory 2 - Rating of 3

...All cases of supplying contraband which involve the supplying or possession of any dangerous instrument or weapon, including, but not limited to any blackjack, slingshot, billy club, sand club, or metal knuckles, dirk, dagger, or sharp instrument.

Subcategory 3 - Rating of 2

...All cases of supplying contraband which involve the supplying or possession of Schedule I drugs, except marijuana, Schedule II drugs, plus PCP.

Subcategory 4 - Rating of 1

...All cases of supplying contraband which involve the supplying or possession of Schedule III drugs, plus marijuana or other contraband not fitting subcategories 2 and 1 above.

1, 2 and 3 above

ITEM 6

Adopting rules relating to the discharge of parolees from parole and establishing tentative periods of time a parolee may serve on supervised parole; repealing Exhibit H and amending 255-90-005, 255-90-010, 255-90-015.

255-90-002. The Board shall establish a conditional discharge date from supervised parole within the range for the appropriate offense severity rating and history/risk score shown in the guideline matrix, Exhibit H-1. A parolee shall remain on unsupervised parole and shall not be given final discharge from parole until five (5) years after his placement on unsupervised parole, or until the occurrence of his good time date, whichever first occurs.

255-90-003. The Board may revoke parole, extend or deny a conditional discharge date, a final discharge or place a person back on supervised parole after his placement on conditional discharge for a period equal to the sentence expiration date when the parolee has been found, after hearing pursuant to Division 75 of these rules, to have violated the conditions of parole.

ITEM 6
DISCHARGE

Discharge Generally

255-90-005 The guidelines set forth in Exhibit H shall govern the establishment of conditional [tentative] discharge dates. The date shall be set at the parole release interview, and shall be written on the Order of Parole. For the conditional discharge date to become effective, the parolee must display acceptable parole performance during the term of supervised [active] parole.

255-90-010(1) A minimum of 30 days prior to the conditional [tentative] discharge date on the Order of Parole, the supervising parole officer shall send to the Board a supervisory report. This report shall recommend one of two courses:

(a) That the parolee be conditionally discharged on the conditional [tentative] date:

[(A) Upon approval by the Board, the supervising officer shall be forwarded the discharge certificate for presentation to the parolee on the tentative discharge date or the first prior business day.]

[(B) Provided that no facts are discovered between the submission of the supervising officer's report and the discharge date which indicate discharge should occur, the supervising officer shall present the certificate in person or by certified mail at a confirmed address and shall return proof of presentation directly to the Board.]

(b) That the conditional discharge not be granted [on the tentative date].

(A) In this case, the supervisory report shall contain information showing why conditional discharge is not warranted and

recommend a new conditional discharge date.

- (B) The case shall receive a Board review under procedures of section 255-30-015(3).
- (C) After consideration of the parole officer's recommendation, the Board shall either conditionally discharge the parolee or issue [forward a discharge certificate or] a written explanation for denial of the request.
- (D) The supervising officer shall either [present the discharge certificate as in (a) above or shall] notify the parolee of the new conditional discharge date and reasons [whichever is applicable] or notify the parolee in writing that he has been conditionally discharged.
- (2) If the Board desires further information on which to base its decision, it may conduct a hearing according to the procedures in division 75.
- (3) Notwithstanding section (1) above, the supervising officer may submit a recommendation with written reasons for early conditional discharge at any time after one year [active] supervised parole.

255-90-015 [Tentative] Conditional discharge dates may be extended according to the following procedures:

- (1) An extension of a [tentative] conditional discharge date shall be made by the Board when notified that an inmate has good time under forfeiture at the time of parole release.
- (2) A prisoner with good time under forfeiture shall have his/her [tentative] conditional discharge date extended

by the amount of good time under forfeiture.

- (3) The Order of Parole will specify the amount of good time under forfeiture.
- (4) The Board may rescind the extension upon recommendation of the supervising parole officer after six months of satisfactory parole adjustment.

ITEM 6

TIME TO BE SERVED ON SUPERVISED PAROLE
PRIOR TO CONDITIONAL DISCHARGE **

EXHIBIT H-1

OFFENSE SEVERITY RATING	CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
	11-9 Excellent	8-6 Good	5-3 Fair	2-0 Poor
1	2 *	2	2	2
2	2	2	2	2
3	2	2	2	2
4	2	2	2	2
5	2	3	3	3
6	3	4	4	4
7 Subcategory 2	4	4	4	4
Subcategory 1	4	4	4	4

* Numbers represent years of supervised parole

** Final discharge shall occur five (5) years after conditional discharge or on the occurrence of his good time date, whichever occurs first.

Rules

4-80

eff 7-28-80

FILED
AUG 10 1980
NORMA PAULUS
SECRETARY OF STATE

**CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE**

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole _____ on _____
(Agency) (Date)

to become effective _____
(Date)

The within matter having come before the _____ Oregon State Board of Parole _____ after
(Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules)

Temp.

Perm.

Amended:
(Existing Rules)

255-35-035, Exhibit B, C, & D

Suspended:
(Temporary Only)

Repealed:
(Existing Rules)

as Administrative Rules of the _____ Oregon State Board of Parole _____
(Agency)

DATED this _____ 28th _____ day of _____ July _____, 19 _____ 80

By: _____ Elizabeth W Browne _____
(Authorized Signer)
Title: _____ Chairman _____

Statutory Authority: _____

Subject Matter: _____

Statement of Need Attached: Yes No

For Further Information Contact: _____ Elizabeth Browne, or Dwight L. Ferris _____ Phone: _____ 378-2334 _____

STATE BOARD OF PAROLE

In the Matter of Board of)
Parole Rules and Amending)
Chapter 255 of the Oregon) Notice of Intent to Amend
Administrative Rules, Ex-) Rules on a Temporary Basis;
hibit B (Criminal History/) Statement of Findings, Authori
Risk Assessment under Rule) Need and Sources Relied Upon
255-35-015); Exhibit C (Time)
to be Served under Rule 255-35-025))
Exhibit D (Maximum Variations)
from the Ranges under Rule)
255-35-035).)

- (1) Statement of Findings; It is found by the Board that failure to act promptly in the adoption of the above amendments will result in serious prejudice to the parties affected due to the impact on ranges set for prison terms which will necessitate rehearing.
- (2) Legal Authority: ORS 144.120, 144.140, 183.335(5) OAR 255-01-005, OAR 255-01-055, OAR 255-35-015, OAR 255-35-025, OAR 255-35-035.
- (3) Statement of Need: The amendment of Exhibits B, C, and D of Chapter 255 of the Oregon Administrative Rules which, respectively, pertain to the criminal history/risk assessment under Rule 255-35-015, time to be served under Rule 255-35-025, and maximum variations from the ranges under Rule 255-35-035, is needed to narrow the discretionary function of the Board in setting prison terms, provide a more equitable application of the aforementioned rules and bring them into compliance with practical realities for establishment of release dates.
- (4) Documents; reports and studies relied upon by the Board in preparing the rule: The Board has acted in response to suggestions and recommendations of the Advisory Commission on Prison Terms and Parole Standards, and the Corrections Division of the State of Oregon.
- (5) The above rule amendments shall become effective May 1, 1980.

April 1, 1980
DATE


Chalmers Jones, Acting Chairman
Oregon State Board of Parole

IN THE MATTER OF ADOPTION)
OF ADMINISTRATIVE RULES OF)
THE BOARD OF PAROLE, to wit:)
Exhibit B (255-35-015) Exhibit)
C (255-35-025) and Exhibit D)
(255-35-035).)

FISCAL IMPACT STATEMENT

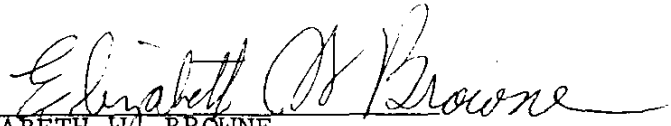
Exhibits B and D are not expected to economically affect any state agency or the public to any significant degree.

Exhibit C can be expected to impact the Corrections Division as follows:

Assuming a shift in institution time from 28.8 to 25.8 months by adoption of the new matrix, a reduction of bed use by 358 bodies over the next eight year period is anticipated, provided new commitments remain at 134 per month and the Corrections Division maintains an 11% "out-count". This will result in a savings of approximately \$2,613,000. It should be noted, however, that an increase of 358 persons on parole could require the hiring of additional parole officers and clerical staff, at an estimated total cost of \$560,000. Thus, net savings of approximately \$2,000,000 per biennium would occur after approximately eight years. The projected savings per biennium are as follows:

\$1.0 million - 81-83	\$1.5 million - 83-85
\$1.8 million - 85-87	\$2.0 million - 87-89 *

*Constant 1980 dollars.


ELIZABETH W. BROWNE
CHAIRPERSON

OREGON ADMINISTRATIVE RULES -
CHAPTER 255-BOARD OF PAROLE

EXHIBIT B
CRIMINAL HISTORY/RISK ASSESSMENT UNDER RULE 255-35-015

ITEM	SCORE
A. No prior felony or misdemeanor convictions as an adult or juvenile:*	3
One prior conviction:	2
Two or three prior convictions:	1
Four or more prior convictions:	0 _____
B. No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile:	2
One or two prior incarcerations:	1
Three or more prior incarcerations:	0 _____
C. Age at first commitment of 90 days or more:**	
26 or older:	2
21 to under 26	1
Under 21	0 _____
D. Never escaped, failed parole or probation:***	2
One incident of the above:	1
Any two or more incidents of the above	0 _____
E. Has no admitted or documented heroin or opiate derivative abuse problem, or has no admitted or documented alcohol problem	1
One or more of the above	0 _____
F. Verified period of 3 years conviction free in the community prior to present offense:	1
Otherwise	0 _____
TOTAL HISTORY/RISK ASSESSMENT SCORE:	=====

*Do not count convictions over 20 years old, convictions that have been pardoned, or juvenile or adult "status offenses" (runaway, truancy, incorrigibility, drunk in public).

**If no prior commitment, use age at present conviction.

***Count probation failure only if it resulted from an executed sentence of 90 days or more; count any parole failure, including parole reinstatement under rule 254-175-080.

OREGON ADMINISTRATIVE RULES
CHAPTER 255-BOARD OF PAROLE

EXHIBIT C of Oregon Administrative Rules, Chapter 255, shall be amended to read as follows:

EXHIBIT C

TIME TO BE SERVED UNDER RULE 255-35-025

OFFENSE SEVERITY RATING	CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
	11-9 EXCELLENT	8-6 GOOD	5-3 FAIR	2-0 POOR
	(All ranges in Categories 1-6 shown in months)			
Category 1	6	6	6-10	12-18
Category 2	6	6-10	10-14	16-24
Category 3	6-10	10-14	14-20	22-32
Category 4	10-16	16-22	22-30	32-44
Category 5	16-24	24-36	40-52	56-72
Category 6	30-40	44-56	60-80	90-130
* Category 7				
Subcategory 2	8-10 yrs.	10-13 yrs.	13-16 yrs.	16-20 yr
Subcategory 1	10-14 yrs.	14-19 yrs.	19-24 yrs.	24-life;

* The Minimum Term for murders committed after December 7, 1978, shall be twenty-five (25) years, as required by ORS 163.115.

OREGON ADMINISTRATIVE RULES
CHAPTER 255-BOARD OF PAROLE

EXHIBIT D - GUIDELINES MATRIX

MAXIMUM VARIATIONS FROM THE RANGES UNDER RULE 255-35-035

		CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
		11-9 EXCELLENT	8-6 GOOD	5-3 FAIR	2-0 POOR
<u>CRIME CATEGORY</u>					
1	PANEL	3*	3	3	3
2	PANEL	3	3	3	4
3	PANEL	3	3	3	6
4	PANEL	3	3	4	6
5	PANEL	4	6	6	8
6	PANEL	5	6	10	12
7	FULL BOARD	3 yrs**	3 yrs	3 yrs	3 yrs/NA

* All numbers in categories 1 - 6 represent allowed panel variations in months. Board variations may be twice the panel variation.

** Crime category 7 is subject to full Board action only.

OREGON ADMINISTRATIVE RULES

BOARD OF PAROLE

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OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 10 — BOARD OF PAROLE

DIVISION 10

ORGANIZATION

Membership

255-10-005 The Board of Parole shall consist of five voting members, appointed by the Governor, and the Administrator of the Corrections Division, who shall have no vote but act as an advisor.

Stat. Auth.: ORS Ch. 144

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

Chairperson: Term; Removal

~~255-10-010 The chairperson shall be a voting member of the Board selected by a majority of the Board. The chairperson shall have a minimum term of one year and may be removed prior to the end of his/her term by a unanimous vote of the voting Board members.~~ Refer to attachment

Stat. Auth.: ORS Ch. 144

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

Chairperson: Powers and Duties

~~255-10-015 The chairperson shall have the powers and duties established by law and rules necessary for the performance of the office and administration of the Board, and shall:~~

~~(1) Assign voting Board members to panels and designate the presiding members.~~

~~(2) Apportion matters to the panels and full Board for decision~~

~~(3) Reassign matters to different panels when required by rule, law, or procedure.~~

~~(4) Schedule business meetings and establish the agenda.~~

~~(5) Inform the sentencing judge, district attorney, sheriff, or arresting agency of the scheduled release of each prisoner.~~

~~(6) Review administrative appeals.~~

~~(7) Designate members to conduct hearings and reviews.~~

~~(8) Appoint persons to assist prisoners in parole proceedings, when appropriate.~~ Refer to attachment

Stat. Auth.: ORS Ch. 144

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

Jointly Adopted Rules: Adoption, Designation, and Changes of Rules With Other Agencies

255-10-020 (1) The Board shall adopt rules jointly with other administrative agencies as required by statute.

(2) The Board may adopt rules jointly with another administrative agency when necessary to implement its own rules.

(3) Rules adopted jointly shall be specifically identified as joint rules with the appropriate agency designated.

(4) Jointly adopted rules shall not be changed without prior notice, consultation, and agreement with the jointly adopting agency.

Stat. Auth.: ORS Ch. 144

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

Amend and adopt on a temporary basis 255-10-010, 255-10-015

[Chairperson: Term; Removal]

Chairperson; Vice-Chairperson: Selection, Term

255-10-010 (~~The chairperson shall be a voting member of the Board selected by a majority of the Board. The chairperson shall have a minimum term of one year and may be removed prior to the end of his/her term by a unanimous vote of the voting Board members.~~]

The Governor shall select one of the members of the State Board of Parole as chairperson and another member as Vice-chairperson, for such terms as the Governor determines.

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

[Chairperson: Powers and Duties]

255-10-015

~~[The chairperson shall have the powers and duties established by law and rules necessary for the performance of the office and administration of the Board, and shall:]~~

The chairperson shall have the powers and duties established by law and rules and such powers and duties, in addition to those established by law, necessary for the performance of the functions of such office, as determined by the Governor. Such powers and duties shall include, but are not limited to:

- (1) Assign voting Board members to panels and designate the presiding members.
- (2) Apportion matters to the panels and full Board for decision.
- (3) Reassign matters to different panels when required by rule, law, or procedure.

- (4) Schedule business meetings and establish the agenda.
- (5) Inform the sentencing judge, district attorney, sheriff, or arresting agency of the scheduled release of each prisoner.
- (6) Review administrative appeals.
- (7) Designate members to conduct hearings and reviews.
- (8) Appoint persons to assist prisoners in parole proceedings, when appropriate.

(2) The vice-chairperson shall, in the absence of the chairperson. At all other times the vice-chairperson shall have such powers and duties as are delegated by the chairperson in addition to those powers and duties determined by the Governor as necessary for the performance of such office.

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 20 — BOARD OF PAROLE

DIVISION 20

BUSINESS MEETINGS

Scheduling

255-20-005 Business meetings shall be held as scheduled by the chairperson or upon the request of at least two members.

Stat. Auth.: ORS Ch. 144

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

Quorum

255-20-010 A business meeting requires the presence of at least three voting members of the Board.

Stat. Auth.: ORS Ch. 144

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

Matters for Consideration; Majority Vote

255-20-015 The business meeting shall consider matters relating to Board policy and administration raised by the agenda presented by the chairperson or by Board members. Three affirmative votes are required to make a Board decision at a business meeting.

Stat. Auth.: ORS Ch. 144

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 30 — BOARD OF PAROLE

DIVISION 30

PRISON TERM HEARING PROCEDURE

Definitions

255-30-005 (1) "Prison term hearing": The hearing given a prisoner within six months of admission to a correctional institution at which the Board establishes a prison term to be served according to the guideline ranges.

(2) "Prison term": The actual amount of time the Board determines a prisoner will serve when it sets a parole release date or chooses not to set a parole release date, i.e., denies parole.

Stat. Auth.: ORS Ch. 144

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

Scheduling, Notice, and Deferral of Prison Term Hearings

255-30-010 (1) Every prisoner initially incarcerated at any institution of the Corrections Division shall be given a hearing for the purpose of establishing a prison term as follows:

(a) A prisoner incarcerated at any institution of the Corrections Division with a sentence of up to one year shall be scheduled for a hearing within two months of admission or as soon thereafter as possible.

(b) A prisoner with a sentence of one to three years shall be scheduled for a hearing within three months of admission or as soon thereafter as possible.

(c) A prisoner with a sentence of over three years shall be scheduled for a hearing within four months of admission or as soon thereafter as possible.

(d) In no case shall a prisoner be scheduled for a hearing more than six months after admission.

(2) The prisoner shall be notified in writing of the hearing and its purpose within a reasonable time of the hearing date.

(3) Prior to making a decision, the Board may continue the hearing for a reasonable period of time, if necessary, to obtain additional information. The continuance may not extend past six months from admission plus 30 days.

Stat. Auth.: ORS Ch. 144

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

255-30-012 - SEE ATTACHMENT

Panels: When a Two-Member Panel Conducts a Prison Term Hearing; When Full Board is Required; Procedures for Full Board Decision

255-30-015 (1) Except as provided in this rule, all prison term hearings shall be heard by a panel of two voting members of the Board.

(2) The following cases shall be decided by the full Board (i.e., all five voting members) according to the procedures in rule 255-30-020:

(a) Any cases involving a prisoner sentenced to life imprisonment, 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, sentenced under ORS 161.725 and 161.735 as a dangerous offender;

(b) Whenever a panel recommends a decision to exceed the allowable variation from the matrix permitted to the panel or deny parole;

(c) Whenever a minimum sentence imposed by a judge pursuant to ORS 144.110 exceeds the applicable matrix guideline range in Exhibit C plus the maximum variation from the range shown in Exhibit D;

(d) Whenever a panel or member recommends a decision below a judicially set minimum sentence;

(e) Whenever an extension of a prison term due to institutional misconduct for more than one year is recommended.

Stat. Auth.: ORS Ch. 144

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

Procedures for Full Board Decisions

255-30-020 The following procedures shall apply to cases decided by the full Board:

(1) A hearing shall be conducted by the Board with at least a quorum present when:

(a) Setting a prison term for prisoners falling under subsection 255-30-015(2)(a);

(b) The Board considers exceeding the normal variations permitted to the full Board in rule 255-35-035;

(c) The Board considers denying parole, except when denial is because the guideline range exceeds the good time date on a sentence;

(d) Extending a prison term, in any case, for longer than one year.

(2) Prisoners in custody in another jurisdiction may be heard by a conference call or returned to Oregon for the hearing.

(3) If a Board member is not present at a hearing, he/she shall vote after reviewing the record of the hearing.

(4) In all other cases, the Board may:

(a) Circulate the record to be considered with a copy of the proposed action for comment and voting by the individual Board members; or

(b) Decide the matter at a business meeting at which a quorum is present.

(5) A simple majority vote of the Board shall be required to reach a decision except when a vote of four members is required by statute or rule.

Stat. Auth.: ORS Ch. 144

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

Who May Appear at a Prison Term Hearing

255-30-025 (1) The prisoner shall appear at the prison term hearing unless he/she waives appearance in writing.

(2) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to language barriers, mental or emotional incapacity, or educational deficiency. Assistance shall be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the chairperson of the Board. SEE ATTACHMENT

Stat. Auth.: ORS Ch. 144

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

Panel Decisions: Use of Guidelines; Unanimity Requirement

255-30-030 (1) The panel shall consider the case in accordance with the guidelines in division 35.

(2) The decision of a panel of two or three members must be unanimous. In the absence of a unanimous decision, each panel member shall forward his/her recommendation to the chairperson for reassignment. No matter so reassigned shall be decided by fewer than three affirmative votes. This may be done by another two-member panel reaching a unanimous decision in agreement with a member of the prior panel. The decision becomes the decision of the Board. The provisions of section 255-30-015(2) and rule 255-30-020 shall govern full Board cases.

Stat. Auth.: ORS Ch. 144

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

Information the Board Must Consider at a Prison Term Hearing: Parole Analysis Report; Other Material

255-30-035 (1) The Corrections Division will provide a Parole Analysis Report to the Board prior to the prisoner's

PRESENTENCE INVESTIGATION OR SIMILAR REPORT
1-Div. 30 (4-1-79)

Adopting, on a temporary basis, OAR 255-30-012 and amending
and adopting on a temporary basis OAR 255-30-025

Scheduling and Hearing Procedure for Aggravated Murder
255-30-012

(1) Those persons sentenced under ORS 163.095 for aggravated murder shall be seen at a prison term hearing within six months of confinement at a state institution. The Board shall make necessary findings such as history/risk score, aggravation or mitigation and shall establish the maximum period of confinement and first eligibility for a hearing under ORS 163.105 (3).

(2) At any time after the minimum period of confinement has been served the prisoner may petition the Board for a hearing. Within a reasonable period of time the Board shall hold a hearing under the provisions of ORS 163.105 (3), (4), (5) and (6).

Who May Appear at a Parole Board Hearing

255-30-025(1) The prisoner shall appear at the Parole Board hearing unless the prisoner waives parole in writing [.] or by refusal to appear. The Board may choose not to set a release date if the prisoner waives parole. However, the prisoner, shall be rescheduled for a hearing upon written request from the prisoner who previously waived.

~~[(2) No person other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to language barriers, mental or emotional incapacity, or education deficiency. Assistance shall be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the Chairperson of the Board.]~~

(2) The prisoner may be accompanied by a person of the prisoner's choice, subject to rules and procedures of the Corrections Division. The person accompanying the prisoner may make a statement, not to exceed five minutes, at the conclusion of the hearing.

(3) Assistance to prisoners incapable of presenting their position due to language barriers, mental or emotional incapacity or educational deficiency shall be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the chairperson of the panel.

(4) If the prisoner needs assistance and has an assistant appointed by the chairperson pursuant to this subsection, his shall not preclude the prisoner being accompanied to the hearing by a person of the prisoner's choice.

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 30 — BOARD OF PAROLE

n term hearing. This report shall be prepared according to optional outline attached (Exhibit F). Any transcripts ordered by the sentencing judge shall be attached to the ~~Parole Analysis Report~~ PRE-SENTENCE REPORT.

(2) Additional information and recommendations from police, district attorney, defense attorney, and others with a special interest in the case shall be considered if available. Such information shall be subject to disclosure to the prisoner.

(3) Transcripts forwarded by the sentencing judge shall be considered if available. The Board may continue a hearing to request the transcript if not received.

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

Inmate Access to Written Materials Considered at Parole Board Hearings and Interviews

255-30-040 Prior to any hearing affecting his/her parole status, any prisoner shall have access to the written material the Board considers with respect to his/her release on parole under rule 255-30-035. Verbal communication which the Board considers shall be reduced to writing and subject to disclosure as written material.

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

Exemptions From Disclosure

255-30-045 (1) Prisoners shall have access to written materials, including psychiatric and psychological reports prepared solely for Board use, which the Board considers, with the following exception:

(a) Information or records of the Corrections Division, to the extent that disclosure thereof would interfere with the rehabilitation of the person;

(b) Information or records, the disclosure of which would substantially prejudice or prevent the Corrections Division from carrying out its normal functions; or

(c) If the public interest in confidentiality clearly outweighs the public interest in disclosure.

(2) Prisoners shall have access to psychiatric and psychological reports not prepared solely for the Board's use that are considered in a hearing concerned with the release or parole of a prisoner, except when:

(a) Release of the information would constitute an immediate and grave danger to the prisoner;

(b) The information relates to an individual other than the prisoner seeking it;

(c) The release of the information would constitute a danger to another person; or

(d) The release of the information would compromise the privacy of an individual source.

(3) Disclosure of medical, psychiatric, and/or psychological records may be in the form of an accurate, representative summary of the complete contents of the written materials.

(4) When disclosure of information is denied, a written statement of the reasons for denial must be entered into the record.

(5) Written materials subject to disclosure to be considered by the Board shall be sent to the inmate at the same time the material is made available to the Board.

(6) Where a particular document contains information that is exempt from disclosure, exempt material shall be separated from non-exempt material and the non-exempt material must be disclosed.

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

Record of Hearing: Content; Time to be Maintained

255-30-050 Record of the prison term hearing and any other hearings shall be kept by the Board for at least two years. The record shall contain:

(1) Documents considered by the Board at the hearings, which shall be kept in a separate file; documents considered but not disclosed shall be specifically noted as undisclosed.

(2) A statement of the facts and specific reasons for actions taken by the Board and the individual votes of the Board members.

(3) A record of the oral proceedings of the hearing, with the exception of the deliberations of the Board. (This record may be kept by any manual or electronic means which is capable of being transcribed. Once transcribed, the transcript may be substituted for the original record.)

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

Notification of Decision: Parties Notified; Content

255-30-055 (1) Following a Board decision, the prisoner, sentencing court, district attorney, Corrections Division, and upon request, the prisoner's counsel shall be notified in writing of the Board action.

(2) Such notification shall state the specific facts and reasons for the Board decision, including the history/risk score, offense severity rating, range and date set, the specific facts and reasons for a Board decision to go outside the applicable guideline range or to deny parole, and the votes of the individual Board members.

(3) The prisoner shall be given written notice of his/her right to administrative appeal of the decision.

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

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

DIVISION 35

APPLICATION OF THE GUIDELINES
TO ESTABLISH A PRISON TERM

Definitions

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

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

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

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

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

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

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

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

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

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

(10) (11) (12) Refer to attachment

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

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

(2) Special Situations:

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

(b) Attempt (ORS 161.405) and Solicitation (ORS 161.435) shall be assigned a rating one category less than the criminal activity intended. Conspiracy shall be assigned the same severity as the actual crime except that Conspiracy to Commit Murder shall be classified a six (6) rather than seven (7).

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

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

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

Stat. Auth.: ORS Ch. 144

Hist.: 2PB 1-1979, f. & cf. 2-1-79; 2PB 2-1980, f. & cf. 5-20-80

255-35-012 (1) Refer to attachment
Criminal History/Risk Assessment

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

Stat. Auth.: ORS Ch. 144

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

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

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

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

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

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

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

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

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

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

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

55-35-005 (10) Principal range: The longest range imposed in a chain of ranges shall be the principal range.

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

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

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

Board to Make Findings of Fact Regarding Offense Severity;
Waiver of Exit Interview; Establishing Conditions of Parole.

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

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

OREGON ADMINISTRATIVE RULES
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(2) ~~(3)~~ Judicial Sentences: Mandatory Minimums; Findings of Fact and Reasons for Sentence:

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

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

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

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

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

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

Stat. Auth.: ORS Ch. 144

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

255-35-022 Refer to attachment
Setting a Parole Release Date: Guideline Ranges; Where Range Exceeds Good Time Date

255-35-025 (1) The Board shall establish a prison term by setting a parole release date within the range for the appropriate offense severity rating and history/risk score shown in the guideline matrix, Exhibit C, unless it finds aggravation or mitigation sufficient to justify variation from the range pursuant to rule 255-35-035 or takes action according to section (2) of this rule, or elects to deny parole according to rule 255-030.

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

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

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

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

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

Stat. Auth.: ORS Ch. 144

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

Parole Denial: When Parole May be Denied; Action by the Full Board Necessary

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

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

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

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

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

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

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

(4) When the Board chooses not to set a parole release date, it shall clearly state on the record the facts and specific reasons for that decision.

Stat. Auth.: ORS Ch. 144

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

it shall secure a third vote.

Adopting on a temporary basis

255-35-022

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

255-35-022

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Resetting Pre-Guideline Parole Hearing Dates for Category 7 Offenders

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

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 38 -- BOARD OF PAROLE

DIVISION 38

DANGEROUS OFFENDERS

Amending and temporarily adopting OAR 255-38-005

Permissible Action: ~~[When a Parole Release Date May Not be Set; Procedures When a Parole Release Date Is Not Set]~~ Setting Parole consideration hearing instead of a release date, setting release dates and periodic reviews.

255-38-005 (1) Notwithstanding the provisions of Division [30] 60, the Board shall not set a parole release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender. ~~[if the record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance (e.g., severe personality disorder).]~~ The Board shall within six months after commitment to the custody of the Corrections set a parole consideration hearing instead of a parole release date as otherwise required by Division 60. The parole consideration hearing shall be at the earliest time the prisoner would be eligible for release. If the condition is still present, reviews will be scheduled at least every two years thereafter. If at the parole consideration hearing or a subsequent review the condition is determined to be absent or in remission, the Board shall set a release date or order parole if the prisoner is otherwise eligible under the rules.

(2) The Board shall set a date for a parole consideration hearing within the matrix guidelines in Exhibit C and provisions for variations under rule 255-35-035.

(3) At any hearing or review, the Board shall consider the report of the executive officer of the facility in which the

prisoner is confined regarding the prisoner's conduct, attitude, and work record as defined in ORS 144.228(2) and a psychiatric or psychological report made within two months of the hearing:

(a) The Board shall not set a parole release date unless the psychiatric or psychological report reveals that the severe emotional disturbance which has made the prisoner dangerous is no longer present.

(b) If the disturbance is present, the Board may defer release to a specified future time or deny parole under rule 255-35-030.

(4) Notwithstanding the above, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner believes that he is no longer dangerous, request a parole consideration hearing. Should the Board find based upon the request that there is a reasonable cause to believe the dangerous condition is in remission, the Board shall order a parole consideration hearing pursuant to the above procedures. Applications received more often than every two years will carry a greater burden in establishing that the request is reasonable.

~~(4) [Periodic reviews shall be given dangerous offenders pursuant to rule 255-40-005. If, at the review, the psychiatric or psychological reports and the executive officer's report reveals that the severe emotional disturbance which has made the prisoner dangerous is not longer present, the Board shall review the matter and set a parole release date according to Divisions 30 and 35.]~~

(5) Support for the application from the superintendent of the institution in which the prisoner has been confined under

subsection 4 above, shall be considered reasonable cause pursuant to subsection (4) of this section.

(6) The Board shall consider at the parole consideration hearing a report pursuant to ORS 144.228 from the Executive Officer of the penal or correctional institution in which the prisoner has been confined.

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 40 — BOARD OF PAROLE

DIVISION 40

REVIEWS, REOPENING CASES, AND
REDUCTIONS IN PRISON TERMS

Scheduling of Periodic Reviews

255-40-005 (1) Periodic reviews shall be conducted after the prisoner has served five years of his prison term and every three years thereafter, starting with the date the prisoner's sentence begins to run.

~~(a) Dangerous offenders sentenced under ORS 161.725 and 161.735 shall be seen every two years as required by statute.~~

(2) Prisoners convicted of murder shall be seen as required by statute.

~~(3) Reviews that have been scheduled prior to January 26, 1977 shall be conducted as scheduled. Reviews scheduled subsequent to January 26, 1977 shall be rescheduled to comply with this rule.~~

Stat. Auth.: ORS Ch. 144

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

Procedure for Periodic Reviews

255-40-010 An interview shall be conducted by one or more voting members of the Board. In the event an interviewer determines that modification of the prison term is appropriate, the matter shall be referred with recommendations to the full Board for review. No other action shall be taken by the interviewer.

Stat. Auth.: ORS Ch. 144

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

Purpose:

255-40-015 Periodic reviews shall be conducted to determine if anything exceptional has occurred that would warrant a reduction in the prison term.

Stat. Auth.: ORS Ch. 144

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

Reopening Cases: When; What Showing is Necessary

255-40-020 The Board may reopen any case for reconsideration upon formal written request of a prisoner to the chairperson or motion of a Board member if:

(1) Substantial new information which was unknown at the time of the prison term hearing or could not be contemplated at that time has been received;

(2) Substantial information that a prisoner, or any other person, willfully concealed or misrepresented information material to a prior Board action has been received;

(3) Statutory changes have reclassified the criminal conduct involved (e.g., reduction of certain categories of murder to manslaughter, creation of degrees of manslaughter).

(4) Rule changes have resulted in a shorter range.

~~(5) An error in applying the Board rules has occurred by clerical error or incorrect computation of the release date. SEE~~

(6) The Board shall state the specific reasons for denial of a request to reopen a hearing.

Stat. Auth.: ORS Ch. 144

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80

Reductions in Prison Terms: Effect of Minimum Terms; Criteria; Limitations

255-40-025 (1) An established prison term as defined in section 255-30-005(2) may be reset to an earlier time upon application for review to the chairperson of the Board and after concurrence of a voting majority of the Board, unless the prisoner has a statutory minimum term for murder. Parole release date resets falling below a judicially imposed minimum sentence shall require concurring votes of four members:

(a) Reductions in prison terms will ordinarily be granted only in cases where a prisoner can show an extended course of conduct indicating outstanding reformation. Cases will be determined on individual merits; however, the usual criteria will include:

(A) A five-year period of good conduct, and

(B) Demonstrable achievement in dealing with problems present at incarceration and associated with criminal conduct (e.g., psychological disorder, drug or alcohol dependency, lack of educational or vocational skills).

(b) A prisoner's exercise of recognized constitutional rights or legitimate use of legal process shall not be construed as lack of good conduct.

(c) Cooperation with authorities is not sufficient in itself to justify a reduction.

(d) Reductions in prison terms may be considered where the prisoner is suffering from a terminal illness or a unique opportunity is available and the reduction of the prison term is not excessive.

(2) Overall, reductions shall be limited to a maximum of 20% of the prison term under review unless a majority of the Board approves a further reduction:

(a) Reductions shall customarily be considered at periodic reviews under rule 255-40-005.

~~(b) Special interviews to consider a reduction will only be granted in cases approved by at least three Board members following a file pass. SEE ATTACHMENT~~

~~(3) A recommendation shall be requested from the institution superintendent on each application considered by the Board. SEE ATTACHMENT~~

(4) The prisoner shall have the burden of establishing that his/her conduct meets the criteria for a date reduction.

Stat. Auth.: ORS Ch. 144

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

Who May Appear

255-40-030 (1) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to illiteracy, language barriers, or lack of mental capacity. Assistance will be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the chairperson of the Board.

(2) The prisoner may waive the personal appearance in writing or by voluntary absence from the institution.

Stat. Auth.: ORS Ch. 144

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

Notice; Disclosure; Record

255-40-035 The notice, disclosure, and record making provisions of division 30 shall apply to all hearings and interviews in this division.

Stat. Auth.: ORS Ch. 144

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

~~S-40-020~~ (5) Clerical error is established. In cases where the error is obvious and the result of correction will be to the prisoner's benefit, the Board may take administrative action by file pass to correct the error. The prisoner shall be notified in writing of Board action. If the Board intends to take action which would be adverse to the prisoner, the Board shall reopen the hearing at the request of the inmate.

55-40-025 -
-7-(b) Special requests for reduction supported by the superintendent which do not coincide with the periodic interviews shall be scheduled for a hearing or considered by file pass at the discretion of the chairperson.

(3) A recommendation shall be requested from the institution superintendent by the prisoner. Requests for reductions shall be accompanied by the superintendent's recommendation.

(4) The prisoner shall have the burden of establishing that his/her conduct meets the criteria for a date reduction.

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

OREGON ADMINISTRATIVE RULES
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DIVISION 50

EXTENDING A PAROLE RELEASE
DATE FOR SERIOUS MISCONDUCT

Procedure for Extension of Parole Release Dates: Required Recommendations and Guidelines; Classification of Conduct; Amount of Time; When Parole Release Date Is Set; If After Parole Ordered

255-50-005 A parole release date may be reset to a later date for serious misconduct according to the following procedure:

(1) The institution disciplinary committee or the Corrections Division Hearings Officer may recommend an extension of a prisoner's parole release date as a disciplinary sanction.

(2) Recommendation to extend a parole release date shall be made according to the following guidelines:

(a) The prisoner must be given an opportunity for a disciplinary hearing and have been found to have violated an adopted rule governing conduct. The recommendation must be approved by the institutional superintendent or Regional Manager and the Administrator of the Corrections Division before the Board can consider an extension.

(b) In no instance shall an extension of a parole release date be recommended unless all other disciplinary options have been specifically considered and deemed to be, individually and in combination, inadequate to the seriousness of the misconduct in terms of the following factors:

(A) Effectiveness of the sanction as a disciplinary measure, both to the prisoner and to the general prisoner population;

(B) Degree of hazard posed by the misconduct to human health and/or life, facility security, or to property;

(C) Seriousness of the misconduct had it been committed in the wider community;

(D) Circumstances of the misconduct; and

(E) The prisoner's prior record of conduct.

(3) A parole release date shall not be extended unless the misconduct can be classified within one of the four following categories. The extension must be set within the range for the category of misconduct unless the Board finds aggravation or mitigation based on those factors listed in rule 255-35-035, Exhibit E.

If a basis for aggravation or mitigation is found by the Board, the maximum variation allowed to a majority of the Board would be 25 percent of the sanction recommended. Any greater variation than 25 percent or resets in excess of two years will require concurrence by at least four voting members of the Board. (See Table 1 at the end of this division.)

(4) When the amount of time recommended for the parole release date extension exceeds the prisoner's sentence or statutory good time date, the effect is to deny parole. An extension in the parole release date may not be beyond the prisoner's maximum statutory release date.

(5) If serious misconduct occurs before a prisoner's parole release date has been set and an extension of the parole release date would be justified, the term for misconduct will be added to the release date at the time of the misconduct.

(6) If serious misconduct occurs after a parole has been ordered and an extension of the parole release date would be otherwise justified, the chairperson of the Board may take immediate steps to suspend release and order a rescission hearing to consider resetting the release date upon receiving notice from an institution superintendent, Regional Manager, or a Board member.

(7) Upon recommendation of the disciplinary committee or hearings officer, the Board may suspend imposition of the reset subject to a period of acceptable conduct.

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

Reset Procedures: Hearing by Board; Board Action

255-50-010 (1) When the Board is notified by the Administrator of the Corrections Division that an extension of a prisoner's parole release date has been recommended, a duly constituted panel of the Board shall conduct a hearing to determine whether the misconduct was serious.

(a) The prisoner shall be given notice of the hearing and its purpose; the provisions of Division 30 as to appearance, disclosure, and record shall apply.

(b) A prisoner may waive his/her right to appear in writing or by voluntary absence from the institution.

(c) A prisoner may not relitigate facts which he/she has had a full opportunity to contest and have been decided against him/her in another forum.

(2) Serious misconduct is misconduct which the Board classified within one of the four categories listed in rule 255-50-005.

(3) The Board may request the prisoner be given another hearing before the disciplinary committee originating the recommendation for reset, or choose not to extend a parole release date if the Board does not find that all other disciplinary options are inadequate to the seriousness of the misconduct, considering the following factors:

(a) Effectiveness of the sanction as a disciplinary measure, both to the inmate and to the general institution population;

(b) Degree of hazard posed by the misconduct to human health and/or life, institution security, or to property;

(c) Seriousness of the misconduct had it been committed in the wider community;

(d) The prisoner's prior record of conduct.

(4) The Board may continue the reset hearing and order a psychiatric examination when it appears that a severe emotional disturbance is present. If there is a psychiatric or psychological diagnosis of present severe emotional disturbance, the Board may defer release to a specified future date. In choosing not to set a parole release date, rule 255-35-025 shall control.

(5) If the Board resets a parole release date, the prisoner shall be given:

(a) A written statement of the facts and specific reasons for the decision, including the individual votes of the Board members; and

(b) Notice of the right to administrative appeal under Division 80.

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

Rescission of Parole: Hearing; Suspension of Release

255-50-015 (1) The chairperson may, on his/her own motion or upon notification by the Chief of Release Services, suspend the release date of a prisoner when there is reason to believe the person has engaged in serious misconduct. Suspension shall be for such time as is reasonably necessary to conduct the rescission hearing and make a decision.

(2) The Board may rescind a parole after it has been ordered but prior to release from custody ~~by conducting a rehearing under the procedures of Division 30, upon recommendation of an institution superintendent, Regional Manager, or a Board member, and with the concurrence of three voting members of the Board. see attachment overleaf~~

~~(3) The Board may rescind a parole after it has been ordered and after release from custody when the Board is informed of reasonable grounds to believe a person has violated a law prior to his parole release date and knowledge of the law violation was not known by the Board on the date of the Order of Parole. Upon concurrence of three Board members, a fact finding hearing shall be held pursuant to the~~

LS5-50-015 (2) Continued

based upon the written findings of either the institution disciplinary committee or a hearing conducted at the order of the Chairperson. The Board shall also consider the recommendation for disposition provided by the institution superintendent, regional manager, Parole Board members or Parole Board hearings officer. Action to rescind parole shall be taken by a panel of the Board.

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 50 — BOARD OF PAROLE

~~Procedures set forth in Division 50 of these rules pertaining to revocation of parole to determine if the law violation did occur.~~

~~(4) The parole order of a prisoner who is voluntarily absent from a facility shall be voided by the chairperson. A rescission hearing shall be scheduled when the prisoner is available.~~

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 1-1981, f. 1-20-81, ef. 2-15-81

Basis for Rescission

~~255-50-020 At the hearing, the Board will take relevant, material, and reliable information of the prisoner's misconduct which causes the hearing to be held. The Board shall clearly state the facts and specific reasons, including a statement of misconduct, for its decision to rescind and reset the parole release date or deny parole.~~

Stat. Auth.: ORS Ch. 144

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

by a Parole Board member
or Parole Board Hearings
Officer to determine if the
law violation did occur.

255-50-016, 255-50-017, 255-50-018
overleaf

255-50-020 is attached.

255-50-016 Procedure.

The procedure for a rescission hearing shall be in accord with the provisions of Division 75.

255-50-017 Waiver.

The provisions for waiving a rescission hearing shall be those outlined in Division 75, OAR 255-75-030, with the exception of those situations which involve involuntary absence from a correctional facility. In those cases the waiver of rescission hearing, signed prior to the effective date of the parole, shall be considered valid.

255-50-018 Hearing after rescission of parole

Scheduling: Board Action. After parole is rescinded, the Board may conduct a dispositional hearing to establish a future release date for the prisoner. The provisions of the Board rule 255-75-085 shall apply in the conduct of this hearing.

akk

12, 46, 40

SED 425a
Oct. 1, 1974
Rev. 11/18/72

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

FILED
DEC 02 1980
NORMA PAULUS
SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole _____ on _____ 11.26.80 _____
(Agency) (Date)

to become effective _____ 12.8.80 _____
(Date)

The within matter having come before the _____ Oregon State Board of Parole _____ after
(Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) _____

Temp. Perm.

Amended:
(Existing Rules) _____ 255-35-015, Exhibit B. _____

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

as Administrative Rules of the _____ Oregon State Board of Parole _____
(Agency)

DATED this _____ 8th _____ day of _____ December _____, 19 _____ 80

By: _____ Elizabeth A. Browne _____
(Authorized Signer)
Title: _____ Chairperson _____

Statutory Authority: _____

Subject Matter: _____

Statement of Need Attached: Yes No

For Further Information Contact: _____ Elizabeth Browne, or Dwight L. Ferris _____ Phone: _____ 378-2334 _____

STATE BOARD OF PAROLE

In the Matter of Board of Parole)
Rules and Amending Chapter 255)
of the Oregon Administrative Rules,)
Exhibit B (Criminal history/risk)
Assessment Under Rule 255-35-015).)

Notice of Intent to Amend Rules
on a Temporary Basis; Statement
of Findings, Authority, Need and
Sources Relied Upon.

- (1) Statement of Findings: It is found by the Board that failure to act promptly in the adoption of the above amendment will result in serious prejudice to inmates affected by the proposed change due to the impact on ranges set for prison terms which will necessitate rehearing.
- (2) Legal Authority: ORS 144.120, 144.140, 183.335(5), OAR 255-01-005, OAR 255-01-055, OAR 255-35-015, OAR 255-35-025.
- (3) Statement of Need: The amendment of Exhibit B of Chapter 255 of the Oregon Administrative Rules which pertains to the criminal history/risk assessment under Rule 255-35-015 is needed to narrow the discretionary function of the Board in setting prison terms, provide a more equitable application of the aforementioned rule, enhance its predictive vote, and bring the matrix into compliance with the practical reality for the need to establish new release dates, which adhere to the "just deserts" policy of incarceration which are in keeping with sound correctional philosophy.
- (4) Documents, reports and studies relied upon by the Board in preparing the rule: The Board has acted in response to suggestions and recommendations of the Advisory Commission on Prison Terms and Parole Standards, and the Corrections Division of the State of Oregon.
- (5) The above rule shall become effective December 8, 1980.

12/5/80
Date

Elizabeth A. Brouse
Chairperson, Oregon State Board of Parole

EXHIBIT B

CRIMINAL HISTORY/RISK ASSESSMENT UNDER RULE 255.35.015

	SCORE
(A) No prior felony or misdemeanor convictions as an adult or juvenile:	3
One prior conviction:	2
Two or three prior convictions:	1
Four or more prior convictions:	0 _____
(B) No prior incarcerations (i.e. executed sentences of 90 days or more) as an adult or juvenile:	2
One or two prior incarcerations:	1
Three or more prior incarcerations:	0 _____
(C) Age of behavior leading to this incarceration:	
26 or older:	2
21 to under 26:	1
Under 21:	0 _____
(D) Present committment does not include parole, probation, failure to appear, release agreement, escape or custody violation:	2
Present committment involves probation, release agreement, or failure to appear violation:	1
Present committment involves parole, escape or custody violation:	0 _____
(E) Has no admitted or documented heroin or opiate derivative abuse problem:	1
Otherwise:	0 _____
(F) Verified period of 3 years conviction free in the community prior to present incarceration:	1
Otherwise:	0 _____
TOTAL HISTORY/RISK ASSESSMENT SCORE:	

Amended 12.8.80

akk

2-15-81

FILED
JAN 20 1981
NORMA PAULUS
SECRETARY OF STATE

**CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE**

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole on January 12, 1981

to become effective _____
February 15, 1981
(Agency) (Date)

The within matter having come before the _____
Oregon State Board of Parole after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted: _____
(New Rules) 255-90-002, 255-90-003; Exhibit H-1 Temp. Perm.

Amended: _____
(Existing Rules) 255-35-010; 255-40-020; 255-50-015; 255-60-005;
255-60-010; 255-90-005; 255-90-010; 255-90-015;
Exhibit A, Part I & II; Exhibit B, Exhibit C, Exhibit D

Suspended: _____
(Temporary Only)

Repealed: _____
(Existing Rules) Chapter 255, Exhibit H;

as Administrative Rules of the _____
Oregon State Board of Parole
(Agency)

DATED this 14th day of January 1981

By: Elizabeth O. Browne
(Authorized Signer)
Title: Chairperson

Statutory Authority: ORS Ch 144

Subject Matter: _____

Statement of Need Attached: Yes No

For Further Information Contact: Elizabeth W. Browne/Dwight L. Ferris Phone: 378-2334

ITEM 1

AMENDMENT TO 255-35-010

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

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

255-35-010 Shall be amended as follows:

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

STAT.AUTH.:ORS Ch.144

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

ITEM 2

AMENDMENT TO 255-40-020

Amending OAR 255-40-020 to read as follows:

Reopening Cases: When; What Showing is Necessary

255-40-020 The Board may reopen any case for reconsideration upon formal written request of a prisoner to the Chairperson or motion of a Board member [(including the Administrator)] if:

- (1) Substantial new information which was unknown at the time of the prison term hearing or could not be contemplated at that time has been received;
- (2) Substantial information that a prisoner, or any other person, willfully concealed or misrepresented information material to a prior Board action has been received;
- (3) Statutory changes have reclassified the criminal conduct involved (e.g., reduction of certain categories of murder to manslaughter, creation of degrees of manslaughter).
- (4) Rule changes have resulted in a shorter range.
- (5) An error in applying the Board rules has occurred by clerical error or incorrect computation of the release date.
- (6) [5] The Board shall state the specific reasons for denial of a request to reopen a hearing.

ITEM 3

AMENDMENT TO 255-50-015

Amending OAR 255-50-015 to provide for rescission of parole after a person's release on parole.

255-50-015(1) The chairperson may, on his own motion or upon notification by the Chief of Release Services, suspend the release date of a prisoner when there is reason to believe the person has engaged in serious misconduct. Suspension shall be for such time as is reasonably necessary to conduct the rescission hearing and make a decision.

(2) The Board may rescind a parole after it has been ordered but prior to release from custody by conducting a rehearing under the procedures of division 30, upon recommendation of an institution superintendent, Regional Manager, or a Board member, and with the concurrence of three voting members of the Board.

(3) The Board may rescind a parole after it has been ordered and after release from custody when the Board is informed of reasonable grounds to believe a person has violated a law prior to his parole release date and knowledge of the law violation was not known by the Board on the date of the Order of Parole. Upon concurrence of three Board members, a fact finding hearing shall be held pursuant to the procedures set forth in Division 75 of these rules pertaining to revocation of parole to determine if the law violation did occur.

(4)[(3)] The parole order of a prisoner who is voluntarily absent from a facility shall be voided by the chairperson. A rescission hearing shall be scheduled when the prisoner is available.

ITEM 4

AMENDMENT TO 255-60-005

Amending 255-60-005(1) to read as follows:

Parole Release interviews: Purpose; Review of Parole Plan; Procedure if Plan is Inadequate; Maximum Deferred

255-60-005(1) A prisoner who has been given a parole release date shall be interviewed prior to his/her parole release.

- (2) Interviews shall be conducted by one or more voting members of the Board.
- (3) The purpose of the interview shall be to examine the prisoner's Parole Plan, his/her psychological report, if any, and the record of his/her conduct during confinement.
- (4) The interviewer shall examine the prisoner's plans for residence, employment, or other situation in the community to determine whether the parole is adequate:
 - (a) An acceptable plan includes employment, school, or other situation (e.g., retirement income), and suitable residence; it may require treatment programs and prescribed medication.
 - (b) If any portion of the plan is deficient or unverified, the Board may order deferred release to a verified plan approved by a panel, or to a plan approved by the Administrator of the Corrections Division.
 - (c) If the prisoner's record includes a psychiatric or psychological diagnosis of severe emotional disturbance, the Board may order a psychological evaluation to determine the prisoner's rehabilitation potential.

The evaluation shall consist of a diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural,

social, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes, and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed.

The evaluation should include recommendations for treatment or medication if necessary to assist in the rehabilitation of the prisoner or to protect the health and safety of the community. After considering the evaluation, the Board may require that the prisoner include in his plan provisions which are recommended in the evaluation.

[(c)](d) Parole release may be deferred up to 90 days from the parole release date when a plan is deficient or unverified in order to obtain verification of a satisfactory plan from the Corrections Division. A report shall be presented to the Board after 60 days by the Corrections Division, according to its letter of agreement with the Board.

(5) A prisoner requesting an out-of-state parole waives the 90-day limitation on postponements for developing an adequate parole plan.

(6) The Board shall clearly state the facts and specific reasons for its decision if parole release is deferred. The individual votes of the Board members shall be listed.

ITEM 4

AMENDMENT TO 255-60-010(1)

Amending 255-60-010 to read as follows

255-60-010(1) Should the interview indicate that:

- (a) A psychiatric or psychological diagnosis of the prisoner reveals a present severe emotional disturbance [; or] which the Board finds based upon the crime of committal and/or behavior in the institution poses a threat to the health and/or safety of the community; or
 - (b) The prisoner has engaged in serious institutional misconduct, a hearing shall be conducted by the Board to consider deferring the parole release date. The procedure for hearings in dividion 30 shall apply.
- (2) Following the hearing, a panel may order postponement of the scheduled release of a prisoner found to have a present emotional disturbance which the Board finds poses a threat to the health or safety of the community until after a specified future date not to exceed one year or until the prisoner or institution presents evidence that the emotional disturbance is over or in remission.
- (3) The Board may not deny release on parole solely because of a prisoner's severe emotional disturbance. Should the prisoner be diagnosed as a danger to himself or others or unable to provide for the basic personal needs necessary for his health or safety, the Board may initiate the civil commitment procedure as provided in ORS Chapter 426.
- (4)[(3)] If the prisoner has engaged in serious institutional misconduct, the provisions of dividion 50 shall apply.

ITEM 4
AMENDING 255-60-010(1)
Page four

(5)[4] The Board shall clearly state the facts and specific reasons for its decision. The individual votes of the Board members shall be indicated.

STAT. AUTH. ORS Ch. 144
Hist: 2PB 1-1979 & ef. 2-1-79

ITEM 5

AMENDMENT TO EXHIBIT A, PART I

Exhibit A, Part I, Chapter #255, Oregon Administrative Rules is Amended as follows:

EXHIBIT A

Part I

OFFENSE SEVERITY UNDER RULE 255-35-010

OFFENSE	RATING	FELONY CLASS
163.095 - Aggravated Murder	7	A
163.115 - Murder	7	A
166.005 - Treason	7	A
163.118 - Manslaughter I	6	A
163.235 - Kidnapping I	6	A
163.375 - Rape I (Subcategory 1)	6	A
163.405 - Sodomy I (Subcategory 1)	6	A
164.415 - Robbery I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 1)	6	A
164.325 - Arson I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 2)	5	A
164.325 - Arson I (Subcategory 2)	5	A
164.415 - Robbery I (Subcategory 2)	5	A
162.165 - Escape I	5	B
164.225 - Burglary I (Subcategory 1)	5	A
<u>162.185 - Supplying Contraband (Subcategory 1)</u>	<u>5</u>	<u>C</u>
163.175 - Assault II	4	B
163.225 - Kidnapping II	4	B
163.365 - Rape II (Subcategory 1)	4	B
163.395 - Sodomy II	4	B
164.225 - Burglary I (Subcategory 2)	4	A
167.017 - Compelling Prostitution	4	B
164.405 - Robbery II	4	B
167.207(4) - Criminal Activity in Drugs (Subcategory 1)	4	A
163.275 - Coercion (Subcategory 1)	4	C
164.075 - Theft by Extortion (Subcategory 1)	4	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 1)	4	A
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 1)	4	A,B
163.125 - Manslaughter II	3	B
162.015 - Bribe Giving	3	B
162.025 - Bribe Receiving	3	B
167.207(1) - Criminal Activity in Drugs (Subcategory 1)	3	B
163.425 - Sexual Abuse I	3	C
<u>162.185 - Supplying Contraband (Subcategory 2)</u>	<u>3</u>	<u>C</u>

OFFENSE	RATING	FELONY CLASS
164.225 - Burglary I (Subcategory 3)	3	A
163.365 - Rape II (Subcategory 2)	3	B
164.215 - Burglary II (Subcategory 1)	3	C
164.055 - Theft I (Subcategory 1)	3	C
164.125 - Theft of Services (Subcategory 1)	3	C
164.085 - Theft by Deception (Subcategory 1)	3	C
165.013 - Forgery I (Subcategory 1)	3	C
475.992(1) - Manufacture or Delivery of Controlled Substance (Subcategory 2)	3	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 1)	3	A
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 2)	3	A,B
162.065 - Perjury	2	C
162.155 - Escape II (Subcategory 1)	2	C
162.205 - Failure to Appear I	2	C
162.265 - Bribing a Witness	2	C
162.275 - Witness Receiving Bribe	2	C
163.145 - Criminally Negligent Homicide	2	C
163.205 - Criminal Mistreatment	2	C
163.257 - Custodial Interference I	2	C
163.275 - Theft by Coercion (Subcategory 2)	2	C
163.355 - Rape III	2	C
163.385 - Sodomy III	2	C
163.535 - Abandon Child	2	C
164.055 - Theft I (Subcategory 2)	2	C
164.095 - Theft by Receiving	2	C
164.135 - Unauthorized Use of a Motor Vehicle (Subcategory 1)	2	C
164.215 - Burglary II (Subcategory 2)	2	C
164.315 - Arson II	2	C
[164.395 - Robbery III	2	C]
165.013 - Forgery I (Subcategory 2)	2	C
167.207(4) - Criminal Activity in Drugs (Subcategory 3)	2	A
167.207(1) - Criminal Activity in Drugs (Subcategory 2)	2	A
164.125 - Theft of Services (Subcategory 2)	2	C
164.075 - Theft by Deception (Subcategory 2)	2	C
165.095 - Sports Bribery	2	C
165.090 - Sports Bribe Receiving	2	C
162.185 - Supplying Contraband (Subcategory 3)	2	C
166.270 - Ex-Convict in Possession	2	C
166.410 - Sale related (firearms)	2	C
166.220 - Carrying a Weapon With Intent to Use	2	C
167.012 - Promoting Prostitution	2	C

OFFENSE	RATING	FELONY CLASS
167.278 - Obtaining Drugs Unlawfully	2	B
496.992(3) - Poaching (Subcategory 1)	2	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 3)	2	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 2)	2	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 1)	2	B,C
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 3)	2	C
162.185 - Supplying Contraband (Subcategory 4)	1	C
162.325 - Hindering Prosecution	1	C
163.515 - Bigamy	1	C
163.525 - Incest	1	C
163.555 - Criminal Nonsupport	1	C
164.065 - Theft; Lost, Mislaid	1	C
164.075 - Theft by Deception (Subcategory 3)	1	C
164.125 - Theft of Services (Subcategory 3)	1	A -\$200(Misd.) C +\$200
164.365 - Criminal Mischief I	1	C
165.022 - Forged Instrument I	1	C
165.032 - Forgery Device	1	C
165.055 - Fraudulent Use of a Credit Card	1	A -\$200(Misd.) C +\$200
165.070 - Fraudulent Communication Device	1	C
167.127 - Promoting Gambling	1	C
167.137 - Possession of Gambling Records I	1	C
167.212 - Tampering with Drug Records	1	C
- Welfare Fraud	1	C
-Felony Traffic	1	C
133.723 - Interception of Communication	1	C
496.992(3) - Poaching (Subcategory 2)	1	C
167.207(1) - Criminal Activity in Drugs (Subcategory 3)	1	A
164.215 - Burglary II (Subcategory 3)	1	C
164.135 - Unauthorized Use of a Motor Vehicle (Subcategory 2)	1	C
162.155 - Escape II (Subcategory 2)	1	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 4)	1	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 3)	1	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 2)	1	B,C
475.993 - Violation of Controlled Substance Act by Registrants	1	C

Conspiracy has the same offense severity as the crime conspired to, except that Conspiracy to Commit Murder shall be given a rating of 6.

ITEM 5

AMENDMENT TO EXHIBIT A, PART II

Exhibit A, Part II, Chapter 255, Oregon Administrative Rules, is amended to add the subcategorization of Supplying Contraband, as follows:

SUPPLYING CONTRABAND ORS 162.185

Felony Class - C

Statutory Elements: Person knowingly introduces contraband into a correctional facility, juvenile training school or state hospital, or being confined in a correctional facility, juvenile training school or state hospital, he knowingly makes, obtains or possesses any contraband.

Subcategory 1 - Rating of 5

...All cases of supplying contraband which involve the supplying or possession of any explosive substance, pistol, revolver or other firearm or ammunition.

Subcategory 2 - Rating of 3

...All cases of supplying contraband which involve the supplying or possession of any dangerous instrument or weapon, including, but not limited to any blackjack, slingshot, billy club, sand club, or metal knuckles, dirk, dagger, or sharp instrument.

Subcategory 3 - Rating of 2

...All cases of supplying contraband which involve the supplying or possession of Schedule I drugs, except marijuana, Schedule II drugs, plus PCP.

Subcategory 4 - Rating of 1

...All cases of supplying contraband which involve the supplying or possession of Schedule III drugs, plus marijuana or other contraband not fitting subcategories 1, 2, and 3 above.

ITEM 6

Adopting rules relating to the discharge of parolees from parole and establishing tentative periods of time a parolee may serve on supervised parole; repealing Exhibit H and amending 255-90-005, 255-90-010, 255-90-015.

255-90-002. The Board shall establish a conditional discharge date from supervised parole within the range for the appropriate offense severity rating and history/risk score shown in the guideline matrix, Exhibit H-1. A parolee shall remain on unsupervised parole and shall not be given final discharge from parole until five (5) years after his placement on unsupervised parole, or until the occurrence of his good time date, whichever first occurs.

255-90-003. The Board may revoke parole, extend or deny a conditional discharge date, a final discharge or place a person back on supervised parole after his placement on conditional discharge for a period equal to the sentence expiration date when the parolee has been found, after hearing pursuant to Division 75 of these rules, to have violated the conditions of parole.

ITEM 6
DISCHARGE

Discharge Generally

255-90-005 The guidelines set forth in [Exhibit H] Exhibit H-1 shall govern the establishment of conditional [tentative] discharge dates. The date shall be set at the parole release interview, and shall be written on the Order of Parole. For the conditional discharge date to become effective, the parolee must display acceptable performance during the term of supervised [active] parole.

255-90-010(1) A minimum of 30 days prior to the conditional [tentative] discharge date on the Order of Parole, the supervising parole officer shall send to the Board a supervisory report. This report shall recommend one of two courses:

(a) That the parolee be conditionally discharged on the conditional [tentative] date:

[(A) Upon approval by the Board, the supervising officer shall be forwarded the discharge certificate for presentation to the parolee on the tentative discharge date or the first prior business day.]

[(B) Provided that no facts are discovered between the submission of the supervising officer's report and the discharge date which indicate discharge should occur, the supervising officer shall present the certificate in person or by certified mail at a confirmed address and shall return proof of presentation directly to the Board.]

(b) That the conditional discharge not be granted [on the tentative date.]

(A) In this case, the supervisory report shall contain information showing why conditional discharge is not warranted and

recommend a new conditional discharge date.

- (B) The case shall receive a Board review under procedures of section 255-30-015(3).
- (C) After consideration of the parole officer's recommendation, the Board shall either conditionally discharge the parolee or issue [forward a discharge certificate or] a written explanation for denial of the request.
- (D) The supervising officer shall either [present the discharge certificate as in (a) above or shall] notify the parolee of the new conditional discharge date and reasons [whichever is applicable] or notify the parolee in writing that he has been conditionally discharged.
- (2) If the Board desires further information on which to base its decision, it may conduct a hearing according to the procedures in division 75.
- (3) Notwithstanding section (1) above, the supervising officer may submit a recommendation with written reasons for early conditional discharge at any time after one year [active] supervised parole.

255-90-015 [Tentative] Conditional discharge dates may be extended according to the following procedures:

- (1) An extension of a [tentative] conditional discharge date shall be made by the Board when notified that an inmate has good time under forfeiture at the time of parole release.
- (2) A prisoner with good time under forfeiture shall have his/her [tentative] conditional discharge date extended

by the amount of good time under forfeiture.

(3) The Order of Parole will specify the amount of good time under forfeiture.

(4) The Board may rescind the extension upon recommendation of the supervising parole officer after six months of satisfactory parole adjustment.

ITEM 6

TIME TO BE SERVED ON SUPERVISED PAROLE
PRIOR TO CONDITIONAL DISCHARGE **

EXHIBIT H-1

OFFENSE SEVERITY RATING	CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
	11-9 Excellent	8-6 Good	5-3 Fair	2-0 Poor
1	2 *	2	2	2
2	2	2	2	2
3	2	2	2	2
4	2	2	2	2
5	2	3	3	3
6	3	4	4	4
7 Subcategory 2	4	4	4	4
Subcategory 1	4	4	4	4

* Numbers represent years of supervised parole

** Final discharge shall occur five (5) years after conditional discharge or on the occurrence of his good time date, whichever occurs first.

eff

4-1-81

OREGON ADMINISTRATIVE RULES
CHAPTER 255 -- BOARD OF PAROLE

[ROBBERY I -- ORS 164.415

Felony Class: A

Statutory Elements: Robbery involved either:
armed with a deadly weapon; or uses or
attempts to use dangerous weapon; or
causes or attempts to cause serious injury

Subcategory 1 - rating of 6

... All cases of Robbery I except those fitting Subcategory 2

Subcategory 2 - rating of 5

Cases of robbery where the crime does not involve

... Discharge of a firearm; or
... Use of any other dangerous weapon; or
... Explicit and immediate threats, by word or gesture (e.g., cocking hammer
of gun), of death or serious bodily harm; or
... Serious injury]

ASSAULT I -- ORS 163.185

Felony Class: A

Statutory Elements: Intentional serious injury to another by means of
a deadly or dangerous weapon

Subcategory 1 - rating of 6

...All cases of Assault I except those fitting Subcategory 2

Subcategory 2 - rating of 5

...Cases of Assault I in which the victim or victims provoked the crime to
a substantial degree, or other evidence that misconduct by victim con-
tributed substantially to the criminal episode.

ARSON I -- ORS 164.325

Felony Class: A

Statutory Elements: Arson involving either:
property of another which is customarily occupied by
people; or own property, if persons are endangered or
if other customarily occupied property is also endangered

OREGON ADMINISTRATIVE RULES
CHAPTER 255 — BOARD OF PAROLE

EXHIBIT A

Part I

OFFENSE SEVERITY UNDER RULE 255-35-010

OFFENSE	RATING	FELONY CLASS
163.095 - Aggravated Murder	7	A
163.115 - Murder	7	A
166.005 - Treason	7	A
163.118 - Manslaughter I	6	A
163.235 - Kidnapping I	6	A
163.375 - Rape I (Subcategory 1)	6	A
163.405 - Sodomy I (Subcategory 1)	6	A
164.415 - Robbery I [(Subcategory .)]	5	A
163.185 - Assault I (Subcategory 1)	6	A
164.325 - Arson I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 2)	5	A
164.325 - Arson I (Subcategory 2)	5	A
[164.415 - Robbery I (Subcategory 2)	5	A]
162.165 - Escape I	5	B
164.225 - Burglary I (Subcategory 1)	5	A
162.185 - Supplying Contraband (Subcategory 1)	5	C
163.175 - Assault II	4	B
163.225 - Kidnapping II	4	B
163.365 - Rape II (Subcategory 1)	4	B
163.395 - Sodomy II	4	B
164.225 - Burglary I (Subcategory 2)	4	A
167.017 - Compelling Prostitution	4	B
164.405 - Robbery II	4	B
167.207(4) - Criminal Activity in Drugs (Subcategory 1)	4	A
163.275 - Coercion (Subcategory 1)	4	C
164.075 - Theft by Extortion (Subcategory 1)	4	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 1)	4	A
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 1)	4	A,B
163.125 - Manslaughter II	3	B
162.015 - Bribe Giving	3	B
162.025 - Bribe Receiving	3	B
167.207(1) - Criminal Activity in Drugs (Subcategory 1)	3	B
163.425 - Sexual Abuse I	3	C
162.185 - Supplying Contraband (Subcategory 2)	3	C
164.225 - Burglary I (Subcategory 3)	3	A

ED 25a
Oct. 1, 1976
Nov. 11/18/77

FILED
MAR 05 1981
NORMA PAULUS
SECRETARY OF STATE

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole on March 5, 1981
(Agency) (Date)
to become effective April 1, 1981
(Date)

The within matter having come before the Oregon State Board of Parole after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) _____

Temp. Perm.

Amended:
(Existing Rules) Exhibit A, Parts I and II; Exhibit B

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

is Administrative Rules of the Oregon State Board of Parole
(Agency)

DATED this 5th day of March, 1981

By: *E. Browne*
(Authorized Signer)

Title: CHAIRPERSON, BOARD OF PAROLE

Statutory Authority: ORS Ch. 144

Subject Matter: _____

Statement of Need Attached: Yes No Previously filed 1.14.81

For Further Information Contact: Dwight L. Ferris or Elizabeth W. Browne Phone: 378-2334

EXHIBIT B

CRIMINAL HISTORY/RISK ASSESSMENT UNDER RULE 255.35.015

	SCORE
1) No prior felony or misdemeanor convictions as an adult or juvenile: One prior conviction: Two or three prior convictions: Four or more prior convictions:	3 2 1 0 _____
2) No prior incarcerations (i.e. executed sentences of 90 days or more) as an adult or juvenile: One or two prior incarcerations: Three or more prior incarcerations:	2 1 0 _____
3) Age of behavior leading to this incarceration: 26 or older: 21 to under 26: Under 21:	2 1 0 _____
4) Present committment does not include parole, probation, failure to appear, release agreement, escape or custody violation: Present committment involves probation, release agreement, or failure to appear violation: Present committment involves parole, escape or custody violation:	2 1 0 _____
5) Has no admitted or documented heroin or opiate derivative abuse problem: Otherwise:	1 0 _____
6) Verified period of 3 years conviction free in the community prior to present incarceration: Otherwise:	1 0 _____
TOTAL HISTORY/RISK ASSESSMENT SCORE:	

dated 12.8.80

abb

720-81

CERTIFICATE AND ORDER for FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole on July 20, 1981
(Agency) (Date)
become effective July 20, 1981
(Date)

The within matter having come before the Oregon State Board of Parole after
(Agency)
procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
vised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) OAR 255-30-002 Exhibit J Temp Perm.

Amended:
(Existing Rules) _____

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

Administrative Rules of the OREGON STATE BOARD OF PAROLE
(Agency)

DATED this 20th day of July 1981

By: Hazel G. Hays
(Authorized Signer)
Title: CHAIRPERSON, BOARD OF PAROLE

Statutory Authority: ORS 144.120, 144.140

Subject Matter: _____

Statement of Need Attached: Yes No

For Further Information Contact: Hazel G. Hays or Dwight L. Ferris Phone: 378-2334

OREGON STATE BOARD OF PAROLE

In the Matter of Adopting a Rule)
Pertaining to Board Policy in)
Setting Prison Terms) Notice of Intent to Adopt a Rule
on a Temporary Basis; Statement
of Findings, Authority, Need and
Sources Relied Upon.

1. Statement of Findings: It is found by the Board of Parole that failure to act promptly in the adoption of the above amendment will result in serious prejudice to inmates affected by the proposed change due to the potential impact on ranges set for prison terms which may necessitate re-hearings.
2. Legal Authority: ORS 144.120, 144.140, 183.335(5), OAR 255-01-005, OAR 255-01-055.
3. Statement of Need: The adoption of the proposed rule OAR 255-30-002 and Exhibit J which specifies a policy of the Board in respect to what rules will be applied in setting a prison term is needed to narrow the discretionary function of the Board in setting prison terms and to assure a consistent and uniform application of Board rules to inmates sentenced on or before December 31, 1976.
4. Documents, reports and studies relied upon by the Board in preparing the rule: ORS 144.175 and ORS 144.180 (repealed 1977).
5. Statement of Fiscal Impact: The adoption of OAR 255-30-002 and Exhibit J are not expected to economically affect any state agency or the public to any significant degree.
6. The above rule shall become effective upon filing on July 20, 1981.

DATE: 7-20-81

Hazel M. Hans
CHAIRPERSON, OREGON STATE BOARD OF PAROLE

255-30-002 - Policy (1) Whenever the Parole Board considers the release or the setting of a prison term, it shall be the policy of the Board to utilize the rules in effect at the time the prisoner was given an executed sentence to prison.

(2) In January, 1977, the Board of Parole adopted rules creating the matrix system. Prior to the adoption of the matrix, the Board did not give a firm release date to the prisoner. Instead the Board set a parole consideration hearing pursuant to the authority granted by the existing statutes, ORS 144.175 and 144.180 (repealed by 1977 c 372 §18). Consequently, it is the policy of the Board that inmates who were sentenced on or before December 31, 1976, may either remain under the system which was in effect prior to 1977 or may receive a firm release date under the matrix system. If the prisoner chooses to remain under the system in effect prior to 1977, the Board cannot give him or her a firm release date. The Board can only give a consideration date and review the inmate, using the criteria of the above statutes which are set out verbatim in Exhibit J. A prisoner who applies for and receives a firm date shall not later request to be given a parole consideration hearing pursuant to ORS 144.175 and 144.180.

EXHIBIT J

PAROLE PROCESS

144.115 Policy on paroling prisoner; reasons for not paroling prisoner. Whenever the State Board of Parole considers the release of a prisoner who, by its rules or order, is eligible for release on parole, it shall be the policy of the board to order his release, unless the board is of the opinion that his release should be deferred or denied because:

(1) There is a reasonable probability that the inmate will not, after parole, remain outside the institution without violating the law and that his release is incompatible with the welfare of society;

(2) There is substantial risk that he will not conform to the conditions of parole;

(3) His release at that time would depreciate the seriousness of his crime or promote disrespect for law;

(4) His release would have a substantially adverse effect on institutional discipline; or

(5) His continued correctional treatment, medical care or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life when released at a later date.
[1973 c.884 §4]

144.120 Factors to be considered in paroling prisoner. In making its determination regarding a prisoner's release on parole, the State Board of Parole may take into account each of the following factors:

(1) The prisoner's personality, including his maturity, stability, sense of responsibility and any apparent development in his personality which may promote or hinder his conformity to law;

(2) The adequacy of the prisoner's parole plan;

(3) The prisoner's ability and readiness to assume obligations and undertake responsibilities;

(4) The prisoner's intelligence and training;

(5) The prisoner's family status and whether he has relatives who display an interest in him, or whether he has other close and constructive associations in the community;

(6) The prisoner's employment history, his occupational skills, and the stability of his past employment;

(7) The type of residence, neighborhood or community in which the prisoner plans to live;

(8) The prisoner's past use of narcotics or dangerous drugs, or past habitual and excessive use of alcoholic liquor;

(9) The prisoner's mental or physical makeup, including any disability or handicap which may affect his conformity to law;

(10) The prisoner's prior criminal record, including the nature and circumstances, recency, frequency and type of previous offenses;

(11) The prisoner's attitude toward law and authority;

(12) The prisoner's conduct in the institution, including particularly whether he has taken advantage of the opportunities for self-improvement afforded by the institutional program, whether he has been disciplined for misconduct prior to his hearing or reconsideration for parole release, whether he has forfeited any reductions of term during his period of imprisonment, and whether the reductions have been restored at the time of hearing or reconsideration; and

(13) The prisoner's conduct and attitude during any previous experience of probation or parole and when the experience occurred.
[1973 c.884 §5]

144.122 [Repealed by 1974 n.s. c.36 §28]

eff

11-4-81

FILED
NOV 04 1981
NORMA PAULUS
SECRETARY OF STATE

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____

Oregon Board of Parole

on November 4, 1981

to become effective November 4, 1981

The within matter having come before the Oregon Board of Parole after

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be adopted: Perm. or Temp.
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted: (New Rules) OAR 255-30-012

Amended: (Existing Rules) OAR 255-30-025

Suspended: (Temporary Only)

Repealed: (Existing Rules)

Administrative Rules of the Oregon Board of Parole

DATED this 4th day of November 1981

By: Hazel G. Hayes
(Authorized Signer)
Title: Chairperson

Statutory Authority: ORS 144, Senate Bill 526 and House Bill 2995 (Oregon Legislative assembly - 1981 regular session)

Subject Matter: scheduling and hearing procedure for aggravated murder and who may appear at a parole board hearing.

Statement of Need Attached: Fiscal Impact Attached:

For Further Information Contact: _____ Phone: _____


OREGON STATE BOARD OF PAROLE

In The Matter of Amending and)
Adopting Rules Pertaining to)
Scheduling and Hearings Proce-)
dure for Aggravated Murder and)
Who May Appear at a Parole)
Board Hearing)

Notice of Intent to Adopt a Rule
on a Temporary Basis; Statement
of Findings, Authority, Need and
Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt rules setting procedures for hearings on persons convicted under the aggravated murder statutes and to establish guidelines for who may appear at a parole board hearing is necessary to bring the Board into compliance with Senate Bill 526 and House Bill 2995 passed into law by the 1981 Legislature on an emergency basis.
2. Legal Authority: ORS Chapter 144, Senate Bill 526 and House Bill 2995 (Oregon Legislative Assembly - 1981 Regular Session).
3. Statement of Need: The adoption/amendment of the proposed rules which set the procedure for hearings on persons convicted under the aggravated murder statutes and to establish guidelines for who may appear at a parole board hearing are needed to bring the Board rules into conformity with Senate Bill 526 and House Bill 2995, passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing the rule: Senate Bill 526 and House Bill 2995, Oregon Legislative Assembly - 1981 regular session.
5. Statement of Fiscal Impact: The adoption of OAR 255-30-012 and the amendment/adoption of OAR 255-30-025 is expected to have no significant fiscal impact.
6. The above rule shall become effective upon filing on November 4, 1981.

Date November 4, 1981


Hazel C. Hays, Chairperson
Oregon State Board of Parole

;

Adopting, on a temporary basis, OAR 255-30-012 and amending
and adopting on a temporary basis OAR 255-30-025

Scheduling and Hearing Procedure for Aggravated Murder

255-30-012

(1) Those persons sentenced under ORS 163.095 for aggravated murder shall be seen at a prison term hearing within six months of confinement at a state institution. The Board shall make necessary findings such as history/risk score, aggravation or mitigation and shall establish the maximum period of confinement and first eligibility for a hearing under ORS 163.105 (3).

(2) At any time after the minimum period of confinement has been served the prisoner may petition the Board for a hearing. Within a reasonable period of time the Board shall hold a hearing under the provisions of ORS 163.105 (3), (4), (5) and (6).

Who May Appear at a Parole Board Hearing

255-30-025(1) The prisoner shall appear at the Parole Board hearing unless the prisoner waives parole in writing [.] or by refusal to appear. The Board may choose not to set a release date if the prisoner waives parole. However, the prisoner, shall be rescheduled for a hearing upon written request from the prisoner who previously waived.

[(2) No person other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to language barriers, mental or emotional incapacity, or education deficiency. Assistance shall be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the Chairperson of the Board.]

(2) The prisoner may be accompanied by a person of the prisoner's choice, subject to rules and procedures of the Corrections Division. The person accompanying the prisoner may make a statement, not to exceed five minutes, at the conclusion of the hearing.

(3) Assistance to prisoners incapable of presenting their position due to language barriers, mental or emotional incapacity or educational deficiency shall be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the chairperson of the panel.

(4) If the prisoner needs assistance and has an assistant appointed by the chairperson pursuant to this subsection, this shall not preclude the prisoner being accompanied to the hearing by a person of the prisoner's choice.

FILED
NOV 4 1981
NORMA PALLUS

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____

Oregon Board of Parole

(Agency)

on November 4, 1981

(Date)

to become effective November 4, 1981

(Date)

The within matter having come before the Oregon State Board of Parole after

(Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be adopted: Perm. or Temp.
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules)

0AR 255-35-012

Amended:
(Existing Rules)

0AR 255-35-010; 255-35-035 and Exhibit D

Suspended:
(Temporary Only)

Repealed:
(Existing Rules)

as Administrative Rules of the Oregon State Board of Parole

(Agency)

DATED this 4th day of November 19 81

By: Hazel H. Hayes
(Authorized Signer)

Title: Chairperson

Statutory Authority: ORS 144.120, 144.125, 144.140, 183.335(5), 0AR 255-01-005 and 0AR 255-01-055

Subject Matter: severity ratings and setting release dates

Statement of Need Attached: x

Fiscal Impact Attached:

For Further Information Contact: _____ Phone: _____

Amending and adopting on a temporary basis 255-35-010, and adopting on a temporary basis 255-35-012

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

255-35-010

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

(2) Special Situations:

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

(b) Attempt (ORS 161.405) and Solicitation (ORS 161.423) shall be assigned a rating one category less than the criminal activity intended. Conspiracy shall be assigned the same severity as the actual crime except that Conspiracy to Commit Murder shall be classified a six (6) rather than a seven (7).

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

(d) When consecutive sentences have been imposed, a rating shall be assigned for each offense, except as provided in paragraph 255-35-02[0(2)(e)(A)] 2.

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

Board to Make Findings of Fact Regarding Offense Severity;

Waiver of Exit Interview; Establishing Conditions of Parole.

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

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

Amending and adopting on a temporary basis OAR 255-35-035
and Exhibit D

Variations From the Ranges for Aggravation or Mitigation:

Findings Necessary; Disclosure of Information; When Not Justified; Effect of Plea Bargained Sentences: Sentence as Aggravating or Mitigating; Variation by a Panel of Two; Variation by the Full Board

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT D

GUIDELINES MATRIX

STANDARD VARIATIONS FROM THE RANGES UNDER RULE 255-35-035

CRIME CATEGORY	CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
	11-9	8-6	5-3	2-0
	Excellent	Good	Fair	Poor
1 PANEL	3*	3	3	3
2 PANEL	3	3	3	4
3 PANEL	3	3	3	6
4 PANEL	3	3	4	6
5 PANEL	4	6	6	8
6 PANEL	5	6	10	12
7 FULL BOARD	36	36	36	36

*All numbers represent standard variations in months.

[Board variations may be twice the panel variation.]

The maximum variation allowed in crime categories 1 through 6 are:

- (a) For a panel: the standard variation.
- (b) For a two-member panel with a concurring vote (3 concurring votes): two times the standard variation.
- (c) For four concurring votes after a hearing before the full Board: three times the standard variation.
- (d) For five concurring votes after a hearing before the full Board: four times the standard variation.

The maximum variations allowed the full Board for category 7 crimes are:

- (a) For three concurring votes: the standard variation of 36 mo.
- (b) For four concurring votes: two times the standard variation of 36 months (72 months).
- (c) For five concurring votes: three times the standard variation of 36 months (108 months).

Nov 11 1981
Nov Oct 1979

FILED
NOV 04 1981
NOLMA FARMING

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____

Oregon Board of Parole on November 4, 1981
(Agency) (Date)

to become effective November 4, 1981
(Date)

The within matter having come before the Oregon Board of Parole after
(Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be adopted: Perm. or Temp.
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) _____

Amended:
(Existing Rules) OAR 255-38-005

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

Administrative Rules of the Oregon Board of Parole
(Agency)

DATED this 4th day of November, 1981

By: Hazel M. Hayes
(Authorized Signer)
Title: Chairperson

Statutory Authority: ORS Chapter 144 & House Bill 2995 (Oregon Legislative Assembly - 1981 regular session)

Subject Matter: setting of release dates for dangerous offenders

Statement of Need Attached: Fiscal Impact Attached:

For Further Information Contact: _____ Phone: _____

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting a Rule Pertaining to)
the Setting of Release Dates for)
Dangerous Offenders)
Notice of Intent to Adopt a
Rule on a Temporary Basis;
Statement of Findings, Author-
ity, Need and Sources Relied
Upon

1. Statement of findings: It is found by the Board of Parole that prompt action to adopt the rule pertaining to the setting of release dates for dangerous offenders is needed to bring the Board into compliance with House Bill 2995 passed into law by the 1981 Legislature, effective 11-1-81.
2. Legal Authority: ORS Chapter 144 and House Bill 2995 (Oregon Legislative Assembly - 1981 Regular Session).
3. Statement of Need: The adoption of the proposed rule which pertains to the setting of release dates for dangerous offenders is needed to bring the Board rules into compliance with House Bill 2995 which was passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing the rule: House Bill 2995, Oregon Legislative Assembly - 1981 Regular Session.
5. Statement of Fiscal Impact: The amendment/adoption of OAR 255-38-005 is not expected to economically affect any state agency or the public to any significant degree.
6. The above rule shall become effective upon filing on November 4, 1981.

Date November 4, 1981


Hazel G. Hays, Chairperson
Oregon State Board of Parole

Amending and temporarily adopting OAR 255-38-005

Permissible Action: [When a Parole Release Date May Not be Set; Procedures When a Parole Release Date is Not Set] Setting Parole consideration hearing instead of a release date, setting release dates and periodic reviews.

255-38-005 (1) Notwithstanding the provisions of Division [30] 60, the Board shall not set a parole release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender. [if the record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance (e.g., severe personality disorder).] The Board shall within six months after commitment to the custody of the Corrections set a parole consideration hearing instead of a parole release date as otherwise required by Division 60. The parole consideration hearing shall be at the earliest time the prisoner would be eligible for release. If the condition is still present, reviews will be scheduled at least every two years thereafter. If at the parole consideration hearing or a subsequent review the condition is determined to be absent or in remission, the Board shall set a release date or order parole if the prisoner is otherwise eligible under the rules.

(2) The Board shall set a date for a parole consideration hearing within the matrix guidelines in Exhibit C and provisions for variations under rule 255-35-035.

(3) At any hearing or review, the Board shall consider the report of the executive officer of the facility in which the

prisoner is confined regarding the prisoner's conduct, attitude, and work record as defined in ORS 144.228(2) and a psychiatric or psychological report made within two months of the hearing:

(a) The Board shall not set a parole release date unless the psychiatric or psychological report reveals that the severe emotional disturbance which has made the prisoner dangerous is no longer present.

(b) If the disturbance is present, the Board may defer release to a specified future time or deny parole under rule 255-35-030.

(4) Notwithstanding the above, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner believes that he is no longer dangerous, request a parole consideration hearing. Should the Board find based upon the request that there is a reasonable cause to believe the dangerous condition is in remission, the Board shall order a parole consideration hearing pursuant to the above procedures. Applications received more often than every two years will carry a greater burden in establishing that the request is reasonable.

(4) [Periodic reviews shall be given dangerous offenders pursuant to rule 255-40-005. If, at the review, the psychiatric or psychological reports and the executive officer's report reveals that the severe emotional disturbance which has made the prisoner dangerous is not longer present, the Board shall review the matter and set a parole release date according to Divisions 30 and 35.]

(5) Support for the application from the superintendent of the institution in which the prisoner has been confined under

subsection 4 above, shall be considered reasonable cause pursuant to subsection (4) of this section.

(6) The Board shall consider at the parole consideration hearing a report pursuant to ORS 144.228 from the Executive Officer of the penal or correctional institution in which the prisoner has been confined.

Oct 1 1977
Nov 14 1977
Rev Oct 1977

FILED
NOV 04 1981
NOV 04 1981

CERTIFICATE AND ORDER
for

FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

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Oregon State Board of Parole on November 4, 1981
(Agency) (Date)

to become effective November 4, 1981
(Date)

The within matter having come before the Oregon State Board of Parole after
(Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be adopted: Perm. or Temp.
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) _____

Amended:
(Existing Rules) OAR 255-60-005, 255-60-010, 255-60-015 and 255-60-025

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

Administrative Rules of the Oregon State Board of Parole
(Agency)

DATED this 4th day of November, 1981

By: *Hazel M. Hays*
(Authorized Signer)
Title: Chairperson

Statutory Authority: - ORS 144.125, 144.140, 183.335(5), OAR 255-01-005, 255-01-055, House Bills 2328, 2319 and 2320.

Subject Matter: conducting of exit interviews, postponement of release for reasons of severe emotional disturbance and parole consideration for local jail inmates.

Statement of Need Attached: Fiscal Impact Attached:

Further Information Contact: _____ Phone: _____

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting rules pertaining to the)
Conducting of Exit Interviews,)
Postponement of Release for)
Reasons of Severe Emotional Dis-)
turbance of and Parole Consider-)
ation for Local Jail Inmates)

) Notice of Intent to Adopt a
) Rule on a Temporary Basis;
) Statement of Findings, Auth-
) ority, Need and Sources Re-
) lied Upon

1. Statement of Findings: It is found by the Board of Parole that failure to act promptly in the adoption of the proposed amendments will result in serious prejudice to affected inmates in that failure to adopt the proposed amendments will result in inmates serving more time in state institutions while awaiting release interviews. The proposed changes streamline the present system and will result in a reduction of the time served pending a release interview. The proposed changes are also needed to bring the Board into compliance with House Bills 2319, 2320 and 2328 passed into law by the 1981 Legislature, effective 11-1-81.
2. Legal authority: ORS 144.25, 144.140, 183.335(5), OAR 255-01-005, OAR 255-01-055 and House Bill 2328, 2319 and 2320.
3. Statement of Need: The amendment/adoption of proposed rules 255-60-005, 255-60-010, 255-60-015, and 255-60-025 is needed to bring the Board rules into compliance with House Bills 2319, 2320 and 2328 passed into law by the 1981 Oregon Legislature and to ensure orderly and speedy transition of inmates from parole ordered to release status.
4. Documents, reports and studies relied upon by the Board in preparing the rule: House Bills 2319, 2320, 2328 and ORS 144.125.
5. Statement of Fiscal Impact: The adoption of OAR 255-60-005, 255-60-010, 255-60-015, and 255-60-025 is not expected to have significant economic impact on any state agency or to the public.
6. The above rule shall become effective upon filing on November 4, 1981.

Date November 4, 1981


Hazel G. Hays, Chairperson
Oregon State Board of Parole

Amending and adopting on a temporary basis OAR 255-60-005, 255-60-010, 255-60-015, and 255-60-025.

Parole Release Interviews: Purpose [; Review of Parole Plan; Procedure if Plan is Inadequate; Maximum Deferred] and Scheduling

255-60-005(1)

[A prisoner who has been given a parole release date shall be interviewed prior to his/her parole release.] Within ninety (90) days of the scheduled release on parole of any prisoner, the Board, on its own initiative or at the request of the Corrections Division, may conduct an exit interview to review the parole plan, the prisoner's psychiatric or psychological report, if any, and the record of the prisoner's conduct during confinement. The Board may order, pursuant to ORS 144.125, any psychiatric or psychological reports held by the division not endorsed by the examiner in a manner to preclude disclosure.

(2) Exit [I] interviews shall be conducted by one or more voting members of the Board. The exit interview and the materials provided by the Corrections Division shall be reviewed for the purpose of determining whether probable cause exists to find that misconduct justifies a reset to a later date, to examine the parole plan, or to determine if a severe emotional disturbance exists such that the prisoner is a danger to himself or others. If the information available to the Board is deficient or unverified, the interviewer may continue the interview and hold the record open for a specified period of time to receive further evidence. The interviewer may order a psychiatric or psychological diagnosis and evaluation. The exit interview shall not be continued beyond ninety (90) days of the release date. Any further extension shall follow a hearing.

[(3) The purpose of the interview shall be to examine the prisoner's parole plan, his/her psychological report, if any, and the record of his/her conduct during confinement.]

(3) If ordered, the psychiatric or psychological diagnosis shall be conducted to determine if a severe emotional disturbance exists and the prisoner's potential for rehabilitation. An evaluation shall be provided which may consist of a diagnostic study, consisting of a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential, including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes, and interests, personal and social adjustments, employment opportunities, or other pertinent data helpful in determining the nature and scope of services needed. The evaluation should include recommendations for treatment or medication if necessary to assist in the rehabilitation of the prisoner or to protect the health and safety of the community. After considering the evaluation, the panel may require that the prisoner develop a plan with provisions which are recommended in the evaluation.

[(4) The interviewer shall examine the prisoner's plan for residence, employment, or other situation in the community to determine whether the parole plan is adequate:

(a) An acceptable plan includes employment, school, or other situation (e.g., retirement income), and suitable residence; it may require treatment programs and prescribed medication.

(b) If any portion of the plan is deficient or unverified, the Board may order deferred release to a verified plan approved by a panel, or to a plan approved by the Administrator of the Corrections Division.

(c) If the prisoner's record includes a psychiatric or psychological diagnosis of severe emotional disturbance, the Board may order a psychological evaluation to determine the prisoner's rehabilitation potential.

(A) The evaluation shall consist of a diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individ-

ual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed.

(B) The evaluation should include recommendations for treatment or medication if necessary to assist in the rehabilitation of the prisoner or to protect the health and safety of the community. After considering the evaluation, the Board may require that the prisoner include in his plan provisions which are recommended in the evaluation.

(d) Parole release may be deferred up to 90 days from the parole release date when a plan is deficient or unverified in order to obtain verification of a satisfactory plan from the Corrections Division. A report shall be presented to the Board after 60 days by the Corrections Division, according to its letter of agreement with the Board.]

(4) [(5)] A prisoner requesting an out-of-state parole waives the 90-day limitation on postponements for developing an adequate parole plan.

(5) [(6) The Board shall clearly state the facts and specific reasons for its decision if parole release is deferred.]
The individual votes of the Board members shall be listed.

Deferring Parole Release Following an Interview: Basis;
Procedure

255-60-010 (1) Should the exit interview indicate that: (a)

[A psychiatric or psychological diagnosis of the prisoner reveals a present severe emotional disturbance which the Board findings based upon the crime of committal and/or behavior in the institution poses a threat to the health and/or safety of the community; or] There is probable cause to believe that a present severe emotional disturbance exists which, based upon the crime of committal or behavior in the institution, poses a threat to the health or safety of the community, the interviewer may order postponement of the scheduled release of a prisoner, and order a hearing pursuant to the procedure for hearings in Division 30. The hearing shall be held no more than sixty (60) days from conclusion of the exit interview.

(b) The prisoner has engaged in serious institutional misconduct, a hearing shall be conducted by the Board to consider deferring the parole release date. The procedure for hearings in Division 30 shall apply.

(2) Following a hearing, a panel may order postponement of the scheduled release of a prisoner found to have a present severe emotional disturbance which the Board finds poses a threat to the health or safety of the community until a specified future date or until the prisoner or institution presents evidence that the emotional disturbance is over or in remission.

(3) The Board may not deny release on parole solely because of a prisoner's severe emotional disturbance. Should the pri-

soner be diagnosed as a danger to himself or others or unable to provide for the basic personal needs necessary for his health or safety, the Board may initiate the civil commitment procedure as provided in ORS Chapter 426.

(4) If the prisoner has engaged in serious institutional misconduct, the provisions of Division 50 shall apply.

(5) The Board shall clearly state the facts and specific reasons for its decision. The individual votes of the Board members shall be indicated.

Instate Parole Release Interview Procedures

255-60-015 (1) Notice: At a reasonable time prior to a parole release interview, the prisoner shall be notified at his/her place of confinement of the scheduled parole release interview and shall be advised that information may be provided to the Board in writing or by persons sending written information to the Board.

(2) Disclosure of information considered by the Board shall be governed by Division 30.

[(3) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to language barriers or lack of mental capacity. Assistance will be provided to prisoners meeting these criteria by persons recommended by the superintendent and appointed by the chairperson of the Board.]

(3) [(4)] The prisoner shall receive notice of the interview results, including the facts and specific reasons for the decision and the individual votes of the Board members.

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

Out-Of-State Parole Release Interview Procedures

255-60-020 A prisoner who is in the custody of the Corrections Division who is housed in an out-of-state facility shall receive a parole release interview in conformance with rule 255-60-015. However, all proceedings may be conducted by con-

ference telephone call.

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

Parole Consideration for Prisoners in a Local Jail

255-60-025 (1) A prisoner confined in a jail facility as defined in ORS 144.050 [with a sentence of at least six months shall be given a hearing to determine whether parole will be granted when:

- (a) Written application is submitted to the Board; and
- (b) The prisoner has served at least four months of the sentence.

(2) Hearings shall be conducted by one voting member of the Board.

(3) The Board member may order parole, establish a parole release date, continue the hearing for a reasonable period of time, or deny parole.

(4) The procedures in rule 255-60-015 shall be followed.]

is not eligible for parole by the State Board of Parole.

FILED
NOV 4 1981
NORMA PAULUS
SECRETARY OF STATE

CERTIFICATE AND ORDER
for

FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____

Oregon State Board of Parole

on November 4, 1981

(Agency)

(Date)

to become effective November 4, 1981

(Date)

The within matter having come before the Oregon State Board of Parole after

(Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be adopted: Perm. or Temp.

(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:

(New Rules)

 OAR 255-65-020

Amended:

(Existing Rules)

 OAR 255-65-005 and 255-65-015

Suspended:

(Temporary Only)

Repealed:

(Existing Rules)

as Administrative Rules of the Oregon State Board of Parole

(Agency)

DATED this 4th day of November, 1981

By: Hazel G. Hayes

(Authorized Signer)

Title: Chairperson

Statutory Authority: ORS 144 & Senate Bill 589 (Oregon Legislative Assembly - 1981

Regular Session

Subject Matter: parole supervision fees and notification of courts of restitution

payment schedules

Statement of Need Attached:

Fiscal Impact Attached:

For Further Information Contact: _____

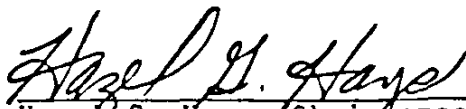
Phone: _____

OREGON STATE BOARD OF PAROLE

In the Matter of Adopting Rules)
Pertaining to Fees for Supervision)
on Parole and Notifying Courts)
Regarding Restitution Payment)
Schedule) Notice of Intent to Adopt
a Rule on a Temporary Basis;
Statement of Findings, Auth-
ority, Need and Sources Relied
Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt the rule to impose fees for supervision is needed to bring the Board into compliance with Senate Bill 589 passed into law by the 1981 Legislature on an emergency basis.
2. Legal Authority: ORS Chapter 144 and Senate Bill 589 (Oregon Legislative Assembly - 1981 Regular Session).
3. Statement of Need: The adoption of OAR 255-65-020 which requires that a parolee reimburse his or her supervising agency is needed to bring the Board rules into conformity with Senate Bill 589 which was passed into law by the 1981 Oregon Legislature. Adoption of OAR 255-65-005 and 255-65-010 will provide notice of Board action to the courts and permit the courts to maintain accurate records relating to restitution payments for parolees.
4. Documents, reports and studies relied upon by the Board in preparing the rule: Senate Bill 589, Oregon Legislative Assembly-1981 regular session; ORS 144.275.
5. Statement of Fiscal Impact: The adoption of OAR 255-65-020 is expected to enhance revenues to counties having community corrections program established pursuant to ORS 423.500 to 423.560 and the Oregon State Corrections Division. Adoption of OAR 255-65-005 and OAR 255-65-010 is expected to have no fiscal impact.
6. The above rules shall become effective upon filing on November 4, 1981.

Date November 4, 1981



Hazel G. Hays, Chairperson
Oregon State Board of Parole

Amending and adopting on a temporary basis OAR 255-65-005 and 255-65-015 and adopting on a temporary basis OAR 255-65-020.

RESTITUTION AND SUPERVISION FEES

When Restitution is Ordered [after] Upon Parole Release:

Establishing a Payment Schedule; Limitations

255-65-005 When a person has been sentenced pursuant to ORS 137.106 to pay restitution for a crime committed after October 4, 1977, and any portion of that payment is deferred until after release from imprisonment, the Board shall establish a schedule of payments.

(1) In establishing and supervising a schedule of payments, the Board shall consider:

(a) The prisoner's financial resources, including salary, savings, and liquid assets;

(b) The burden that it will impose in light of the person's overall obligations (e.g., family and necessary living expenses);

(c) Ability to pay on an installment or other conditional basis;

(d) The rehabilitative effect of the payment and the method of payment.

(2) Normal payments shall range from 10 to 20 percent of a person's take-home salary without voluntary payroll deductions, unless significant savings or liquid assets permit larger amounts.

(3) The Board shall provide to the sentencing court a copy of the schedule of payments and any modifications thereof.

Supervision of Payments: Conditions of Parole; Default by Parolee; Effect on Discharge

255-65-015 (1) Payment of restitution shall be included as a special condition of parole:

(a) Any applicable schedule shall be clearly stated on the Order of Parole.

(b) Payments shall be made to the clerk of the court of the county of sentencing, or as directed by the Board.

(c) The method and manner of payment shall be supervised by the individual's parole officer.

(2) When a parolee defaults on any scheduled payment, the supervising parole officer shall notify the Board. The default shall be grounds for revocation of parole unless the parolee shows:

(a) The default was not due to an intentional refusal to make the payment.

(b) The default occurred despite a good faith effort to make the payment.

(3) If payment of restitution has not been completed by the parolee's tentative discharge date, the parolee shall be continued on parole until completion of payment or the expiration of his/her sentence, whichever is first.

(4) The Board shall provide to the sentencing court a copy of the discharge of parole in cases where restitution has been ordered.

255-65-020(1) When a person is placed on parole, subject to supervision by either the Corrections Division or a community corrections program established under ORS 423.500 to 423.560, the person shall be required to pay a monthly fee to offset costs of supervising parole. The fee shall be \$10.00 unless a greater fee is recommended by the supervising officer and approved by the Board using the same criteria set forth in 255-65-005(1)(a)(b) and (c). In no case shall the fee be less than \$10.00 per month.

(2) The fee established pursuant to section (1) shall be a condition of parole and intentional and willful failure to pay such fee shall be grounds for revocation of parole or extension of the supervision period.

(3) In cases of financial hardship or when otherwise advisable in the interest of the released person's rehabilitation, the community program director or the Assistant Director of Corrections, whichever is appropriate, may waive the payment of the fee in whole or in part.

(4) Fees collected shall be transferred to the Corrections Division or retained by the county as provided by statute.

Oct 1, 1979
Nov 11, 1979
Nov Oct, 1979

FILED
NOV 04 1981
NORMA PAULUS
SECRETARY

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____

Oregon State Board of Parole
(Agency)

on November 4, 1981
(Date)

to become effective November 4, 1981
(Date)

The within matter having come before the Oregon Board of Parole after
(Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be adopted: Perm. or Temp.
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) OAR 255-75-006 and 255-75-082

Amended:
(Existing Rules) _____

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

s Administrative Rules of the Oregon Board of Parole
(Agency)

DATED this 4th day of November, 1981

By: Harzel G. Hays
(Authorized Signer)

Title: Chairperson

Statutory Authority: ORS 144.035, 144.343, 144.345, 144.395, 183.335(5), OAR 255-01-005, 255-01-005

Subject Matter: conducting of parole revocation hearing and the setting of a parole release date by the revocation panel

Statement of Need Attached: Fiscal Impact Attached:


For Further Information Contact: _____ Phone: _____

OREGON STATE BOARD OF PAROLE

In the Matter of Adopting Rules)	Notice of Intent to Adopt a
Pertaining to the Method of Con-)	Rule on a Temporary Basis;
ducting a Parole Revocation)	Statement of Findings, Auth-
Hearing and Giving the Revocation)	ority, Need and Sources Re-
Panel authority to Set a Parole)	lied Upon
Release Date)	

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt rules pertaining to the method of conducting a revocation hearing and giving the revocation panel authority to set a parole release date is necessary to permit the use of teleconference hearings in the majority of contested cases and to allow the revocation panel to accelerate the release process by setting a parole release date at the time the revocation decision is made.
2. Legal Authority: ORS 144.035, 144.343, 144.345, 144.395, 183.335(5), OAR 255-01-005, OAR 255-01-005.
3. Statement of Need: The adoption of OAR 255-75-006 setting forth the method of parole revocation hearing is essential to completing parole revocation hearings in a timely manner as required by statute and relevant case law. A 50% reduction in hearings officer staff makes the utilization of the teleconference hearings system crucial to meeting statutory guidelines. Adoption of OAR 255-75-082 enables the Board to set release dates at an earlier time and is to the definite advantage of the inmate, whose release date will be accelerated by the change.
4. Documents, reports and studies relied upon by the Board in preparing the rule: ORS 144.035, 144.343, 144.345, and 144.395.
5. Statement of Fiscal Impact: The adoption of OAR 255-75-006 and OAR 255-75-082 will result in positive cost benefit to the state agencies and the public by reducing the cost of on-site hearings and shortening the length of time an inmate, whose parole is revoked, will serve before reparole.
6. The above rule shall become effective upon filing on November 4, 1981.

Date November 4, 1981


Hazel G. Hays, Chairperson
Oregon State Board of Parole

Adopting on a temporary basis OAR 255-75-006 and 255-75-082

Method of Hearing: Utilization of Conference Call Hearing;
Objections to Conference Call Procedure; Determination
of Situation Requiring On-Site Hearings.

255-75-006 (1) All hearings under Division 75 shall be
conducted by conference telephone call. Exceptions to the
rule will be made only in the following situations:

(a) Where the alleged violations are contested and there
is an affirmative showing by either the parolee or his/her
attorney that credibility of the witnesses, including ob-
servations of their demeanor, would be a primary issue for
determination by the Hearings Officer.

(b) Physical exhibits are to be made a part of the record
and viewing of the exhibits would be essential in deter-
mining whether a violation of parole has occurred.

(c) At the discretion of the Hearings Officer in situ-
ations not covered by either subsection (a) or (b) above.

Authority of Revocation Panel to Set New Parole Release
Date for Parole Violators.

255-75-082 (1) In cases involving a parole violator re-
turned for a technical violation and no new prison com-
mitment for a new conviction, the Revocation Panel may
establish a new parole release date following four to six
months being incarcerated as long as the action is consis-
tent with the guidelines for re-release of parole violators
and variations in rule 255-75-085.

In all cases involving a parole violator returned for
technical violations and with new new prison commitment for
a new conviction the Board shall set a re-release date.
The new release date may be set by the Revocation Panel if
the date is within four to six months following return
to custody as long as the decision is consistent with
the guidelines for re-release of parole violators and var-
iations under rule 255-75-085.

(2) In cases where the Revocation Panel does not set a
new parole release date, the prisoner shall receive a
Future Disposition Hearing in accordance with rule 255-75-
080.

NOV 04 1981
NORMA PAULUS
SECRETARY OF STATE

CERTIFICATE AND ORDER
for

FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____

Oregon State Board of Parole

on November 4, 1981

to become effective November 4, 1981

The within matter having come before the Oregon State Board of Parole after

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be adopted: Perm. or Temp.
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted: OAR 255-90-001
(New Rules)

Amended: OAR 255-90-002, 255-90-003, 255-90-005, 255-90-010, 255-90-015
(Existing Rules) and Exhibit H-1

Suspended: _____
(Temporary Only)

Repealed: _____
(Existing Rules)

as Administrative Rules of the Oregon State Board of Parole

DATED this 4th day of November, 1981

By: Hazel G. Hays
Title: Chairperson

Statutory Authority: -ORS 144 and House Bill 2327 (Oregon Legislative Assembly - 1981 regular session)

Subject Matter: Discharge from parole supervision

Statement of Need Attached: Fiscal Impact Attached:

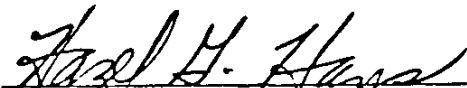
For Further Information Contact: _____ Phone: _____

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and Adopting Rules Pertaining to Discharge from Parole Supervision) Notice of Intent to Amend and Adopt Rules on a Temporary Basis:) Statement of Findings, Authority,) Need and Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt the rules regarding discharge from parole supervision is required to bring the Board into compliance with House Bill 2327 passed into law by the 1981 Legislature, effective 11-1-81.
2. Legal Authority: ORS Chapter 144 and House Bill 2327 (Oregon Legislative Assembly -- 1981 Regular Session).
3. Statement of Need: The adoption of the proposed rules which define relevant terms, establish periods of supervision, and set forth the procedure for discharge is needed to bring the Board rules into conformity with House Bill 2327 which was passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing the rule: House Bill 2327, Oregon Legislative Assembly - 1981 regular session.
5. Statement of Fiscal Impact: The adoption of OAR 255-90-001 and the amendment/adoption of OAR 255-90-002, 255-90-003, 255-90-005, 255-90-010, 255-90-015 and Exhibit H-1 is expected to have positive fiscal impact by reducing the length of supervised parole and thereby enabling both Community Corrections and Oregon State Corrections Division field services programs to operate with fewer parole officers.
6. The above rule shall become effective upon filing on November 4, 1981.

Date November 4, 1981



Hazel G. Hays, Chairperson
Oregon State Board of Parole

A rule amending and adopting on a temporary basis OAR 255-90-002, 255-90-003, 255-90-005, 255-90-010, 255-90-015 and Exhibit H-1 and adopting temporary rule OAR 255-90-001.

Definitions

255-90-001

"Active Parole Supervision": Supervision requiring periodic contact with the supervising officer or monitoring by supervising officer to assure that parolee has committed no new crimes or monitoring by supervising officer to assure repayment of a restitution amount.

"Intensive Parole Supervision": (1) Supervision requiring at least monthly contact with the supervising officer; or (2) monitoring of parole by the supervising officer to assure adherence to special conditions of parole by the parolee which are by direction of the Board and not left to the discretion of the supervising officer.

Major Technical Violation": A violation of a parole condition involving the possession of a weapon or firearm, absconding supervision by leaving the state of Oregon without permission, a new law violation not resulting in a new felony sentence, or a finding pursuant to a hearing conducted under Division 75 that new criminal activity has occurred which would constitute a class "A" misdemeanor or felony.

"Minor Technical Violation": 'Violations' as described by ORS 161.565 and 161.575 and all parole violations except major technical violations and law violations.

Discharge of parolees

255-90-002 [The Board shall establish a conditional discharge date from supervised parole within the range for the appropriate offense severity rating and history/risk score shown in the guideline matrix, Exhibit H-1. A parolee shall remain on unsupervised parole and shall not be given final discharge from parole until five (5) years after his placement on unsupervised parole, or until the occurrence of his good time date, whichever first occurs.]

255-90-005; 255-65-015 Pursuant to ORS 144.310 the Board shall establish a discharge date from active supervised parole. The period of supervised parole shall be as shown in the guideline matrix, Exhibit H-2, unless the Board provides written reasons for an extended supervision period. Extended supervision periods shall not exceed 36 months. (2) Notwithstanding the above, active supervision, shall extend until expiration of the sentence if restitution remains unpaid.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 2-1980, f. & ef. 5-20-80

Period of Time to Serve on Supervised Parole

255-90-003 [The Board may revoke parole, extend or deny a conditional discharge date, a final discharge or place a person back on supervised parole after his placement on conditional discharge for a period equal to the sentence expiration date when the parolee has been found, after hearing pursuant to Division 75 of these rules, to have violated the conditions of parole.]

The guidelines set forth in Exhibit H-1 shall govern the establishment of discharge dates. The date shall be set at the prison term hearing, periodic review, rescission action or by the Revocation Panel and shall be written on the Order of Parole. For discharge to be effective, the parolee must display acceptable parole performance as indicated by Exhibit H-1 during the term of active parole supervision.

255-90-011 During the pendency of any parole violation proceeding, the running of the parole period is stayed and the Board shall retain jurisdiction over the parolee until the proceedings are resolved.

Discharge [Generally] and Supervision Term

255-90-005 [The guidelines set forth in Exhibit H-1 shall govern the establishment of conditional discharge dates. The date shall be set at the parole release interview and shall be written on the Order of Parole. For the conditional discharge date to become effective, the parolee must display acceptable parole performance during the term of supervised parole.]

A prisoner who discharges a sentence imposed after November 3, 1981 shall be released upon the condition that the prisoner be subject to a period of supervision in the same manner as a parolee. However the maximum period of supervision shall be six months and upon violation of the terms imposed upon the conditional discharge, the maximum period of incarceration shall be ninety (90) days. The period of supervision, reincarceration or both shall in no case cause the length of the inmate's term to exceed the maximum term imposed by the court.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80

Procedure: Approving and Denying Discharge: Further Proceedings

255-90-010 (1) A minimum of 30 days prior to the [conditional] discharge date on the Order of Parole, the supervising parole officer shall send to the Board a supervisory report. This report shall recommend one of two courses:

(a) That the parolee be [conditionally] discharged [on the conditional date:]

(b) That the [conditional] discharge not be granted.

(A) In this case, the supervisory report shall contain information showing why [conditional] discharge is not warranted and recommend a new [conditional] discharge date[.] in accordance with OAR 255-90-015.

(B) The case shall receive a Board review. [under the procedures of section 255-30-015(3).]

(C) After consideration of the parole officer's recommendation, the Board shall either [conditionally] discharge the parolee or issue a written explanation for denial of the request.

(D) The supervising officer shall either notify the parolee of the new [conditional] discharge date and reasons or notify the parolee in writing that he has been [conditionally] discharged.

(2) If the Board desires further information on which to base

its decision, it may conduct a hearing according to the procedures in Division 75.

(3) Notwithstanding section (1) of this rule, the supervising officer may submit a recommendation with written reasons for early conditional discharge at any time after [one year] six months supervised parole.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef.

5-20-80

Extension of [Tentative] Parole Discharge Dates [; When Good Time Under Forfeiture]

255-90-015 [Conditional discharge dates may be extended according to the following procedures:

(1) An extension of a conditional discharge date shall be made by the Board when notified that an inmate has good time under forfeiture.

(3) The Order of Parole will specify the amount of good time under forfeiture.

(4) The Board may rescind the extension upon recommendation of the supervising parole officer after six months of satisfactory parole adjustment.]

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80

In addition to the power of the Board to revoke parole, it may extend a discharge date one time for six months without a hearing and thereafter up to a one year period if the Board finds, after a hearing pursuant to Division 75, that the parolee has violated the conditions of parole. (2) Nothing contained in this rule shall be interpreted to preclude more than one extension of a discharge date by the Board. However, no extension of parole shall exceed the maximum term of sentence imposed by the Court.

TIME TO BE SERVED ON PAROLE
PRIOR TO CONDITIONAL DISCHARGE

EXHIBIT H-1

OFFENSE SEVERITY RATING	CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
	11-9	8-6	5-3	2-0
	Excellent	Good	Fair	Poor
1	6 mos.	6 mos.	6 mos.	6 mos.
2	6 mos.	6 mos.	6 mos.	6 mos.
3	6 mos.	6 mos.	6 mos.	6 mos.
4	6 mos.	6 mos.	6 mos.	1 year
5	6 mos.	6 mos.	1 year	1 year
6	1 year	1 year	1 year	1 year
7	1 year	1 year	1 year	1 year

- I (a) For minor technical violations in crime categories 1, 2, 3 and 4 extension may be imposed for up to an additional six months supervised parole.
- (b) For minor technical violations in crime category 5, 6 and 7 extension may be imposed for up to an additional one year supervised parole.
- (c) For major technical violations, extensions may be imposed for up to an additional one year supervised parole.

eff

11-25-81

FILED
NOV 25 1981
NORMA PAULUS
SECRETARY OF STATE

**CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE**

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole on November 25, 1981
(Agency) (Date)

to become effective November 25, 1981
(Date)

The within matter having come before the Oregon State Board of Parole after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) OAR 255-35-022

Temp. Per

Amended:
(Existing Rules) OAR 255-35-005 and Exhibits A, B, B2, C and E; OAR 255-35-020

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

as Administrative Rules of the Oregon State Board of Parole

DATED this 25th day of November 1981
(Agency)

By: Hazel D. Hays
(Authorized Signer)

Title: Chairperson, Board of Parole

Statutory Authority: ORS 144, House Bill 2321 (Oregon Legislative Assembly - 1981 regular session).

Subject Matter: Modifies procedures pertaining to Offense Severity Rating, Criminal History/
k Assessment, and Aggravation and Mitigation. Adopts coding instructions for computing the

story/Risk score and procedures for exercising the option not to sum the ranges where con-
secutive sentences have been imposed.

Statement of Need Attached: Yes No

For Further Information Contact: _____ Phone: 378-2334

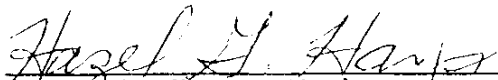
OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting Rules Pertaining to)
Offense Severity Rating,)
Criminal History/Risk Assess-)
ment, Coding Instructions,)
Aggravation and Mitigation,)
Definiation of Terms and Board)
Option not to Sum Ranges in)
Cases Where Consecutive Sentences)
have been Imposed by the Court.)

Notice of Intent to Adopt Rules
on a Temporary Basis; Statement
of Findings, Authority, Need and
Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that failure to act promptly in the adoption of the above amendments/ rules will result in serious prejudice to inmates affected by the proposed changes due to the potential impact on ranges set for prison terms which may necessitate re-hearings, will reduce efficiency in terms of establishing ranges, and further that such changes are necessary in order to bring the Board into compliance with House Bill 2321 relating to the Board's option not to sum ranges in cases where consecutive sentences have been imposed by the court; House Bill 2321 was passed into law by the 1981 Legislature on an emergency basis.
2. Legal Authority: ORS 144, House Bill 2321 (Oregon Legislative Assembly - 1981 regular session).
3. Statement of Need: The adoption/amendment of OAR 255-35-005 and Exhibits A, B, B2, C, and E is needed to insure a consistent and uniform application of board rules to all inmates; amendment/adoption of OAR 255-35-020 and 255-35-022 is necessary to bring the board into conformity with House Bill 2321 passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing the rule: House Bill 2321 and ORS Chapter 144.
5. Statement of Fiscal Impact: The amendment/adoption of OAR 255-35-005, 255-35-020, 255-35-022 and Exhibits A, B, B2, C, and E is expected to have no significant fiscal impact.
6. The above rules shall become effective upon filing on November 25, 1981.

Date: November 25, 1981


Hazel G. Hays, Chairperson
Oregon State Board of Parole

Amending and adopting on a temporary basis 255-35-005

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS Ch. 144

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

Adopting on a temporary basis

255-35-022

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

255-35-022

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT A

PART I

OFFENSE SEVERITY UNDER RULE 255-35-010

OFFENSE	RATING	FELONY CLASS
163.095 - Aggravated Murder	7	A
163.115 - Murder	7	A
166.005 - Treason	7	A
163.118 - Manslaughter I	6	A
163.235 - Kidnapping I	6	A
163.375 - Rape I (Subcategory 1)	6	A
163.405 - Sodomy I (Subcategory 1)	6	A
164.415 - Robbery I	6	A
163.185 - Assault I (Subcategory 1)	6	A
164.325 - Arson I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 2)	5	A
164.325 - Arson I (Subcategory 2)	5	A
162.165 - Escape I	5	B
164.225 - Burglary I (Subcategory 1)	5	A
162.185 - Supplying Contraband (Subcategory 1)	5	C
166.275 - Possession of Weapon by Inmate of Penal Institution	5	A
163.125 - <u>Manslaughter II (Subcategory 1)</u>	<u>5</u>	
163.175 - Assault II	4	B
163.225 - Kidnapping II	4	B
163.365 - Rape II (Subcategory 1)	4	B
163.395 - Sodomy II	4	B
164.225 - Burglary I (Subcategory 2)	4	A
167.207(4) - Criminal Activity in Drugs (Sub 1)	4	A
163.275 - Coercion (Subcategory 1)	4	C
164.075 - Theft by Extortion (Subcategory 1)	4	C
475.992(1) - Manuf. or Delivery of Controlled substance (Subcategory 1)	4	A
475.995 - Unlawful Delivery of a Controlled substance to Minor (Subcategory 1)	4	A, B
163.125 - <u>Manslaughter II (Subcategory 2)</u>	<u>4</u> [3]	B
162.015 - Bribe Giving	3	B
162.025 - Bribe Receiving	3	B
167.207(1) - Criminal Activity in Drugs (Subcate- gory 1)	3	B
163.425 - Sexual Abuse I	3	C
162.185 - Supplying Contraband (Subcategory 2)	3	C
164.225 - Burglary I (Subcategory 3)	3	A

OFFENSE	RATING	FELONY CLASS
163.365 - Rape II (Sub 2)	3	B
164.215 - Burglary II (Sub 1)	3	C
164.005 - Theft I (Sub 1)	3	C
164.125 - Theft of Services (Sub 1)	3	C
164.085 - Theft by Deception (Sub 1)	3	C
165.013 - Forgery I (Sub 1)	3	C
475.992(1) - Manufacture or Delivery of Controlled substance (Sub 2)	3	A, B, C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit substance (Sub 1)	3	A
475.995 - Unlawful Delivery of a Controlled Substance to Minor (Sub 2)	3	A, B
<u>163.125 - Manslaughter II (subcategory 3)</u>	<u>3</u>	
<u>164.395 - Robbery III</u>	<u>2</u>	<u>C</u>
162.065 - Perjury	2	C
162.155 - Escape II (Sub 1)	2	C
162.205 - Failure to Appear I	2	C
162.265 - Bribing a Witness	2	C
162.275 - Witness Receiving Bribe	2	C
163.145 - Criminally Negligent Homicide	2	C
163.205 - Criminal Mistreatment	2	C
163.257 - Custodial Interference I	2	C
163.275 - Theft by Coercion (Sub 2)	2	C
163.355 - Rape III	2	C
162.385 - Sodomy III	2	C
163.535 - Abandon Child	2	C
164.055 - Theft I (Sub 2)	2	C
164.095 - Theft by Receiving	2	C
164.135 - Unauthorized Use of Motor Vehicle (Sub 1) 2	2	C
164.215 - Burglary II (Sub 2)	2	C
164.315 - Arson II	2	C
165.013 - Forgery I (Sub 2)	2	C
167.207(4) - Criminal Activity in Drugs (Sub 3)	2	A
167.207(1) - Criminal Activity in Drugs (Sub 2)	2	A
164.125 - Theft of Services (Sub 2)	2	C
164.075 - Theft by Deception (Sub 2)	2	C
165.095 - Sports Bribery	2	C
165.090 - Sports Bribe Receiving	2	C
162.185 - Supplying Contraband (Sub 3)	2	C
166.270 - Ex-Convict in Possession	2	C
166.410 - Sale related (firearms)	2	C
166.220 - Carrying a Weapon with Intent to Use	2	C
167.012 - Promoting Prostitution	2	C
167.278 - Obtaining Drugs Unlawfully	2	B
496.992(3) - Poaching (Sub 1)	2	C
<u>483.602 - Failure to Perform Duties Motorist, Injury or Death</u>	<u>1</u>	<u>C</u>

OREGON ADMINISTRATIVE RULES
CHAPTER 255 — BOARD OF PAROLE

EXHIBIT A

Part II

OFFENSE SERIOUSNESS RATINGS
SUBCATEGORIZATION OF BROAD-SCOPE OFFENSE CATEGORIES

MURDER -- ORS 163.115

Felony Class: A

Statutory Elements: Committed intentionally, not under extreme emotional disturbance; committed by person(s) committing, attempting or fleeing from Arson I, Burglary I, Escape I, Kidnapping I, Rape I, Sodomy I, or Robbery.

Subcategory 1 - rating of 7

...Stranger to stranger; cruelty to victim; prior conviction for Murder or Manslaughter; evidence of significant planning or preparation

Subcategory 2 - rating of 7

...All other cases of Murder

NOTE: Applies to crimes committed before December 7, 1978.

RAPE I -- ORS 163.375

Felony Class: A

Statutory Elements: Forcible compulsion; or voluntary intercourse with female under 12; or incestuous voluntary intercourse with female under 16

Subcategory 1 - rating of 6

...Stranger to stranger; aggravated custodial interference; breaking and entering; threat to use or use of a weapon; or actual or attempted serious bodily or emotional harm; or
...Intercourse with female under 12

Subcategory 2 - rating of 5

...All other cases

SODOMY I -- ORS 163.405

Sodomy I should be broken down in the same manner as Rape I.

OREGON ADMINISTRATIVE RULES
CHAPTER 255 — BOARD OF PAROLE

ROBBERY I -- ORS 164.415

Felony Class: A

Statutory Elements: Robbery involved either:
armed with a deadly weapon; or
uses or attempts to use dangerous weapon; or
causes or attempts to cause serious injury

Subcategory 1 - rating of 6

...All cases of Robbery I except those fitting Subcategory 2

Subcategory 2 - rating of 5

Cases of robbery where the crime does not involve

...Discharge of a firearm; or
...Use of any other dangerous weapon; or
...Explicit and immediate threats, by word or gesture (e.g., cocking hammer
of gun), of death or serious bodily harm; or
...Serious injury

ASSAULT I -- ORS 163.185

Felony Class: A

Statutory Elements: Intentional serious injury to another by means of
a deadly or dangerous weapon

Subcategory 1 - rating of 6

...All cases of Assault I except those fitting Subcategory 2

Subcategory 2 - rating of 5

...Cases of Assault I in which the victim or victims provoked the crime to
a substantial degree, or other evidence that misconduct by victim con-
tributed substantially to the criminal episode.

ARSON I -- ORS 164.325

Felony Class: A

Statutory Elements: Arson involving either:
property of another which is customarily occupied by
people; or own property, if persons are endangered or
if other customarily occupied property is also endangered

ARSON I (Continued)

Subcategory 1 - rating of 6

...Knowing the premises were occupied at time of act; or
...Actual serious injury

Subcategory 2 - rating of 5

...Other cases of Arson I

BURGLARY I -- ORS 164.225

Felony Class: A

Statutory Elements: Burglary involving either:
entry of a dwelling; or else
entry of a building, if defendant is armed/carries
burglar's tools/causes or threatens injury/or use of a
dangerous weapon

Subcategory 1 - rating of 5

Entry into any actually or regularly occupied building, whether a dwelling
or non-dwelling, where defendant

...Used or threatened to use, by word or gesture, a dangerous weapon; and
...Caused or threatened serious physical injury

Subcategory 2 - rating of 4

...Entry into a non-dwelling in which value of goods taken is over \$5,000
...Entry into a residence or temporary residence, except for cases fitting
Subcategory 3

Subcategory 3 - rating of 3

...All other entries into a non-dwelling; or
...Entry into a residence or temporary residence in which
...Defendant is not armed with a deadly or dangerous weapon; and
...No extensive property damage; and
...Value of goods taken was below \$1,000

Manslaughter II --- ORS 163.125

Felony Class: B

Statutory Elements: Criminal homicide not meeting statutory elements of Murder of Manslaughter I, committed recklessly, or resulting from intentionally causing/ assisting another person to commit suicide.

Subcategory 1 --- rating of 5

. . .Manslaughter II cases where death of a victim, usually a child, results from prolonged abuse; failure to provide for the victim's welfare resulting in death; or medical treatment is withheld in order to conceal physical signs of abuse.

Subcategory 2 --- rating of 4

. . .Manslaughter II cases where the death of a victim involves use of a weapon or follows an assault.

Subcategory 2 --- rating of 3

. . . Manslaughter II cases where the death is by negligent use of a vehicle and all other cases.

RAPE II -- ORS 163.365

Felony Class: B

OREGON ADMINISTRATIVE RULES
CHAPTER 255 — BOARD OF PAROLE

RAPE II (Continued)

Statutory Elements: Nonforcible intercourse involving:
incapacitated (e.g., mentally defective) female; or
female under 14 (i.e., 12 or 13)

Subcategory 1 - rating of 4

...All cases of Rape II except those fitting Subcategory 2

Subcategory 2 - rating of 3

...Not both under 16 and incapacitated; and
...No coercion or undue influence (e.g., father, step-father); and
...No position of trust (e.g., counselor, doctor)

BURGLARY II -- ORS 164.215

Felony Class: C

Statutory Elements: Any illegal entry, if not a Burglary I, with intent to
commit a crime therein

Subcategory 1 - rating of 3

...Theft or destruction of over \$5,000

Subcategory 2 - rating of 2

...Theft or destruction of between \$1,000 and \$5,000

Subcategory 3 - rating of 1

Theft or destruction of less than \$1,000

THEFT I -- ORS 164.055

Felony Class: C

Statutory Elements: Theft involving:
more than \$200; or
during a riot or catastrophe; or
theft by receiving; or
of a livestock animal; or
of a firearm or explosive

Subcategory 1 - rating of 3

...Theft or receiving of over \$5,000

OREGON ADMINISTRATIVE RULES
CHAPTER 255 -- BOARD OF PAROLE

COERCION (Continued)

Subcategory 2 - rating of 3

...All others

UNAUTHORIZED USE OF A MOTOR VEHICLE -- ORS 164.135

Felony Class: C

Statutory Elements: Joyriding, unauthorized exercise of control over vehicle

Subcategory 1 - rating of 2

...Loss, destruction or severe damage to vehicle or to property; or
...Injury to others

Subcategory 2 - rating of 1

...Other

FORGERY I -- ORS 165.013

Felony Class: C

The breakdown should be based on the amounts involved in the same manner as theft.

Note: For this crime and other theft crimes, the amounts involved would be based on the amounts for which each defendant has been convicted or has admitted.

POACHING -- ORS 496.992(3)

Felony Class: C

Statutory Elements: Second and each subsequent conviction within a 10-year period for taking of game fish or game mammals with a value of \$200

Subcategory 1 - rating of 2

...Poaching of game valued over \$3,000; or
...Commercial operation

OREGON ADMINISTRATIVE RULES
CHAPTER 255 -- BOARD OF PAROLE

MANUFACTURE OR DELIVERY OF A CONTROLLED SUBSTANCE (Continued)

Subcategory 1 - rating of 4

...Manufacture or delivery of heroin or opiate derivatives for compensation of \$2,000 or more

Subcategory 2 - rating of 3

...Manufacture or delivery of heroin or opiate derivatives without compensation or for compensation of less than \$2,000;
...Manufacture or delivery of cocaine for compensation of \$2,000 or more and other drugs for compensation of \$1,000 or more

Subcategory 3 - rating of 2

...Manufacture or delivery of cocaine for compensation of less than \$2,000 and other drugs for compensation of less than \$1,000

Subcategory 4 - rating of 1

...Manufacture exclusively for own use;
...Delivery without compensation, except heroin or opiate derivatives

UNLAWFUL CREATION OR DELIVERY OF COUNTERFEIT SUBSTANCE -- ORS 475.992(3)

Statutory Elements: Unlawful creation or delivery of counterfeit substance

Felony Class: Schedule 1 drugs - Class A Felony
Schedule 2 drugs - Class B Felony
Schedule 3 drugs - Class C Felony

Subcategory 1 - rating of 3

...Schedule 1 drugs, except marijuana

Subcategory 2 - rating of 2

...Schedule 2 drugs, plus PCP

Subcategory 3 - rating of 1

...Schedule 3 drugs, plus marijuana

POSSESSION OF CONTROLLED SUBSTANCE -- ORS 475.992(4)

Statutory Elements: Knowing or intentional possession of controlled substance not obtained by prescription or valid doctor's order

CRIMINAL ACTIVITY IN DRUGS (INVOLVING MINORS) (Continued)

Subcategory 2 - rating of 3

...Furnishing any other drug except those fitting in Subcategory 3

Subcategory 3 - rating of 2

...Furnishing less than 1 ounce of marijuana

NOTE: Applies to crimes committed before July 1, 1978.

CRIMINAL ACTIVITY IN DRUGS (OTHER) -- ORS 167.207(1)

Felony Class: B

Statutory Elements: Manufacture, cultivation, sale or possession of any narcotic or dangerous drug (other than possession of less than one ounce of marijuana)

Subcategory 1 - rating of 3

...Manufacture, cultivation or sale for profit, or possession with intent to sell for profit of any heroin or opiate derivatives

Subcategory 2 - rating of 2

...Manufacture, cultivation, or sale for profit, or possession with intent to sell for profit, of any other drug

Subcategory 3 - rating of 1

...Manufacture for own use or possession for own use

NOTE: Applies to crimes committed before July 1, 1978.

EXHIBIT B

CRIMINAL HISTORY/RISK ASSESSMENT UNDER RULE 255-35-015

(A) -No prior felony or misdemeanor convictions as an adult or juvenile:	3
-One prior conviction:	2
-Two or three prior convictions:	1
-Four or more prior convictions:	0

(B) -No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile:	2
-One or two prior incarcerations:	1
-Three or more prior incarcerations:	0

(C) [Age of behavior leading to this incarceration:	
26 or older:	2
21 to under 26:	1
Under 21:	0]
- <u>Verified period of 3 years conviction free in the community prior to present incarceration:</u>	<u>1</u>
- <u>Otherwise:</u>	<u>0</u>

(D) [Present commitment does not include parole, probation, failure to appear, release agreement, escape or custody violation:	2
Present commitment involves probation, release agreement, or failure to appear violation:	1
Present commitment involves parole, escape or custody violation:	0]
<u>Age at commencement of behavior leading to this incarceration:</u>	
- <u>26 or older and at least one point received in Items A, B or C:</u>	<u>2</u>
- <u>26 or older and no points received in A, B or C:</u>	<u>1</u>
- <u>21 to under 26 and at least one point received in A, B or C:</u>	<u>1</u>
- <u>21 to under 26 and no points received in A, B or C:</u>	<u>0</u>
-Under 21:	<u>0</u>

(E) [Has no admitted or documented heroin or opiate derivative abuse problem: 1
Otherwise: 0]

-Present commitment does not include parole, probation, failure to appear, release agreement, escape or custody violation: 2

-Present commitment involves probation, release agreement, or failure to appear violation: 1

-Present commitment involves parole, escape or custody violation: 0

(F) [Verified period of 3 years conviction free in the community prior to present incarceration: 1
Otherwise: 0]

-Has no admitted or documented heroin or opiate derivative abuse problem: 1

-Otherwise: 0

TOTAL HISTORY/RISK ASSESSMENT SCORE: _____

EXHIBIT B - Part II

Coding Instructions: History/Risk Score

The instructions address the application of the history/risk scoring instrument in most circumstances. Invariably, situations will arise where judgment will have to be exercised. As a general rule, never delete a point when doubt exists, note such doubtful items.

Item	Score
(A) No prior felony or misdemeanor convictions as an adult or juvenile, excepting juvenile convictions prior to age 16 where the conviction did not result in an executed sentence of 90 days or more:	3
One prior conviction:	2
Two or three prior convictions:	1
Four or more prior convictions:	0

(In general, the purpose of this item is to consider previous verified instances of criminal conduct.)

1. Adult Convictions. Count as a prior conviction all adult convictions for criminal acts classed as felonies or misdemeanors under Oregon law. Therefore, do not count public drunkenness, vagrancy, loitering, or traffic infractions. Count convictions in a voreign country for behavior that would be criminal in Oregon.

2. Juvenile convictions. Count juvenile adjudications after age 16 for offense behaviors that would have been crimes if committed by an adult. Count adjudications transpiring prior to the 16th birthday if incarceration results. Do not count status offenses (e.g., runaway, incorrigibility, hitch-hiking, habitual disobedience, truancy, ungovernable juvenile). Do not count any juvenile charge which results in informal probation; however, formal probation and wardship are considered to constitute a conviction providing the foregoing criteria are met.

3. Effective Age. Count as a conviction a finding by a court that a juvenile, who has passed his 16th birthday, while either on probation or parole, has committed a new crime, even though the probation/parole is continued. Count as a new conviction a return to a juvenile facility following a formal finding that criminal behavior occurred.

4. Military Convictions. Count prior convictions for behavior which would constitute a criminal act if committed by a civilian (e.g., assault, theft, disorderly conduct or any general courts marshall conviction. Do not, for example, count AWOL or disrespect to an officer.

5. Convictions Pardoned. Count offenses which have been pardoned on grounds other than innocence. Do not count convictions or adjudications which were set aside or pardoned on the grounds of innocence. Do not count any convictions which have been expunged pursuant to court order.

6. Convictions reversed or Vacated on Constitutional Grounds. Do not count convictions reversed or vacated on constitutional grounds (e.g., that an indigent defendant was deprived of his/her right to counsel). However, it is presumed that a conviction/adjudication is valid unless the evidence is clear that it is not. If a prisoner challenges such conviction, the prisoner should be advised to petition for a reversal of such conviction in the court in which the prisoner was originally tried, and then to provide the Board with evidence of such reversal.

7. Uncounseled Convictions. Do not count convictions if the Presentence Report clearly documents that the defendant neither had counsel nor waived counsel for a particular conviction. Count convictions where the offender chooses to represent himself. If an offender challenges counting an offense on the basis that it was uncounseled, consider the circumstances prior to granting the relief. In weighting the evidence, recent convictions and serious convictions increase the burden on the offender for producing criteria to overcome the presumption that the crime was counseled. If the conviction record is not clear and several years have elapsed, e.g., a marijuana-related crime in 1971 in New Jersey where the disposition is unclear other than recording a \$100 fine, the conviction would be more susceptible to a challenge that it was uncounseled. However, a recent misdemeanor conviction in Oregon would be presumed to be counseled. If the offender fails to raise the issue, failure may be cited to require that the offender produce more evidence, e.g., documentation from the court, that the conviction was uncounseled. If the court makes a finding to the effect that a case was counseled, then the burden of producing evidence is upon the offender.

8. Diversion. Do not count conduct resulting in diversion from the judicial process without a psecific finding of guilt (e.g., deferred prosecution, probation without plea).

9. Convictions Now Classed as Infractions. Count as a conviction offenses which were previously misdemeanors or felonies but are now only infractions (e.g., driving under the influence of intoxicants and possession or less than an ounce of marijuana) if the offense occurred at a time when they were sanctioned as a misdemeanor or felony. Driving under the influence of intoxicants or failure to perform the duties of a driver involved in an accident or collision which results only in damage to the property of another shall be treated in accordance with ORS 484.365 in deciding whether it is a conviction.

10. Present Conviction. Do not count the present offense or offenses as prior convictions.
11. Old Prior Record. Do not count prior convictions or commitments under Item A or B if the offender has maintained a conviction free record of ten years in the community immediately prior to the current offense behavior (including time on probation or parole). The ten year period is counted between the date of the last conviction countable under Item A or release from the last commitment countable under Item B (whichever comes last) and the date of commencement of the current offense behavior. Notwithstanding the above, count any homicide or conviction categorized as a 6 even if it is over ten years old and the offender has been crime free. Note: This does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as an aggravating factor. Similarly, a substantial crime free period in the community, not amounting to ten years, may be considered as a mitigating factor.
12. Intervening Probation. When a new conviction occurs while on probation and the new conviction is the basis for the current commitment, the original conviction leading to probation shall constitute a prior conviction, even if the probation is continued or terminated. Notwithstanding 10 above, it does not matter that the probation also results in the current incarceration.
13. Merged Convictions. Convictions arising from the same criminal conduct which have been merged for the purposes of sentencing shall be treated as a single prior conviction.
14. Documentation. Document the foregoing through official criminal justice system instruments (e.g., court orders, presentence investigations, police and parole/probation officer reports, computerized criminal histories, and other criminal justice systems records). Admissions shall also constitute adequate documentation.

Item	Score
(B) No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile:	2
One or two prior incarcerations	1
Three or more prior incarcerations	0

(In general, this serves to weigh the severity of the prior convictions counted under Item A and documents more serious criminal episodes which have occurred.)

1. Incarcerations and Facilities that Count as Confinement. Count as an incarceration all sentences of 90 days or more which were executed prior to the present commitment. An offender need not serve 90 days or more for a sentence to be executed; an offender need only serve a portion thereof. the deciding criteria is whether the confinement actually was begun. Count as incarceration confinement to a facility if the movement of the person is restricted through social passes and furloughs; the facility need not be of a highly secure nature.
2. Unbroken Incarceration. Do not count an unbroken incarceration twice, even if a new charge results in an additional prison sentence.
3. Current Commitment Counted. Count the current commitment as a prior incarceration if a conviction is received for a new criminal behavior while incarcerated and a new history/risk score is being calculated for the new conviction.
4. Incarcerated While Awaiting Trial. Do not count as an incarceration confinement awaiting trial unless a sentence to time served was imposed.
5. Incarceration Avoided. Count as a prior commitment if a sentence of more than 90 days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal).
6. Non-Criminal Commitments. Do not count juvenile commitments imposed for behavior which is non-criminal if performed by an adult. If the commitment offense is not countable under Item A, then the incarceration shall not be counted under Item B. Indeterminate juvenile incarcerations shall be treated the same as executed sentences of 90 days or more.
7. Incarceration Followed by Probation. Count as a prior incarceration any executed sentence of 90 days or more imposed pursuant to a probation violation even when the present commitment results from a violation of the same probation.
8. Hospital Commitments. Do not count commitments of 90 days or more if the same are imposed only for psychological, psychiatric, or medical observation.
9. Technical Parole Violation. Do not count parole violation commitments if the recommitment is based on a technical violation(s).
10. Old Record. Do not count prior commitments over ten years old if the current commitment follows ten years conviction free in the community (see #11 under Item A).

Item	Score
(C) Verified period of 3 years conviction free in the community prior to present commitment:	1
Otherwise	0

1. Score 1 if the offender has no prior convictions: or if the offender was released to the community from offender's last prior commitment and is conviction free for at least three years prior to commencement of the offender's current offense behavior.
2. Score 0 if there is a conviction within the three years prior to commencement of behavior leading to this conviction or if the offender was confined or on escape status at the time of the current offense.
3. Convictions Counted. For this purpose, count as a conviction only such offenses which would count as a "felony or misdemeanor conviction" under Oregon law under Item (A).

Item	Score
(D) Age at commencement of behavior leading to this incarceration:	
26 or older and at least one point received in Items A, B or C:	2
26 or older and no points received in A, B or C:	1
21 to 25 and at least one point received in A, B or C:	1
21 to 25 and no points received in A, B or C:	0
Under 21:	0

1. Score 2 if the offender was 26 years of age at the commencement of the current offense and at least one point was received under Items A, B or C.
2. Score 1 if the offender was 26 years of age at the commencement of the current offense and no points were received under Items A, B or C.
3. Score 1 if the offender was 21 to 25 and at least one point was received under Items A, B or C.

4. Score 0 if the offender was 21 to 25 years old and no points were received under Items A, B or C.
5. Score 0 if the offender was under 21 at the commencement of the current offense.
6. Age. Use the offender's age at the time the crime was committed unless the offender was initially placed on probation, in which case the offender's age at the time of the behavior leading to revocation should be used.

Item	Score
(E) Present commitment does not include parole, probation, failure to appear, release agreement, escape, or custody violation:	2
Present commitment involves probation, release agreement, or failure to appear violation:	1
Present commitment involves parole, escape or custody violation:	0

1. Probation Violation. Count as a probation violation if the offender was on probation when the misconduct occurred. It does not matter if the probation was continued or terminated. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the person was on probation.
2. Release Agreement Violation. Count as a release agreement violation if an offender committed the present offense while on release, bail or other custody reduction from any legal jurisdiction. If an offender, pursuant to being arrested for the present crime, is granted bail or release on own recognizance and subsequently fails to appear at a time and place specified by a court of legal jurisdiction, a violation is considered to have occurred.
3. Failure to Appear. Count as a failure to appear violation any sentence to the Corrections Division for Failure to Appear. A probation imposed for Failure to Appear, where Failure to Appear transpired following arrest for the present crime, is counted as a Failure to Appear violation.
4. Parole Violation. Count as a parole violation misconduct occurring while on parole. It does not matter whether the parole was continued or revoked nor does it matter in what jurisdiction the parole was imposed. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the offender was on parole.

5. Escape. Count as an escape if serving a sentence for escape. Count as an escape if offender escapes from custody following an arrest. Count escape as a trust violation even if it was not adjudicated.
6. Custody Violation. Count as a custody violation if the present crime or crimes was committed while in custody (e.g., county jail, prison, work release center, probation center, forest camp, terminal leave, temporary leave, social pass). It does not matter whether the offender is awaiting trial or serving an executed sentence, only that the present crime occurred while the person was in custody.

Item	Score
(F) Has no admitted or documented heroin or opiate derivative abuse problem:	1
Otherwise:	0

1. Documentation. Abuse may be documented by admission, diagnosed abuse problem by competent medical or counseling professional, participation in treatment program, preponderance of such evidence as possession, urinalysis, and needle tracts.
2. Determination. Abuse may be determined by any two professionals including but not limited to: parole officers, law enforcement officials, prosecuting attorneys, defense attorneys, or parole analysts. Abuse may also be determined by a judicial finding made in open court.
3. Do not count abuse of a drug other than heroin or an opiate derivative.
4. Do not count as abuse if documentation is over ten years old.

EXHIBIT C

TIME TO BE SERVED UNDER RULE 255-35-025

CRIMINAL HISTORY/RISK ASSESSMENT SCORE

11-9 8-6 5-3 2-0
 Excellent Good Fair Poor

Offense Severity Rating (All ranges in Categories 1-6 shown in months)

Base Range

Category 1	6	6	6-10	12-18
Category 2	6	6-10	10-14	16-24
Category 3	6-10	10-14	14-20	22-32
Category 4	10-16	16-22	22-30	32-44
Category 5	16-24	24-36	40-52	56-72
Category 6	30-40	44-56	60-80	90-130
Category 7*				
Subcategory 2 (years)	8-10	10-13	13-16	16-20
Subcategory 1 (years)	10-14	14-19	19-24	24-Life

EXHIBIT E

AGGRAVATING AND MITIGATING FACTORS

AGGRAVATION

Production or use of any weapon during the criminal episode.

Threat or violence toward witness[es] or victim[s].

[The prisoner] Knew or had reason to know the victims were particularly vulnerable (i.e., aged, handicapped, very young).

Ability to make restitution or reparation and failed to do so.

Violation of position of public trust or recognized professional ethics.

Degree of property loss, personal injury or threatened personal injury substantially greater than characteristic for the crime.

There is a single conviction for a crime involving multiple victims or incidents.

[More than one concurrently imposed conviction, not arising out of the same criminal episode.]

More than three trust violations in last five years as relates to Item D of matrix computation.

Persistent involvement in similar criminal offenses.

Repetition of behavior pattern which contributes to criminal conduct (e.g., return to drug or alcohol abuse).

Criminal history more extensive or serious than reflected by history/risk score.

Pursuant to a Guilty or No Contest Plea, other crimes were dismissed or not prosecuted.

New criminal activity while on escape or reduced custody status.

Persistent criminal misconduct while under supervision.

Efforts to conceal crime.

Other, (including judicial findings)

[Judge's sentence and reasons under rule 254-135-030(1)(d) and plea bargained offenses under rule 254-135-010(1)(c) may be considered as either an aggravating or mitigating circumstance.]

Any aggravating or mitigating circumstances which constitute a defining element of the crime or subcategory of the crime of which the prisoner was convicted, or resulted in a lower history/risk score, shall not justify variation from the guidelines. Additionally, such circumstances should not be the basis for more than one findings in aggravation or mitigation.

The Board may find mitigation, when enhanced penalties have been imposed for multiple convictions, if it finds that the crimes are part of a "crime spree" and that the spree is not indicative of a persistent criminal orientation or proclivity.

For the purpose of this exhibit, a crime spree is a set of criminal activities congruent in time or actually overlapping that are so joined by place and circumstance as to be the product of a continuous disposition or intent.

MITIGATION

Victim[s)] provoked the crime to a substantial degree, or other evidence that misconduct by victim contributed to the criminal episode.

Cooperation with criminal justice agencies in resolution of other criminal activity.

Effort to make restitution or reparation[, particularly before required to do so by sentencing].

Degree of property loss, personal injury or threatened personal injury substantially less than characteristic for the crime.

Special effort on the part of the perpetrator to minimize the harm or risk.

Peripheral involvement in the criminal episode (e.g., passive accessory).

Evidence of withdrawal, duress, necessity or lack of sustained criminal intent [, or diminished mental capacity, e.g., mental retardation, which is insufficient to constitute a defense but is indicative of reduced culpability].

Evidence of reduced responsibility or lack of mental capacity (e.g., mental retardation, which is insufficient to constitute a defense but is indicative of reduced culpability).

[Sentence] Ordered to pay restitution after [a] term of imprisonment.

No prior parole or probation difficulty.

Efforts to deal with problems associated with past criminal conduct.

Criminal history less extensive or serious than reflected by history/risk score.

Evidence of no new criminal activity while on escape or abscond status.

Consecutive sentences imposed for convictions resulting from single criminal episode.

Probation violation is technical in nature and not indicative of on-going criminal pattern.

Substantial period, but less than ten years, conviction free in the community.

Other (including judicial findings)

FILED
NOV 25 1981
NORMA PAULUS
SECRETARY OF STATE

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole on November 25, 1981
(Agency) (Date)
to become effective November 25, 1981
(Date)

The within matter having come before the Oregon State Board of Parole after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted: (New Rules)	_____	Temp.	<input checked="" type="checkbox"/>	Perm.	<input type="checkbox"/>
Amended: (Existing Rules)	<u>OAR 255-30-035</u>				
Suspended: (Temporary Only)	_____				
Repealed: (Existing Rules)	_____				

is Administrative Rules of the Oregon State Board of Parole
(Agency)
DATED this 25th day of November, 1981
By: Hazel G. Hayes
(Authorized Signer)
Title: Chairperson, Board of Parole

Statutory Authority: ORS 144, House Bill 2328 (Oregon Legislative Assembly - 1981 regular session).
Subject Matter: Utilization of Presentence Reports by the Parole Board.

Statement of Need Attached: Yes No

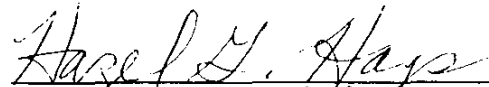
For Further Information Contact: _____ Phone: 378-2334

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and) Notice of Intent to Adopt a Rule on
Adopting Rules Pertaining to) a Temporary Basis; Statement of
Utilization of Presentence Re-) Findings, Authority, Need and
ports by the Parole Board) Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt rules regarding the utilization of the Presentence Report or similar report in lieu of the Parole Analysis Report is necessary to bring the Board into compliance with House Bill 2328 passed into law by the 1981 Legislature on an emergency basis.
2. Legal Authority: ORS Chapter 144 and House Bill 2328 (Oregon Legislative Assembly - 1981 Regular Session).
3. Statement of Need: The adoption/amendment of the proposed rules which replace the Parole Analysis Report with the Presentence Report or similar document is needed to bring the Board into conformity with House Bill 2328, passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing the rules: House Bill 2328, Oregon Legislative Assembly - 1981 regular session.
5. Statement of Fiscal Impact: The amendment/adoption of OAR 255-30-035 is expected to have positive fiscal impact in that the same report utilized by the court in sentencing will be used by the Board. Preparation of an alternative or additional background report will not be necessary in the majority of cases.
6. The above rules shall become effective upon filing on 11-24-81.

Date: November 25, 1981


Hazel G. Hays, Chairperson
Oregon State Board of Parole

Amending and adopting on a temporary basis 255-30-035

Information the Board Must Consider at a Prison Term Hearing:
Parole Analysis Report; Other Material

255-30-035 (1) The Corrections Division will provide a [Parole Analysis Report] Pre-sentence Investigation or similar report to the Board prior to the prisoner's prison term hearing. This report shall be prepared according to the sectional outline attached (Exhibit F). Any transcripts forwarded by the sentencing judge shall be attached to the [Parole Analysis Report] Pre-sentence Investigation.

(2) Additional information and recommendations from police, district attorney, defense attorney, and others with a special interest in the case shall be considered if available. Such information shall be subject to disclosure to the prisoner.

(3) Transcripts forwarded by the sentencing judge shall be considered if available. The Board may continue a hearing to request the transcript if not received.

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

ED 425
Oct. 1, 1976
Rev. 11/9/77

FILED
NOV 25 1981
NORMA PAULUS
SECRETARY OF STATE

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole on November 25, 1981
(Agency) (Date)
to become effective November 25, 1981
(Date)

The within matter having come before the Oregon State Board of Parole after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) _____

Temp. Perm.

Amended:
(Existing Rules) 0AR 255-10-010, 255-10-015

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

as Administrative Rules of the Oregon State Board of Parole
(Agency)

DATED this 25th day of November, 1981

By: Hazel G. Hays
(Authorized Signer)
Title: Chairperson, Board of Parole

Statutory Authority: ORS Chapter 144, House Bill 2995 (Oregon Legislative Assembly - 1981 regular session).

Subject Matter: Adopts procedures for appointment by the Governor of the Chairperson and Vice-Chairperson of the Board of Parole; establishes duties and powers of both.

Statement of Need Attached: Yes No

For Further Information Contact: _____ Phone: 378-2334

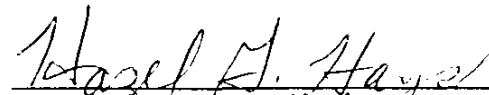
OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting Rules pertaining to)
Appointment by the Governor of)
the Chairperson/Vice-chairperson)
of the Board of Parole, estab-)
lishing duties and powers of both)
the Chairperson and the Vice-)
Chairperson, Term of Office.)

Notice of Intent to Adopt a Rule
on a Temporary Basis; Statement
of Findings, Authority, Need and
Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt rules regarding selection of the Chairperson/Vice-Chairperson of the Board, setting term of office, and establishing powers and duties of the respective positions is necessary to bring the Board into compliance with House Bill 2995 passed into law by the 1981 legislature on an emergency basis.
2. Legal Authority: ORS Chapter 144, House Bill 2995 (Oregon Legislative Assembly - 1981 Regular session).
3. Statement of Need: The adoption/amendment of OAR 255-10-010 and 255-10-015 which relate to selection of the Chairperson/Vice-Chairperson of the Board by the Governor, setting of term of office, and powers and duties of the Chairperson/Vice-Chairperson is needed to bring the Board rules into conformity with House Bill 2995 passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing rule: House Bill 2995, Oregon Legislative Assembly - 1981 regular session.
5. Statement of Fiscal Impact: The amendment/adoption of the above-cited rules is expected to have no significant fiscal impact.
6. The above rules shall become effective upon filing on November 25, 1981.

Date: November 25, 1981



Hazel G. Hays, Chairperson
Oregon State Board of Parole

Amend and adopt on a temporary basis 255-10-010, 255-10-015

[Chairperson: Term; Removal]

Chairperson; Vice-Chairperson: Selection, Term

255-10-010 (The chairperson shall be a voting member of the Board selected by a majority of the Board. The chairperson shall have a minimum term of one year and may be removed prior to the end of his/her term by a unanimous vote of the voting Board members.)

The Governor shall select one of the members of the State Board of Parole as chairperson and another member as Vice-chairperson, for such terms as the Governor determines.

Stat. Auth.: ORS Ch. 144

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

[Chairperson: Powers and Duties]

255-10-015

[The chairperson shall have the powers and duties established by law and rules necessary for the performance of the office and administration of the Board, and shall:]

The chairperson shall have the powers and duties established by law and rules and such powers and duties, in addition to those established by law, necessary for the performance of the functions of such office, as determined by the Governor. Such powers and duties shall include, but are not limited to:

- (1) Assign voting Board members to panels and designate the presiding members.
- (2) Apportion matters to the panels and full Board for decision.
- (3) Reassign matters to different panels when required by rule, law, or procedure.

- (4) Schedule business meetings and establish the agenda.
- (5) Inform the sentencing judge, district attorney, sheriff, or arresting agency of the scheduled release of each prisoner.
- (6) Review administrative appeals.
- (7) Designate members to conduct hearings and reviews.
- (8) Appoint persons to assist prisoners in parole proceedings, when appropriate.

(2) The vice-chairperson shall, in the absence of the chairperson. At all other times the vice-chairperson shall have such powers and duties as are delegated by the chairperson in addition to those powers and duties determined by the Governor as necessary for the performance of such office.

Stat. Auth.: ORS Ch. 144

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

FILED
NOV 25 1981
NORMA PAULUS
SECRETARY OF STATE

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole on November 25, 1981
(Agency) (Date)
to become effective November 25, 1981
(Date)

The within matter having come before the Oregon State Board of Parole after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) _____

Temp. Perm.

Amended:
(Existing Rules) 0AR 255-40-005, 255-40-020 and 255-40-025.

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

as Administrative Rules of the Oregon State Board of Parole
(Agency)
DATED this 25th day of November, 1981

By: Hazel M. Hays
(Authorized Signer)
Title: Chairperson, Board of Parole

Statutory Authority: ORS 144.140, 144.780, 144.785 and 183.335(5).

Subject Matter: Simplifies correcting clerical errors and processing procedures for special requests
for prison term reductions.

Statement of Need Attached: Yes No

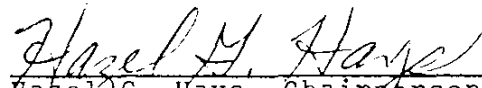
For Further Information Contact: _____ Phone: 378-2334

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and) Notice of Intent to Adopt a Rule
Adopting Rules Pertaining to) on a Temporary Basis; Statement
Correcting of Clerical Errors) of Findings, Authority, Need and
and Special Requests for Reduc-) Sources Relied Upon
tion of Prison Term.)

1. Statement of Findings: It is found by the Board of Parole that failure to act promptly in the adoption of the above amendments/ rules will result in serious prejudice to inmates affected by the proposed changes due to the length of time necessary to correct errors by file pass rather than by administrative action and because of the delays which occur in completing the special requests for reduction which do not contain supporting documents required by the Board in taking requested action.
2. Legal Authority: ORS 144.140, 144.780, 144.785, 183.335(5), OAR 255-01-005 and OAR 255-01-055.
3. Statement of Need: The amendment/adoption of OAR 255-40-005 and OAR 255-40-025 is needed to assure that errors adversely affecting inmates are corrected in a timely manner and that special requests for reduction are received with necessary documents in order to assure prompt action by the Board on the reduction requests.
4. Documents, reports and studies relied upon by the Board in preparing rule: ORS 144.780, 144.785, and OAR 255 Division 40.
5. Statement of Fiscal IMPact: The amendment/adoption of OAR 255-40-005, 255-40-020, and 255-40-025 is not expected to economically affect any state agency or the public to any significant degree.
6. The above rule shall become effective upon the filing on November 25, 1981.

Date November 25, 1981


Hazel G. Hays, Chairperson
Oregon State Board of Parole

Amend and adopt on a temporary basis 255-40-005, 255-40-020, and 255-40-025.

Scheduling of Periodic Reviews

255-40-005(1) Periodic reviews shall be conducted after the prisoner has served five years of his prison term and every three years thereafter, starting with the date the prisoner's sentence begins to run.

[(a) Dangerous offenders sentenced under ORS 161.725 and 161.735 shall be seen every two years as required by statute.]

[(b)] (2) Prisoners convicted of murder shall be seen as required by statute.

[(2) Reviews that have been scheduled prior to January 26, 1977 shall be conducted as scheduled. Reviews scheduled subsequent to January 26, 1977 shall be rescheduled to comply with this rule.]

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

Reopening Cases: When; What Showing is Necessary

255-40-020 The Board may reopen any case for reconsideration upon formal written request of a prisoner to the chairperson or motion of a Boardmember if:

(1) Substantial new information which was unknown at the time of the prison term hearing or could not be contemplated at that time has been received;

(2) Substantial information that a prisoner, or any other person, willfully concealed or misrepresented information material to a prior Board action has been received;

(3) Statutory changes have reclassified the criminal conduct involved (e.g., reduction of certain categories of murder to man-

slaughter, creation of degrees of manslaughter).

(4) Rule changes have resulted in a shorter range.

(5) [An error in applying the Board rules has occurred by clerical error or incorrect computation of the release date.]

Clerical error is established. In cases where the error is obvious and the result of correction will be to the prisoner's benefit, the Board may take administrative action by file pass to correct the error. The prisoner shall be notified in writing of Board action. If the Board intends to take action which would be adverse to the prisoner, the Board shall reopen the hearing at the request of the inmate.

(6) The Board shall state the specific reasons for denial of a request to reopen a hearing.

Stat. Auth.: ORS Ch. 144
Hist: 2PB 1-1979,f.& ef. 2-1-79; 2PB 2-1980,f.& ef.5-20-80

Reductions in Prison Terms: Effect of Minimum Terms; Criteria; Limitation

255-40-025 (1) An established prison term as defined in section 255-30-005(2) may be reset to an earlier time upon application for review to the chairperson of the Board and after concurrence of a voting majority of the Board, unless the prisoner has a statutory minimum term for murder. Parole release date resets falling below a judicially imposed minimum sentence shall require concurring votes of four members:

(a) Reductions in prison terms will ordinarily be granted only in cases where a prisoner can show an extended course of conduct indicating outstanding reformation. Cases will be determined on individual merits; however, the usual criteria will include:

(A) A five-year period of good conduct, and

(B) Demonstrable achievement in dealing with problems present at incarceration and associated with criminal conduct (e.g., psychological disorder, drug or alcohol dependency, lack of educational or vocational skills).

(b) A prisoner's exercise of recognized constitutional rights or legitimate use of legal process shall not be construed as lack of good conduct.

(c) Cooperation with authorities is not sufficient in itself to justify a reduction.

(d) Reductions in prison terms may be considered where the prisoner is suffering from a terminal illness or a unique opportunity is available and the reduction of the prison term is not excessive.

(2) Overall, reductions shall be limited to a maximum of 20% of the prison term under review unless a majority of the Board approves a further reduction:

(a) Reductions shall customarily be considered at periodic reviews under rule 255-40-005.

(b) [Special interviews to consider a reduction will only be granted in cases approved by at least three Board members following a file pass.]

Special requests for reduction supported by the superintendent which do not coincide with the periodic interviews shall be scheduled for a hearing or considered by file pass at the discretion of the chairperson.

(3) [A recommendation shall be requested from the institution superintendent on each application considered by the Board.]

A recommendation shall be requested from the institution super-

intendent by the prisoner. Requests for reductions shall be accompanied by the superintendent's recommendation.

(4) The prisoner shall have the burden of establishing that his/her conduct meets the criteria for a date reduction.

Stat. Auth.: ORS Ch. 144

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

FILED
NOV 25 1981
NORMA PAULUS
SECRETARY OF STATE

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole on November 25, 1981
(Agency) (Date)
to become effective November 25, 1981
(Date)

The within matter having come before the Oregon State Board of Parole after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) 255-50-016, 255-50-017, 255-50-018

Temp. Perm.

Amended:
(Existing Rules) OAR 255-50-015, 255-50-020

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

as Administrative Rules of the Oregon State Board of Parole

DATED this 25th day of November, 1981
(Agency)

By: Hazel G. Hayes
(Authorized Signer)
Title: Chairperson, Board of Parole

Statutory Authority: ORS 144, House Bill 2328 (Oregon Legislative Assembly - 1981 regular session)
Subject Matter: Procedures for rescinding parole and waiver of Rescission hearings, hearings
after rescission and basis for rescinding parole.

Statement of Need Attached: Yes No

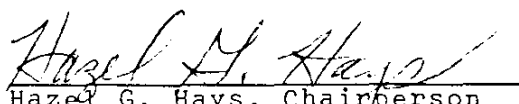
OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting Rules Pertaining to)
Procedures for Rescinding Parole,)
Waiver of Rescission Hearing,)
Hearing after Rescission of Par-)
ole, and Basis for Rescission.)

Notice of Intent to Adopt a Rule
on a Temporary Basis; Statement
of Findings, Authority, Need and
Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to amend/adopt rules relating to rescission of parole is necessary to bring the Board into compliance with the intent of House Bill 2328 relating to release procedures and delay of parole release and further that failure to act promptly in the adoption of the above amendments/rules will seriously affect the length of time required to complete a rescission hearing to the point that an inmate may not receive such hearing in a timely manner.
2. Legal Authority: ORS Chapter 144, House Bill 2328 (Oregon Legislative Assembly - 1981 regular session).
3. Statement of Need: The adoption/amendment of OAR 255-50-015, 255-50-017, 255-50-018, and 255-50-020 which collectively establish the procedure that the Board will follow in rescinding parole are needed to bring the Board rules into conformity with House Bill 2328 and further to insure that rescission hearings are completed in a timely manner.
4. Documents, reports and studies relied upon by the Board in preparing rule: ORS Chapter 144 and House Bill 2328, Oregon Legislative Assembly - 1981 regular session.
5. Statement of Fiscal Impact: The amendment/adoption of the above-cited rules is not expected to have significant economic impact upon any state agency or the public.
6. The above rule shall be come effective upon filing on November 25, 1981.

Date: November 25, 1981


Hazel G. Hays, Chairperson
Oregon State Board of Parole

Amend and adopt on a temporary basis 255-50-015 and adopt on a temporary basis 255-50-017, 255-50-018, and amending and adopting on a temporary basis 255-50-020

Rescission of Parole: Hearing, Suspension of Release 255-50-015 (1) The Chairperson may, on his/her own motion or upon notification by the Chief of Release Services, suspend the release date of a prisoner when there is reason to believe the person has engaged in serious misconduct. Suspension shall be for such time as is reasonably necessary to conduct the rescission hearing and make a decision.

(2) The Board may rescind a parole after it has been ordered but prior to release from custody [by conducting a rehearing under the procedures of Division 30, upon recommendation of an institution Superintendent, Regional Manager, or a Board member, and with the concurrence of three voting members of the Board]. based upon the written findings of either the institution disciplinary committee or a hearing conducted at the order of the Chairperson. The Board shall also consider the recommendation for disposition provided by the institution Superintendent, Regional Manager, Parole Board members or Parole Board Hearings Officer. Action to rescind parole shall be taken by a panel of the Board.

(3) The Board may rescind a parole after it has been ordered and after release from custody when the Board is informed of reasonable grounds to believe a person has violated a law prior to [his] the parole release date and knowledge of the law violation was not known by the Board on the date of the Order of Parole. Upon [concurrence of three Board members] the order of the Chairperson, a fact-finding hearing shall be held [pursuant to the procedures set

forth in Division 75 of these rules pertaining to revocation of parole to determine if the law violation did occur]. by a Parole Board Member or Parole Board Hearings Officer to determine if the law violation did occur.

(4) The parole order of a prisoner who is voluntarily absent from a facility shall be voided by the Chairperson. A Rescission Hearing shall be scheduled when the prisoner is available.

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

255-50-016 Procedure.

The procedure for a Rescission Hearing shall be in accord with the provisions of Division 75.

255-50-017 Waiver.

The provisions for waiving a Rescission Hearing shall be those outlined in Division 75, OAR 255-75-030, with the exception of those situations which involve involuntary absence from a correctional facility. In those cases the waiver of Rescission Hearing, signed prior to the effective date of the parole, shall be considered valid.

255-50-018 Hearing after rescission of parole

Scheduling: Board Action. After parole is rescinded, the Board may conduct a dispositional hearing to establish a future release date for the prisoner. The provisions of the Board rule 255-75-085 shall apply in the conduct of this hearing.

Basis for Rescission

255-50-020 [At the hearing, the Board will take relevant material, and reliable information of the prisoner's misconduct which causes the hearing to be held. The Board shall clearly state the facts and specific reasons, including a statement of misconduct, for its decision to rescind and reset the parole release date or deny parole.]

(1) The following actions, occurring after parole is ordered but prior to release from custody, shall be considered conclusive evidence upon which the Board may base rescission of parole:

(a) evidence of the prisoner's voluntary absence from a corrections facility:

(b) conviction of a new criminal offense or admission by the prisoner to criminal activity even when charges have been dismissed, not brought, or the prisoner has been acquitted at trial;

(c) admission by the prisoner to violation of one or more of the terms and conditions of a temporary leave.

(2) In all cases where the Board has rescinded parole based on conclusive evidence, the Board shall reset a release date when the prisoner is in custody. The new release date may be set by the rescission panel without a hearing if the date is within two to five months following return to custody. However, the Board may, at the discretion of the rescission panel, provide a hearing under Division 30 solely for purposes of determining the amount of time the prisoner shall serve prior to future parole release or whether the prisoner shall be denied parole.

(3) The Board shall clearly state the facts and specific reasons, including a statement of misconduct, for its decision to rescind and reset the parole release date or deny parole.

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

SD 25
Oct. 1, 1976
Rev. 11/18/77

FILED
NOV 25 1981
NORMA PAULUS
SECRETARY OF STATE

**CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE**

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____

Oregon State Board of Parole

(Agency)

on November 25, 1981

(Date)

to become effective November 25, 1981

(Date)

The within matter having come before the Oregon State Board of Parole after

(Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:

(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:

(New Rules)

0AR 255-75-042

Temp.

Per

Amended:

(Existing Rules)

0AR 255-75-045

Suspended:

(Temporary Only)

Repealed:

(Existing Rules)

as Administrative Rules of the Oregon State Board of Parole

(Agency)

DATED this 25th day of November, 1981

By:

Hazel M. Hays

(Authorized Signer)

Title: Chairperson, Board of Parole

Statutory Authority: ORS 144.315 and House Bill 2955 (Oregon Legislative Assembly - 1981 regular session)

Subject Matter: Establish procedures to use preliminary hearing findings or waivers in the revocation process; specifies types of documentary evidence which may be received at parole revocation hearing and exceptions to the hearsay rule.

Statement of Need Attached:

Yes

No

Phone: 378-2334

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting Rules Pertaining to)
the Effect of a Preliminary)
Hearing on the Revocation)
Process, Probable Cause, Evi-)
dence which may be Received at)
a Parole Revocation Hearing and)
the Exceptions to the Hearsay)
Rule.)

Notice of Intent to Adopt a Rule
on a Temporary Basis; Statement
of Findings, Authority, Need and
Sources relied upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt the above amendments/rules relating the effect of a preliminary hearing on the revocation process, definition of probable cause, and evidence which may be received at a parole revocation hearing is necessary to bring the Board into compliance with House Bill 2995 passed into law by the 1981 legislature on an emergency basis and to permit receipt of exhibits submitted at revocation hearings in a timely manner if there is a reasonable showing of reliability.
2. Legal Authority: ORS 144.315 and House Bill 2955 (Oregon Legislative Assembly - 1981 regular session).
3. Statement of Need: The adoption/amendment of OAR 255-75-042 and 255-75-045 which defined the effect of the preliminary hearing on the parole revocation process, define probable cause, except certain judicially recognized exceptions to the hearsay rule and permit receipt of letters, documents, reports, etc. upon a reasonable showing of reliability is necessary to bring Board rules into conformity with House Bill 2995 passed into law by the 1981 Oregon legislature and to permit the Board to deal more effectively with requests for rulings on the admissibility of evidence at a parole revocation hearing.
4. Documents, reports and studies relied upon by the Board in preparing rule: ORS 144.315 and House Bill 2955, Oregon Legislative assembly - 1981 regular session.
5. Statement of Fiscal Impact: The adoption of OAR 255-75-042 and the amendment/adoption of OAR 255-75-045 is not expected to have significant economic impact upon any state agency or the public.
6. The above rules shall become effective upon filing on November 25, 1981.

Date: November 25, 1981



Hazel G. Hays Chairperson
Oregon State Board of Parole

Adopting on a temporary basis 255-75-042 and amending and adopting on a temporary basis 255-75-045

255-75-042 Probable cause; Effect of Preliminary Hearing; Definition of Term; Deferral of Revocation hearing.

(1) Evidence received by and/or the order of the court at the preliminary hearing may be used by the Board to establish that probable cause exists to believe that a violation of a condition of parole has occurred; and further, that should the parolee waive right to a preliminary hearing, such waiver shall also constitute a waiver of a hearing by the Board to determine whether there is probable cause to believe that a violation of one or more of the conditions of parole has occurred.

(2) "Probable cause" shall be interpreted to mean a standard of proof lower than a preponderance (e.g., a reasonable belief that the violation did occur as opposed to proof by greater weight of the evidence). Such finding shall be used to support the Board decision to suspend and detain a parolee charged with the commission of a new crime. The Board may then defer completion of a parole revocation hearing until trial has been completed. In no case, however, shall a deferral following a finding of probable cause extend for a period greater than ninety (90) days from the date of the preliminary hearing or waiver.

Evidence at Parole Revocation Hearing: What May be Received
255-75-045

The following evidence may be received at a parole revocation hearing:

- (1) Oral testimony under oath;
- (2) Affidavits or other sworn statements;
- (3) Evidence determined to be material, relevant, and reliable, regardless of its nature, including:

- (a) Letters;
- (b) Documents;
- (c) Reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole officers, doctors, psychologists, attorneys);
- (d) Uncertified copies of letters, documents, or reports shall be admissible in a parole revocation if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable.
- (4) Evidence of criminal activity even when charges have been dismissed, not brought, or the parolee has been acquitted at trial.
- (5) Hearsay evidence, although admissible, cannot alone form the evidentiary basis for revocation if objection is raised. This provision shall not apply to certain recognized exceptions to the hearsay rule. For Board purposes, Federal rules 803, 804, and 805 shall be utilized in determining exceptions to the hearsay rule.

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

FILED
NOV 25 1981
NORMA PAULUS
SECRETARY OF STATE

**CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE**

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole on November 25, 1981

(Agency) _____ on _____ (Date)
to become effective November 25, 1981
(Date)

The within matter having come before the Oregon State Board of Parole after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) _____

Temp. Perm

Amended:
(Existing Rules) 0AR 255-80-005

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

as Administrative Rules of the Oregon State Board of Parole

DATED this 25th day of November, 1981

By: Hazel G. Hays
(Authorized Signer)
Title: Chairperson, Board of Parole

Statutory Authority: ORS 144.140, 183.335(5)

Subject Matter: Amends procedures to allow Administrative Review to be conducted by a file pass or hearing.

Statement of Need Attached: Yes No

For Further Information Contact: _____ Phone: 378-2334

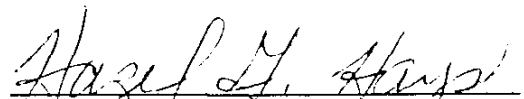
OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting Rules Pertaining to)
the Method of Conducting an)
Administrative Review.)

Notice of Intent to Adopt a Rule
on a Temporary Basis; Statement
of Findings, Authority, Need and
Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that failure to act promptly in the adoption of the above amendment will result in serious prejudice to inmates affected by the proposed change due to the length of time required to set and complete and Administrative Review by the original panel when, where appropriate, such action could be completed by file pass.
2. Legal Authority: ORS 144.140, 183.335(5), OAR 255-01-005, OAR 255-01-055, and OAR 255, Division 80.
3. Statement of Need: The amendment/adoption of OAR 255-80-005 is needed to insure completion of administrative review, where practical, in the most timely manner possible.
4. Documents, reports and studies relied upon by the Board in preparing rule: ORS Chapter 144 and OAR 255, Division 80.
5. Statement of Fiscal Impact: The amendment/adoption of OAR 255-80-005 is not expected to economically affect any state agency or the public to any significant degree.
6. The above rules shall become effective upon filing on November 25, 1981.

Date: November 25, 1981


Hazel G. Hays, Chairperson
Oregon State Board of Parole

Amending and adopting on a temporary basis 255-80-005

Method of Appeal

255-80-005 (1) Administrative appeal may be requested by a prisoner or Board member. If the Chairperson of the Board determines the request is consistent with the Board's criteria as defined in rule 255-80-010, the Chairperson shall [remand the case for rehearing, where practicable, to the original panel.] order an Administrative Review by the original panel, where practical, either by file pass or a hearing.

(2) When the Chairperson was a member of the panel from which an appeal is generated and finds the request does not meet the Board's criteria, he/she shall refer the matter to a member who was not on the panel for review. In such case, that member may concur or call for a rehearing.

(3) The Chairperson shall inform the prisoner in writing of the specific reasons for denial of the appeal and leaving the prior decision in effect.

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

**CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE**

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Oregon State Board of Parole on November 25, 1981
(Agency) (Date)
to become effective November 25, 1981
(Date)

The within matter having come before the Oregon State Board of Parole after
(Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) OAR 255-50-015, 255-50-018 _____

Temp. Perm.

Amended:
(Existing Rules) OAR 255-50-015, 255-50-020 _____

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

is Administrative Rules of the Oregon State Board of Parole
(Agency)

DATED this 25th day of November, 1981

By: Hazel A. Hays
(Authorized Signer)
Title: Chairperson, Board of Parole

Statutory Authority: ORS 144, House Bill 2328 (Oregon Legislative Assembly - 1981 regular session)
Subject Matter: Procedures for rescinding parole and waiver of Rescission hearings, hearings
after rescission and basis for rescinding parole.

Statement of Need Attached: Yes No

or Further Information Contact: _____ Phone: 378-2334

Basis for Rescission

255-50-020 [~~At the hearing, the Board will take relevant material, and reliable information of the prisoner's misconduct which causes the hearing to be held. The Board shall clearly state the facts and specific reasons, including a statement of misconduct, for its decision to rescind and reset the parole release date or deny parole.~~]

(1) The following actions, occurring after parole is ordered but prior to release from custody, shall be considered conclusive evidence upon which the Board may base rescission of parole:

(a) evidence of the prisoner's voluntary absence from a corrections facility:

(b) conviction of a new criminal offense or admission by the prisoner to criminal activity even when charges have been dismissed, not brought, or the prisoner has been acquitted at trial;

(c) admission by the prisoner to violation of one or more of the terms and conditions of a temporary leave.

(2) In all cases where the Board has rescinded parole based on conclusive evidence, the Board shall reset a release date when the prisoner is in custody. The new release date may be set by the rescission panel without a hearing if the date is within two to five months following return to custody. However, the Board may, at the discretion of the rescission panel, provide a hearing under Division 30 solely for purposes of determining the amount of time the prisoner shall serve prior to future parole release or whether the prisoner shall be denied parole.

(3) The Board shall clearly state the facts and specific reasons, including a statement of misconduct, for its decision to rescind and reset the parole release date or deny parole.

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 50 — BOARD OF PAROLE

TABLE 1
(255-50-005)
AMOUNT OF TIME

<u>CATEGORY</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
(a) Hazard to Human Life/ Health	50% of the prison term	100% of the prison term. In no instance may the extension exceed five years.
(b) Hazard to Security	25% of the prison term	50% of the prison term. In no instance may the extension exceed two years.
(c) Hazard to Property	10% of the prison term	20% of the prison term. In no instance may the extension exceed one year.
(d) Third in a series of rule violations within a three-month period, while assigned to any Corrections Division program	5% of the prison term	10% of the prison term. In no instance may the extension exceed six months.

Amending and adopting on a temporary basis OAR 255-60-005, 255-60-010, 255-60-015, and 255-60-025.

Parole Release Interviews: Purpose [~~; Review of Parole Plan; Procedure if Plan is Inadequate; Maximum Deferred~~] and Scheduling

255-60-005(1)

~~[A prisoner who has been given a parole release date shall be interviewed prior to his/her parole release.]~~ Within ninety (90) days of the scheduled release on parole of any prisoner, the Board, on its own initiative or at the request of the Corrections Division, may conduct an exit interview to review the parole plan, the prisoner's psychiatric or psychological report, if any, and the record of the prisoner's conduct during confinement. The Board may order, pursuant to ORS 144.125, any psychiatric or psychological reports held by the division not endorsed by the examiner in a manner to preclude disclosure.

(2) Exit ~~int~~ interviews shall be conducted by one or more voting members of the Board. The exit interview and the materials provided by the Corrections Division shall be reviewed for the purpose of determining whether probable cause exists to find that misconduct justifies a reset to a later date, to examine the parole plan, or to determine if a severe emotional disturbance exists such that the prisoner is a danger to himself or others. If the information available to the Board is deficient or unverified, the interviewer may continue the interview and hold the record open for a specified period of time to receive further evidence. The interviewer may order a psychiatric or psychological diagnosis and evaluation. The exit interview shall not be continued beyond ninety (90) days of the release date. Any further extension shall follow a hearing.

~~[(3) The purpose of the interview shall be to examine the prisoner's parole plan, his/her psychological report, if any, and the record of his/her conduct during confinement.]~~

(3) If ordered, the psychiatric or psychological diagnosis shall be conducted to determine if a severe emotional disturbance exists and the prisoner's potential for rehabilitation. An evaluation shall be provided which may consist of a diagnostic study, consisting of a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential, including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes, and interests, personal and social adjustments, employment opportunities, or other pertinent data helpful in determining the nature and scope of services needed. The evaluation should include recommendations for treatment or medication if necessary to assist in the rehabilitation of the prisoner or to protect the health and safety of the community. After considering the evaluation, the panel may require that the prisoner develop a plan with provisions which are recommended in the evaluation.

~~[(4) The interviewer shall examine the prisoner's plan for residence, employment, or other situation in the community to determine whether the parole plan is adequate:~~

~~(a) An acceptable plan includes employment, school, or other situation (e.g., retirement income), and suitable residence; it may require treatment programs and prescribed medication.~~

~~(b) If any portion of the plan is deficient or unverified, the Board may order deferred release to a verified plan approved by a panel, or to a plan approved by the Administrator of the Corrections Division.~~

~~(c) If the prisoner's record includes a psychiatric or psychological diagnosis of severe emotional disturbance, the Board may order a psychological evaluation to determine the prisoner's rehabilitation potential.~~

~~(A) The evaluation shall consist of a diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individ-~~

~~ual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed.~~

~~(B) The evaluation should include recommendations for treatment or medication if necessary to assist in the rehabilitation of the prisoner or to protect the health and safety of the community. After considering the evaluation, the Board may require that the prisoner include in his plan provisions which are recommended in the evaluation.~~

~~(d) Parole release may be deferred up to 90 days from the parole release date when a plan is deficient or unverified in order to obtain verification of a satisfactory plan from the Corrections Division. A report shall be presented to the Board after 60 days by the Corrections Division, according to its letter of agreement with the Board.~~

~~(4) [(5)] A prisoner requesting an out-of-state parole waives the 90-day limitation on postponements for developing an adequate parole plan.~~

~~(5) [(6) The Board shall clearly state the facts and specific reasons for its decision if parole release is deferred.]~~
The individual votes of the Board members shall be listed.

Deferring Parole Release Following an Interview: Basis;
Procedure

255-60-010 (1) Should the exit interview indicate that: (a)

~~[A psychiatric or psychological diagnosis of the prisoner reveals a present severe emotional disturbance which the Board findings based upon the crime of committal and/or behavior in the institution poses a threat to the health and/or safety of the community; or]~~ There is probable cause to believe that

a present severe emotional disturbance exists which, based upon the crime of committal or behavior in the institution, poses a threat to the health or safety of the community, the interviewer may order postponement of the scheduled release of a prisoner, and order a hearing pursuant to the procedure for hearings in Division 30. The hearing shall be held no more than sixty (60) days from conclusion of the exit interview.

(b) The prisoner has engaged in serious institutional misconduct, a hearing shall be conducted by the Board to consider deferring the parole release date. The procedure for hearings in Division 30 shall apply.

(2) Following a hearing, a panel may order postponement of the scheduled release of a prisoner found to have a present severe emotional disturbance which the Board finds poses a threat to the health or safety of the community until a specified future date or until the prisoner or institution presents evidence that the emotional disturbance is over or in remission.

(3) The Board may not deny release on parole solely because of a prisoner's severe emotional disturbance. Should the pri-

soner be diagnosed as a danger to himself or others or unable to provide for the basic personal needs necessary for his health or safety, the Board may initiate the civil commitment procedure as provided in ORS Chapter 426.

(4) If the prisoner has engaged in serious institutional misconduct, the provisions of Division 50 shall apply.

(5) The Board shall clearly state the facts and specific reasons for its decision. The individual votes of the Board members shall be indicated.

Instate Parole Release Interview Procedures

255-60-015 (1) Notice: At a reasonable time prior to a parole release interview, the prisoner shall be notified at his/her place of confinement of the scheduled parole release interview and shall be advised that information may be provided to the Board in writing or by persons sending written information to the Board.

(2) Disclosure of information considered by the Board shall be governed by Division 30.

~~[(3) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to language barriers or lack of mental capacity. Assistance will be provided to prisoners meeting these criteria by persons recommended by the superintendent and appointed by the chairperson of the Board.]~~

(3) ~~[(4)]~~ The prisoner shall receive notice of the interview results, including the facts and specific reasons for the decision and the individual votes of the Board members.

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

Out-Of-State Parole Release Interview Procedures

255-60-020 A prisoner who is in the custody of the Corrections Division who is housed in an out-of-state facility shall receive a parole release interview in conformance with rule 255-60-015. However, all proceedings may be conducted by con-

ference telephone call.

Stat. Auth.: ORS Ch. 144

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

Parole Consideration for Prisoners in a Local Jail

255-60-025 (1) A prisoner confined in a jail facility as defined in ORS 144.050 ~~[with a sentence of at least six months shall be given a hearing to determine whether parole will be granted when:~~

~~(a) Written application is submitted to the Board; and~~

~~(b) The prisoner has served at least four months of the sentence.~~

~~(2) Hearings shall be conducted by one voting member of the Board.~~

~~(3) The Board member may order parole, establish a parole release date, continue the hearing for a reasonable period of time, or deny parole.~~

~~(4) The procedures in rule 255-60-015 shall be followed.]~~

is not eligible for parole by the State Board of Parole.

see the new pages preceeding

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 60 — BOARD OF PAROLE

~~DIVISION 60~~

PAROLE RELEASE

Parole Release Interviews: Purpose; Review of Parole Plan; Procedure if Plan is Inadequate; Maximum Deferred

255-60-005 (1) A prisoner who has been given a parole release date shall be interviewed prior to his/her parole release.

(2) Interviews shall be conducted by one or more voting members of the Board.

(3) The purpose of the interview shall be to examine the prisoner's parole plan, his/her psychological report, if any, and the record of his/her conduct during confinement.

(4) The interviewer shall examine the prisoner's plans for residence, employment, or other situation in the community to determine whether the parole is adequate:

(a) An acceptable plan includes employment, school, or other situation (e.g., retirement income), and suitable residence; it may require treatment programs and prescribed medication.

(b) If any portion of the plan is deficient or unverified, the Board may order deferred release to a verified plan approved by a panel, or to a plan approved by the Administrator of the Corrections Division.

(c) If the prisoner's record includes a psychiatric or psychological diagnosis of severe emotional disturbance, the Board may order a psychological evaluation to determine the prisoner's rehabilitation potential:

(A) The evaluation shall consist of a diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes, and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed.

(B) The evaluation should include recommendations for treatment or medication if necessary to assist in the rehabilitation of the prisoner or to protect the health and safety of the community. After considering the evaluation, the Board may require that the prisoner include in his plan provisions which are recommended in the evaluation.

(d) Parole release may be deferred up to 90 days from the parole release date when a plan is deficient or unverified in order to obtain verification of a satisfactory plan from the Corrections Division. A report shall be presented to the Board after 60 days by the Corrections Division, according to its letter of agreement with the Board.

(5) A prisoner requesting an out-of-state parole waives the 90-day limitation on postponements for developing an adequate parole plan.

(6) The Board shall clearly state the facts and specific reasons for its decision if parole release is deferred. The individual votes of the Board members shall be listed.

Stat. Auth.: ORS Ch. 144

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80; 2PB 1-1981, f. 1-20-81, ef. 2-15-81

Deferring Parole Release Following an Interview: Basis; Procedure

255-60-010 (1) Should the interview indicate that:

(a) A psychiatric or psychological diagnosis of the prisoner reveals a present severe emotional disturbance which the Board finds based upon the crime of committal and/or behavior

in the institution poses a threat to the health and/or safety of the community; or

(b) The prisoner has engaged in serious institutional misconduct, a hearing shall be conducted by the Board to consider deferring the parole release date. The procedure for hearings in Division 30 shall apply.

(2) Following the hearing, a panel may order postponement of the scheduled release of a prisoner found to have a present emotional disturbance which the Board finds poses a threat to the health or safety of the community until after a specified future date not to exceed one year or until the prisoner or institution presents evidence that the emotional disturbance is over or in remission.

(3) The Board may not deny release on parole solely because of a prisoner's severe emotional disturbance. Should the prisoner be diagnosed as a danger to himself or others or unable to provide for the basic personal needs necessary for his health or safety, the Board may initiate the civil commitment procedure as provided in ORS Chapter 426.

(4) If the prisoner has engaged in serious institutional misconduct, the provisions of Division 50 shall apply.

(5) The Board shall clearly state the facts and specific reasons for its decision. The individual votes of the Board members shall be indicated.

Stat. Auth.: ORS Ch. 144

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80; 2PB 1-1981, f. 1-20-81, ef. 2-15-81

Instate Parole Release Interview Procedures

255-60-015 (1) Notice: At a reasonable time prior to a parole release interview, the prisoner shall be notified at his/her place of confinement of the scheduled parole release interview and shall be advised that information may be provided to the Board in writing or by persons sending written information to the Board.

(2) Disclosure of information considered by the Board shall be governed by Division 30.

(3) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to language barriers or lack of mental capacity. Assistance will be provided to prisoners meeting these criteria by persons recommended by the superintendent and appointed by the chairperson of the Board.

(4) The prisoner shall receive notice of the interview results, including the facts and specific reasons for the decision and the individual votes of the Board members.

Stat. Auth.: ORS Ch. 144

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

Out-Of-State Parole Release Interview Procedures

255-60-020 A prisoner who is in the custody of the Corrections Division who is housed in an out-of-state facility shall receive a parole release interview in conformance with rule 255-60-015. However, all proceedings may be conducted by conference telephone call.

Stat. Auth.: ORS Ch. 144

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

Parole Consideration for Prisoners in a Local Jail

255-60-025 (1) A prisoner confined in a jail facility as defined in ORS 144.050 with a sentence of at least six months shall be given a hearing to determine whether parole will be granted when:

(a) Written application is submitted to the Board; and
(b) The prisoner has served at least four months of the sentence.

(2) Hearings shall be conducted by one voting member of the Board.

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 60 — BOARD OF PAROLE

-) The Board member may order parole, establish a release date, continue the hearing for a reasonable period of time, or deny parole.
- (4) The procedures in rule 255-60-015 shall be followed.

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 65 — BOARD OF PAROLE

DIVISION 65

RESTITUTION

When Restitution is Ordered After Parole Release: Establishing a Payment Schedule; Limitations

255-65-005 When a person has been sentenced pursuant to ORS 137.106 to pay restitution for a crime committed after October 4, 1977, and any portion of that payment is deferred until after release from imprisonment, the Board shall establish a schedule of payments.

(1) In establishing and supervising a schedule of payments, the Board shall consider:

(a) The prisoner's financial resources, including salary, savings, and liquid assets;

(b) The burden that it will impose in light of the person's overall obligations (e.g., family and necessary living expenses);

(c) Ability to pay on an installment or other conditional basis;

(d) The rehabilitative effect of the payment and the method of payment.

(2) Normal payments shall range from 10 to 20 percent of a person's take-home salary without voluntary payroll deductions, unless significant savings or liquid assets permit larger amounts.

Stat. Auth.: ORS Ch. 144

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

Sentence Including Restitution as Mitigation

255-65-010 Restitution is a form of punishment which requires an offender to assume responsibility for his/her

criminal conduct by assuming the costs of compensating the actual victim of the crime, or the state when it has provided compensation to the victim, under ORS 147.005 to 147.365. The Board shall consider a sentence to pay restitution after a term of imprisonment as mitigation in setting a parole release date.

Stat. Auth.: ORS Ch. 144

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

Supervision of Payments; Conditions of Parole; Default by Parolee; Effect on Discharge

255-65-015 (1) Payment of restitution shall be included as a special condition of parole:

(a) Any applicable schedule shall be clearly stated on the Order of Parole.

(b) Payments shall be made to the clerk of the court of the county of sentencing, or as directed by the Board.

(c) The method and manner of payment shall be supervised by the individual's parole officer.

(2) When a parolee defaults on any scheduled payment, the supervising parole officer shall notify the Board. The default shall be grounds for revocation of parole unless the parolee shows:

(a) The default was not due to an intentional refusal to make the payment.

(b) The default occurred despite a good faith effort to make the payment.

(3) If payment of restitution has not been completed by the parolee's tentative discharge date, the parolee shall be continued on parole until completion of payment or the expiration of his/her sentence, whichever is first.

Stat. Auth.: ORS Ch. 144

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

(3) The Board shall provide to the sentencing court a copy of the schedule of payments and any modifications thereof.

(4) The Board shall provide to the sentencing court a copy of the discharge of parole in cases where restitution has been ordered.

255-65-020(1) When a person is placed on parole, subject to supervision by either the Corrections Division or a community corrections program established under ORS 423.500 to 423.560, the person shall be required to pay a monthly fee to offset costs of supervising parole. The fee shall be \$10.00 unless a greater fee is recommended by the supervising officer and approved by the Board using the same criteria set forth in 255-65-005(1)(a)(b) and (c). In no case shall the fee be less than \$10.00 per month.

(2) The fee established pursuant to section (1) shall be a condition of parole and intentional and willful failure to pay such fee shall be grounds for revocation of parole or extension of the supervision period.

(3) In cases of financial hardship or when otherwise advisable in the interest of the released person's rehabilitation, the community program director or the Assistant Director of Corrections, whichever is appropriate, may waive the payment of the fee in whole or in part.

(4) Fees collected shall be transferred to the Corrections Division or retained by the county as provided by statute.

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 70 — BOARD OF PAROLE

DIVISION 70

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

CONDITIONS OF PAROLE

Parolee Placement in Community Corrections Centers: Standards; Limitations

255-70-005 (1) A parolee who is in danger of having his/her parole revoked because of difficulty in meeting the conditions of parole or a breakdown in his/her parole program may be placed in a community corrections center upon his/her written consent pursuant to Corrections Division rule on placement and ORS 144.420(3).

(2) A quorum of the Board must approve the placement when the parolee is to remain in a community corrections center more than 30 days or before a second placement in a community corrections center during a 12-month period. A quorum of the Board may overrule any placement and order the parolee's release.

(3) Voluntary termination of a parolee's placement in a community corrections center shall not be grounds for revocation of parole.

(Subject to letter of agreement with Corrections Division)

Guidelines on Standard Condition Relating to "Best Interest" Return

255-70-010 As used in the standard conditions of the Order of Parole, revocation of parole when it is "in my best interest or in the best interest of society" shall refer to the following situations:

(1) The parolee is suffering from an emotional or psychological disturbance which makes him/her substantially dangerous to self or others if left in the community and which may be indicated by threatening behavior in the form of:

(a) Some overt act showing a present capacity to carry out any statements or threats of violence; or

(b) The substantial duplication of circumstances and conduct surrounding previous acting out of dangerous behavior; and

(2) The parolee's behavior cannot be adequately controlled if left in the community (e.g., demonstrated failure to follow through on a previously accepted mental health treatment program).

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 75 — BOARD OF PAROLE

DIVISION 75

PROCEDURES FOR REVOCATION OF PAROLE

Hearing Requirement: Time; Place; Presiding Officer

255-75-005 Before the Board can revoke parole, it shall conduct a hearing according to the procedures in this division.

(1) The hearing shall be held within a reasonable time after the Board is notified of the alleged violations and reasonably near the place of the alleged violations or the place of confinement.

(2) The hearing may be conducted by a Parole Board Hearings Officer.

Stat. Auth.: ORS Ch. 144

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

Board Action Upon Notification of Alleged Parole Violation: Criteria for; Release of Parolee Pending Hearing

255-75-010 (1) When the Board is informed of reasonable grounds to believe a person has violated the conditions of his/her parole and that revocation of parole may be justified, the Board may:

(a) Suspend parole and order the parolee arrested and detained pending a parole revocation hearing.

(b) Suspend parole pending a parole revocation hearing without detaining the parolee.

(c) Continue parole and order a parole revocation hearing.

(2) In determining whether to allow a parolee to remain in the community pending the parole revocation hearing, the Board shall consider:

(a) The risk presented by the parolee in light of the nature and seriousness of the allegations;

(b) The risk of the parolee absconding or failing to appear for the hearing;

(c) The availability of bail when applicable;

(d) The availability of resources or special situations in the community, including employment or school, evaluation or placement in a treatment program, medical emergencies or work release;

(e) Any recommendation by the parole officer.

Stat. Auth.: ORS Ch. 144

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

Procedures When Parolee is in Another Jurisdiction: Return of Parolee; Hearing Requirement

255-75-015 (1) The Board may suspend a parole and order the parolee's return to prison in Oregon without first conducting a hearing when:

(a) The parolee has left the state to which he/she was paroled without permission and is in custody in another jurisdiction.

(b) The parolee is in federal custody.

(c) The parolee has absconded from supervision and his/her whereabouts are unknown.

(d) The parolee has been convicted of a new crime in another jurisdiction.

(2) After the parolee is returned to prison in Oregon, he/she shall be given a parole revocation hearing according to the provisions of this division.

Stat. Auth.: ORS Ch. 144

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

Rights of a Parolee at a Formal Hearing

255-75-020 The parolee shall have the rights listed in ORS 144.343(4) at a parole revocation hearing.

Stat. Auth.: ORS Ch. 144

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

Notice of Alleged Parole Violation and Hearing

255-75-025 (1) The parolee shall be given written notice, as required by ORS 144.343(3), within a reasonable time before a hearing which may result in revocation of parole.

(2) Notice shall be given at a personal interview with the parolee or by other means which will assure that the parolee has received and understood the required notice.

Stat. Auth.: ORS Ch. 144

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

Waiver of Parole Revocation Hearing: When; Rejection of Waiver; Record Submitted to Board When Hearing Waived

255-75-030 (1) After receiving notice and a full explanation of his/her rights, a parolee may waive the parole revocation hearing and the rights provided in rule 255-75-025. The parolee may submit a statement to the Board to accompany his/her waiver.

(2) If the Board is not satisfied that the waiver was made knowingly and intelligently or if it believes more information is necessary before making its decision, it may order a hearing.

(3) The record submitted to the Board shall consist of:

(a) Notice forms properly executed;

(b) A statement by the parolee that he/she has waived a parole revocation hearing and understands the significance of that waiver;

(c) Evidence supporting the alleged violations; and

(d) Any statements made by the parolee.

Stat. Auth.: ORS Ch. 144

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

Appointment of Counsel: Criteria; Case by Case; Affidavit of Indigency

255-75-035 (1) If requested, the Board shall appoint counsel to represent indigent parolees at parole revocation hearings if the parolee makes a timely and colorable claim that:

(a) He/she has not committed the alleged violation; or

(b) There are substantial complex mitigating circumstances which make revocation inappropriate even if violation is admitted or a matter of record; or

(c) The parolee appears incapable of speaking effectively in his/her behalf.

(2) Cases shall be reviewed individually to determine whether the criteria have been met.

(3) Parolees shall be required to submit an affidavit of indigency at the hearing.

Stat. Auth.: ORS Ch. 144

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

Compelling Appearance of Witnesses: If Subpoena Requested; Board Motion; Failure to Obey

255-75-040 (1) As provided in ORS 144.347, the Board has the power to subpoena witnesses and documents to a parole revocation hearing.

(2) The Board shall issue a subpoena for any witness whose appearance at a hearing is requested.

(3) At any time before a hearing has begun, the Board, on its own motion, may subpoena any witness or documents it feels are necessary to the full examination of the issues raised at the hearing. A hearing may be postponed to obtain the presence of a material witness or document.

(4) The Board or party requesting a subpoena may seek contempt proceedings in the circuit court of any county against any person refusing to honor the subpoena.

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 75 — BOARD OF PAROLE

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

255-75-042 *Refer to attachment*

Evidence at Parole Revocation Hearing: What May be Received
255-75-045 The following evidence may be received at a parole revocation hearing:

- (1) Oral testimony under oath;
- (2) Affidavits or other sworn statements;
- (3) Evidence determined to be material, relevant, and reliable, regardless of its nature, including:
 - (a) Letters;
 - (b) Documents;
 - (c) Reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole officers, doctors, psychologists, attorneys);
 - (4) Evidence of criminal activity even when charges have been dismissed, not brought, or the parolee has been acquitted at trial.

(5) Hearsay evidence, although admissible, cannot alone form the evidentiary basis for revocation if objection is raised.

Stat. Auth.: ORS Ch. 144 (*Refer to Attachment*)
Hist.: ZPB 1-1979, f. & ef. 2-1-79

Procedure for Receiving Evidence if Good Cause Exists Not to Require Confrontation or Disclosure of an Informant's Identity

255-75-050 (1) When the Board receives material evidence from a witness who is likely to be subject to an actual threat of physical or psychological harm if his/her identity is disclosed to the parolee, the Board may receive the evidence provided by the witness without requiring confrontation or disclosure of the witness' identity.

(2) The determination whether to disclose the identity of a witness shall be made at an in-camera hearing:

- (a) If the Hearings Officer decides good cause does not exist, the evidence shall be disclosed unless withdrawn.
- (b) If the Hearings Officer decides good cause does exist, he/she shall state the reasons for the decision and conduct an independent examination of the witness on the record.

(3) Evidence received without disclosing the identity of the witness shall be made a sealed part of the record.

(4) When a witness is unavailable, his/her statements may be received in the form of documentary evidence, following the procedures in this rule, when the Hearings Officer determines at an in-camera hearing that good cause for non-disclosure exists and supporting evidence establishes the reliability of the absent witness' statement.

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

Reopening Hearings for New Information: Criteria; Procedure

255-75-055 (1) After completion of a parole revocation hearing and before a final decision, the Board 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 parolee shall be given notice of the decision to reopen the hearing and the new information to be considered. The hearing shall conform to the procedures of this division.

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

Record of Parole Revocation Hearing

255-75-060 (1) A record shall be made of the parole revocation hearing, including all evidence received and considered and a manual or mechanical recording of all oral testimony and presentations.

(2) The record shall include evidence presented at the parole revocation hearing. Upon request, the presiding officer may hold the record open for a specified period of time to receive further evidence deemed material to the proceeding.

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

Hearings Officer's Report: Content; Copy to Parolee; Ten-Day Waiting Period for Parolee's Arguments and Exceptions

255-75-065 (1) After the hearing, the record of the hearing shall be given to the Board along with the report of the Hearings Officer, which shall include:

- (a) Grounds for denial of a request for Board-appointed counsel, if applicable;
- (b) Findings of fact;
- (c) A recommendation as to disposition of the case, with reasons for the recommendations; and
- (d) A proposed order;
- (e) The report may also include any exhibits submitted and a summary of the record.

(2) Within a reasonable time after the hearing, the Hearings Officer's report shall be provided to the parolee. Unless the right is waived, the parolee shall have 10 days from the date the report is mailed to make written exceptions and arguments to the report for the Board's consideration.

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

Final Action by the Board: Quorum to Decide; Final Order; Notice of Decision

255-75-070 (1) The Board shall consider the record, Hearings Officer's report, and exceptions and arguments. A quorum of the Board shall enter a final order including findings of fact, the decision, reasons for the decision, and the individual votes of the Board members. The Board may choose to adopt the findings and recommendation with reasons of the Hearings Officer as its own when entering the final order.

(2) A copy of the final order shall be forwarded to the parolee with notice of his/her right to administrative review under division 80 of these rules and judicial review under ORS 144.335.

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

Parolees Convicted of a New Crime in Another Jurisdiction: Return; Jurisdictional Reinstatement

255-75-075 If a parolee has violated his/her parole as a result of a conviction of a new crime in another jurisdiction and has been sentenced to a term in prison, the Board may:

(1) Suspend parole and order the parolee returned to Oregon for a parole revocation hearing after serving the new sentence; or

(2) Reinstate parole to the prison sentence in the other jurisdiction in order to consolidate jurisdiction over the parolee and allow the Oregon sentence to run concurrently. Reinstatement under these circumstances is not a recommendation for parole release.

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

Reinstatement Based on Time Served: Necessary Findings by Board; Effect on History/Risk Score

255-75-080 (1) If the Board finds that a parolee has committed a violation of parole conditions which is sufficiently serious to require revocation of parole and the time the parolee has spent in custody pending final action on the parole

Adopting on a temporary basis 255-75-042 and amending and adopting on a temporary basis 255-75-045

255-75-042 Probable cause; Effect of Preliminary Hearing; Definition of Term; Deferral of Revocation hearing.

(1) Evidence received by and/or the order of the court at the preliminary hearing may be used by the Board to establish that probable cause exists to believe that a violation of a condition of parole has occurred; and further, that should the parolee waive right to a preliminary hearing, such waiver shall also constitute a waiver of a hearing by the Board to determine whether there is probable cause to believe that a violation of one or more of the conditions of parole has occurred.

(2) "Probable cause" shall be interpreted to mean a standard of proof lower than a preponderance (e.g., a reasonable belief that the violation did occur as opposed to proof by greater weight of the evidence). Such finding shall be used to support the Board decision to suspend and detain a parolee charged with the commission of a new crime. The Board may then defer completion of a parole revocation hearing until trial has been completed. In no case, however, shall a deferral following a finding of probable cause extend for a period greater than ninety (90) days from the date of the preliminary hearing or waiver.

Evidence at Parole Revocation Hearing: What May be Received
255-75-045

The following evidence may be received at a parole revocation hearing:

- (1) Oral testimony under oath;
- (2) Affidavits or other sworn statements;
- (3) Evidence determined to be material, relevant, and reliable, regardless of its nature, including:

- (a) Letters;
- (b) Documents;
- (c) Reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole officers, doctors, psychologists, attorneys);
- (d) Uncertified copies of letters, documents, or reports shall be admissible in a parole revocation if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable.
- (4) Evidence of criminal activity even when charges have been dismissed, not brought, or the parolee has been acquitted at trial.
- (5) Hearsay evidence, although admissible, cannot alone form the evidentiary basis for revocation if objection is raised. This provision shall not apply to certain recognized exceptions to the hearsay rule. For Board purposes, Federal rules 803, 804, and 805 shall be utilized in determining exceptions to the hearsay rule.

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 75 — BOARD OF PAROLE

revocation hearing is an adequate punishment for the violation, the Board may reinstate parole.

(2) Reinstatement of parole under this rule shall be counted as a parole failure in computing a criminal history/risk assessment score under rule 255-35-015.

Stat. Auth.: ORS Ch. 144

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

255-75-082 Refer to attachment
Future Disposition Hearing; Procedures; Scheduling; Board Action

255-75-085 (1) After parole is revoked, the Board shall conduct a hearing to establish future disposition of the prisoner within 90 days after his/her return. This hearing shall follow the procedures of a prison term hearing as provided in division 30.

(2) At the future disposition hearing, the Board may:

(a) Set a new parole release date according to the guidelines in rule 255-75-085 and choose not to give credit for statutory good time earned until suspension of parole; or

(b) Deny further parole consideration, according to the guidelines in rule 255-75-090, and return all or part of the statutory good time to which the prisoner is entitled.

Stat. Auth.: ORS Ch. 144

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

Guidelines for Re-Release of Parole Violators: Technical Violators; New Convictions; Denial of Further Parole

255-75-090 (1) Parole violators returned with a technical violation and no prison commitment for a new conviction shall be given an additional prison term based on the following guidelines:

(a) If the violations did not involve a finding at the parole revocation hearing of new criminal activity, the prisoner shall serve from four to eight months unless the Board decides that the aggravation or mitigation found at the parole revocation

hearing is sufficient to justify variation from this range. Variation shall not exceed two months without concurrence of at least four voting members of the Board.

(b) If the violation involved a finding at the parole revocation hearing that new criminal activity has occurred, the prisoner shall serve from eight to 12 months unless the Board decides that the aggravation or mitigation found at the parole revocation hearing is sufficient to justify variation from this range. Variation shall not exceed four months without concurrence of at least four voting members of the Board.

(c) Usual, but not exclusive, factors in aggravation and mitigation are shown in Exhibit G. When applicable, the factors shown in Exhibit E may be consulted.

(d) In setting a re-release date, the Board may consider the seriousness of the parole violator's original offense and history/risk score.

(2) Parole violators returned with a new prison commitment shall be given a prison term according to the guidelines in division 35:

(a) A history/risk score reflecting the new conviction shall be calculated. When applicable, the original conviction and incarceration and the parole failure shall result in lost points.

(b) If the sentence on the new conviction is imposed consecutive to the original commitment offense, the provisions of subsection 255-35-020(2)(e) shall govern the credit given for time served.

(3) The Board may deny reparole consideration and require the parole violator to serve to the end of his/her sentence upon affirmative vote of at least four voting members. In cases where setting a parole violator within the guidelines of this rule would require the parole violator to serve to the end of his/her sentence, four votes are not required.

Stat. Auth.: ORS Ch. 144

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

Authority of Revocation Panel to Set New Parole Release
Date for Parole Violators.

255-75-082 (1) In cases involving a parole violator re-
turned for a technical violation and no new prison com-
mitment for a new conviction, the Revocation Panel may
establish a new parole release date following four to six
months being incarcerated as long as the action is consis-
tent with the guidelines for re-release of parole violators
and variations in rule 255-75-085.

In all cases involving a parole violator returned for
technical violations and with new new prison commitment for
a new conviction the Board shall set a re-release date.
The new release date may be set by the Revocation Panel if
the date is within four to six months following return
to custody as long as the decision is consistent with
the guidelines for re-release of parole violators and var-
iations under rule 255-75-085.

(2) In cases where the Revocation Panel does not set a
new parole release date, the prisoner shall receive a
Future Disposition Hearing in accordance with rule 255-75-
080.

Adopting on a temporary basis OAR 255-75-006 and 255-75-082

Method of Hearing: Utilization of Conference Call Hearing;
Objections to Conference Call Procedure; Determination
of Situation Requiring On-Site Hearings.

255-75-006 (1) All hearings under Division 75 shall be
conducted by conference telephone call. Exceptions to the
rule will be made only in the following situations:

(a) Where the alleged violations are contested and there
is an affirmative showing by either the parolee or his/her
attorney that credibility of the witnesses, including ob-
servations of their demeanor, would be a primary issue for
determination by the Hearings Officer.

(b) Physical exhibits are to be made a part of the record
and viewing of the exhibits would be essential in deter-
mining whether a violation of parole has occurred.

(c) At the discretion of the Hearings Officer in situ-
ations not covered by either subsection (a) or (b) above.

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 80 — BOARD OF PAROLE

DIVISION 80

Stat. Auth.: ORS Ch. 144
Hist: ZPB 1-979, f. & cf. 2-1-79

ADMINISTRATIVE APPEAL

Method of Appeal

255-80-005 (1) Administrative appeal may be requested by a prisoner or a Board member. If the chairperson of the Board determines the request is consistent with the Board's criteria as defined in rule 255-80-010, the chairperson shall ~~remand the case for rehearing, where practicable, to the original panel.~~

(2) When the chairperson was a member of a panel from which an appeal is generated and finds the request does not meet the Board's criteria, he/she shall refer the matter to a member who was not on the panel for review. In such case, that member may concur or call for a rehearing.

(3) The chairperson shall inform the prisoner in writing of the specific reasons for denial of the appeal and leaving the prior decision in effect.

Criteria for Appeal

255-80-010 The criteria for meritorious appeal are:

(1) The Board action is not supported by the written findings, or the written findings are inaccurate; or

(2) Pertinent information was available at the time of the original hearing which, through no fault of the prisoner, was not considered; or

(3) The action of the Board is inconsistent with its rules or policies or is contrary to law; and

(4) The matters raised on appeal may have an effect on the original decision.

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

order an administrative review
by the original panel, where practical, either by
a file pass or a hearing.

A rule amending and adopting on a temporary basis OAR 255-90-002, 255-90-003, 255-90-005, 255-90-010, 255-90-015 and Exhibit H-1 and adopting temporary rule OAR 255-90-001.

Definitions

255-90-001

"Active Parole Supervision": Supervision requiring periodic contact with the supervising officer or monitoring by supervising officer to assure that parolee has committed no new crimes or monitoring by supervising officer to assure repayment of a restitution amount.

"Intensive Parole Supervision": (1) Supervision requiring at least monthly contact with the supervising officer; or (2) monitoring of parole by the supervising officer to assure adherence to special conditions of parole by the parolee which are by direction of the Board and not left to the discretion of the supervising officer.

Major Technical Violation": A violation of a parole condition involving the possession of a weapon or firearm, absconding supervision by leaving the state of Oregon without permission, a new law violation not resulting in a new felony sentence, or a finding pursuant to a hearing conducted under Division 75 that new criminal activity has occurred which would constitute a class "A" misdemeanor or felony.

"Minor Technical Violation": 'Violations' as described by ORS 161.565 and 161.575 and all parole violations except major technical violations and law violations.

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 90 — BOARD OF PAROLE

DIVISION 90

DISCHARGE

Discharge of Parolees

~~255-90-002 The Board shall establish a conditional discharge date from supervised parole within the range for the appropriate offense severity rating and history/risk score shown in the guideline matrix, Exhibit H-1. A parolee shall remain on unsupervised parole and shall not be given final discharge from parole until five (5) years after his placement on unsupervised parole, or until the occurrence of his good time date, whichever first occurs.~~

Stat. Auth.: ORS Ch. 144
Hist: 2PB 2-1980, f. & cf. 5-20-80

Period of Time to Serve on Supervised Parole

~~255-90-003 The Board may revoke parole, extend or deny a conditional discharge date, a final discharge or place a person back on supervised parole after his placement on conditional discharge for a period equal to the sentence expiration date when the parolee has been found, after hearing pursuant to Division 75 of these rules, to have violated the conditions of parole.~~

Stat. Auth.: ORS Ch. 144
Hist: 2PB 2-1980, f. & cf. 5-20-80

Discharge Generally

~~255-90-005 The guidelines set forth in Exhibit H-1 shall govern the establishment of conditional discharge dates. The date shall be set at the parole release interview and shall be written on the Order of Parole. For the conditional discharge date to become effective, the parolee must display acceptable parole performance during the term of supervised parole.~~

Stat. Auth.: ORS Ch. 144
Hist: 2PB 1-1979, f. & cf. 2-1-79; 2PB 2-1980, f. & cf. 5-20-80

Procedure: Approving and Denying Discharge; Further Proceedings

255-90-010 (1) A minimum of 30 days prior to the conditional discharge date on the Order of Parole, the supervising parole officer shall send to the Board a supervisory report. This report shall recommend one of two courses:

(a) That the parolee be conditionally discharged on the conditional date.

(b) That the conditional discharge not be granted.

(A) In this case, the supervisory report shall contain information showing why conditional discharge is not warranted and recommend a new conditional discharge date in accordance

(B) The case shall receive a Board review, under the procedures of section 255-30-015(2).

(C) After consideration of the parole officer's recommendation, the Board shall either conditionally discharge the parolee or issue a written explanation for denial of the request.

(D) The supervising officer shall either notify the parolee of the new conditional discharge date and reasons or notify the parolee in writing that he has been conditionally discharged.

(2) If the Board desires further information on which to base its decision, it may conduct a hearing according to the procedures in division 75.

(3) Notwithstanding section (1) of this rule, the supervising officer may submit a recommendation with written reasons for early conditional discharge at any time after ~~one year~~ ^{6 months} supervised parole.

Stat. Auth.: ORS Ch. 144
Hist: 2PB 1-1979, f. & cf. 2-1-79; 2PB 2-1980, f. & cf. 5-20-80

Extension of ~~Parole~~ Parole Discharge Dates When Good Time Under Forfeiture

255-90-015 Conditional discharge dates may be extended according to the following procedures:

(1) An extension of a conditional discharge date shall be made by the Board when notified that an inmate has good time under forfeiture at the time of parole release.

(2) A prisoner with good time under forfeiture shall have his/her conditional discharge date extended by the amount of good time under forfeiture.

(3) The Order of Parole will specify the amount of good time under forfeiture.

(4) The Board may rescind the extension upon recommendation of the supervising parole officer after six months of satisfactory parole adjustment. Refer to attachment

Stat. Auth.: ORS Ch. 144
Hist: 2PB 1-1979, f. & cf. 2-1-79; 2PB 2-1980, f. & cf. 5-20-80

Stat. Auth.: ORS Ch. 144

Hist: 2PB 2-1980, f. & ef. 5-20-80

Period of Time to Serve on Supervised Parole

~~255-90-003 [The Board may revoke parole, extend or deny a conditional discharge date, a final discharge or place a person back on supervised parole after his placement on conditional discharge for a period equal to the sentence expiration date when the parolee has been found, after hearing pursuant to Division 75 of these rules, to have violated the conditions of parole.]~~

The guidelines set forth in Exhibit H-1 shall govern the establishment of discharge dates. The date shall be set at the prison term hearing, periodic review, rescission action or by the Revocation Panel and shall be written on the Order of Parole. For discharge to be effective, the parolee must display acceptable parole performance as indicated by Exhibit H-1 during the term of active parole supervision.

255-90-011 During the pendency of any parole violation proceeding, the running of the parole period is stayed and the Board shall retain jurisdiction over the parolee until the proceedings are resolved.

Discharge [Generally] and Supervision Term

255-90-005 [~~The guidelines set forth in Exhibit H-1 shall govern the establishment of conditional discharge dates. The date shall be set at the parole release interview and shall be written on the Order of Parole. For the conditional discharge date to become effective, the parolee must display acceptable parole performance during the term of supervised parole.~~]

A prisoner who discharges a sentence imposed after November 3, 1981 shall be released upon the condition that the prisoner be subject to a period of supervision in the same manner as a parolee. However the maximum period of supervision shall be six months and upon violation of the terms imposed upon the conditional discharge, the maximum period of incarceration shall be ninety (90) days. The period of supervision, reincarceration or both shall in no case cause the length of the inmate's term to exceed the maximum term imposed by the court.

Extension of ~~[Tentative]~~ Parole Discharge Dates ~~[When Good Time Under Forfeiture]~~

255-90-015 ~~[Conditional discharge dates may be extended according to the following procedures:-~~

~~(1) An extension of a conditional discharge date shall be made by the Board when notified that an inmate has good time under forfeiture.~~

~~(3) The Order of Parole will specify the amount of good time under forfeiture.~~

~~(4) The Board may rescind the extension upon recommendation of the supervising parole officer after six months of satisfactory parole adjustment.]~~

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80

In addition to the power of the Board to revoke parole, it may extend a discharge date one time for six months without a hearing and thereafter up to a one year period if the Board finds, after a hearing pursuant to Division 75, that the parolee has violated the conditions of parole. (2) Nothing contained in this rule shall be interpreted to preclude more than one extension of a discharge date by the Board. However, no extension of parole shall exceed the maximum term of sentence imposed by the Court.

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 95 — BOARD OF PAROLE

DIVISION 95

MISCELLANEOUS

Uniform Presentence Report

255-95-005 (1) Presentence Reports furnished pursuant to ORS 144.785 shall be prepared according to the format outlined in Exhibit I.

(2) The Board of Parole and the Corrections Division shall issue policy statements, as necessary, to supplement this rule.

(3) Each presentence report shall include the Basic Data

(present crime synopsis; evaluation; recommendation; and Attachments I, II, and III) listed in Exhibit I. The presentence report may include additional exhibits listed in Exhibit I as ordered by the judge in an individual case.

(4) For offenders sentenced to imprisonment in state institutions, the presentence report and all of the exhibits will be completed and forwarded to the Board of Parole within 60 days of sentencing.

Stat. Auth.: ORS Ch. 144

Hist: ZPB 1-1979, f. & of. 2-1-79

EXHIBIT A

PART I

OFFENSE SEVERITY UNDER RULE 255-35-010

OFFENSE	RATING	FELONY CLASS
163.095 - Aggravated Murder	7	A
163.115 - Murder	7	A
166.005 - Treason	7	A
163.118 - Manslaughter I	6	A
163.235 - Kidnapping I	6	A
163.375 - Rape I (Subcategory 1)	6	A
163.405 - Sodomy I (Subcategory 1)	6	A
164.415 - Robbery I	6	A
163.185 - Assault I (Subcategory 1)	6	A
164.325 - Arson I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 2)	5	A
164.325 - Arson I (Subcategory 2)	5	A
162.165 - Escape I	5	B
164.225 - Burglary I (Subcategory 1)	5	A
162.185 - Supplying Contraband (Subcategory 1)	5	C
166.275 - Possession of Weapon by Inmate of Penal Institution	5	A
163.125 - Manslaughter II (Subcategory 1)	<u>5</u>	
163.175 - Assault II	4	B
163.225 - Kidnapping II	4	B
163.365 - Rape II (Subcategory 1)	4	B
163.395 - Sodomy II	4	B
164.225 - Burglary I (Subcategory 2)	4	A
167.207(4) - Criminal Activity in Drugs (Sub 1)	4	A
163.275 - Coercion (Subcategory 1)	4	C
164.075 - Theft by Extortion (Subcategory 1)	4	C
475.992(1) - Manuf. or Delivery of Controlled substance (Subcategory 1)	4	A
475.995 - Unlawful Delivery of a Controlled substance to Minor (Subcategory 1)	4	A, B
163.125 - Manslaughter II (Subcategory 2)	<u>4</u> [3]	B
162.015 - Bribe Giving	3	B
162.025 - Bribe Receiving	3	B
167.207(1) - Criminal Activity in Drugs (Subcate- gory 1)	3	B
163.425 - Sexual Abuse I	3	C
162.185 - Supplying Contraband (Subcategory 2)	3	C
164.225 - Burglary I (Subcategory 3)	3	A

OFFENSE	RATING	FELONY CLASS
163.365 - Rape II (Sub 2)	3	B
164.215 - Burglary II (Sub 1)	3	C
164.005 - Theft I (Sub 1)	3	C
164.125 - Theft of Services (Sub 1)	3	C
164.085 - Theft by Deception (Sub 1)	3	C
165.013 - Forgery I (Sub 1)	3	C
475.992(1) - Manufacture or Delivery of Controlled substance (Sub 2)	3	A, B, C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit substance (Sub 1)	3	A
475.995 - Unlawful Delivery of a Controlled Substance to Minor (Sub 2)	3	A, B
<u>163.125 - Manslaughter II (subcategory 3)</u>	<u>3</u>	
164.395 - Robbery III	<u>2</u>	<u>C</u>
162.065 - Perjury	2	C
162.155 - Escape II (Sub 1)	2	C
162.205 - Failure to Appear I	2	C
162.265 - Bribing a Witness	2	C
162.275 - Witness Receiving Bribe	2	C
163.145 - Criminally Negligent Homicide	2	C
163.205 - Criminal Mistreatment	2	C
163.257 - Custodial Interference I	2	C
163.275 - Theft by Coercion (Sub 2)	2	C
163.355 - Rape III	2	C
162.385 - Sodomy III	2	C
163.535 - Abandon Child	2	C
164.055 - Theft I (Sub 2)	2	C
164.095 - Theft by Receiving	2	C
164.135 - Unauthorized Use of Motor Vehicle (Sub 1) 2	2	C
164.215 - Burglary II (Sub 2)	2	C
164.315 - Arson II	2	C
165.013 - Forgery I (Sub 2)	2	C
167.207(4) - Criminal Activity in Drugs (Sub 3)	2	A
167.207(1) - Criminal Activity in Drugs (Sub 2)	2	A
164.125 - Theft of Services (Sub 2)	2	C
164.075 - Theft by Deception (Sub 2)	2	C
165.095 - Sports Bribery	2	C
165.090 - Sports Bribe Receiving	2	C
162.185 - Supplying Contraband (Sub 3)	2	C
166.270 - Ex-Convict in Possession	2	C
166.410 - Sale related (firearms)	2	C
166.220 - Carrying a Weapon with Intent to Use	2	C
167.012 - Promoting Prostitution	2	C
167.278 - Obtaining Drugs Unlawfully	2	B
496.992(3) - Poaching (Sub 1)	2	C
<u>483.602 - Failure to Perform Duties Motorist, Injury or Death</u>	<u>1</u>	<u>C</u>

OREGON ADMINISTRATIVE RULES
CHAPTER 255 — BOARD OF PAROLE

EXHIBIT A

Part I

OFFENSE SEVERITY UNDER RULE 255-35-010

OFFENSE	RATING	FELONY CLASS
163.095 - Aggravated Murder	7	A
163.115 - Murder	7	A
166.005 - Treason	7	A
163.118 - Manslaughter I	6	A
163.235 - Kidnapping I	6	A
163.375 - Rape I (Subcategory 1)	8	A
163.405 - Sodomy I (Subcategory 1)	6	A
164.415 - Robbery I (Subcategory 1)	5	A
163.185 - Assault I (Subcategory 1)	6	A
164.325 - Arson I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 2)	5	A
164.325 - Arson I (Subcategory 2)	5	A
164.415 - Robbery I (Subcategory 2)	5	A
162.165 - Escape I	5	B
164.225 - Burglary I (Subcategory 1)	5	A
162.185 - Supplying Contraband (Subcategory 1)	5	C
163.175 - Assault II	4	B
163.225 - Kidnapping II	4	B
163.365 - Rape II (Subcategory 1)	4	B
163.395 - Sodomy II	4	B
164.225 - Burglary I (Subcategory 2)	4	A
167.017 - Compelling Prostitution	4	B
164.405 - Robbery II	4	B
167.207(4) - Criminal Activity in Drugs (Subcategory 1)	4	A
163.275 - Coercion (Subcategory 1)	4	C
164.075 - Theft by Extortion (Subcategory 1)	4	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 1)	4	A
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 1)	4	A, B
163.125 - Manslaughter II	3	B
162.015 - Bribe Giving	3	B
162.025 - Bribe Receiving	3	B
167.207(1) - Criminal Activity in Drugs (Subcategory 1)	3	B
163.425 - Sexual Abuse I	3	C
162.185 - Supplying Contraband (Subcategory 2)	3	C
164.225 - Burglary I (Subcategory 3)	3	A

OREGON ADMINISTRATIVE RULES
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OFFENSE	RATING	FELONY CLASS
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 3)	2	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 2)	2	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 1)	2	B,C
475.995 - Unlawful Delivery of a Controlled Substance to a minor (Subcategory 3)	2	C
162.185 - Supplying Contraband (Subcategory 4)	1	C
162.325 - Hindering Prosecution	1	C
163.525 - Bigamy	1	C
163.525 - Incest	1	C
163.555 - Criminal Nonsupport	1	C
164.065 - Theft; Lost, Mislaid	1	C
164.075 - Theft by Deception (Subcategory 3)	1	C
164.125 - Theft of Services (Subcategory 3)	1	A -\$200(Misd. C +\$200
164.365 - Criminal Mischief I	1	C
165.022 - Forged Instrument I	1	C
165.032 - Forgery Device	1	C
165.055 - Fraudulent Use of a Credit Card	1	A -\$200(Misd. C +\$200
165.070 - Fraudulent Communication Device	1	C
167.127 - Promoting Gambling	1	C
167.137 - Possession of Gambling Records I	1	C
167.212 - Tampering with Drug Records	1	C
- Welfare Fraud	1	C
- Felony Traffic	1	C
133.723 - Interception of Communication	1	C
496.992(3) - Poaching (Subcategory 2)	1	C
167.207(1) - Criminal Activity in Drugs (Subcategory 3)	1	A
164.215 - Burglary II (Subcategory 3)	1	C
164.135 - Unauthorized Use of a Motor Vehicle (Subcategory 2)	1	C
162.155 - Escape II (Subcategory 2)	1	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 4)	1	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 3)	1	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 2)	1	B,C
475.993 - Violation of Controlled Substance Act by Registrants	1	C

Conspiracy has the same offense severity as the crime conspired to, except that Conspiracy to Commit Murder shall be given a rating of 6.

OREGON ADMINISTRATIVE RULES
CHAPTER 255 -- BOARD OF PAROLE

EXHIBIT A

Part II

OFFENSE SERIOUSNESS RATINGS
SUBCATEGORIZATION OF BROAD-SCOPE OFFENSE CATEGORIES

MURDER -- ORS 163.115

Felony Class: A

Statutory Elements: Committed intentionally, not under extreme emotional disturbance; committed by person(s) committing, attempting or fleeing from Arson I, Burglary I, Escape I, Kidnapping I, Rape I, Sodomy I, or Robbery.

Subcategory 1 - rating of 7

...Stranger to stranger; cruelty to victim; prior conviction for Murder or Manslaughter; evidence of significant planning or preparation

Subcategory 2 - rating of 7

...All other cases of Murder

NOTE: Applies to crimes committed before December 7, 1978.

RAPE I -- ORS 163.375

Felony Class: A

Statutory Elements: Forceful compulsion; or voluntary intercourse with female under 12; or incestuous voluntary intercourse with female under 16

Subcategory 1 - rating of 6

...Stranger to stranger; aggravated custodial interference; breaking and entering; threat to use or use of a weapon; or actual or attempted serious bodily or emotional harm; or
...Intercourse with female under 12

Subcategory 2 - rating of 5

...All other cases

SODOMY I -- ORS 163.405

Sodomy I should be broken down in the same manner as Rape I.

OREGON ADMINISTRATIVE RULES
CHAPTER 255 -- BOARD OF PAROLE

ROBBERY I -- ORS 164.415

Felony Class: A

Statutory Elements: Robbery involved either:
armed with a deadly weapon; or
uses or attempts to use dangerous weapon; or
causes or attempts to cause serious injury

Subcategory 1 - rating of 6

...All cases of Robbery I except those fitting Subcategory 2

Subcategory 2 - rating of 5

Cases of robbery where the crime does not involve

...Discharge of a firearm; or
...Use of any other dangerous weapon; or
...Explicit and immediate threats, by word or gesture (e.g., cocking hammer
of gun), of death or serious bodily harm; or
...Serious injury

ASSAULT I -- ORS 163.185

Felony Class: A

Statutory Elements: Intentional serious injury to another by means of
a deadly or dangerous weapon

Subcategory 1 - rating of 6

...All cases of Assault I except those fitting Subcategory 2

Subcategory 2 - rating of 5

...Cases of Assault I in which the victim or victims provoked the crime to
a substantial degree, or other evidence that misconduct by victim con-
tributed substantially to the criminal episode.

ARSON I -- ORS 164.325

Felony Class: A

Statutory Elements: Arson involving either:
property of another which is customarily occupied by
people; or own property, if persons are endangered or
if other customarily occupied property is also endangered

ARSON I (Continued)

Subcategory 1 - rating of 6

...Knowing the premises were occupied at time of act; or
...Actual serious injury

Subcategory 2 - rating of 5

...Other cases of Arson I

BURGLARY I -- ORS 164.225

Felony Class: A

Statutory Elements: Burglary involving either:
entry of a dwelling; or else
entry of a building, if defendant is armed/carries
burglar's tools/causes or threatens injury/or use of a
dangerous weapon

Subcategory 1 - rating of 5

Entry into any actually or regularly occupied building, whether a dwelling
or non-dwelling, where defendant

...Used or threatened to use, by word or gesture, a dangerous weapon; and
...Caused or threatened serious physical injury

Subcategory 2 - rating of 4

...Entry into a non-dwelling in which value of goods taken is over \$5,000
...Entry into a residence or temporary residence, except for cases fitting
Subcategory 3

Subcategory 3 - rating of 3

...All other entries into a non-dwelling; or
...Entry into a residence or temporary residence in which
...Defendant is not armed with a deadly or dangerous weapon; and
...No extensive property damage; and
...Value of goods taken was below \$1,000

RAPE II -- ORS 163.365

Felony Class: B

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RAPE II (Continued)

Statutory Elements: Nonforcible intercourse involving:
incapacitated (e.g., mentally defective) female; or
female under 14 (i.e., 12 or 13)

Subcategory 1 - rating of 4

...All cases of Rape II except those fitting Subcategory 2

Subcategory 2 - rating of 3

...Not both under 16 and incapacitated; and
...No coercion or undue influence (e.g., father, step-father); and
...No position of trust (e.g., counselor, doctor)

BURGLARY II -- ORS 164.215

Felony Class: C

Statutory Elements: Any illegal entry, if not a Burglary I, with intent to
commit a crime therein

Subcategory 1 - rating of 3

...Theft or destruction of over \$5,000

Subcategory 2 - rating of 2

...Theft or destruction of between \$1,000 and \$5,000

Subcategory 3 - rating of 1

Theft or destruction of less than \$1,000

THEFT I -- ORS 164.055

Felony Class: C

Statutory Elements: Theft involving:
more than \$200; or
during a riot or catastrophe; or
theft by receiving; or
of a livestock animal; or
of a firearm or explosive

Subcategory 1 - rating of 3

...Theft or receiving of over \$5,000

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THEFT I (Continued)

Subcategory 2 - rating of 2

- ...Theft or receiving of \$1,000 to \$5,000
- ...Theft of a firearm or explosive
- ...Theft of a livestock animal
- ...Theft during riot or catastrophe

Subcategory 3 - rating of 1

- ...Other thefts (i.e., thefts under \$1,000)

THEFT OF SERVICES -- ORS 164.125

The breakdown should be the same as for ordinary Theft.

THEFT BY DECEPTION -- ORS 164.085

The breakdown should be the same as for ordinary Theft.

THEFT BY EXTORTION -- ORS 164.075

Felony Class: C

Statutory Elements: Extortion through threat of serious physical harm
or property damage; blackmail

Subcategory 1 - rating of 4

- ...Threat of serious bodily harm or death

Subcategory 2 - rating of 3

- ...All others

COERCION -- ORS 163.275

Felony Class: C

Statutory Elements: Compelling another to act through threat of serious
physical harm or property damage; blackmail

Subcategory 1 - rating of 4

- ...Threat of serious bodily harm or death

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COERCION (Continued)

Subcategory 2 - rating of 3

...All others

UNAUTHORIZED USE OF A MOTOR VEHICLE -- ORS 164.135

Felony Class: C

Statutory Elements: Joyriding, unauthorized exercise of control over
vehicle

Subcategory 1 - rating of 2

...Loss, destruction or severe damage to vehicle or to property; or
...Injury to others

Subcategory 2 - rating of 1

...Other

FORGERY I -- ORS 165.013

Felony Class: C

The breakdown should be based on the amounts involved in the same manner
as theft.

Note: For this crime and other theft crimes, the amounts involved would be
based on the amounts for which each defendant has been convicted or has
admitted.

POACHING -- ORS 496.992(3)

Felony Class: C

Statutory Elements: Second and each subsequent conviction within a
10-year period for taking of game fish or game mammals
with a value of \$200

Subcategory 1 - rating of 2

...Poaching of game valued over \$3,000; or
...Commercial operation

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POACHING (Continued)

Subcategory 2 - rating of 1

...Other

ESCAPE II -- ORS 162.155

Felony Class: C

Statutory Elements: Escape from custody where individual:
uses or threatens to use physical force; or
the confinement is due to a finding of guilt of a felony; or
escape is from a correctional facility

Subcategory 1 - rating of 2

...All cases of Escape except those fitting Subcategory 2

Subcategory 2 - rating of 1

...Escapes from a minimum custody situation in a correctional facility
for no more than 30 days (e.g., walkaways from Prison Farm, Work
Release Center, outside custody at OSP)

DRUG CRIMES

Uniform Controlled Substance Act

DRUG VIOLATIONS OF CONTROLLED SUBSTANCE ACT BY REGISTRANTS -- ORS 475.993

Felony Class: C

Rating: 1

MANUFACTURE OR DELIVERY OF A CONTROLLED SUBSTANCE -- ORS 475.992(1)

Statutory Elements: Manufacture or delivery of a controlled substance

Schedule 1 drugs - Class A Felony

Schedule 2 drugs - Class B Felony

Schedule 3 drugs - Class C Felony

Manufacture or delivery of marijuana for compensation -
Class B Felony

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MANUFACTURE OR DELIVERY OF A CONTROLLED SUBSTANCE (Continued)

Subcategory 1 - rating of 4

...Manufacture or delivery of heroin or opiate derivatives for compensation of \$2,000 or more

Subcategory 2 - rating of 3

...Manufacture or delivery of heroin or opiate derivatives without compensation or for compensation of less than \$2,000;
...Manufacture or delivery of cocaine for compensation of \$2,000 or more and other drugs for compensation of \$1,000 or more

Subcategory 3 - rating of 2

...Manufacture or delivery of cocaine for compensation of less than \$2,000 and other drugs for compensation of less than \$1,000

Subcategory 4 - rating of 1

...Manufacture exclusively for own use;
...Delivery without compensation, except heroin or opiate derivatives

UNLAWFUL CREATION OR DELIVERY OF COUNTERFEIT SUBSTANCE -- ORS 475.992(3)

Statutory Elements: Unlawful creation or delivery of counterfeit substance

Felony Class: Schedule 1 drugs - Class A Felony
Schedule 2 drugs - Class B Felony
Schedule 3 drugs - Class C Felony

Subcategory 1 - rating of 3

...Schedule 1 drugs, except marijuana

Subcategory 2 - rating of 2

...Schedule 2 drugs, plus PCP

Subcategory 3 - rating of 1

...Schedule 3 drugs, plus marijuana

POSSESSION OF CONTROLLED SUBSTANCE -- ORS 475.992(4)

Statutory Elements: Knowing or intentional possession of controlled substance not obtained by prescription or valid doctor's order

POSSESSION OF CONTROLLED SUBSTANCE (Continued)

Felony Class: Schedule 1 drugs - Class B Felony
Schedule 2 drugs - Class C Felony

Subcategory 1 - rating of 2

...Possession of large amounts (rebuttable presumption of possession with intent to sell)

Subcategory 2 - rating of 1

...Possession of small amounts (rebuttable presumption of possession for own use)

UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE TO ANY MINOR -- ORS 475.995

Statutory Elements: Unlawful delivery of a controlled substance to any minor (under 18);
Unlawful delivery of marijuana to a minor more than three years younger

Felony Class: Schedules 1 and 2 - Class A Felony
Schedule 3 - Class B Felony

Subcategory 1 - rating of 4

...Any delivery of heroin;
...Delivery for compensation of any other drug, except those fitting Subcategory 3

Subcategory 2 - rating of 3

...All other except those fitting Subcategory 3

Subcategory 3 - rating of 2

...Any delivery of less than 1 ounce of marijuana

CRIMINAL ACTIVITY IN DRUGS (INVOLVING MINORS) -- ORS 167.207(4)

Felony Class: A

Statutory Elements: Furnishing a narcotic or dangerous drug to a person under 18 by an adult at least three years older

Subcategory 1 - rating of 4

...Furnishing heroin or opiate derivatives;
...Sale for profit of any drug

CRIMINAL ACTIVITY IN DRUGS (INVOLVING MINORS) (Continued)

Subcategory 2 - rating of 3

...Furnishing any other drug except those fitting in Subcategory 3

Subcategory 3 - rating of 2

...Furnishing less than 1 ounce of marijuana

NOTE: Applies to crimes committed before July 1, 1978.

CRIMINAL ACTIVITY IN DRUGS (OTHER) -- ORS 167.207(1)

Felony Class: B

Statutory Elements: Manufacture, cultivation, sale or possession of any narcotic or dangerous drug (other than possession of less than one ounce of marijuana)

Subcategory 1 - rating of 3

...Manufacture, cultivation or sale for profit, or possession with intent to sell for profit of any heroin or opiate derivatives

Subcategory 2 - rating of 2

...Manufacture, cultivation, or sale for profit, or possession with intent to sell for profit, of any other drug

Subcategory 3 - rating of 1

...Manufacture for own use or possession for own use

NOTE: Applies to crimes committed before July 1, 1978.

EXHIBIT B

CRIMINAL HISTORY/RISK ASSESSMENT UNDER RULE 255-35-015

(A) -No prior felony or misdemeanor convictions as an adult or juvenile:	3
-One prior conviction:	2
-Two or three prior convictions:	1
-Four or more prior convictions:	0

(B) -No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile:	2
-One or two prior incarcerations:	1
-Three or more prior incarcerations:	0

(C) Age of behavior leading to this incarceration:	
-26 or older:	2
-21 to under 26:	1
Under 21:	0
- <u>Verified period of 3 years conviction free in the community prior to present incarceration:</u>	<u>1</u>
- <u>Otherwise:</u>	<u>0</u>

(D) Present commitment does not include parole, probation, failure to appear, release agreement, escape or custody violation:	2
Present commitment involves probation, release agreement, or failure to appear violation:	1
Present commitment involves parole, escape or custody violation:	0
<u>Age at commencement of behavior leading to this incarceration:</u>	
<u>-26 or older and at least one point received in Items A, B or C:</u>	<u>2</u>
<u>-26 or older and no points received in A, B or C:</u>	<u>1</u>
<u>-21 to under 26 and at least one point received in A, B or C:</u>	<u>1</u>
<u>-21 to under 26 and no points received in A, B or C:</u>	<u>0</u>
<u>-Under 21:</u>	<u>0</u>

(E) ~~[Has no admitted or documented heroin or opiate derivative abuse problem:~~ 1
Otherwise: 0

-Present commitment does not include parole, probation, failure to appear, release agreement, escape or custody violation: 2

-Present commitment involves probation, release agreement, or failure to appear violation: 1

-Present commitment involves parole, escape or custody violation: 0

(F) ~~[Verified period of 3 years conviction free in the community prior to present incarceration:~~ 1
Otherwise: 0

-Has no admitted or documented heroin or opiate derivative abuse problem: 1

-Otherwise: 0

TOTAL HISTORY/RISK ASSESSMENT SCORE: _____

EXHIBIT B - Part II

Coding Instructions: History/Risk Score

The instructions address the application of the history/risk scoring instrument in most circumstances. Invariably, situations will arise where judgment will have to be exercised. As a general rule, never delete a point when doubt exists, note such doubtful items.

Item	Score
(A) No prior felony or misdemeanor convictions as an adult or juvenile, excepting juvenile convictions prior to age 16 where the conviction did not result in an executed sentence of 90 days or more:	3
One prior conviction:	2
Two or three prior convictions:	1
Four or more prior convictions:	0

(In general, the purpose of this item is to consider previous verified instances of criminal conduct.)

1. Adult Convictions. Count as a prior conviction all adult convictions for criminal acts classed as felonies or misdemeanors under Oregon law. Therefore, do not count public drunkenness, vagrancy, loitering, or traffic infractions. Count convictions in a voreign country for behavior that would be criminal in Oregon.

2. Juvenile convictions. Count juvenile adjudications after age 16 for offense behaviors that would have been crimes if committed by an adult. Count adjudications transpiring prior to the 16th birthday if incarceration results. Do not count status offenses (e.g., runaway, incorrigibility, hitch-hiking, habitual disobedience, truancy, ungovernable juvenile). Do not count any juvenile charge which results in informal probation; however, formal probation and wardship are considered to constitute a conviction providing the foregoing criteria are met.

3. Effective Age. Count as a conviction a finding by a court that a juvenile, who has passed his 16th birthday, while either on probation or parole, has committed a new crime, even though the probation/parole is continued. Count as a new conviction a return to a juvenile facility following a formal finding that criminal behavior occurred.

4. Military Convictions. Count prior convictions for behavior which would constitute a criminal act if committed by a civilian (e.g., assault, theft, disorderly conduct or any general courts marshall conviction. Do not, for example, count AWOL or disrespect to an officer.

5. Convictions Pardoned. Count offenses which have been pardoned on grounds other than innocence. Do not count convictions or adjudications which were set aside or pardoned on the grounds of innocence. Do not count any convictions which have been expunged pursuant to court order.

6. Convictions reversed or Vacated on Constitutional Grounds. Do not count convictions reversed or vacated on constitutional grounds (e.g., that an indigent defendant was deprived of his/her right to counsel). However, it is presumed that a conviction/adjudication is valid unless the evidence is clear that it is not. If a prisoner challenges such conviction, the prisoner should be advised to petition for a reversal of such conviction in the court in which the prisoner was originally tried, and then to provide the Board with evidence of such reversal.

7. Uncounseled Convictions. Do not count convictions if the Presentence Report clearly documents that the defendant neither had counsel nor waived counsel for a particular conviction. Count convictions where the offender chooses to represent himself. If an offender challenges counting an offense on the basis that it was uncounseled, consider the circumstances prior to granting the relief. In weighting the evidence, recent convictions and serious convictions increase the burden on the offender for producing criteria to overcome the presumption that the crime was counseled. If the conviction record is not clear and several years have elapsed, e.g., a marijuana-related crime in 1971 in New Jersey where the disposition is unclear other than recording a \$100 fine, the conviction would be more susceptible to a challenge that it was uncounseled. However, a recent misdemeanor conviction in Oregon would be presumed to be counseled. If the offender fails to raise the issue, failure may be cited to require that the offender produce more evidence, e.g., documentation from the court, that the conviction was uncounseled. If the court makes a finding to the effect that a case was counseled, then the burden of producing evidence is upon the offender.

8. Diversion. Do not count conduct resulting in diversion from the judicial process without a psecific finding of guilt (e.g., deferred prosecution, probation without plea).

9. Convictions Now Classed as Infractions. Count as a conviction offenses which were previously misdemeanors or felonies but are now only infractions (e.g., driving under the influence of intoxicants and possession or less than an ounce of marijuana) if the offense occurred at a time when they were sanctioned as a misdemeanor or felony. Driving under the influence of intoxicants or failure to perform the duties of a driver involved in an accident or collision which results only in damage to the property of another shall be treated in accordance with ORS 484.365 in deciding whether it is a conviction.

10. Present Conviction. Do not count the present offense or offenses as prior convictions.
11. Old Prior Record. Do not count prior convictions or commitments under Item A or B if the offender has maintained a conviction free record of ten years in the community immediately prior to the current offense behavior (including time on probation or parole). The ten year period is counted between the date of the last conviction countable under Item A or release from the last commitment countable under Item B (whichever comes last) and the date of commencement of the current offense behavior. Notwithstanding the above, count any homicide or conviction categorized as a 6 even if it is over ten years old and the offender has been crime free. Note: This does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as an aggravating factor. Similarly, a substantial crime free period in the community, not amounting to ten years, may be considered as a mitigating factor.
12. Intervening Probation. When a new conviction occurs while on probation and the new conviction is the basis for the current commitment, the original conviction leading to probation shall constitute a prior conviction, even if the probation is continued or terminated. Notwithstanding 10 above, it does not matter that the probation also results in the current incarceration.
13. Merged Convictions. Convictions arising from the same criminal conduct which have been merged for the purposes of sentencing shall be treated as a single prior conviction.
14. Documentation. Document the foregoing through official criminal justice system instruments (e.g., court orders, presentence investigations, police and parole/probation officer reports, computerized criminal histories, and other criminal justice systems records). Admissions shall also constitute adequate documentation.

Item	Score
(B) No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile:	2
One or two prior incarcerations	1
Three or more prior incarcerations	0

(In general, this serves to weigh the severity of the prior convictions counted under Item A and documents more serious criminal episodes which have occurred.)

1. Incarcerations and Facilities that Count as Confinement. Count as an incarceration all sentences of 90 days or more which were executed prior to the present commitment. An offender need not serve 90 days or more for a sentence to be executed; an offender need only serve a portion thereof. the deciding criteria is whether the confinement actually was begun. Count as incarceration confinement to a facility if the movement of the person is restricted through social passes and furloughs; the facility need not be of a highly secure nature.
2. Unbroken Incarceration. Do not count an unbroken incarceration twice, even if a new charge results in an additional prison sentence.
3. Current Commitment Counted. Count the current commitment as a prior incarceration if a conviction is received for a new criminal behavior while incarcerated and a new history/risk score is being calculated for the new conviction.
4. Incarcerated While Awaiting Trial. Do not count as an incarceration confinement awaiting trial unless a sentence to time served was imposed.
5. Incarceration Avoided. Count as a prior commitment if a sentence of more than 90 days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal).
6. Non-Criminal Commitments. Do not count juvenile commitments imposed for behavior which is non-criminal if performed by an adult. If the commitment offense is not countable under Item A, then the incarceration shall not be counted under Item B. Indeterminate juvenile incarcerations shall be treated the same as executed sentences of 90 days or more.
7. Incarceration Followed by Probation. Count as a prior incarceration any executed sentence of 90 days or more imposed pursuant to a probation violation even when the present commitment results from a violation of the same probation.
8. Hospital Commitments. Do not count commitments of 90 days or more if the same are imposed only for psychological, psychiatric, or medical observation.
9. Technical Parole Violation. Do not count parole violation commitments if the recommitment is based on a technical violation(s).
10. Old Record. Do not count prior commitments over ten years old if the current commitment follows ten years conviction free in the community (see #11 under Item A).

Item	Score
(C) Verified period of 3 years conviction free in the community prior to present commitment:	1
Otherwise	0

1. Score 1 if the offender has no prior convictions: or if the offender was released to the community from offender's last prior commitment and is conviction free for at least three years prior to commencement of the offender's current offense behavior.
2. Score 0 if there is a conviction within the three years prior to commencement of behavior leading to this conviction or if the offender was confined or on escape status at the time of the current offense.
3. Convictions Counted. For this purpose, count as a conviction only such offenses which would count as a "felony or misdemeanor conviction" under Oregon law under Item (A).

Item	Score
(D) Age at commencement of behavior leading to this incarceration:	
26 or older and at least one point received in Items A, B or C:	2
26 or older and no points received in A, B or C:	1
21 to 25 and at least one point received in A, B or C:	1
21 to 25 and no points received in A, B or C:	0
Under 21:	0

1. Score 2 if the offender was 26 years of age at the commencement of the current offense and at least one point was received under Items A, B or C.
2. Score 1 if the offender was 26 years of age at the commencement of the current offense and no points were received under Items A, B or C.
3. Score 1 if the offender was 21 to 25 and at least one point was received under Items A, B or C.

4. Score 0 if the offender was 21 to 25 years old and no points were received under Items A, B or C.
5. Score 0 if the offender was under 21 at the commencement of the current offense.
6. Age. Use the offender's age at the time the crime was committed unless the offender was initially placed on probation, in which case the offender's age at the time of the behavior leading to revocation should be used.

Item	Score
(E) Present commitment does not include parole, probation, failure to appear, release agreement, escape, or custody violation:	2
Present commitment involves probation, release agreement, or failure to appear violation:	1
Present commitment involves parole, escape or custody violation:	0

1. Probation Violation. Count as a probation violation if the offender was on probation when the misconduct occurred. It does not matter if the probation was continued or terminated. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the person was on probation.
2. Release Agreement Violation. Count as a release agreement violation if an offender committed the present offense while on release, bail or other custody reduction from any legal jurisdiction. If an offender, pursuant to being arrested for the present crime, is granted bail or release on own recognizance and subsequently fails to appear at a time and place specified by a court of legal jurisdiction, a violation is considered to have occurred.
3. Failure to Appear. Count as a failure to appear violation any sentence to the Corrections Division for Failure to Appear. A probation imposed for Failure to Appear, where Failure to Appear transpired following arrest for the present crime, is counted as a Failure to Appear violation.
4. Parole Violation. Count as a parole violation misconduct occurring while on parole. It does not matter whether the parole was continued or revoked nor does it matter in what jurisdiction the parole was imposed. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the offender was on parole.

5. Escape. Count as an escape if serving a sentence for escape. Count as an escape if offender escapes from custody following an arrest. Count escape as a trust violation even if it was not adjudicated.
6. Custody Violation. Count as a custody violation if the present crime or crimes was committed while in custody (e.g., county jail, prison, work release center, probation center, forest camp, terminal leave, temporary leave, social pass). It does not matter whether the offender is awaiting trial or serving an executed sentence, only that the present crime occurred while the person was in custody.

Item	Score
(F) Has no admitted or documented heroin or opiate derivative abuse problem:	1
Otherwise:	0

1. Documentation. Abuse may be documented by admission, diagnosed abuse problem by competent medical or counseling professional, participation in treatment program, preponderance of such evidence as possession, urinalysis, and needle tracts.
2. Determination. Abuse may be determined by any two professionals including but not limited to: parole officers, law enforcement officials, prosecuting attorneys, defense attorneys, or parole analysts. Abuse may also be determined by a judicial finding made in open court.
3. Do not count abuse of a drug other than heroin or an opiate derivative.
4. Do not count as abuse if documentation is over ten years old.

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EXHIBIT C

TIME TO BE SERVED UNDER RULE 255-35-025

CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
11-9	8-6	5-3	2-0
EXCELLENT	GOOD	FAIR	POOR

OFFENSE SEVERITY RATING

(All ranges in Categories 1-6 shown in months)

	<i>Base Range</i>			
Category 1	6	6	6-10	12-18
Category 2	6	6-10	10-14	16-24
Category 3	6-10	10-14	14-20	22-32
Category 4	10-16	16-22	22-30	32-44
Category 5	16-24	24-36	40-52	56-72
Category 6	30-40	44-56	60-80	90-130
Category 7* Subcategory 2	8-10 years	10-13	13-16	16-20
Subcategory 1	10-14 years	14-19	19-24	24-Life

~~* The minimum term for murders committed after December 7, 1978, shall be twenty five (25) years, as required by ORS 163.115.~~

EXHIBIT D

GUIDELINES MATRIX

STANDARD VARIATIONS FROM THE RANGES UNDER RULE 255-35-035

CRIMINAL HISTORY/RISK ASSESSMENT SCORE

11-9 8-6 5-3 2-0
Excellent Good Fair Poor

CRIME CATEGORY	STANDARD VARIATIONS			
1 PANEL	3*	3	3	3
2 PANEL	3	3	3	4
3 PANEL	3	3	3	6
4 PANEL	3	3	4	6
5 PANEL	4	6	6	8
6 PANEL	5	6	10	12
7 FULL BOARD	36	36	36	36

*All numbers represent standard variations in months.

[Board variations may be twice the panel variation.]

The maximum variation allowed in crime categories 1 through 6 are:

- (a) For a panel: the standard variation.
- (b) For a two-member panel with a concurring vote (3 concurring votes): two times the standard variation.
- (c) For four concurring votes after a hearing before the full Board: three times the standard variation.
- (d) For five concurring votes after a hearing before the full Board: four times the standard variation.

The maximum variations allowed the full Board for category 7 crimes are:

- (a) For three concurring votes: the standard variation of 36 mo.
- (b) For four concurring votes: two times the standard variation of 36 months (72 months).
- (c) For five concurring votes: three times the standard variation of 36 months (108 months).

The Board may deny parole pursuant to OAR 255-35-030.

EXHIBIT E

AGGRAVATING AND MITIGATING FACTORS

AGGRAVATION

Production or use of any weapon during the criminal episode.

Threat or violence toward witness[es] or victim[s].

[The prisoner] Knew or had reason to know the victims were particularly vulnerable (i.e., aged, handicapped, very young).

Ability to make restitution or reparation and failed to do so.

Violation of position of public trust or recognized professional ethics.

Degree of property loss, personal injury or threatened personal injury substantially greater than characteristic for the crime.

There is a single conviction for a crime involving multiple victims or incidents.

[More than one concurrently imposed conviction, not arising out of the same criminal episode.]

More than three trust violations in last five years as relates to item D of matrix computation.

Persistent involvement in similar criminal offenses.

Repetition of behavior pattern which contributes to criminal conduct (e.g., return to drug or alcohol abuse).

Criminal history more extensive or serious than reflected by history/risk score.

Pursuant to a Guilty or No Contest Plea, other crimes were dismissed or not prosecuted.

New criminal activity while on escape or reduced custody status.

Persistent criminal misconduct while under supervision.

Efforts to conceal crime.

Other, (including judicial findings)

MITIGATION

Victim[(s)] provoked the crime to a substantial degree, or other evidence that misconduct by victim contributed to the criminal episode.

Cooperation with criminal justice agencies in resolution of other criminal activity.

Effort to make restitution or reparation[particularly before required to do so by sentencing].

Degree of property loss, personal injury or threatened personal injury substantially less than characteristic for the crime.

Special effort on the part of the perpetrator to minimize the harm or risk.

Peripheral involvement in the criminal episode (e.g., passive accessory).

Evidence of withdrawal, duress, necessity or lack of sustained criminal intent [, or diminished mental capacity, e.g., mental retardation, which is insufficient to constitute a defense but is indicative of reduced culpability].

Evidence of reduced responsibility or lack of mental capacity (e.g., mental retardation, which is insufficient to constitute a defense but is indicative of reduced culpability).

[Sentence] Ordered to pay restitution after [a] term of imprisonment.

No prior parole or probation difficulty.

Efforts to deal with problems associated with past criminal conduct.

Criminal history less extensive or serious than reflected by history/risk score

Evidence of no new criminal activity while on escape or abscond status.

Consecutive sentences imposed for convictions resulting from single criminal episode.

Probation violation is technical in nature and not indicative of on-going criminal pattern.

Substantial period, but less than ten years, conviction free in the community.

Other (including judicial findings)

[Judge's sentence and reasons under rule 254-135-030(1)(d) and plea bargained offenses under rule 254-135-010(1)(c) may be considered as either an aggravating or mitigating circumstance.]

Any aggravating or mitigating circumstances which constitute a defining element of the crime or subcategory of the crime of which the prisoner was convicted, or resulted in a lower history/risk score, shall not justify variation from the guidelines. Additionally, such circumstances should not be the basis for more than one findings in aggravation or mitigation.

The Board may find mitigation, when enhanced penalties have been imposed for multiple convictions, if it finds that the crimes are part of a "crime spree" and that the spree is not indicative of a persistent criminal orientation or proclivity.

For the purpose of this exhibit, a crime spree is a set of criminal activities congruent in time or actually overlapping that are so joined by place and circumstance as to be the product of a continuous disposition or intent.

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EXHIBIT F

OUTLINE FOR PAROLE ANALYSIS REPORT UNDER RULE 255-30-035 (1)

SECTION I: (Minimum information required)

Identifying data

Matrix application

Present crime synopsis

Aggravating and mitigating factors

Conviction chronology and arrest record

Brief social profile

Criminal history/risk assessment

Recommendations

SECTION II:

Confidential data exempt from disclosure under ORS 192.500(2)(d)

SECTION III:

Attachments, including transcript forwarded by the sentencing judge

OREGON ADMINISTRATIVE RULES
CHAPTER 255 — BOARD OF PAROLE

EXHIBIT G

AGGRAVATION/MITIGATION IN PAROLE VIOLATION CASES UNDER RULE 255-75-090

AGGRAVATION

Prior parole revocation.

Prior Board reprimand, revocation hearing, or like difficulty on present parole.

Less than 3 months to first difficulty.

Repetition of type conduct associated with commitment offense or past conditions (return to drug or alcohol abuse, assaultiveness, involvement in same type criminal activity).

MITIGATION

No evidence of new criminal activity.

No prior parole difficulty.

More than 9 months to first difficulty.

Efforts to deal with problems associated with past criminal conduct.

Evidence of reduced responsibility or lack of mental capacity.

**TIME TO BE SERVED ON PAROLE
PRIOR TO CONDITIONAL DISCHARGE**

EXHIBIT H-1

OFFENSE SEVERITY RATING	CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
	11-9	8-6	5-3	2-0
	Excellent	Good	Fair	Poor
1	6 mos.	6 mos.	6 mos.	6 mos.
2	6 mos.	6 mos.	6 mos.	6 mos.
3	6 mos.	6 mos.	6 mos.	6 mos.
4	6 mos.	6 mos.	6 mos.	1 year
5	6 mos.	6 mos.	1 year	1 year
6	1 year	1 year	1 year	1 year
7	1 year	1 year	1 year	1 year

I (a) For minor technical violations in crime categories 1, 2, 3 and 4 extension may be imposed for up to an additional six months supervised parole.

(b) For minor technical violations in crime category 5, 6 and 7 extension may be imposed for up to an additional one year supervised parole.

(c) For major technical violations, extensions may be imposed for up to an additional one year supervised parole.

EXHIBIT I

OUTLINE FOR PRESENTENCE REPORT AND EXHIBITS UNDER RULE 255-95-005

- I. Basic Data: (Minimum information required)
 - A. Present Crime Synopsis:
 1. Summary of offense(s)
 2. Official version
 3. Defendant's version
 4. Victim's damages
 5. Co-defendant's status
 - B. Evaluation:
 1. Assets
 2. Liabilities
 3. Summary
 - C. Recommendation
 - D. Attachment I -- Criminal History/Risk Assessment
 - E. Attachment II -- Aggravation and Mitigation
- II. Exhibits: (To be attached as ordered)
 - A. EXHIBIT 1 -- FAMILY BACKGROUND
 - B. EXHIBIT 2 -- MARITAL HISTORY
 - C. EXHIBIT 3 -- SUBSTANCE ABUSE PROBLEMS
 - D. EXHIBIT 4 -- MENTAL HEALTH
 - E. EXHIBIT 5 -- EDUCATION
 - F. EXHIBIT 6 -- ECONOMIC STATUS
 1. Employment
 2. Transportation
 3. Financial

EXHIBIT I (Continued)

G. EXHIBIT 7 -- OTHER

1. Physical health
2. Free-time activities
3. Military

lfb

5-19-82

CERTIFICATE AND ORDER

for

FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

FILED
MAY 19 1982
NORMA PAULUS
SECRETARY OF STATE

HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the

Oregon State Board of Parole

(Agency)

on

May 15, 1982

(Date)

become effective May 1, 1982

(Date)

The within matter having come before the Oregon State Board of Parole

(Agency)

after

procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be adopted: Perm. [X] or Temp. []

(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:

(New Rules)

255-30-012; 255-35-012; 255-35-022; 255-50-016; 255-50-017;

255-50-018; 255-65-020; 255-75-006; 255-75-042; 255-90-001;
Exhibit B, Part II

Amended:

(Existing Rules)

255-10-010; 255-10-015; 255-30-025; 255-30-035; 255-35-005;
255-35-010; 255-35-020; 255-35-035; 255-38-005; 255-40-005;
255-40-020; 255-40-025; 255-50-015; 255-50-020; 255-60-005;
255-60-010; 255-60-015; 255-60-025; 255-65-005; 255-65-015;

Suspended:

(Special Rule)

255-75-035; 255-75-045; 255-80-005; 255-90-002; 255-90-003;
255-90-005; 255-90-010; 255-90-015; 255-95-005; Exhibit A,
Parts I and II; Exhibit B, Part I; Exhibit C; Exhibit D;
Exhibit E; Exhibit H-1; Exhibit I.

Repealed:

(Existing Rules)

Administrative Rules of the Oregon State Board of Parole

(Agency)

DATED this 15th day of May 1982

By:

Hazel G. Hays

(Authorized Signer)

Title: Chairperson, Board of Parole

Statutory Authority: ORS Ch. 144

Subject Matter:

Need Attached: [X]

Fiscal Impact Attached: [X]

Further Information Contact: Hazel G. Hays/ Anna Helm

Phone: 378-2334

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting Rules pertaining to)
Appointment by the Governor of)
the Chairperson/Vice-chairperson)
of the Board of Parole, estab-)
lishing duties and powers of both)
the Chairperson and the Vice-)
Chairperson, Term of Office.)

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt rules regarding selection of the Chairperson/Vice-Chairperson of the Board, setting term of office, and establishing powers and duties of the respective positions is necessary to bring the Board into compliance with House Bill 2995 passed into law by the 1981 legislature on an emergency basis.
2. Legal Authority: ORS Chapter 144, House Bill 2995 (Oregon Legislative Assembly - 1981 Regular session).
3. Statement of Need: The adoption/amendment of OAR 255-10-010 and 255-10-015 which relate to selection of the Chairperson/Vice-Chairperson of the Board by the Governor, setting of term of office, and powers and duties of the Chairperson/Vice-Chairperson is needed to bring the Board rules into conformity with House Bill 2995 passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing rule: House Bill 2995, Oregon Legislative Assembly - 1981 regular session.
5. Statement of Fiscal Impact: The amendment/adoption of the above-cited rules is expected to have no significant fiscal impact.
6. The above rules shall become effective upon filing on May 15, 1982.

Date

April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Parole Board

OREGON STATE BOARD OF PAROLE

On the Matter of Amending and)
Adopting Rules pertaining to)
Appointment by the Governor of)
the Chairperson/Vice-chairperson)
of the Board of Parole, estab-)
lishing duties and powers of both)
the Chairperson and the Vice-)
Chairperson, Term of Office.)

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt rules regarding selection of the Chairperson/Vice-Chairperson of the Board, setting term of office, and establishing powers and duties of the respective positions is necessary to bring the Board into compliance with House Bill 2995 passed into law by the 1981 legislature on an emergency basis.
2. Legal Authority: ORS Chapter 144, House Bill 2995 (Oregon Legislative Assembly - 1981 Regular session).
3. Statement of Need: The adoption/amendment of OAR 255-10-010 and 255-10-015 which relate to selection of the Chairperson/Vice-Chairperson of the Board by the Governor, setting of term of office, and powers and duties of the Chairperson/Vice-Chairperson is needed to bring the Board rules into conformity with House Bill 2995 passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing rule: House Bill 2995, Oregon Legislative Assembly - 1981 regular session.
5. Statement of Fiscal Impact: The amendment/adoption of the above-cited rules is expected to have no significant fiscal impact.
6. The above rules shall become effective upon filing on May 15, 1982.

Date April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Parole Board

Re: Item 2

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting Rules Pertaining to)
Utilization of Presentence Re-)
ports by the Parole Board)

Notice of Intent to Adopt a Rule on
a Permanent Basis; Statement of
Findings, Authority, Need and
Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt rules regarding the utilization of the Presentence Report or similar report in lieu of the Parole Analysis Report is necessary to bring the Board into compliance with House Bill 2328 passed into law by the 1981 Legislature on an emergency basis.
2. Legal Authority: ORS Chapter 144 and House Bill 2328 (Oregon Legislative Assembly - 1981 Regular Session).
3. Statement of Need: The adoption/amendment of the proposed rules which replace the Parole Analysis Report with the Presentence Report or similar document is needed to bring the Board into conformity with House Bill 2328, passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing the rules: House Bill 2328, Oregon Legislative Assembly - 1981 regular session.
5. Statement of Fiscal Impact: The amendment/adoption of OAR 255-30-035 is expected to have positive fiscal impact in that the same report utilized by the court in sentencing will be used by the Board. Preparation of an alternative or additional background report will not be necessary in the majority of cases.
6. The above rules shall become effective upon filing on May 15, 1982.

Date April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

Re: Item 2

OREGON STATE BOARD OF PAROLE

In The Matter of Amending and)
Adopting Rules Pertaining to)
Scheduling and Hearings Proce-)
dure for Aggravated Murder and)
Who May Appear at a Parole)
Board Hearing)
)
)
)
)
)

Notice of Intent to Adopt a Rule
on a Permanent Basis; Statement
of Findings, Authority, Need and
Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt rules setting procedures for hearings on persons convicted under the aggravated murder statutes and to establish guidelines for who may appear at a parole board hearing is necessary to bring the Board into compliance with Senate Bill 526 and House Bill 2995 passed into law by the 1981 Legislature on an emergency basis.
2. Legal Authority: ORS Chapter 144, Senate Bill 526 and House Bill 2995 (Oregon Legislative Assembly - 1981 Regular Session).
3. Statement of Need: The adoption/amendment of the proposed rules which set the procedure for hearings on persons convicted under the aggravated murder statutes and to establish guidelines for who may appear at a parole board hearing are needed to bring the Board rules into conformity with Senate Bill 526 and House Bill 2995, passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing the rule: Senate Bill 526 and House Bill 2995, Oregon Legislative Assembly - 1981 regular session.
5. Statement of Fiscal Impact: The adoption of OAR 255-30-012 and the amendment/adoption of OAR 255-30-025 is expected to have no significant fiscal impact.
6. The above rule shall become effective upon filing on May 15, 1982.

Date April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

Re: Item 3

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting Rules Pertaining to)
Offense Severity Rating,)
Criminal History/Risk Assess-)
ment, Coding Instructions,)
Aggravation and Mitigation,)
Definiation of Terms and Board)
Option not to Sum Ranges in)
Cases Where Consecutive Sentences)
have been Imposed by the Court.)

1. Statement of Findings: It is found by the Board of Parole that failure to act promptly in the adoption of the above amendments/ rules will result in serious prejudice to inmates affected by the proposed changes due to the potential impact on ranges set for prison terms which may necessitate re-hearings, will reduce efficiency in terms of establishing ranges, and further that such changes are necessary in order to bring the Board into compliance with House Bill 2321 relating to the Board's option not to sum ranges in cases where consecutive sentences have been imposed by the court; House Bill 2321 was passed into law by the 1981 Legislature on an emergency basis.

Legal Authority: ORS 144, House Bill 2321 (Oregon Legislative Assembly - 1981 regular session).

3. Statement of Need: The adoption/amendment of OAR 255-35-005 and Exhibits A, B, B2, C, and E is needed to insure a consistent and uniform application of board rules to all inmates; amendment/adoption of OAR 255-35-020 and 255-35-022 is necessary to bring the board into conformity with House Bill 2321 passed into law by the 1981 Oregon Legislature.

4. Documents, reports and studies relied upon by the Board in preparing the rule: House Bill 2321 and ORS Chapter 144.

5. Statement of Fiscal Impact: The amendment/adoption of OAR 255-35-005, 255-35-020, 255-35-022 and Exhibits A, B, B2, C, and E is expected to have no significant fiscal impact.

6. The above rules shall become effective upon filing on May 15, 1982.

Date April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting a Rule Pertaining to)
the Setting of Release Dates for)
Dangerous Offenders)

Notice of Intent to Adopt a
Rule on a Permanent Basis;
Statement of Findings, Author-
ity, Need and Sources Relied
Upon

1. Statement of findings: It is found by the Board of Parole that prompt action to adopt the rule pertaining to the setting of release dates for dangerous offenders is needed to bring the Board into compliance with House Bill 2995 passed into law by the 1981 Legislature, effective 11-1-81.
2. Legal Authority: ORS Chapter 144 and House Bill 2995 (Oregon Legislative Assembly - 1981 Regular Session).
3. Statement of Need: The adoption of the proposed rule which pertains to the setting of release dates for dangerous offenders is needed to bring the Board rules into compliance with House Bill 2995 which was passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing the rule: House Bill 2995, Oregon Legislative Assembly - 1981 Regular Session.
5. Statement of Fiscal Impact: The amendment/adoption of OAR 255-38-005 is not expected to economically affect any state agency or the public to any significant degree.
6. The above rule shall become effective upon filing on May 15, 1982.

Date

April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

Re: Item 5

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting Rules Pertaining to)
Correcting of Clerical Errors)
and Special Requests for Reduc-)
tion of Prison Term.) Notice of Intent to Adopt a Rule
on a Permanent Basis; Statement
of Findings, Authority, Need and
Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that failure to act promptly in the adoption of the above amendments/rules will result in serious prejudice to inmates affected by the proposed changes due to the length of time necessary to correct errors by file pass rather than by administrative action and because of the delays which occur in completing the special requests for reduction which do not contain supporting documents required by the Board in taking requested action.
2. Legal Authority: ORS 144.140, 144.780, 144.785, 163.335(5), OAR 255-01-005 and OAR 255-01-055.
3. Statement of Need: The amendment/adoption of OAR 255-40-005 and OAR 255-40-025 is needed to assure that errors adversely affecting inmates are corrected in a timely manner and that special requests for reduction are received with necessary documents in order to assure prompt action by the Board on the reduction requests.
4. Documents, reports and studies relied upon by the Board in preparing rule: ORS 144.780, 144.785, and OAR 255 Division 40.
5. Statement of Fiscal Impact: The amendment/adoption of OAR 255-40-005, 255-40-020, and 255-40-025 is not expected to economically affect any state agency or the public to any significant degree.
6. The above rule shall become effective upon the filing on May 15, 1982.

Page

April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

Re: Item 6

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting Rules Pertaining to)
Procedures for Rescinding Parole,)
Waiver of Rescission Hearing,)
Hearing after Rescission of Par-)
ole, and Basis for Rescission.)

) Notice of Intent to Adopt a Rule
) on a Permanent Basis; Statement
) of Findings, Authority, Need and
) Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to amend/adopt rules relating to rescission of parole is necessary to bring the Board into compliance with the intent of House Bill 2328 relating to release procedures and delay of parole release and further that failure to act promptly in the adoption of the above amendments/rules will seriously affect the length of time required to complete a rescission hearing to the point that an inmate may not receive such hearing in a timely manner.

Legal Authority: ORS Chapter 144, House Bill 2328 (Oregon Legislative Assembly - 1981 regular session).

3. Statement of Need: The adoption/amendment of OAR 255-50-015, 255-30-016, 255-50-017, 255-50-018, and 255-50-020 which collectively establish the procedure that the Board will follow in rescinding parole are needed to bring the Board rules into conformity with House Bill 2328 and further to insure that rescission hearings are completed in a timely manner.

4. Documents, reports and studies relied upon by the Board in preparing rule: ORS Chapter 144 and House Bill 2328, Oregon Legislative Assembly - 1981 regular session.

5. Statement of Fiscal Impact: The amendment/adoption of the above-cited rules is not expected to have significant economic impact upon any state agency or the public.

6. The above rule shall be come effective upon filing on May 15, 1982.

Date April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

Re: Item 7

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and Adopting rules pertaining to the Conducting of Exit Interviews, Postponement of Release for Reasons of Severe Emotional Disturbance of and Parole Consideration for Local Jail Inmates) Notice of Intent to Adopt a Rule on a Permanent Basis; Statement of Findings, Authority, Need and Sources Relied Upon)

1. Statement of Findings: It is found by the Board of Parole that failure to act promptly in the adoption of the proposed amendments will result in serious prejudice to affected inmates in that failure to adopt the proposed amendments will result in inmates serving more time in state institutions while awaiting release interviews. The proposed changes streamline the present system and will result in a reduction of the time served pending a release interview. The proposed changes are also needed to bring the Board into compliance with House Bills 2319, 2320 and 2328 passed into law by the 1981 Legislature, effective 11-1-81.
2. Legal authority: ORS 144.25, 144.140, 183.335(5), OAR 255-01-005, OAR 255-01-055 and House Bill 2328, 2319 and 2320.
3. Statement of Need: The amendment/adoption of proposed rules 255-60-005, 255-60-010, 255-60-015, and 255-60-025 is needed to bring the Board rules into compliance with House Bills 2319, 2320 and 2328 passed into law by the 1981 Oregon Legislature and to ensure orderly and speedy transition of inmates from parole ordered to release status.
4. Documents, reports and studies relied upon by the Board in preparing the rule: House Bills 2319, 2320, 2328 and ORS 144.125.
5. Statement of Fiscal Impact: The adoption of OAR 255-60-005, 255-60-010, 255-60-015, and 255-60-025 is not expected to have significant economic impact on any state agency or to the public.
6. The above rule shall become effective upon filing on May 15, 1982.

Date

Hazel G. Hays
April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

Re: Item 8

OREGON STATE BOARD OF PAROLE

In the Matter of Adopting Rules)
Pertaining to Fees for Supervision)
on Parole and Notifying Courts)
Regarding Restitution Payment)
Schedule) Notice of Intent to Adopt
a Rule on a Permanent Basis;
Statement of Findings, Auth-
ority, Need and Sources Relied
Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt the rule to impose fees for supervision is needed to bring the Board into compliance with Senate Bill 589 passed into law by the 1981 Legislature on an emergency basis.
2. Legal Authority: ORS Chapter 144 and Senate Bill 589 (Oregon Legislative Assembly - 1981 Regular Session).
3. Statement of Need: The adoption of OAR 255-65-020 which requires that a parolee reimburse his or her supervising agency is needed to bring the Board rules into conformity with Senate Bill 589 which was passed into law by the 1981 Oregon Legislature. Adoption of OAR 255-65-005 and 255-65-015 will provide notice of Board action to the courts and permit the courts to maintain accurate records relating to restitution payments for parolees.
4. Documents, reports and studies relied upon by the Board in preparing the rule: Senate Bill 589, Oregon Legislative Assembly-1981 regular session; ORS 144.275.
5. Statement of Fiscal Impact: The adoption of OAR 255-65-020 is expected to enhance revenues to counties having community corrections program established pursuant to ORS 423.500 to 423.560 and the Oregon State Corrections Division. Adoption of OAR 255-65-005 and OAR 255-65-015 is expected to have no fiscal impact.
6. The above rules shall become effective upon filing on May 15, 1982.

Date

April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Parole Board

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and)
Adopting Rules Pertaining to)
the Effect of a Preliminary)
Hearing on the Revocation)
Process, Probable Cause, Evi-)
dence which may be Received at)
a Parole Revocation Hearing and)
the Exceptions to the Hearsay)
Rule.)

Notice of Intent to Adopt a Rule
on a Temporary Basis; Statement
of Findings, Authority, Need and
Sources relied upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt the above amendments/rules relating the effect of a preliminary hearing on the revocation process, definition of probable cause, and evidence which may be received at a parole revocation hearing is necessary to bring the Board into compliance with House Bill 2995 passed into law by the 1981 legislature on an emergency basis and to permit receipt of exhibits submitted at revocation hearings in a timely manner if there is a reasonable showing of reliability.
2. Legal Authority: ORS 144.315 and House Bill 2955 (Oregon Legislative Assembly - 1981 regular session).
 - . Statement of Need: The adoption/amendment of OAR 255-75-042 and 255-75-045 which defined the effect of the preliminary hearing on the parole revocation process, define probable cause, except certain judicially recognized exceptions to the hearsay rule and permit receipt of letters, documents, reports, etc. upon a reasonable showing of reliability is necessary to bring Board rules into conformity with House Bill 2995 passed into law by the 1981 Oregon legislature and to permit the Board to deal more effectively with requests for rulings on the admissibility of evidence at a parole revocation hearing.
4. Documents, reports and studies relied upon by the Board in preparing rule: ORS 144.315 and House Bill 2955, Oregon Legislative assembly - 1981 regular session.
5. Statement of Fiscal Impact: The adoption of OAR 255-75-042 and the amendment/adoption of OAR 255-75-045 is not expected to have significant economic impact upon any state agency or the public.
6. The above rules shall become effective upon filing on May 15, 1982.

Date April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

Re: Item 9

OREGON STATE BOARD OF PAROLE

In the Matter of Adopting Rules)
Pertaining to the Method of Con-)
ducting a Parole Revocation)
Hearing and Giving the Revocation)
Panel authority to Set a Parole)
Release Date)
Notice of Intent to Adopt a
Rule on a Permanent Basis;
Statement of Findings, Auth-
ority, Need and Sources Re-
lied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt rules pertaining to the method of conducting a revocation hearing and payment of attorney fees by paroled inmates involved in revocation hearings who are able to make such payments is necessary to permit the use of teleconference hearings in the majority of contested cases and to bring the Board into compliance with ORS 144.317.
2. Legal Authority: ORS 144.035, 144.343, 144.345, 144.395, 183.335(5), OAR 255-01-005, OAR 255-01-005.
3. Statement of Need: The adoption of OAR 255-75-005 setting forth the method of parole revocation hearing is essential to completing parole revocation hearings in a timely manner as required by statute and relevant case law. A 50% reduction in hearings officer staff makes the utilization of the teleconference hearings system crucial to meeting statutory guidelines. Amendment/adoption of OAR 255-75-035 is needed to bring Board rules into conformity with OAR 144.317.
4. Documents, reports and studies relied upon by the Board in preparing the rule: ORS 144.035, 144.343, 144.345, 144.395 and 144.317.
5. Statement of Fiscal Impact: The adoption of OAR 255-75-005 and amendment/adoption of OAR 255-75-035 will result in positive cost benefit to the state agencies and the public by reducing the cost of on-site hearings and providing reimbursement of attorney fees by paroled inmates involved in revocation hearings if the paroled inmate is able to make such payment.
6. The above rule shall become effective upon filing on May 15, 1982.

Date

April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

OREGON STATE BOARD OF PAROLE

In the Matter of Adopting Rules)
Pertaining to the Method of Con-)
ducting a Parole Revocation)
Hearing and Giving the Revocation))
Panel authority to Set a Parole)
Release Date)

Notice of Intent to Adopt a Rule
on a Temporary Basis; Statement
of Findings, Authority, Need and
Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt rules pertaining to the method of conducting a revocation hearing and payment of attorney fees by paroled inmates involved in revocation hearings who are able to make such payments is necessary to permit the use of teleconference hearings in the majority of contested cases and to bring the Board into compliance with ORS 144.317.
2. Legal Authority: ORS 144.035, 144.343, 144.345, 144.395, 183.335(5), OAR 255-01-005, OAR 255-01-005.
3. Statement of Need: The adoption of OAR 255-75-006 setting forth the method of parole revocation hearing is essential to completing parole revocation hearings in a timely manner as required by statute and relevant case law. A 50% reduction in hearings officer staff makes the utilization of the teleconference hearings system crucial to meeting statutory guidelines. Amendment/adoption of OAR 255-75-035 is needed to bring Board rules into conformity with ORS 144.317.
4. Documents, reports and studies relied upon by the Board in preparing the rule: ORS 144.035, 144.343, 144.345, 144.395, and 144.317.
5. Statement of Fiscal Impact: The adoption of OAR 255-75-006 and amendment/ adoption of OAR 255-75-035 will result in positive cost benefit to the state agencies and the public by reducing the cost of on-site hearings and providing reimbursement of attorney fees by paroled inmates involved in revocation hearings if the paroled inmate is able to make such payment.
6. The above rule shall become effective upon filing on May 15, 1982.

Date April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

Re: Item 10

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and Adopting Rules Pertaining to the Method of Conducting an Administrative Review.) Notice of Intent to Adopt a Rule on a Permanent Basis; Statement of Findings, Authority, Need and Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that failure to act promptly in the adoption of the above amendment will result in serious prejudice to inmates affected by the proposed change due to the length of time required to set and complete and Administrative Review by the original panel when, where appropriate, such action could be completed by file pass.
2. Legal Authority: ORS 144.140, 183.335(5), OAR 255-01-005, OAR 255-01-055, and OAR 255, Division 80.
3. Statement of Need: The amendment/adoption of OAR 255-80-005 is needed to insure completion of administrative review, where practical, in the most timely manner possible.
4. Documents, reports and studies relied upon by the Board in preparing rule: ORS Chapter 144 and OAR 255, Division 80.
5. Statement of Fiscal Impact: The amendment/adoption of OAR 255-80-005 is not expected to economically affect any state agency or the public to any significant degree.
6. The above rules shall become effective upon filing or May 15, 1982.

Date

April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

Re: Item 11

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and Adopting Rules Pertaining to Discharge from Parole Supervision) Notice of Intent to Amend and Adopt Rules on a Permanent Basis:) Statement of Findings, Authority, Need and Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt the rules regarding discharge from parole supervision is required to bring the Board into compliance with House Bill 2327 passed into law by the 1981 Legislature, effective 11-1-81.
2. Legal Authority: ORS Chapter 144 and House Bill 2327 (Oregon Legislative Assembly -- 1981 Regular Session).
3. Statement of Need: The adoption of the proposed rules which define relevant terms, establish periods of supervision, and set forth the procedure for discharge is needed to bring the Board rules into conformity with House Bill 2327 which was passed into law by the 1981 Oregon Legislature.
4. Documents, reports and studies relied upon by the Board in preparing the rule: House Bill 2327, Oregon Legislative Assembly - 1981 regular session.
5. Statement of Fiscal Impact: The adoption of OAR 255-90-001 and the amendment/adoption of OAR 255-90-002, 255-90-003, 255-90-005, 255-90-010, 255-90-015 and Exhibit H-1 is expected to have positive fiscal impact by reducing the length of supervised parole and thereby enabling both Community Corrections and Oregon State Corrections Division field services programs to operate with fewer parole officers.
6. The above rule shall become effective upon filing on May 15, 1982.

Date

April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

Re: Item 12

OREGON STATE BOARD OF PAROLE

In the Matter of Amending and Adopting Rules pertaining to the format of the Presentence Investigation) Notice of Intent to Amend and) Adopt Rules on a Permanent Basis:) Statement of Findings, Authority,) Need and Sources Relied Upon

1. Statement of Findings: It is found by the Board of Parole that prompt action to adopt rules pertaining to the format of the Presentence Investigation is necessary to bring the Board into compliance with ORS 144.790.
2. Legal authority: ORS Chapter 144.
3. Statement of Need: The amendment/adoption of OAR 255-95-005 and Exhibit I, which pertains to the format of the Presentence Investigation is needed to bring Board rules into compliance with ORS 144.790.
4. Documents, reports and studies relied upon by the Board in preparing rule: ORS Chapter 144.
5. Statement of Fiscal Impact: The amendment/adoption of the above cited rule is expected to have no significant fiscal impact.
6. The above rule shall become effective upon filing on May 15, 1982.

Date April 15, 1982

Hazel G. Hays
Hazel G. Hays, Chairperson
Oregon State Board of Parole

FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

copied from ARCHIVES 7-14-82

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the

Oregon State Board of Parole

on

15, 1982

becomes effective

May 15, 1982

The within matter having come before the

Oregon State Board of Parole

after

procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully set in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be adopted: Perm. or Temp.

(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:

(New Rules)

255-30-012; 255-35-012; 255-35-022; 255-50-016; 255-50-017;

255-50-018; 255-65-020; 255-75-006; 255-75-042; 255-90-001;

Exhibit B, Part II

Amended:

(Existing Rules)

255-10-010; 255-10-015; 255-30-025; 255-30-035; 255-35-005;

255-35-010; 255-35-020; 255-35-035; 255-38-005; 255-40-005;

255-40-020; 255-40-025; 255-50-015; 255-50-020; 255-60-005;

255-60-010; 255-60-015; 255-60-025; 255-65-005; 255-65-015;

Suspended:

(Temporary Only)

255-75-035; 255-75-045; 255-80-005; 255-90-002; 255-90-003;

255-90-005; 255-90-010; 255-90-015; 255-95-005; Exhibit A,

Parts I and II; Exhibit B, Part I; Exhibit C; Exhibit D;

Exhibit E; Exhibit H-1; Exhibit I.

Repealed:

(Existing Rules)

Administrative Rules of the Oregon State Board of Parole

(Agency)

DATED this 15th day of May 1982

By:

Hazel G. Hays

(Authorized Signer)

Title: Chairperson, Board of Parole

Authority: -ORS Ch. 144

Subject Matter:

Emergency Need Attached:

Fiscal Impact Attached:

For Information Contact: Hazel G. Hays/ Anna Helm

Phone 378-2334

ITEM 1

Amendment to 255-10-010

Amending OAR 255-10-010 to read as follows:

[Chairperson: Term; Removal]

Chairperson: Vice-Chairperson; Selection; Term

The Governor shall select one of the members of the State Board of Parole as chairperson and another member as Vice-chairperson, for such terms as the Governor determines.

Stat. Auth.: ORS Ch. 144

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

Amendment to 255-10-015

Amending OAR 255-10-015 to read as follows:

Chairperson; Vice-Chairperson; Powers and Duties

255-10-015 (1) The chairperson shall have the powers and duties established by law and [rules] such powers and duties, in addition to those established by law, necessary for the performance of [the] such office [and administration of the Board and shall], as determined by the Governor. Such powers and duties shall include, but are not limited to:

- [1] (a) Assign voting Board members to panels and designate the presiding members.
- [2] (b) Apportion matters to the panels and full Board for decision.
- [3] (c) Reassign matters to different panels when required by rule, law, or procedure.
- [4] (d) Schedule business meetings and establish the agenda.
- [5] (e) Inform the sentencing judge, district attorney, sheriff, or arresting agency of the scheduled release of each prisoner.
- [(6) Review administrative appeals.]
- [7] (f) Designate members to conduct hearings and reviews.
- [(8) Appoint persons to assist prisoners in parole proceedings, when appropriate.]

(2) The vice-chairperson shall have such powers and duties as are determined by the Governor as necessary for the performance of such office.

ITEM 2

Adopting a rule establishing the scheduling and hearings procedure for aggravated murder cases; amending 255-30-025 & 255-30-035.

Adopting OAR 255-30-012 to read as follows:

Scheduling and Hearing Procedure for Aggravated Murder

255-30-012

(1) Those persons sentenced under ORS 163.095 for aggravated murder shall be seen at a prison term hearing within six months of confinement at a state institution. The Board shall make necessary findings such as history/risk score, aggravation or mitigation and shall establish the maximum period of confinement and first eligibility for a hearing under ORS 163.105 (3).

(2) At any time after the minimum period of confinement has been served the prisoner may petition the Board for a hearing. Within a reasonable period of time the Board shall hold a hearing under the provisions of ORS 163.105 (3), (4), (5) and (6).

ITEM 2

Amendment to 255-30-025

Amending OAR 255-30-025 to read as follows:

Who May Appear at a Parole Board Hearing

255-30-025(1) The prisoner shall appear at the Parole Board hearing unless the prisoner waives parole in writing [.] or by refusal to appear. The Board may choose not to set a release date if the prisoner waives parole. However, the prisoner, shall be rescheduled for a hearing upon written request from the prisoner who previously waived.

[(2) No person other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to language barriers, mental or emotional incapacity, or education deficiency. Assistance shall be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the Chairperson of the Board.]

(2) The prisoner may be accompanied by a person of the prisoner's choice. Procedures for admission to a parole board hearing will be governed by the Corrections Division rule governing visiting. The person accompanying the prisoner may make a statement, not to exceed five minutes, at the conclusion of the hearing.

(3) Assistance to prisoners incapable of presenting their position due to language barriers, mental or emotional incapacity or educational deficiency shall be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the chairperson of the panel.

(b) If the prisoner needs assistance and has an assistant appointed by the chairperson pursuant to this subsection, this shall not preclude the prisoner being accompanied to the hearing by a person of the prisoner's choice.

ITEM 2

Amendment to 255-30-035

Amending OAR 255-30-035 to read as follows:

Information the Board Must Consider at a Prison Term Hearing:
Parole Analysis Report; Other Material

255-30-035 (1) The Corrections Division will provide a [Parole Analysis Report] Pre-sentence Investigation or similar report to the Board prior to the prisoner's prison term hearing. This report shall be prepared according to the sectional outline attached (Exhibit For I). Any transcripts forwarded by the sentencing judge shall be attached to the [Parole Analysis Report] Pre-sentence Investigation.

(2) Additional information and recommendations from police, district attorney, defense attorney, and others with a special interest in the case shall be considered if available. Such information shall be subject to disclosure to the prisoner.

(3) Transcripts forwarded by the sentencing judge shall be considered if available. The Board may continue a hearing to request the transcript if not received.

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

ITEM 3

Adopting rules relating to the waiver of exit interview, establishing a procedure for overriding judicially imposed consecutive sentences and developing coding instructions for Exhibit B, the history/risk scoring device; amending 255-35-005, 255-35-020, 255-35-035, Exhibit A, Part I and II, Exhibit B, Part I, Exhibit C, Exhibit D, and Exhibit E.

Adopting OAR 255-35-012 to read as follows:

Board to Make Findings of Fact Regarding Offense Severity;

Waiver of Exit Interview; Establishing Conditions of Parole.

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

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

Adopting OAR 255-35-022 to read as follows:

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

255-35-022

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amending OAR 255-35-005 to read as follows:

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

255-35-010

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

(2) Special Situations:

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

(b) Attempt (ORS 161.405) and Solicitation (ORS 161.423) shall be assigned a rating one category less than the criminal activity intended. Conspiracy shall be assigned the same severity as the actual crime except that Conspiracy to Commit Murder shall be classified a six (6) rather than a seven (7).

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

(d) When consecutive sentences have been imposed, a rating shall be assigned for each offense, except as provided in paragraph 255-35-02[0(2)(e)(A)] 2.

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

Amending OAR 255-35-020 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amending OAR 255-35-035 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amending Exhibit A under rule 255-35-010 as follows:

EXHIBIT A

PART I

OFFENSE SEVERITY UNDER RULE 255-35-010

OFFENSE	RATING	FELONY CLASS
163.195 - Aggravating Murder	7	A
163.115 - Murder	7	A
166.005 - Treason	7	A
163.118 - Manslaughter I	6	A
163.235 - Kidnapping I	6	A
163.375 - Rape I (Subcategory 1)	6	A
163.405 - Sodomy I (Subcategory 1)	6	A
164.415 - Robbery I	6	A
164.185 - Assault I (Subcategory 1)	6	A
164.325 - Arson I (Subcategory 1)	6	A
163.411 - Sexual Penetration with a Foreign Object I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 2)	5	A
164.325 - Arson I (Subcategory 2)	5	A
163.411 - Sexual Penetration with a Foreign Object I (Subcategory 2)	5	A
165 - Escape I	5	E
162.225 - Burglary I (Subcategory 1)	5	A
162.185 - Supplying Contraband (Subcategory 1)	5	C
166.275 - Possession of Weapon by Inmate of Penal Institution	5	A
163.125 - Manslaughter II (subcategory 1)	5	
163.175 - Assault II	4	B
163.225 - Kidnapping II	4	B
163.365 - Rape II (Subcategory 1)	4	B
163.395 - Sodomy II	4	B
164.225 - Burglary I (Subcategory 2)	4	A
167.207(4) - Criminal Activity in Drugs (Sub 1)	4	A
163.275 - Coercion (Subcategory 1)	4	C
164.075 - Theft by Extortion (Subcategory 1)	4	C
475-992(1) - Manuf. or Delivery of Controlled Substance (Subcategory 1)	4	A
475.995 - Unlawful Delivery of a Controlled Substance to Minor (Subcategory 1)	4	A, B
163.125 - Manslaughter II (Subcategory 2)	4 [3]	B
163.408 - Sexual Penetration with a Foreign Object II	4	B
162.015 - Bribe Giving	3	B
162.025 - Bribe Receiving	3	B
167.207(1) - Criminal Activity in Drugs (Sub 1)	3	B
163.425 - Sexual Abuse I	3	C
162.185 - Supplying Contraband (Subcategory 2)	3	C
162.225 - Burglary I (Subcategory 3)	3	A

164.215 - Burglary II (Sub 1)	3	C
164.005 - Theft I (Sub 1)	3	C
164.125 - Theft of Services (Sub 1)	3	C
164.085 - Theft by Deception (Sub 1)	3	C
165.013 - Forgery I (Sub 1)	3	C
475.992(1) - Manufacture or Delivery of Controlled substance (Sub 2)	3	A, B, C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit substance (Sub 1)	3	A
475.995 - Unlawful Delivery of a Controlled Substance to Minor (Sub 2)	3	A, B
<u>163.125 - Manslaughter II (subcategory 3)</u>	<u>3</u>	
<u>164.395 - Robbery III</u>	<u>2</u>	<u>C</u>
162.065 - Perjury	2	C
162.155 - Escape II (Sub 1)	2	C
162.205 - Failure to Appear I	2	C
162.265 - Bribing a Witness	2	C
162.275 - Witness Receiving Bribe	2	C
163.145 - Criminally Negligent Homicide	2	C
163.205 - Criminal Mistreatment	2	C
163.257 - Custodial Interference I	2	C
163.275 - Theft by Coercion (Sub 2)	2	C
163.355 - Rape III	2	C
162.385 - Sodomy III	2	C
163.535 - Abandon Child	2	C
164.055 - Theft I (Sub 2)	2	C
164.095 - Theft by Receiving	2	C
164.135 - Unauthorized Use of Motor Vehicle (Sub 1)	2	C
164.215 - Burglary II (Sub 2)	2	C
164.315 - Arson II	2	C
165.013 - Forgery I (Sub 2)	2	C
67.207(4) - Criminal Activity in Drugs (Sub 3)	2	A
167.207(1) - Criminal Activity in Drugs (Sub 2)	2	A
164.125 - Theft of Services (Sub 2)	2	C
164.075 - Theft by Deception (Sub 2)	2	C
165.095 - Sports Bribery	2	C
165.090 - Sports Bribe Receiving	2	C
162.185 - Supplying Contraband (Sub 3)	2	C
166.270 - Ex-Convict in Possession	2	C
166.410 - Sale related (firearms)	2	C
166.220 - Carrying a Weapon with Intent to Use	2	C
167.012 - Promoting Prostitution	2	C
167.278 - Obtaining Drugs Unlawfully	2	B
496.992(3) - Poaching (Sub 1)	2	C
<u>166.165 - Intimidation I</u>	<u>2</u>	<u>C</u>
<u>164.885 - Endangering Aircraft</u>	<u>2</u>	<u>C</u>
<u>163.205 - Criminal Mistreatment I</u>	<u>2</u>	<u>C</u>

OREGON ADMINISTRATIVE RULES
CHAPTER 155 - BOARD OF PAROLE

OFFENSE RATING FELONY CLASS

475.992(1)	- Manufacture or Delivery of a Controlled Substance (Subcategory 3)	2	A, B, C
475.992(3)	- Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 2)	2	B, C
475.992(4)	- Possession of a Controlled Substance (Subcategory 1)	2	B, C
475.995	- Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 3)	2	C
483.602	- Failure to Perform Duties Motorist, Injury 1	1	C
162.185	- Supplying Contraband (Subcategory 4) or Death	1	C
162.325	- Hindering Prosecution	1	C
163.525	- Bigamy	1	C
163.525	- Incest	1	C
163.535	- Criminal Nonsupport	1	C
164.065	- Theft; Lost, Misaid	1	C
164.075	- Theft by Deception (Subcategory 3)	1	C
164.125	- Theft of Services (Subcategory 3)	1	A - \$200 (Misd.)
164.365	- Criminal Mischief I	1	C
165.022	- Forged Instrument I	1	C
165.032	- Forgery Device	1	C
165.055	- Fraudulent Use of a Credit Card	1	A - \$200 (Misd.)
5.070	- Fraudulent Communication Device	1	C
167.127	- Promoting Gambling	1	C
167.137	- Possession of Gambling Records I	1	C
167.212	- Tampering with Drug Records	1	C
167.212	- Welfare Fraud	1	C
167.212	- Felony Traffic	1	C
133.723	- Interception of Communication	1	C
496.992(3)	- Poaching (Subcategory 2)	1	C
167.207(1)	- Criminal Activity in Drugs (Subcategory 3)	1	A
164.215	- Burglary II (Subcategory 3)	1	C
164.135	- Unauthorized Use of a Motor Vehicle (Subcategory 2)	1	C
162.155	- Escape II (Subcategory 2)	1	C
475.992(1)	- Manufacture or Delivery of a Controlled Substance (Subcategory 4)	1	A, B, C
475.992(3)	- Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 3)	1	B, C
475.992(4)	- Possession of a Controlled Substance (Subcategory 2)	1	B, C
475.993	- Violation of Controlled Substance Act by Registrants	1	C

Conspiracy has the same offense severity as the crime conspired to, except that Conspiracy to Commit Murder shall be given a rating of 6.

EXHIBIT A

Part II

OFFENSE SERIOUSNESS RATINGS
SUBCATEGORIZATION OF BROAD-SCOPE OFFENSE CATEGORIES

MURDER -- ORS 163.115

Felony Class: A

Statutory Elements: Committed intentionally, not under extreme emotional disturbance; committed by person(s) committing, attempting or fleeing from Arson I, Burglary I, Escape I, Kidnapping I, Rape I, Sodomy I, or Robbery.

Subcategory 1 - rating of 7

...Stranger to stranger; cruelty to victim; prior conviction for Murder or Manslaughter; evidence of significant planning or preparation

Subcategory 2 - rating of 7

...All other cases of Murder

NOTE: Applies to crimes committed before December 7, 1978.

RAPE I -- ORS 163.375

Felony Class: A

Statutory Elements: Forcible compulsion; or voluntary intercourse with female under 12; or incestuous voluntary intercourse with female under 16

Subcategory 1 - rating of 6

...Stranger to stranger; aggravated custodial interference; breaking and entering; threat to use or use of a weapon; or actual or attempted serious bodily or emotional harm; or
...Intercourse with female under 12

Subcategory 2 - rating of 5

...All other cases

SODOMY I -- ORS 163.405

Sodomy I should be broken down in the same manner as Rape I.

SEXUAL PENETRATION WITH A FOREIGN OBJECT I -- ORS 163.411

Sexual Penetration I should be broken down in the same manner as Rape I.

ROBBERY I -- ORS 164.415

Felony Class: A

Statutory Elements: Robbery involved either:
armed with a deadly weapon; or
uses or attempts to use dangerous weapon; or
causes or attempts to cause serious injury

Subcategory 1 - rating of 6

...All cases of Robbery I except those fitting Subcategory 2

Subcategory 2 - rating of 5

Cases of robbery where the crime does not involve

...Discharge of a firearm; or
...Use of any other dangerous weapon; or
...Explicit and immediate threats, by word or gesture (e.g., cocking hammer
of gun), of death or serious bodily harm; or
...Serious injury]

ASSAULT I -- ORS 163.185

Felony Class: A

Statutory Elements: Intentional serious injury to another by means of
a deadly or dangerous weapon

Subcategory 1 - rating of 6

...All cases of Assault I except those fitting Subcategory 2

Subcategory 2 - rating of 5

...Cases of Assault I in which the victim or victims provoked the crime to
a substantial degree, or other evidence that misconduct by victim con-
tributed substantially to the criminal episode.

ARSON I -- ORS 164.325

Felony Class: A

Statutory Elements: Arson involving either:
property of another which is customarily occupied by
people; or own property, if persons are endangered or
if other customarily occupied property is also endangered

ARSON I (Continued)

Subcategory 1 - rating of 6

- ...Knowing the premises were occupied at time of act; or
- ...Actual serious injury

Subcategory 2 - rating of 5

- ...Other cases of Arson I

BURGLARY I -- ORS 164.225

Felony Class: A

Statutory Elements: Burglary involving either:
entry of a dwelling; or else
entry of a building, if defendant is armed/carries
burglar's tools/causes or threatens injury/or use of a
dangerous weapon

Subcategory 1 - rating of 5

Entry into any actually or regularly occupied building, whether a dwelling
or non-dwelling, where defendant

- ...Used or threatened to use, by word or gesture, a dangerous weapon; and
- ...Caused or threatened serious physical injury

Subcategory 2 - rating of 4

- ...Entry into a non-dwelling in which value of goods taken is over \$5,000
- ...Entry into a residence or temporary residence, except for cases fitting
Subcategory 3

Subcategory 3 - rating of 3

- ...All other entries into a non-dwelling; or
- ...Entry into a residence or temporary residence in which
 - ...Defendant is not armed with a deadly or dangerous weapon; and
 - ...No extensive property damage; and
 - ...Value of goods taken was below \$1,000

Manslaughter II --- ORS 163.125

Felony Class: B

Statutory Elements: Criminal homicide not meeting statutory elements of Murder of Manslaughter I, committed recklessly, or resulting from intentionally causing/ assisting another person to commit suicide.

Subcategory 1 --- rating of 5

. . . Manslaughter II cases where death of a victim, usually a child, results from prolonged abuse; failure to provide for the victim's welfare resulting in death; or medical treatment is withheld in order to conceal physical signs of abuse.

Subcategory 2 --- rating of 4

. . . Manslaughter II cases where the death of a victim involves use of a weapon or follows an assault.

Subcategory 2 --- rating of 3

. . . Manslaughter II cases where the death is by negligent use of a vehicle and all other cases.

RAPE II -- ORS 163.365

Felony Class: B

RAPE II (Continued)

Statutory Elements: Nonforcible intercourse involving:
incapacitated (e.g., mentally defective) female; or
female under 14 (i.e., 12 or 13)

Subcategory 1 - rating of 4

...All cases of Rape II except those fitting Subcategory 2

Subcategory 2 - rating of 3

...Not both under 16 and incapacitated; and
...No coercion or undue influence (e.g., father, step-father); and
...No position of trust (e.g., counselor, doctor)

BURGLARY II -- ORS 164.215

Felony Class: C

Statutory Elements: Any illegal entry, if not a Burglary I, with intent to
commit a crime therein

Subcategory 1 - rating of 3

...Theft or destruction of over \$5,000

Subcategory 2 - rating of 2

...Theft or destruction of between \$1,000 and \$5,000

Subcategory 3 - rating of 1

Theft or destruction of less than \$1,000

THEFT 1 -- ORS 164.055

Felony Class: C

Statutory Elements: Theft involving:
more than \$200; or
during a riot or catastrophe; or
theft by receiving; or
of a livestock animal; or
of a firearm or explosive

Subcategory 1 - rating of 3

...Theft or receiving of over \$5,000

COERCION (Continued)

Subcategory 2 - rating of 3

...All others

UNAUTHORIZED USE OF A MOTOR VEHICLE -- ORS 164.135

Felony Class: C

Statutory Elements: Joyriding, unauthorized exercise of control over vehicle

Subcategory 1 - rating of 2

...loss, destruction or severe damage to vehicle or to property; or
...Injury to others

Subcategory 2 - rating of 1

...Other

FORGERY I -- ORS 165.013

Felony Class: C

The breakdown should be based on the amounts involved in the same manner as theft.

Note: For this crime and other theft crimes, the amounts involved would be based on the amounts for which each defendant has been convicted or has admitted.

POACHING -- ORS 496.992(3)

Felony Class: C

Statutory Elements: Second and each subsequent conviction within a 10-year period for taking of game fish or game mammals with a value of \$200

Subcategory 1 - rating of 2

...Poaching of game valued over \$3,000; or
...Commercial operation

MANUFACTURE OR DELIVERY OF A CONTROLLED SUBSTANCE (Continued)

Subcategory 1 - rating of 4

...Manufacture or delivery of heroin or opiate derivatives for compensation of \$2,000 or more

Subcategory 2 - rating of 3

...Manufacture or delivery of heroin or opiate derivatives without compensation or for compensation of less than \$2,000;

...Manufacture or delivery of cocaine for compensation of \$2,000 or more and other drugs for compensation of \$1,000 or more

Subcategory 3 - rating of 2

...Manufacture or delivery of cocaine for compensation of less than \$2,000 and other drugs for compensation of less than \$1,000

Subcategory 4 - rating of 1

...Manufacture exclusively for own use;

...Delivery without compensation, except heroin or opiate derivatives

UNLAWFUL CREATION OR DELIVERY OF COUNTERFEIT SUBSTANCE -- ORS 475.992(3)

Statutory Elements: Unlawful creation or delivery of counterfeit substance

Felony Class: Schedule 1 drugs - Class A Felony

Schedule 2 drugs - Class B Felony

Schedule 3 drugs - Class C Felony

Subcategory 1 - rating of 3

...Schedule 1 drugs, except marijuana

Subcategory 2 - rating of 2

...Schedule 2 drugs, plus PCP

Subcategory 3 - rating of 1

...Schedule 3 drugs, plus marijuana

POSSESSION OF CONTROLLED SUBSTANCE -- ORS 475.992(4)

Statutory Elements: Knowing or intentional possession of controlled substance not obtained by prescription or valid doctor's order

CRIMINAL ACTIVITY IN DRUGS (INVOLVING MINORS) (Continued)

Subcategory 2 - rating of 3

...Furnishing any other drug except those fitting in Subcategory 3

Subcategory 3 - rating of 2

...Furnishing less than 1 ounce of marijuana

NOTE: Applies to crimes committed before July 1, 1978.

CRIMINAL ACTIVITY IN DRUGS (OTHER) -- ORS 167.207(1)

Felony Class: B

Statutory Elements: Manufacture, cultivation, sale or possession of any narcotic or dangerous drug (other than possession of less than one ounce of marijuana)

Subcategory 1 - rating of 3

...Manufacture, cultivation or sale for profit, or possession with intent to sell for profit of any heroin or opiate derivatives

Subcategory 2 - rating of 2

...Manufacture, cultivation, or sale for profit, or possession with intent to sell for profit, of any other drug

Subcategory 3 - rating of 1

...Manufacture for own use or possession for own use

NOTE: Applies to crimes committed before July 1, 1978.

Amending Exhibit C under rule 255-35-025 as follows:

EXHIBIT C

TIME TO BE SERVED UNDER RULE 255-35-025

CRIMINAL HISTORY/RISK ASSESSMENT SCORE

11-9 8-6 5-3 2-0
Excellent Good Fair Poor

Offense Severity Rating (All ranges in Categories 1-6 shown in months)

Base Range

Category 1	6	6	6-10	12-18
Category 2	6	6-10	10-14	16-24
Category 3	6-10	10-14	14-20	22-32
Category 4	10-16	16-22	22-30	32-44
Category 5	16-24	24-36	40-52	56-72
Category 6	30-40	44-56	60-80	90-130
Category 7*				
Subcategory 2 (years)	8-10	10-13	13-16	16-20
Subcategory 1 (years)	10-14	14-19	19-24	24-Life

Continued

Amending Exhibit D under rule 255-35-035 as follows:

EXHIBIT D

GUIDELINE MATRIX

STANDARD VARIATIONS FROM THE RANGES UNDER RULE 255-35-035

CRIMINAL HISTORY/RISK ASSESSMENT SCORE

CRIME CATEGORY	CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
	11-9 Excellent	8-6 Good	5-3 Fair	2-0 Poor
1 Panel	3*	3	3	3
2 Panel	3	3	3	4
3 Panel	3	3	3	6
4 Panel	3	3	4	6
5 Panel	4	6	6	8
6 Panel	5	6	10	12
7 Full Board	36	36	36	36

*All numbers represent standard variations in months.

[Board variations may be twice the panel variation.]

The maximum variation allowed in crime categories 1 through 6 are:

- (a) For a panel: the standard variation.
- (b) For a two-member panel with a concurring vote (3 concurring votes): two times the standard variation.
- (c) For four concurring votes after a hearing before the full Board: three times the standard variation.
- (d) For five concurring votes after a hearing before the full Board: The Board may set aside the applicable range and/or variations therefrom and set a release date up to 50% of the maximum sentence.

The maximum variations allowed the full Board for category 7 crimes are:

- (a) For three concurring votes: the standard variation of 36 months.
- (b) For four concurring votes: two times the standard variation of 36 months (72 months).
- (c) For five concurring votes: three times the standard variation of 36 months (108 months).

The Board may deny parole pursuant to OAR 255-35-030.

Amending Exhibit E under OAR 255-35-035 as follows:

EXHIBIT E

AGGRAVATING AND MITIGATING FACTORS

AGGRAVATION

Production or use of any weapon during the criminal episode.

Threat or violence toward witness or victim. Held at gunpoint, verbal threats of death.

Knew or had reason to know the victims were particularly vulnerable (i.e., aged, handicapped, very young).

Ability to make restitution or reparation and failed to do so.

Violation of position of public trust or recognized professional ethics.

Degree of property loss, personal injury or threatened personal injury substantially greater than characteristic for the crime.

There is a single conviction for a crime involving multiple victims or incidents.

Concurrently imposed convictions not arising out of same criminal episode.

Multiple instances of repetitive assaultive conduct by two or more.

More than three trust violations in last five years as relates to Item D of matrix computation.

Persistent involvement in similar criminal offenses, three or more convictions for same criminal behavior.

Repetition of behavior pattern which contributes to criminal conduct (e.g., return to drug or alcohol abuse) on two or more recent releases.

Criminal history more extensive or serious than reflected by history/risk score (e.g., more than 5 convictions or four incarcerations).

Pursuant to a Guilty or No Contest plea, other crimes were dismissed or not prosecuted.

New criminal activity while on escape or reduced custody status and points were lost for same item.

Persistent criminal misconduct while under supervision.

Other:

MITIGATION

Victim provoked the crime to a substantial degree, or other evidence that misconduct by victim contributed to the criminal episode.

Special effort on the part of the perpetrator to withdraw or minimize the harm or risk.

Peripheral involvement in the criminal episode (e.g., passive accessory).

Sustained effort to make restitution or reparation.

Cooperation with criminal justice agencies in resolution of other criminal activity.

Degree of property loss, personal injury or threatened personal injury substantially less than characteristic for the crime.

Evidence of withdrawal, duress, necessity or lack of sustained criminal intent.

Ordered to pay restitution after imprisonment.

Successful period of community supervision, at least 24 months.

Effort to deal with problems associated with past criminal conduct (e.g., successful completion of treatment program, abstinence from substance abuse).

Evidence of no new criminal activity while on escape or abscond status.

Criminal history less extensive or serious than reflected by history/risk score (e.g., primarily ~~the~~ major vehicular offenses).

Consecutive sentences imposed for convictions resulting from single criminal episode.

Probation violation is non-criminal in nature and not indicative of on-going criminal pattern.

Other:

Any aggravating or mitigating circumstances which constitute a defining element of the crime or subcategory of the crime of which the prisoner was convicted, or resulted in a lower history/risk score, shall not justify variation from the guidelines. Additionally, such circumstances should not be the basis for more than one finding of aggravation or mitigation. The Board may find mitigation, when enhanced penalties have been imposed for multiple convictions, if it finds that the crimes are part of a "crime spree" and that the spree is not indicative of a persistent criminal orientation or proclivity.

The purpose of this exhibit, a crime spree is a set of criminal activities concurrent in time or actually overlapping that so joined by place and circumstance as to be the product of a continuous disposition or intent.

ITEM 4

Amendment to 255-38-005

Amending 255-38-005 to read as follows:

Permissible Action: [When a Parole Release Date May Not be Set; Procedures When a Parole Release Date is Not Set] Setting Parole consideration hearing instead of a release date, setting release dates and periodic reviews.

255-38-005 (1) Notwithstanding the provisions of Division [30] 60, the Board shall not set a parole release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender. [if the record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance (e.g., severe personality disorder).] The Board shall within six months after commitment to the custody of the Corrections set a parole consideration hearing instead of a parole release date as otherwise required by Division 60. The parole consideration hearing shall be at the earliest time the prisoner would be eligible for release. If the condition (e.g. psychiatric or psychological diagnosis of a present severe emotional disturbance, such as severe personality disorder indicating a propensity toward criminal activity) is still present, reviews will be scheduled at least every two years thereafter. If at the parole consideration hearing or a subsequent review the condition is determined to be absent or in remission, the Board shall set a release date or order parole if the prisoner is otherwise eligible under the rules.

-(2) The Board shall set a date for a parole consideration hearing within the matrix guidelines in Exhibit C and provisions for variations under rule 255-35-035.

(3) At any hearing or review, the Board shall consider the report of the executive officer of the facility in which the

prisoner is confined regarding the prisoner's conduct, attitude, and work record as defined in ORS 144.228(2) and a psychiatric or psychological report^{received} [made] within two months of the hearing:

(a) The Board shall not set a parole release date unless the psychiatric or psychological report reveals that the severe emotional disturbance which has made the prisoner dangerous is no longer present.

(b) If the disturbance is present, the Board may defer release to a specified future time or deny parole under rule 255-25-030.

(4) Notwithstanding the above, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner believes that he is no longer dangerous, request a parole consideration hearing. Should the Board find based upon the request that there is a reasonable cause to believe the dangerous condition is in remission, the Board shall order a parole consideration hearing pursuant to the above procedures. Applications received more often than every two years will carry a greater burden in establishing that the request is reasonable.

(4) [Periodic reviews shall be given dangerous offenders pursuant to rule 255-40-005. If, at the review, the psychiatric or psychological reports and the executive officer's report reveals that the severe emotional disturbance which has made the prisoner dangerous is not longer present, the Board shall review the matter and set a parole release date according to Divisions 30 and 35.]

(5) Support for the application from the superintendent of the institution in which the prisoner has been confined under

subsection 4 above, shall be considered reasonable cause pursuant to subsection (4) of this section.

(6) The Board shall consider at the parole consideration hearing a report pursuant to ORS 144.228 from the Executive Officer of the penal or correctional institution in which the prisoner has been confined.

ITEM 5

Amending OAR 255-40-005 as follows:

Scheduling of Periodic Reviews

255-40-005(1) Periodic reviews shall be conducted after the prisoner has served five years of his prison term and every three years thereafter, starting with the date the prisoner's sentence begins to run.

[(a) Dangerous offenders sentenced under ORS 161.725 and 161.735 shall be seen every two years as required by statute.]

[(b)] (2) Prisoners convicted of murder shall be seen as required by statute.

[(2) Reviews that have been scheduled prior to January 26, 1977 shall be conducted as scheduled. Reviews scheduled subsequent to January 26, 1977 shall be rescheduled to comply with this rule.]

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

Amending OAR 255-40-020 as follows:

Reopening Cases: When; What Showing is Necessary

255-40-020 The Board may reopen any case for reconsideration upon formal written request of a prisoner to the chairperson or motion of a Boardmember if:

(1) Substantial new information which was unknown at the time of the prison term hearing or could not be contemplated at that time has been received;

(2) Substantial information that a prisoner, or any other person, willfully concealed or misrepresented information material to a prior Board action has been received;

(3) Statutory changes have reclassified the criminal conduct involved (e.g., reduction of certain categories of murder to manslaughter, creation of degrees of manslaughter).

(4) Rule changes have resulted in a shorter range.

(5) [An error in applying the Board rules has occurred by clerical error or incorrect computation of the release date.]

Clerical error is established. In cases where the error is obvious and the result of correction will be to the prisoner's benefit, the Board may take administrative action by file pass to correct the error. The prisoner shall be notified in writing of Board action. If the Board intends to take action which would be adverse to the prisoner, the Board shall reopen the hearing at the request of the inmate.

(6) The Board shall state the specific reasons for denial of a request to reopen a hearing.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80

Amending OAR 255-40-025 as follows:

Reductions in Prison Terms: Effect of Minimum Terms; Criteria; Limitation

255-40-025 (1) An established prison term as defined in section 255-30-005(2) may be reset to an earlier time upon application for review to the chairperson of the Board and after concurrence of a voting majority of the Board, unless the prisoner has a statutory minimum term for murder. Parole release date resets falling below a judicially imposed minimum sentence shall require concurring votes of four members:

(a) Reductions in prison terms will ordinarily be granted only in cases where a prisoner can show an extended course of conduct indicating outstanding reformation. Cases will be determined on individual merits; however, the usual criteria will include:

(A) A five-year period of good conduct, and

(B) Demonstrable achievement in dealing with problems present at incarceration and associated with criminal conduct (e.g., psychological disorder, drug or alcohol dependency, lack of educational or vocational skills).

(b) A prisoner's exercise of recognized constitutional rights or legitimate use of legal process shall not be construed as lack of good conduct.

(c) Cooperation with authorities is not sufficient in itself to justify a reduction.

(d) Reductions in prison terms may be considered where the prisoner is suffering from a terminal illness or a unique opportunity is available and the reduction of the prison term is not excessive.

the prison term under review unless a majority of the Board approves a further reduction:

(a) Reductions shall customarily be considered at periodic reviews under rule 255-40-005.

(b) [Special interviews to consider a reduction will only be granted in cases approved by at least three Board members following a file pass.]

Special requests for reduction supported by the superintendent which do not coincide with the periodic interviews shall be scheduled for a hearing or considered by file pass at the discretion of the chairperson.

(3) [A recommendation shall be requested from the institution superintendent on each application considered by the Board.]

A recommendation shall be requested from the institution superintendent by the prisoner. Requests for reductions shall be accompanied by the superintendent's recommendation.

(4) The prisoner shall have the burden of establishing that his/her conduct meets the criteria for a date reduction.

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

Adopting rules relating to the rescission of parole and amending 255-50-015 and 255-50-020.

Amending OAR 255-50-015;

Adopting OAR 255-50-016, 255-50-017 and 255-50-018, and amending OAR 255-50-020 to read as follows:

Rescission of Parole: Hearing, Suspension of Release 255-50-

015 (1) The Chairperson may, on his/her own motion or upon notification by the Chief of Release Services, suspend the release date of a prisoner when there is reason to believe the person has engaged in serious misconduct. Suspension shall be for such time as is reasonably necessary to conduct the rescission hearing and make a decision.

(2) The Board may rescind a parole after it has been ordered but prior to release from custody [by conducting a rehearing under the procedures of Division 30, upon recommendation of an institution Superintendent, Regional Manager, or a Board member, and with the concurrence of three voting members of the Board], based upon the written findings of either the institution disciplinary committee or a hearing conducted at the order of the Chairperson. The Board shall also consider the recommendation for disposition provided by the institution Superintendent, Regional Manager, Parole Board members or Parole Board Hearings Officer. Action to rescind parole shall be taken by a panel of the Board.

(3) The Board may rescind a parole after it has been ordered and after release from custody when the Board is informed of reasonable grounds to believe a person has violated a law prior to [his] the parole release date and knowledge of the law violation was not known by the Board on the date of the Order of Parole. Upon [concurrence of three Board members] the order of the Chairperson, a fact-finding hearing shall be held [pursuant to the procedures set

forth in Division 75 of these rules pertaining to revocation of parole to determine if the law violation did occur]. by a Parole Board Member or Parole Board Hearings Officer to determine if the law violation did occur.

(4) The parole order of a prisoner who is voluntarily absent from a facility shall be voided by the Chairperson. A Rescission Hearing shall be scheduled when the prisoner is available.

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

255-50-016 Procedure.

The procedure for a Rescission Hearing shall be in accord with the provisions of Division 30.

255-50-017 Waiver.

The provisions for waiving a Rescission Hearing shall be those outlined in Division 75, OAR 255-75-030, with the exception of those situations which involve involuntary absence from a correctional facility. In those cases the waiver of Rescission Hearing, signed prior to the effective date of the parole, shall be considered valid.

255-50-018 Hearing after rescission of parole

Scheduling: Board Action. After parole is rescinded, the Board may conduct a dispositional hearing to establish a future release date for the prisoner. The provisions of the Board rule 255-75-085 shall apply in the conduct of this hearing.

Basis for Rescission

255-50-020 [At the hearing, the Board will take relevant material, and reliable information of the prisoner's misconduct which causes the hearing to be held. The Board shall clearly state the facts and specific reasons, including a statement of misconduct, for its decision to rescind and reset the parole release date or deny parole.]

(1) The following actions, occurring after parole is ordered but prior to release from custody, shall be considered serious misconduct and shall constitute evidence upon which the Board may base rescission of parole:

(a) evidence of the prisoner's voluntary absence from a corrections facility:

(b) conviction of a new criminal offense or admission by the prisoner to criminal activity even when charges have been dismissed, not brought, or the prisoner has been acquitted at trial;

(2) In all cases where the Board has rescinded parole based on 255-50-020(1)(a) or (b), the Board shall reset a release date when the prisoner is in custody. The new release date may be set by the rescission panel without a hearing if the date is within two to five months following return to custody. However, the Board may, at the discretion of the rescission panel, provide a hearing under Division 30 solely for purposes of determining the amount of time the prisoner shall serve prior to future parole release or whether the prisoner shall be denied parole.

(3) The Board shall clearly state the facts and specific reasons, including a statement of misconduct, for its decision to rescind and reset the parole release date or deny parole.

ITEM 7

Amending and adopting OAR 255-60-005, 255-60-010, 255-60-015 and 255-60-025 to read as follows:

Parole Release Interviews: Purpose; Review of Parole Plan; Procedure if Plan is Inadequate; Maximum Deferred and Scheduling

255-60-005 (1)

[A prisoner who has been given a parole release date shall be interviewed prior to his/her parole release.] At any time prior to ninety (90) days of the scheduled release on parole of any prisoner, the Board, on its own initiative or at the request of the Corrections Division, may conduct an exit interview to review the parole plan, the prisoner's psychiatric or psychological report, if any, and the record of the prisoner's conduct during confinement. The Board may order, pursuant to ORS 144.125, any psychiatric or psychological reports held by the division not endorsed by the examiner in a manner to preclude disclosure.

(2) Exit [I] interviews shall be conducted by one or more voting members of the Board. The purpose of the interview shall be to examine the prisoner's parole plan, his/her psychological report, if any, and the record of his/her conduct during confinement. If information available to the Board is deficient or unverified, the interviewer may continue the interview and hold the record open for a period up to ninety (90) days. In no case shall an exit interview be continued past the scheduled release date unless the Board takes action under subsections (3), (4) or (5) of this rule to defer release in accordance with ORS 144.125.

(3) The interviewer shall examine the prisoner's plan for residence, employment, or other situation in the community to determine whether the parole plan is adequate:

(a) An acceptable plan may include employment, school, or other situation (e.g., retirement income), and verifiable residence; it may require treatment programs and prescribed medication.

(b) If any portion of the plan is deficient or unverified, the Board may order deferred release to a verified plan approved by a panel, or to a plan approved by the Administrator of the Corrections Division.

(c) Parole release may be deferred up to ninety (90) days from the parole release date when a plan is deficient or unverified in order to obtain verification of a satisfactory plan from the Corrections Division. A report shall be presented to the Board after sixty (60) days by the Corrections Division, according to its letter of agreement with the Board.

(d) A prisoner requesting an out-of-state parole waives the ninety (90) day limitation on postponements for developing an adequate parole plan.

(4) If the record indicates that a psychiatric or psychological condition of severe emotional disturbance, such as to constitute a danger to the health or safety of the community, is present, the Board may order the postponement of the scheduled parole release until a specified future date or until the prisoner or institution presents evidence that the emotional disturbance is over or in remission.

(a) In determining if a severe emotional disturbance exists, the Board may order a psychiatric or psychological evaluation.

(b) If ordered, the psychiatric or psychological evaluation shall be conducted to determine if a severe emotional disturbance exists and the prisoner's potential for rehabilitation. An evaluation shall be provided which may consist of a diagnostic

study, including a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural, social and environmental factors which bear on the individual's handicap to employment and rehabilitation potential, and, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes, and interests, personal and social adjustments, employment opportunities, or other pertinent data helpful in determining the nature and scope of services needed. The evaluation should include recommendations for treatment or medication if necessary to assist in the rehabilitation of the prisoner or to protect the health and safety of the community. After considering the evaluation, the panel may require that the prisoner develop a plan with provisions which are recommended in the evaluation and specific evaluations of emotional stability.

(c) The Board may not deny release on parole solely because of a prisoner's severe emotional disturbance. Should the prisoner be diagnosed as a danger to himself or others or unable to provide for the basic personal needs necessary for his health or safety, the Board may initiate the civil commitment procedure as provided in ORS Chapter 426.

(5) If the prisoner has engaged in serious institutional misconduct, a hearing shall be conducted by the Board to consider deferring the parole release date. The procedure for hearings in Divisions 30 and 50 shall apply.

~~255-60-010~~

(6) In all cases involving deferral or postponement of the parole release date, the Board shall clearly state the facts and specific reasons for its decision. The individual votes of the Board members shall be listed.

[Deferring Parole Release Following an Interview: Basis; Procedure] Waiver of 90-Day Limitation; Deferral for Serious Misconduct 255-60-010 (1) [Should the exit interview indicate that: (a) A psychiatric or psychological diagnosis of the prisoner reveals a present severe emotional disturbance which the Board findings based upon the crime of committal and/or behavior in the institution poses a threat to the health and/or safety of the community; or (b) The prisoner has engaged in serious institutional misconduct, a hearing shall be conducted by the Board to consider deferring the parole release date. The procedure for hearings in Division 30 shall apply.

(2) Following a hearing, a panel may order postponement of the scheduled release of a prisoner found to have a present emotional disturbance which the Board finds poses a threat to the health or safety of the community until a specified future date not to exceed one year or until the prisoner or institution presents evidence that the emotional disturbance is over or in remission.

(3) The Board may not deny release on parole solely because of a prisoner's severe emotional disturbance. Should the prisoner be diagnosed as a danger to himself or others or unable to provide for the basic personal needs necessary for his health or safety, the Board may initiate the civil commitment procedure as provided in ORS Chapter 426.]

(1) A prisoner requesting an out-of-state parole waives the ninety (90) day limitation on postponements for developing an adequate parole plan.

(2) [(4)] If the prisoner has engaged in serious institutional misconduct, the provisions of Division 50 shall apply.

(3) [(5)] The Board shall clearly state the facts and specific reasons for its decision. The individual votes of the Board members shall be indicated.

Instate Parole Release Interview Procedures

255-60-015 (1) Notice: At a reasonable time prior to a parole release interview, the prisoner shall be notified at his/her place of confinement of the scheduled parole release interview and shall be advised that information may be provided to the Board in writing or by persons sending written information to the Board.

(2) Disclosure of information considered by the Board shall be governed by Division 30.

[(3) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to language barriers or lack of mental capacity. Assistance will be provided to prisoners meeting these criteria by persons recommended by the superintendent and appointed by the chairperson of the Board.]

(3) [(4)] The prisoner shall receive notice of the interview results, including the facts and specific reasons for the decision and the individual votes of the Board members.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f.6 ef. 2-1-79

Out-Of-State Parole Release Interview Procedures

255-60-020 A prisoner who is in the custody of the Corrections Division who is housed in an out-of-state facility shall receive a parole release interview in conformance with rule 255-60-015. However, all proceedings may be conducted by con-

ference telephone call.

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

Parole Consideration for Prisoners in a Local Jail

255-60-025 (1) A prisoner [confined in a jail facility as defined in ORS 144.050 with a sentence of at least six months shall be given a hearing to determine whether parole will be granted when:

- (a) Written application is submitted to the Board; and
 - (b) The prisoner has served at least four months of the sentence.
- (2) Hearings shall be conducted by one voting member of the Board.
- (3) The Board member may order parole, establish a parole release date, continue the hearing for a reasonable period of time, or deny parole.

(4) The procedures in rule 255-60-015 shall be followed.]

who is not committed to the legal and physical custody of the Corrections Division is not eligible for parole by the State Board of Parole.

ITEM 8

Amending 255-65-005 and 255-65-015 and adopting 255-65-020 to read as follows:

RESTITUTION AND SUPERVISION FEES

When Restitution is Ordered [after] Upon Parole Release:

Establishing a Payment Schedule; Limitations

255-65-005 When a person has been sentenced pursuant to ORS 137.106 to pay restitution for a crime committed after October 4, 1977, and any portion of that payment is deferred until after release from imprisonment, the Board shall establish a schedule of payments.

(1) In establishing and supervising a schedule of payments, the Board shall consider:

(a) The prisoner's financial resources, including salary, savings, and liquid assets;

(b) The burden that it will impose in light of the person's overall obligations (e.g., family and necessary living expenses);

(c) Ability to pay on an installment or other conditional basis;

(d) The rehabilitative effect of the payment and the method of payment.

(2) Normal payments shall range from 10 to 20 percent of a person's take-home salary without voluntary payroll deductions, unless significant savings or liquid assets permit larger amounts:

(3) The Board shall provide to the sentencing court a copy of the schedule of payments and any modifications thereof.

Supervision of Payments: Conditions of Parole; Default by Parolee; Effect on Discharge

255-65-015 (1) Payment of restitution shall be included as a special condition of parole:

(a) Any applicable schedule shall be clearly stated on the Order of Parole.

(b) Payments shall be made to the clerk of the court of the county of sentencing, or as directed by the Board.

(c) The method and manner of payment shall be supervised by the individual's parole officer.

(2) When a parolee defaults on any scheduled payment, the supervising parole officer shall notify the Board. The default shall be grounds for revocation of parole unless the parolee shows:

(a) The default was not due to an intentional refusal to make the payment.

(b) The default occurred despite a good faith effort to make the payment.

(3) If payment of restitution has not been completed by the parolee's tentative discharge date, the parolee shall be continued on parole until completion of payment or the expiration of his/her sentence, whichever is first.

(4) The Board shall provide to the sentencing court a copy of the discharge of parole in cases where restitution has been ordered.

Establishment of Supervision Fees; Criteria; Disbursement of Fees

255-65-020(1) When a person is placed on parole, subject to supervision by either the Corrections Division or a community corrections program established under ORS 423.500 to 423.560, the person shall be required to pay a monthly fee to offset costs of supervising parole. The fee shall be \$10.00 unless a greater fee is recommended by the supervising officer and approved by the Board using the same criteria set forth in 255-65-005(1)(a)(b) and (c). In no case shall the fee be less than \$10.00 per month.

(2) The fee established pursuant to section (1) shall be a condition of parole and intentional and willful failure to pay such fee shall be grounds for revocation of parole or extension of the supervision period.

(3) In cases of financial hardship or when otherwise advisable in the interest of the released person's rehabilitation, the community program director or the Assistant Director of Corrections, whichever is appropriate, may waive the payment of the fee in whole or in part.

(4) Fees collected shall be transferred to the Corrections Division or retained by the county as provided by statute.

ITEM 9

Amending OAR 255-75-035, 255-75-045 and adopting OAR 255-75-006 and 255-75-042 to read as follows:

Appointment of Counsel: Criteria; Case by Case; Affidavit of Indigency

255-75-035 (1) If requested, the Board shall appoint counsel to represent indigent parolees at parole revocation hearings if the parolee makes a timely and colorable claim that:

- (a) He/she has not committed the alleged violation; or
- (b) There are substantial complex mitigating circumstances which make revocation inappropriate even if violation is admitted or a matter or record; or
- (c) The parolee appears incapable of speaking effectively in his/her behalf.

(2) Cases shall be reviewed individually to determine whether the criteria have been met.

(3) Parolees shall be required to submit an affidavit of indigency at the hearing.

(4) Upon completion of the parole revocation hearing, the Board shall determine whether the person for whom counsel was appointed is able to pay a portion of the attorney fees to be paid by the state.

(5) In determining whether the person is able to pay such portion, the Board shall take into account the other financial obligations of the person, including any existing fines or order to make restitution.

(6) If the Board determines that the person is able to pay such portion, the Board may order, as a condition of parole, that the person pay the portion to the appropriate officer of the state.

Evidence at Parole Revocation Hearing: What May be Received
255-75-045

The following evidence may be received at a parole revocation hearing:

- (1) Oral testimony under oath;
- (2) Affidavits or other sworn statements;
- (3) Evidence determined to be material, relevant, and reliable, regardless of its nature, including:
 - (a) Letters;
 - (b) Documents;
 - (c) Reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole officers, doctors, psychologists, attorneys);
 - (d) Uncertified copies of letters, documents, or reports shall be admissible in a parole revocation if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable.
- (4) Evidence of criminal activity even when charges have been dismissed, not brought, or the parolee has been acquitted at trial.
- (5) Hearsay evidence, although admissible, cannot alone form the evidentiary basis for revocation if objection is raised. This provision shall not apply to certain recognized exceptions to the hearsay rule. For Board purposes, Federal rules 803, 804, and 805 shall be utilized in determining exceptions to the hearsay rule.

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

Method of Hearing: Utilization of Conference Call Hearing;
Objections to Conference Call Procedure; Determination
of Situation Requiring On-Site Hearings.

255-75-006 (1) All hearings under Division 75 shall be
conducted by conference telephone call. Exceptions to the
rule will be made only in the following situations:

(a) Where the alleged violations are contested and there
is an affirmative showing by either the parolee or his/her
attorney that credibility of the witnesses, including ob-
servations of their demeanor, would be a primary issue for
determination by the Hearings Officer.

(b) Physical exhibits are to be made a part of the record
and viewing of the exhibits would be essential in deter-
mining whether a violation of parole has occurred.

(c) At the discretion of the Hearings Officer in situ-
ations not covered by either subsection (a) or (b) above.

255-75-042 Probable cause; Effect of Preliminary Hearing;
Definition of Term; Deferral of Revocation hearing.

(1) Evidence received by and/or the order of the court at the preliminary hearing may be used by the Board to establish that probable cause exists to believe that a violation of a condition of parole has occurred; and further, that should the parolee waive right to a preliminary hearing, such waiver shall also constitute a waiver of a hearing by the Board to determine whether there is probable cause to believe that a violation of one or more of the conditions of parole has occurred.

(2) "Probable cause" shall be interpreted to mean a standard of proof lower than a preponderance (e.g., a reasonable belief that the violation did occur as opposed to proof by greater weight of the evidence). Such finding shall be used to support the Board decision to suspend and detain a parolee charged with the commission of a new crime. The Board may then defer completion of a parole revocation hearing until trial has been completed. In no case, however, shall a deferral following a finding of probable cause extend for a period greater than ninety (90) days from the date of the preliminary hearing or waiver.

ITEM 10

Amending OAR 255-80-005 to read as follows:

Method of Appeal

255-80-005 (1) Administrative appeal may be requested by a prisoner or Board member. If the Chairperson of the Board determines the request is consistent with the Board's criteria as defined in rule 255-80-010, the Chairperson shall [remand the case for rehearing, where practicable, to the original panel.] order an Administrative Review by the original panel, where practical, either by file pass or a hearing.

(2) When the Chairperson was a member of the panel from which an appeal is generated and finds the request does not meet the Board's criteria, he/she shall refer the matter to a member who was not on the panel for review. In such case, that member may concur or call for a rehearing.

(3) The Chairperson shall inform the prisoner in writing of the specific reasons for denial of the appeal and leaving the prior decision in effect.

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

ITEM 11

Amending 255-90-002, 255-90-003, 255-90-005, 255-90-010, 255-90-015 and Exhibit H-1 and adopting 255-90-001

Definitions

255-90-001

"Active Parole Supervision": Supervision requiring periodic contact with the supervising officer or monitoring by supervising officer to assure that parolee has committed no new crimes or monitoring by supervising officer to assure repayment of a restitution amount.

"Intensive Parole Supervision": (1) Supervision requiring at least monthly contact with the supervising officer; or (2) monitoring of parole by the supervising officer to assure adherence to special conditions of parole by the parolee which are by direction of the Board and not left to the discretion of the supervising officer.

"Major Technical Violation": A violation of a parole condition involving the possession of a weapon or firearm, absconding supervision by leaving the state of Oregon without permission, a new law violation not resulting in a new felony sentence, or a finding pursuant to a hearing conducted under Division 75 that new criminal activity has occurred which would constitute a class "A" misdemeanor or felony.

"Minor Technical Violation": 'Violations' as described by ORS 161.565 and 161.575 and all parole violations except major technical violations and law violations.

Discharge of Parolees

255-90-002 [The Board shall establish a conditional discharge date from supervised parole within the range for the appropriate offense severity rating and history/risk score shown in the guideline matrix, Exhibit H-1. A parolee shall remain on unsupervised parole and shall not be given final discharge from parole until five (5) years after his placement on unsupervised parole, or until the occurrence of his goodtime date, whichever first occurs.]

- (1) Pursuant to ORS 144.310 the Board shall establish a discharge date from active supervised parole. The period of supervised parole shall be as shown in the guideline matrix, Exhibit H-1, unless the Board provides written reasons for an extended supervision period. Extended supervision periods shall not exceed thirty six (36) months.
- (2) Notwithstanding the above, active supervision, shall extend until expiration of the sentence if restitution remains unpaid.

Stat. Auth.: ORS Ch. 144
Hist: 2PB 2-1980, f. & ef. 5-20-80

Period of Time to Serve on Supervised Parole

255-90-003 [The Board may revoke parole, extend or deny a conditional discharge date, a final discharge or place a person back on supervised parole after his placement on conditional discharge for a period equal to the sentence expiration date when the parolee has been found, after hearing pursuant to Division 75 of these rules, to have violated the conditions of parole.]

- (1) The guidelines set forth in Exhibit H-1 shall govern the establishment of discharge dates. The date shall be set at the prison term hearing, periodic review, or rescission action and shall be written on the Order of Parole. For discharge to be effective, the parolee must display acceptable parole performance as indicated by Exhibit H-1 during the term of active parole supervision.
- (2) During the pendency of any parole violation proceeding, the running of the parole period is stayed and the Board shall retain jurisdiction over the parolee until the proceedings are resolved.

Effective Date of Discharge [Generally]

255-90-005 [The guidelines set forth in Exhibit H-1 shall govern the establishment of conditional discharge dates. The date shall be set at the parole release interview and shall be written on the Order of Parole. For the conditional discharge date to become effective, the parolee must display acceptable parole performance during the term of supervised parole.]

When discharge is granted by the Board prior to the maximum expiration date of the paroled prisoner's sentence, the discharge shall not be considered effective until the certificate of discharge is received by the paroled prisoner.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80

Procedure: Approving and Denying Discharge: Further Proceedings

255-90-010 (1) A minimum of 30 days prior to the [conditional] discharge date on the Order of Parole, the supervising parole officer shall send to the Board a supervisory report. This report shall recommend one of two courses:

(a) That the parolee be [conditionally] discharged [on the conditional date:]

(b) That the [conditional] discharge not be granted.

(A) In this case, the supervisory report shall contain information showing why [conditional] discharge is not warranted and recommend a new [conditional] discharge date[.] in accordance with OAR 255-90-015.

(B) The case shall receive a Board review, [under the procedures of section 255-30-015(3).]

(C) After consideration of the parole officer's recommendation, the Board shall either [conditionally] discharge the parolee or issue a written explanation for denial of the request.

(D) The supervising officer shall either notify the parolee of the new [conditional] discharge date and reasons or notify the parolee in writing that he has been [conditionally] discharged.

(2) If the Board desires further information on which to base

its decision, it may conduct a hearing according to the procedures in Division 75.

(3) Notwithstanding section (1) of this rule, the supervising officer may submit a recommendation with written reasons for early conditional discharge at any time after [one year] six months supervised parole.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef.

5-20-80

**Extension of [Tentative] Parole Discharge Dates [; When Good
Time Under Forfeiture]**

**255-90-015 [Conditional discharge dates may be extended
according to the following procedures:**

**(1) An extension of a conditional discharge date shall be
made by the Board when notified that an inmate has good time
under forfeiture.**

**(3) The Order of Parole will specify the amount of good
time under forfeiture.**

**(4) The Board may rescind the extension upon recommendation
of the supervising parole officer after six months of satis-
factory parole adjustment.]**

(1) In additional to the power of the Board to revoke parole, it may
extend a discharge date one time for six months without a hearing and
thereafter up to a one year period if the Board finds, after a
hearing pursuant to Division 75, that the parolee has violated the
conditons of parole. (2) Nothing contained in this rule shall be
interpreted to preclude more than one extension of a discharge
date by the Board. However, no extension of parole shall exceed
the maximum term of sentence imposed by the court.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80

TIME TO BE SERVED ON PAROLE
PRIOR TO CONDITIONAL DISCHARGE

EXHIBIT H-1

OFFENSE SEVERITY RATING	CRIMINAL HISTORY/RISK ASSESSMENT SCORE			
	11-9 Excellent	8-6 Good	5-3 Fair	2-0 Poor
1	6 mos.	6 mos.	6 mos.	6 mos.
2	6 mos.	6 mos.	6 mos.	6 mos.
3	6 mos.	6 mos.	6 mos.	6 mos.
4	6 mos.	6 mos.	6 mos.	1 year
5	6 mos.	6 mos.	1 year	1 year
6	1 year	1 year	1 year	1 year
7	1 year	1 year	1 year	1 year

I (a) For minor technical violations in crime categories 1, 2, 3 and 4 extension may be imposed for up to an additional six months supervised parole.

(b) For minor technical violations in crime category 5, 6 and 7 extension may be imposed for up to an additional one year supervised parole.

(c) For major technical violations, extensions may be imposed for up to an additional one year supervised parole.

ITEM 12

Amending OAR 255-90-005 and Exhibit I to read as follows:

Uniform Presentence Report

255-90-005 (1) [Presentence Reports furnished pursuant to ORS 144.785 shall be prepared according to the format outlined in Exhibit L]

The Advisory Commission on Prison Terms and Parole Standards shall propose to the Board and the Board shall adopt rules establishing a uniform presentence report from.

(2) [The Board of Parole and the Corrections Division shall issue policy statements, as necessary, to supplement this rule.]

Presentence reports shall be prepared according to the format outlined in Exhibit I.

[(3) Each presentence report shall include the Basic Data (present crime synopsis; evaluation; recommendation; and attachments I, II, and III) listed in Exhibit I. The presentence report may include additional exhibits listed in Exhibit I as ordered by the judge in an individual case.

(4) For offenders sentenced to imprisonment in state institutions, the presentence report and all of the exhibits will be completed and forwarded to the Board of Parole within 60 days of sentencing.]

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

*typo
this is
95-005*

EXHIBIT I

OUTLINE FOR PRESENTENCE REPORT AND EXHIBITS UNDER RULE 255-95-005

I. Basic Data: (Minimum information required)

A. Present Crime Synopsis:

1. Summary of offense(s)
2. Official version
3. Defendant's version
4. Victim's damages
5. Co-defendant's status

B. Evaluation:

1. Assets
2. Liabilities
3. Summary

C. Recommendation

D. Attachment I -- Criminal History/risk Assessment

E. Attachment II - Aggravation and Mitigation

II. Exhibits: (To be attached as ordered)

A. Exhibit 1 - Family Background

B. Exhibit 2 - Marital History

C. Exhibit 3 - Substance Abuse Problems

D. Exhibit 4 - Mental Health

E. Exhibit 5 - Education

F. Exhibit 6 - Economic Status

1. Employment

2. Transportation

3. Financial

G. Exhibit 7 - Other

1. Physical health

2. Free-time activities

3. Military]

Exhibit I
Oregon Corrections Division
PRESENTENCE INVESTIGATION

NAME: _____ DATE: _____
 ADDRESS: _____
 COUNTY: _____
 JUDGE: _____
 COURT #: _____
 DISTRICT ATTORNEY: _____
 DA'S CASE #: _____
 DEFENSE COUNSEL: _____
 CUSTODY STATUS: _____
 OFFENSE: _____
 NO. OF COUNTS: _____
 C S: _____
 PLEA: _____
 VERDICT: _____
 MAXIMUM PENALTY: _____
 DETAINERS OR PENDING CHARGES: _____

CRIME SEVERITY:
 HISTORY/RISK SCORE:
 RANGE:
 ORS#:
 SID#:
 FBI#:
 CII#:
 SS#:
 DL#:
 STATUS:

DOB/AGE: _____ PLACE OF BIRTH: _____
 HEIGHT: _____ RACE: _____
 WEIGHT: _____ CITIZENSHIP: _____
 HAIR: _____ EDUCATION: _____
 EYES: _____ MARITAL STATUS: _____
 MARKS: _____ NO. OF DEPENDANTS: _____
 REPORT SUBMITTED BY: _____ EMPLOYMENT STATUS: _____
 OFFICE: _____
 CONCERNED AGENCIES: _____

PRESENTENCE INVESTIGATION TRAINING PROPOSAL

by Parole Evaluation Unit

FACE SHEET

As per sample attached.

Detainers or Pending Charges should include a note to 'see Conviction Summary' where the pending matter is more fully detailed. If the matter relates to a probation obligation, include name of Judge and docket number.

The format for the report is listed below with the headings underlined and includes an outline of what information is necessary under each section. (brief sample attached, outline more detailed below)

Report begins with a salutation to the Judge who ordered the PSI and the date the PSI was ordered

OFFENSE SUMMARY

Date of arrest and arresting agency.
Summary of indictment or information noting actual charges brought.
Dates and results of court appearances.
Custody status.
Time served in custody as of PSI writing.

PLEA BARGAIN/NEGOTIATIONS & STIPULATIONS

Any agreements between the defendant, the Court and/or DA, to include charges recommended for dismissal, charges not filed, sentencing recommendation, if any.

OFFICIAL VERSION (Taken from Police Reports & DA's Information)

Date crime was reported to a police agency.
Date crime was committed.
Extent of physical damages.
Extent of property loss or damage.
Use of weapon or threatened use of weapon.
Physical violence or threat of violence.
Factors leading to arrest (describe how crime was committed and how investigation led to arrest).

DEFENDANT'S VERSION

Defendant's summary and account of the offense.
Defendant's statement regarding property loss and damages.
Extent to which defendant admits guilt and attitude toward the offense (remorsefulness, hostility, etc.).
Other statements the defendant may offer for the benefit of the Court (requests for leniency, probation, etc.).

ACCOMPLICES/CODEFENDANTS

Complete names, status of charges brought or reason charges were not brought.

VICTIM'S STATEMENT/DAMAGES

Make contact with the victim or victim's representative and obtain information regarding losses and damages in the exact amount for restitution purposes. (Note: Indicate the actual, total loss to victim, dollar amount, and indicate what amount was recovered. This information is essential for computing the Matrix Range for property crimes.) It is most important that the victim be personally contacted so they are aware the matter in its entirety is presented to the Court. If this has not been done prior to sentencing, the victim's express their displeasure "at the system" to the Analyst.

PRIOR RECORD

Conviction Summary (List all convictions, noting an asterisk by convictions not counted in Matrix computation)

Juvenile:

Date and place of arrest, offense and disposition with a brief description of each offense. This would involve only those proceedings in Juvenile Court in which a petition was filed and adjudicated.

Adult:

Date and place of arrest, offense and disposition with a brief description of each offense. If no disposition is shown on available criminal history printouts, call the appropriate jurisdiction and 'get it'. All individual entries should be complete - noting original sentence, with date of disposition, and probation violations and resulting court action and current status. Don't list the crime on one line, and then half way down the page the PV - all together. If a probation is imposed CC with another entry, so state in disposition column. If any court action is pending (such as a PV), list Judge and docket number for easy reference. This section is one of the most important and liberal use of telephone and teletype is essential. If conviction cannot be documented and it is by inmate admission, so note...

Arrests Not Resulting in Conviction:

Juvenile:

Date and place of arrest, charge and disposition with a brief description of the offense.

Adult:

Date and place of arrest, charge and disposition with a brief description of the offense. If the matter was dismissed for reasons other than innocence, so state. If the matter is pending trial or court proceedings, be sure the details of the offense are noted (as the PSI is often passed around and utilized for additional crimes), the docket number is included as well as the Judge's name if known.

If matters are pending out-of-state, be sure the interested agency is contacted and so noted in your PSI. If a detainer is being filed, be sure to advise that the detainer will not follow the inmate to a state institution and the agency should be recontacted for follow up as to sentencing. Or, they should check back after the sentencing date to ascertain the disposition. Often, we contact out-of-state jurisdictions who are supervising the inmate on a probation, and they don't even know there is a new crime in Oregon - were never contacted - and often dispositions from other states are not noted due to 'no contact'.

Driving Record - ODL #

All traffic misdemeanors and felonies should be listed above. This section should be utilized for infractions not noted previously - in summary form.

Parole, Probation and Institutional Performance

For offenders who are on parole or probation, contact must be made with the supervising officer. For offenders who have been incarcerated and discharged, a review of the institution file is necessary. This includes any out-of-state supervision and supervision as a juvenile.

FAMILY HISTORY

Brief statements regarding age, and present status of family members.

Father:

Mother:

Stepmother and/or Stepfather (if significant)

Brother:

Sister:

The Defendant:

Name at birth - date and place of birth (any conflict or discrepancies in names or birth dates should be explained or resolved in this section). Early developmental influences that may have a significant bearing on the personality and behavior of the defendant (if defendant is 26 or older)

do not emphasize this factor). Present relationship with parents and siblings.

MARITAL HISTORY

Present marriage - name and age of spouse. Date and place of marriage. Add common-law marriage if it was entered into in a state where common-law marriages are recognized. List prior marriages and all children born to those unions. List also any support obligations and if delinquent.

EDUCATION

Highest grade completed and name of school. Summarize all educational experience after high school.

HEALTH (Under all headings, include any reported or verified professional diagnosis)

Physical:

List the general physical condition and health problems as stated by the defendant and review of medical information available. (Do not duplicate identifying information listed on face sheet.)

Mental:

List the defendant's statements and verified information regarding any mental and emotional disorders. Verify the dates and places where the defendant received any psychological or psychiatric treatment.

Alcohol:

List the age the defendant began drinking and the present drinking habit or pattern. List any problems related to drinking and summary of any treatment client may have received. Include length of treatment and date of completion of any treatment program, including Antabuse Program. Be sure to state whether or not information in this section was verified. Was alcohol a factor in this crime? Previous crimes?

Drugs:

List the type of drug(s) used, the frequency and the period of time used. Summarize any treatment the client may have had for a drug problem. Include length of treatment and date of completion of any treatment program, including Methadone Program. Was drug use a factor in this crime? Previous crimes?

EMPLOYMENT:

Employment history for past three years. Employer, dates, type of work, earnings and reason for leaving. For defendant who held numerous jobs of three to six months duration, summarize them in a statement such as - From 6-77 to 8-79, the defendant held several short-term jobs as a bus boy. List any and all job skills the defendant may have and state the longest period of continuous employment. Also list the names of any trade unions he/she may belong to. This section is utilized in pre-release.

MILITARY SERVICE

Date of entry and discharge, branch of service and service number. Make an effort to obtain from the individual a DD214 (discharge summary). List type of discharge and court-martials, commitments to special drug/alcohol programs and other unusual data pertinent to Corrections/rehabilitation. List all military awards.

FINANCIAL CONDITION

Statement of financial obligations and attempts to honor them, income and savings. Make, model and license number of any vehicles (car, truck, motorcycle, boat, etc.)

COLLATERAL CONTACTS

(when appropriate)

PSYCHOLOGICAL EVALUATION

(when appropriate)

AGGRAVATING FACTORS

Apply appropriate factors from attached list - do not aggravate elements of the crime.

MITIGATING FACTORS

Apply appropriate factors from attached list, applying only those factors for which you have documentation - not necessarily defendant's statements.

RECOMMENDATION

See sample format - Analyst will not cover this area as it does not necessarily impact Parole Board. Each office usually defers to preference of specific Courts.

UPDATE PSI

Means just that - update to previous PSI. If no prior PSI for instant offense, then a new Official Version will be completed bringing the Court up-to-date. This should also include updates for each section of PSI, including arrest section.

Analysts wish to emphasize the importance of documenting all information contained in the PSI and, if unable to procure documentation, noting from where they obtained the information if verbal.

Information also to be covered:

Coding Instructions for Matrix
Subcategories for specific offenses
Matrix ranges for CS sentences

Time needed for training session: 3 hours with 2 break periods

Recommend small groups of 10 - 20 people.

AGGRAVATING AND MITIGATING FACTORS

AGGRAVATION

MITIGATION

Production or use of any weapon during the criminal episode.

Victim provoked the crime to a substantial degree, or other evidence that misconduct by victim contributed to the criminal episode.

Threat or violence toward witness or victim. Held at gunpoint, verbal threats of death.

Special effort on the part of the perpetrator to withdraw or minimize the harm or risk.

Knew or had reason to know the victims were particularly vulnerable (i.e., aged, handicapped, very young).

Peripheral involvement in the criminal episode (e.g., passive accessory).

Ability to make restitution or reparation and failed to do so.

Sustained effort to make restitution or reparation.

Violation of position of public trust or recognized professional ethics.

Cooperation with criminal justice agencies in resolution of other criminal activity.

Degree of property loss, personal injury or threatened personal injury substantially greater than characteristic for the crime.

Degree of property loss, personal injury or threatened personal injury substantially less than characteristic for the crime.

There is a single conviction for a crime involving multiple victims or incidents.

Evidence of withdrawal, duress, necessity or lack of sustained criminal intent.

Concurrently imposed convictions not arising out of same criminal episode.

Ordered to pay restitution after imprisonment.

Verified instances of repetitive assaultive conduct usually two or more.

Successful period of community supervision, at least 24 months.

More than three trust violations in last five years as relates to Item D of matrix computation.

Effort to deal with problems associated with past criminal conduct (e.g., successful completion of treatment program, abstinence from substance abuse).

Repetitive involvement in similar criminal offenses, or two or more convictions for same criminal behavior.

Evidence of no new criminal activity while on escape or abscond status.

Repetition of behavior pattern which contributes to criminal conduct (e.g., return to drug or alcohol abuse) on two or more recent releases.

Criminal history less extensive or serious than reflected by history/risk score (e.g., primarily the major vehicle offenses).

Criminal history more extensive or serious than reflected by history/risk score (e.g., more than 5 convictions or four incarcerations).

Consecutive sentences imposed for convictions resulting from single criminal episode.

Pursuant to a Guilty or No Contest plea, other crimes were dismissed or not prosecuted.

Probation violation is non-criminal in nature and not indicative of on-going criminal pattern.

New criminal activity while on escape or reduced custody status and points were lost for same item.

Other:

Persistent criminal misconduct while under supervision.

Other:

Any aggravating or mitigating circumstances which constitute a defining element of the crime or subcategory of the crime of which the prisoner was convicted, or resulted in a lower history/risk score, shall not justify variation from the guidelines. Additionally, such circumstances should not be the basis for more than one finding in aggravation or mitigation. The Board may find mitigation, when enhanced penalties have been imposed for multiple convictions, if it finds that the crimes are part of a "crime spree" and that the spree is not indicative of a persistent criminal orientation or proclivity.

For the purpose of this exhibit, a crime spree is a set of criminal activities congruent in time or actually overlapping that are so joined by place and circumstance as to be the product of a continuous disposition or intent.

Amending Exhibit B under rule 255-35-015 as follows:

EXHIBIT B

CRIMINAL HISTORY/RISK ASSESSMENT UNDER RULE 255-35-015

(A) -No prior felony or misdemeanor convictions as an adult or juvenile:	3
-One prior conviction:	2
-Two or three prior convictions:	1
-Four or more prior convictions:	0

(B) -No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile:	2
-One or two prior incarcerations:	1
-Three or more prior incarcerations:	0

(C) [Age of behavior leading to this incarceration:	
26 or older:	2
21 to under 26:	1
Under 21:	0]
- <u>Verified period of 3 years conviction free in the community prior to present incarceration:</u>	<u>1</u>
- <u>Otherwise:</u>	<u>0</u>

(D) [Present commitment does not include parole, probation, failure to appear, release agreement, escape or custody violation:	2
Present commitment involves probation, release agreement, or failure to appear violation:	1
Present commitment involves parole, escape or custody violation:	0]
<u>Age at commencement of behavior leading to this incarceration:</u>	
- <u>26 or older and at least one point received in Items A, B or C:</u>	<u>2</u>
- <u>26 or older and no points received in A, B or C:</u>	<u>1</u>
- <u>21 to under 26 and at least one point received in A, B or C:</u>	<u>1</u>
- <u>21 to under 26 and no points received in A, B or C:</u>	<u>0</u>
- <u>Under 21:</u>	<u>0</u>

(E) [Has no admitted or documented heroin or opiate derivative abuse problem: 1
Otherwise: 0]

-Present commitment does not include parole, probation, failure to appear, release agreement, escape or custody violation: 2

-Present commitment involves probation, release agreement, or failure to appear violation: 1

-Present commitment involves parole, escape or custody violation: 0

(F) [Verified period of 3 years conviction free in the community prior to present incarceration: 1
Otherwise: 0]

-Has no admitted or documented heroin or opiate derivative abuse problem: 1

-Otherwise: 0

TOTAL HISTORY/RISK ASSESSMENT SCORE: _____

EXHIBIT B - PART II

Coding Instructions: History/Risk Score

The instructions address the application of the history/risk scoring instrument in most circumstances. Invariably, situations will arise where judgment will have to be exercised. As a general rule, never delete a point when doubt exists, note such doubtful items.

<u>Item</u>	<u>Score</u>
<u>(A) No prior felony or misdemeanor convictions as an adult or juvenile, excepting juvenile convictions prior to age 16 where the conviction did not result in an executed sentence of 90 days or more:</u>	<u>3</u>
<u>One prior conviction:</u>	<u>2</u>
<u>Two or three prior convictions:</u>	<u>1</u>
<u>Four or more prior convictions:</u>	<u>0</u>

(In general, the purpose of this item is to consider previous verified instances of criminal conduct.)

1. Adult Convictions. Count as a prior conviction all adult convictions for criminal acts classed as felonies or misdemeanors under Oregon law. Therefore, do not count public drunkenness, vagrancy, loitering, or traffic infractions. Count convictions in a foreign country for behavior that would be criminal in Oregon.

2. Juvenile convictions. Count juvenile adjudications after age 16 for offense behaviors that would have been crimes if committed by an adult. Count adjudications transpiring prior to the 16th birthday if incarceration results. Do not count status offenses (e.g., runaway, incorrigibility, hitch-hiking, habitual disobedience, truancy, ungovernable juvenile). Do not count any juvenile charge which results in informal probation; however, formal probation and wardship are considered to constitute a conviction providing the foregoing criteria are met.

3. Effective Age. Count as a conviction a finding by a court that a juvenile, who has passed his 16th birthday, while either on probation or parole, has committed a new crime, even though the probation/parole is continued. Count as a new conviction a return to a juvenile facility following a formal finding that criminal behavior occurred.

4. Military Convictions. Count prior convictions for behavior which would constitute a criminal act if committed by a civilian (e.g., assault, theft, disorderly conduct or any general courts marshall conviction. Do not, for example, count AWOL or disrespect to an officer.

5. Convictions Pardoned. Count offenses which have been pardoned on grounds other than innocence. Do not count convictions or adjudications which were set aside or pardoned on the grounds of innocence. Do not count any convictions which have been expunged pursuant to court order.

6. Convictions reversed or Vacated on Constitutional Grounds. Do not count convictions reversed or vacated on constitutional grounds (e.g., that an indigent defendant was deprived of his/her right to counsel). However, it is presumed that a conviction/adjudication is valid unless the evidence is clear that it is not. If a prisoner challenges such conviction, the prisoner should be advised to petition for a reversal of such conviction in the court in which the prisoner was originally tried, and then to provide the Board with evidence of such reversal.

7. Uncounseled Convictions. Do not count convictions if the Presentence Report clearly documents that the defendant neither had counsel nor waived counsel for a particular conviction. Count convictions where the offender chooses to represent himself. If an offender challenges counting an offense on the basis that it was uncounseled, consider the circumstances prior to granting the relief. In weighting the evidence, recent convictions and serious convictions increase the burden on the offender for producing criteria to overcome the presumption that the crime was counseled. If the conviction record is not clear and several years have elapsed, e.g., a marijuana-related crime in 1971 in New Jersey where the disposition is unclear other than recording a \$100 fine, the conviction would be more susceptible to a challenge that it was uncounseled. However, a recent misdemeanor conviction in Oregon would be presumed to be counseled. If the offender fails to raise the issue, failure may be cited to require that the offender produce more evidence, e.g., documentation from the court, that the conviction was uncounseled. If the court makes a finding to the effect that a case was counseled, then the burden of producing evidence is upon the offender.

8. Diversion. Do not count conduct resulting in diversion from the judicial process without a specific finding of guilt (e.g., deferred prosecution, probation without plea).

9. Convictions Now Classed as Infractions. Count as a conviction offenses which were previously misdemeanors or felonies but are now only infractions (e.g., driving under the influence of intoxicants and possession or less than an ounce of marijuana) if the offense occurred at a time when they were sanctioned as a misdemeanor or felony. Driving under the influence of intoxicants or failure to perform the duties of a driver involved in an accident or collision which results only in damage to the property of another shall be treated in accordance with ORS 484.365 in deciding whether it is a conviction.

10. Present Conviction. Do not count the present offense or offenses as prior convictions.
11. Old Prior Record. Do not count prior convictions or commitments under Item A or B if the offender has maintained a conviction free record of ten years in the community immediately prior to the current offense behavior (including time on probation or parole). The ten year period is counted between the date of the last conviction countable under Item A or release from the last commitment countable under Item B (whichever comes last) and the date of commencement of the current offense behavior. Notwithstanding the above, count any homicide or conviction categorized as a 6 even if it is over ten years old and the offender has been crime free. Note: This does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as an aggravating factor. Similarly, a substantial crime free period in the community, not amounting to ten years, may be considered as a mitigating factor.
12. Intervening Probation. When a new conviction occurs while on probation and the new conviction is the basis for the current commitment, the original conviction leading to probation shall constitute a prior conviction, even if the probation is continued or terminated. Notwithstanding 10 above, it does not matter that the probation also results in the current incarceration.
13. Merged Convictions. [~~Convictions arising from the same criminal conduct which have been merged for the purposes of sentencing shall be treated as a single prior conviction.~~] Judicially merged convictions at the time of sentence will be counted as one conviction. However, the nature of the conduct resulting in the convictions will be considered.
14. Documentation. Document the foregoing through official criminal justice system instruments (e.g., court orders, presentence investigations, police and parole/probation officer reports, computerized criminal histories, and other criminal justice systems records). Admissions shall also constitute adequate documentation.

Item

<u>(B) No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile:</u>	<u>2</u>
<u>One or two prior incarcerations</u>	<u>1</u>
<u>Three or more prior incarcerations</u>	<u>0</u>

(In general, this serves to weigh the severity of the prior convictions counted under Item A and documents more serious criminal episodes which have occurred.)

1. Incarcerations and Facilities that Count as Confinement. Count as an incarceration all sentences of 90 days or more which were executed prior to the present commitment. An offender need not serve 90 days or more for a sentence to be executed; an offender need only serve a portion thereof. the deciding criteria is whether the confinement actually was begun. Count as incarceration confinement to a facility if the movement of the person is restricted through social passes and furloughs; the facility need not be of a highly secure nature.
2. Unbroken Incarceration. Do not count an unbroken incarceration twice, even if a new charge results in an additional prison sentence.
3. Current Commitment Counted. Count the current commitment as a prior incarceration if a conviction is received for a new criminal behavior while incarcerated and a new history/risk score is being calculated for the new conviction.
4. Incarcerated While Awaiting Trial. Do not count as an incarceration confinement awaiting trial unless a sentence to time served was imposed.
5. Incarceration Avoided. Count as a prior commitment if a sentence of more than 90 days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal).
6. Non-Criminal Commitments. Do not count juvenile commitments imposed for behavior which is non-criminal if performed by an adult. If the commitment offense is not countable under Item A, then the incarceration shall not be counted under Item B. Indeterminate juvenile incarcerations shall be treated the same as executed sentences of 90 days or more.
7. Incarceration Followed by Probation. Count as a prior incarceration any executed sentence of 90 days or more imposed pursuant to a probation violation even when the present commitment results from a violation of the same probation.
8. Hospital Commitments. Do not count commitments of 90 days or more if the same are imposed only for psychological, psychiatric, or medical observation.
9. Technical Parole Violation. Do not count parole violation commitments if the recommitment is based on a technical violation(s).
10. Old Record. Do not count prior commitments over ten years old if the current commitment follows ten years conviction free in the community (see #11 under Item A).

Item	Score
(C) <u>Verified period of 3 years conviction free in the community prior to present commitment:</u>	<u>1</u>
<u>Otherwise</u>	<u>0</u>

1. Score 1 if the offender has no prior convictions: or if the offender was released to the community from offender's last prior commitment and is conviction free for at least three years prior to commencement of the offender's current offense behavior.
2. Score 0 if there is a conviction within the three years prior to commencement of behavior leading to this conviction or if the offender was confined or on escape status at the time of the current offense.
3. Convictions Counted. For this purpose, count as a conviction only such offenses which would count as a "felony or misdemeanor conviction" under Oregon law under Item (A).

Item	Score
(D) <u>Age at commencement of behavior leading to this incarceration:</u>	
<u>26 or older and at least one point received in Items A, B or C:</u>	<u>2</u>
<u>26 or older and no points received in A, B or C:</u>	<u>1</u>
<u>21 to 25 and at least one point received in A, B or C:</u>	<u>1</u>
<u>21 to 25 and no points received in A, B or C:</u>	<u>0</u>
<u>Under 21:</u>	<u>0</u>

1. Score 2 if the offender was 26 years of age at the commencement of the current offense and at least one point was received under Items A, B or C.
2. Score 1 if the offender was 26 years of age at the commencement of the current offense and no points were received under Items A, B or C.
3. Score 1 if the offender was 21 to 25 and at least one point was received under Items A, B or C.

4. Score 0 if the offender was 21 to 25 years old and no points were received under Items A, B or C.
5. Score 0 if the offender was under 21 at the commencement of the current offense.
6. Age. Use the offender's age at the time the crime was committed unless the offender was initially placed on probation, in which case the offender's age at the time of the behavior leading to revocation should be used.

<u>Item</u>	<u>Score</u>
<u>(E) Present commitment does not include parole, probation, failure to appear, release agreement, escape, or custody violation:</u>	<u>2</u>
<u>Present commitment involves probation, release agreement, or failure to appear violation:</u>	<u>1</u>
<u>Present commitment involves parole, escape or custody violation:</u>	<u>0</u>

1. Probation Violation. Count as a probation violation if the offender was on probation when the misconduct occurred. It does not matter if the probation was continued or terminated. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the person was on probation.
2. Release Agreement Violation. Count as a release agreement violation if an offender committed the present offense while on release, bail or other custody reduction from any legal jurisdiction. If an offender, pursuant to being arrested for the present crime, is granted bail or release on own recognizance and subsequently fails to appear at a time and place specified by a court of legal jurisdiction, a violation is considered to have occurred.
3. Failure to Appear. Count as a failure to appear violation any sentence to the Corrections Division for Failure to Appear. A probation imposed for Failure to Appear, where Failure to Appear transpired following arrest for the present crime, is counted as a Failure to Appear violation.
4. Parole Violation. Count as a parole violation misconduct occurring while on parole. It does not matter whether the parole was continued or revoked nor does it matter in what jurisdiction the parole was imposed. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the offender was on parole.

5. Escape. Count as an escape if serving a sentence for escape. Count as an escape if offender escapes from custody following an arrest. Count escape as a trust violation even if it was not adjudicated.

6. Custody Violation. Count as a custody violation if the present crime or crimes was committed while in custody (e.g., county jail, prison, work release center, probation center, forest camp, terminal leave, temporary leave, social pass). It does not matter whether the offender is awaiting trial or serving an executed sentence, only that the present crime occurred while the person was in custody.

<u>Item</u>	<u>Score</u>
<u>(F) Has no admitted or documented heroin or opiate derivative abuse problem:</u>	<u>1</u>
<u>Otherwise:</u>	<u>0</u>

1. Documentation. Abuse may be documented by admission, diagnosed abuse problem by competent medical or counseling professional, participation in treatment program, preponderance of such evidence as possession, urinalysis, and needle tracts.

2. Determination. Abuse may be determined by any two professionals including but not limited to: parole officers, law enforcement officials, prosecuting attorneys, defense attorneys, or parole analysts. Abuse may also be determined by a judicial finding made in open court.

3. Do not count abuse of a drug other than heroin or an opiate derivative.

4. Do not count as abuse if documentation is over ten years old.

rules

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OREGON ADMINISTRATIVE RULES

BOARD OF PAROLE

CHAPTER 255

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OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 10 — BOARD OF PAROLE

DIVISION 10

ORGANIZATION

Membership

255-10-005 The Board of Parole shall consist of five voting members, appointed by the Governor, and the Administrator of the Corrections Division, who shall have no vote but act as an advisor.

Stat. Auth.: ORS Ch. 144

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

Chairperson; Vice-Chairperson; Selection; Term

255-10-010 The Governor shall select one of the members of the State Board of Parole as chairperson and another member as Vice-chairperson, for such terms as the Governor determines.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 17-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82

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

Chairperson; Vice-Chairperson; Powers and Duties

255-10-015 (1) The chairperson shall have the powers and duties established by law and such powers and duties, in addition to those established by law, necessary for the performance of such office, as determined by the Governor. Such powers and duties shall include, but are not limited to:

(a) Assign voting Board members to panels and designate the presiding members;

(b) Apportion matters to the panels and full Board for decision;

(c) Reassign matters to different panels when required by rule, law, or procedure;

(d) Schedule business meetings and establish the agenda;

(e) Inform the sentencing judge, district attorney, sheriff, or arresting agency of the scheduled release of each prisoner;

(f) Designate members to conduct hearings and reviews.

(2) The vice-chairperson shall have such powers and duties as are determined by the Governor as necessary for the performance of such office.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 17-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82

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

Jointly Adopted Rules: Adoption, Designation, and Changes of Rules With Other Agencies

255-10-020 (1) The Board shall adopt rules jointly with other administrative agencies as required by statute.

(2) The Board may adopt rules jointly with another administrative agency when necessary to implement its own rules.

(3) Rules adopted jointly shall be specifically identified as joint rules with the appropriate agency designated.

(4) Jointly adopted rules shall not be changed without prior notice, consultation, and agreement with the jointly adopting agency.

Stat. Auth.: ORS Ch. 144

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

**OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 30 — BOARD OF PAROLE**

DIVISION 30

PRISON TERM HEARING PROCEDURE

Policy

255-30-002 [2PB 3-1981(Temp), f. & ef. 7-20-81]

Definitions

255-30-005 (1) "Prison term hearing": The hearing given a prisoner within six months of admission to a correctional institution at which the Board establishes a prison term to be served according to the guideline ranges.

(2) "Prison term": The actual amount of time the Board determines a prisoner will serve when it sets a parole release date or chooses not to set a parole release date (i.e., denies parole).

Stat. Auth.: ORS Ch. 144

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

Scheduling, Notice, and Deferral of Prison Term Hearings

255-30-010 (1) Every prisoner initially incarcerated at any institution of the Corrections Division shall be given a hearing for the purpose of establishing a prison term as follows:

(a) A prisoner incarcerated at any institution of the Corrections Division with a sentence of up to one year shall be scheduled for a hearing within two months of admission or as soon thereafter as possible;

(b) A prisoner with a sentence of one to three years shall be scheduled for a hearing within three months of admission or as soon thereafter as possible;

(c) A prisoner with a sentence of over three years shall be scheduled for a hearing within four months of admission or as soon thereafter as possible;

(d) In no case shall a prisoner be scheduled for a hearing more than six months after admission.

(2) The prisoner shall be notified in writing of the hearing and its purpose within a reasonable time of the hearing date.

(3) Prior to making a decision, the Board may continue the hearing for a reasonable period of time, if necessary, to obtain additional information. The continuance may not extend past six months from admission plus 30 days.

Stat. Auth.: ORS Ch. 144

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

Scheduling and Hearing Procedure for Aggravated Murder

255-30-012 (1) Those persons sentenced under ORS 163.095 for aggravated murder shall be seen at a prison term hearing within six months of confinement at a state institution. The Board shall make necessary findings such as history/risk score, aggravation or mitigation and shall establish the maximum period of confinement and first eligibility for a hearing under ORS 163.105(3).

(2) At any time after the minimum period of confinement has been served the prisoner may petition the Board for a hearing. Within a reasonable period of time the Board shall hold a hearing under the provisions of ORS 163.105(3), (4), (5) and (6).

Stat. Auth.: ORS Ch. 144

Hist: 2PB 10-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

Panels: When a Two-Member Panel Conducts a Prison Term Hearing; When Full Board is Required; Procedures for Full Board Decision

255-30-015 (1) Except as provided in this rule, all prison term hearings shall be heard by a panel of two voting members of the Board.

(2) The following cases shall be decided by the full Board (i.e., all five voting members) according to the procedures in rule 255-30-020:

(a) Any cases involving a prisoner sentenced to life imprisonment, 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, sentenced under ORS 161.725 and 161.735 as a dangerous offender;

(b) Whenever a panel recommends a decision to exceed the allowable variation from the matrix permitted to the panel or deny parole;

(c) Whenever a minimum sentence imposed by a judge pursuant to ORS 144.110 exceeds the applicable matrix guideline range in Exhibit C plus the maximum variation from the range shown in Exhibit D;

(d) Whenever a panel or member recommends a decision below a judicially set minimum sentence;

(e) Whenever an extension of a prison term due to institutional misconduct for more than one year is recommended.

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

Stat. Auth.: ORS Ch. 144

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

Procedures for Full Board Decisions

255-30-020 The following procedures shall apply to cases decided by the full Board:

(1) A hearing shall be conducted by the Board with at least a quorum present when:

(a) Setting a prison term for prisoners falling under subsection 255-30-015(2)(a);

(b) The Board considers exceeding the normal variations permitted to the full Board in rule 255-35-035;

(c) The Board considers denying parole, except when denial is because the guideline range exceeds the good time date on a sentence;

(d) Extending a prison term, in any case, for longer than one year.

(2) Prisoners in custody in another jurisdiction may be heard by a conference call or returned to Oregon for the hearing.

(3) If a Board member is not present at a hearing, he/she shall vote after reviewing the record of the hearing.

(4) In all other cases, the Board may:

(a) Circulate the record to be considered with a copy of the proposed action for comment and voting by the individual Board members; or

(b) Decide the matter at a business meeting at which a quorum is present.

(5) A simple majority vote of the Board shall be required to reach a decision except when a vote of four members is required by statute or rule.

Stat. Auth.: ORS Ch. 144

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

Who May Appear at a Parole Board Hearing

255-30-025 (1) The prisoner shall appear at the parole board hearing unless the prisoner waives parole in writing or by refusal to appear. The Board may choose not to set a release

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 30 — BOARD OF PAROLE

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

Notification of Decision: Parties Notified; Content

255-30-055 (1) Following a Board decision, the prisoner, sentencing court, district attorney, Corrections Division, and upon request, the prisoner's counsel shall be notified in writing of the Board action.

(2) Such notification shall state the specific facts and reasons for the Board decision, including the history/risk

score, offense severity rating, range and date set, the specific facts and reasons for a Board decision to go outside the applicable guideline range or to deny parole, and the votes of the individual Board members.

(3) The prisoner shall be given written notice of his/her right to administrative appeal of the decision.

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

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

DIVISION 35

APPLICATION OF THE GUIDELINES
TO ESTABLISH A PRISON TERM

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS Ch. 144

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

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

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

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

(2) Special Situations:

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

(b) Attempt (ORS 161.405) and Solicitation (ORS 161.435) shall be assigned a rating one category less than the criminal activity intended. Conspiracy shall be assigned the same severity as the actual crime except that Conspiracy to Commit Murder shall be classified a six (6) rather than seven (7);

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

(d) When consecutive sentences have been imposed, a rating shall be assigned for each offense, except as provided in rule 255-35-022.

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

Stat. Auth.: ORS Ch. 144

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

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

Board to Make Findings of Fact Regarding Offense Severity; Waiver of Exit Interview; Establishing Conditions of Parole

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

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

Stat. Auth.: ORS Ch. 144

Hist: 2PB 4-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

Criminal History/Risk Assessment

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

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

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 4-1980(Temp), f. & ef. 12-8-80; 2PB 15-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82

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

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

255-35-025 (1) The Board shall establish a prison term by setting a parole release date within the range for the appropriate offense severity rating and history/risk score shown in the guideline matrix, Exhibit C, unless it finds aggravation or mitigation sufficient to justify variation from the range pursuant to rule 255-35-035 or takes action according to section (2) of this rule, or elects to deny parole according to rule 255-35-030.

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

- (a) Up to the statutory good time date on a sentence of one year or less;
- (b) Six months from the statutory good time date on a sentence of more than one year and less than three years;
- (c) Nine months from the statutory good time date on a sentence of three years up to six years;
- (d) Twelve months from the statutory good time date on a sentence of six or more years.

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

Stat. Auth.: ORS Ch. 144

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

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

Parole Denial: When Parole May be Denied; Action by the Full Board Necessary

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

- (a) The offense of commitment included particularly violent or otherwise dangerous criminal conduct as defined by section 255-35-005(6); or
 - (b) The offense was preceded by two or more convictions of a class A or class B felony; or
 - (c) The prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance;
 - (d) The prisoner's guideline range is longer than the statutory good time date on the sentence imposed.
- (2) If a two-member panel decides that parole should be denied, it shall refer the matter to the full Board for consideration with its recommendation.

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

(4) When the Board chooses not to set a parole release date, it shall clearly state on the record the facts and specific reasons for that decision.

Stat. Auth.: ORS Ch. 144

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

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

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

state on the record the facts and specific reasons for its finding:

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

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

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

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

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

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

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

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

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

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

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

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

(b) The maximum allowable variations from a range are shown in Exhibit D.

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

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

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

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 3-1980, f. & ef. 8-15-80; 2PB 4-1981(Temp), f. & ef. 11-4-81; 2PB 15-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 38 — BOARD OF PAROLE

DIVISION 38

DANGEROUS OFFENDERS

Permissible Action: Setting Parole Consideration Hearing Instead of a Release Date, Setting Release Dates and Periodic Reviews

255-38-005 (1) Notwithstanding the provisions of Division 60, the Board shall not set a parole release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender. The Board shall within six months after commitment to the custody of the Corrections set a parole consideration hearing instead of a parole release date as otherwise required by Division 60. The parole consideration hearing shall be at the earliest time the prisoner would be eligible for release. If the condition (e.g., psychiatric or psychological diagnosis of a present severe emotional disturbance, such as severe personality disorder indicating a propensity toward criminal activity) is still present, reviews will be scheduled at least every two years thereafter. If at the parole consideration hearing or a subsequent review the condition is determined to be absent or in remission, the Board shall set a release date or order parole if the prisoner is otherwise eligible under the rules.

(2) The Board shall set a date for a parole consideration hearing within the matrix guidelines in Exhibit C and provisions for variations under rule 255-35-035.

(3) At any hearing or review, the Board shall consider the report of the executive officer of the facility in which the prisoner is confined regarding the prisoner's conduct, attitude, and work record as defined in ORS 144.228(2) and a psychiatric or psychological report received within two months of the hearing:

(a) The Board shall not set a parole release date unless the psychiatric or psychological report reveals that the severe emotional disturbance which has made the prisoner dangerous is no longer present;

(b) If the disturbance is present, the Board may defer release to a specified future time or deny parole under rule 255-35-030.

(4) Notwithstanding the above, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner believes that he is no longer dangerous, request a parole consideration hearing. Should the Board find based upon the request that there is a reasonable cause to believe the dangerous condition is in remission, the Board shall order a parole consideration hearing pursuant to the above procedures. Applications received more often than every two years will carry a greater burden in establishing that the request is reasonable.

(5) Support for the application from the superintendent of the institution in which the prisoner has been confined under section (4) of this rule, shall be considered reasonable cause pursuant to section (4) of this rule.

(6) The Board shall consider at the parole consideration hearing a report pursuant to ORS 144.228 from the Executive Officer of the penal or correctional institution in which the prisoner has been confined.

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

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 9-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 40 — BOARD OF PAROLE

DIVISION 40

**REVIEWS, REOPENING CASES, AND
REDUCTIONS IN PRISON TERMS**

Scheduling of Periodic Reviews

255-40-005 (1) Periodic reviews shall be conducted after the prisoner has served five years of his prison term and every three years thereafter, starting with the date the prisoner's sentence begins to run.

(2) Prisoners convicted of murder shall be seen as required by statute.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 14-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82

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

Procedure for Periodic Reviews

255-40-010 An interview shall be conducted by one or more voting members of the Board. In the event an interviewer determines that modification of the prison term is appropriate, the matter shall be referred with recommendations to the full Board for review. No other action shall be taken by the interviewer.

Stat. Auth.: ORS Ch. 144

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

Purpose

255-40-015 Periodic reviews shall be conducted to determine if anything exceptional has occurred that would warrant a reduction in the prison term.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-979, f. & ef. 2-1-79

Reopening Cases: When; What Showing is Necessary

255-40-020 The Board may reopen any case for reconsideration upon formal written request of a prisoner to the chairperson or motion of a Board member if:

(1) Substantial new information which was unknown at the time of the prison term hearing or could not be contemplated at that time has been received;

(2) Substantial information that a prisoner, or any other person, willfully concealed or misrepresented information material to a prior Board action has been received;

(3) Statutory changes have reclassified the criminal conduct involved (e.g., reduction of certain categories of murder to manslaughter, creation of degrees of manslaughter);

(4) Rule changes have resulted in a shorter range;

(5) Clerical error is established. In cases where the error is obvious and the result of correction will be to the prisoner's benefit, the Board may take administrative action by file pass to correct the error. The prisoner shall be notified in writing of Board action. If the Board intends to take action which would be adverse to the prisoner, the Board shall reopen the hearing at the request of the inmate.

(6) The Board shall state the specific reasons for denial of a request to reopen a hearing.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80; 2PB 1-1981, f. 1-20-81, ef. 2-15-81; 2PB 14-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82

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

Reductions in Prison Terms: Effect of Minimum Terms; Criteria; Limitations

255-40-025 (1) An established prison term as defined in section 255-30-005(2) may be reset to an earlier time upon application for review to the chairperson of the Board and after concurrence of a voting majority of the Board, unless the prisoner has a statutory minimum term for murder. Parole release date resets falling below a judicially imposed minimum sentence shall require concurring votes of four members:

(a) Reductions in prison terms will ordinarily be granted only in cases where a prisoner can show an extended course of conduct indicating outstanding reformation. Cases will be determined on individual merits; however, the usual criteria will include:

(A) A five-year period of good conduct; and

(B) Demonstrable achievement in dealing with problems present at incarceration and associated with criminal conduct (e.g., psychological disorder, drug or alcohol dependency, lack of educational or vocational skills).

(b) A prisoner's exercise of recognized constitutional rights or legitimate use of legal process shall not be construed as lack of good conduct;

(c) Cooperation with authorities is not sufficient in itself to justify a reduction;

(d) Reductions in prison terms may be considered where the prisoner is suffering from a terminal illness or a unique opportunity is available and the reduction of the prison term is not excessive.

(2) Overall, reductions shall be limited to a maximum of 20% of the prison term under review unless a majority of the Board approves a further reduction:

(a) Reductions shall customarily be considered at periodic reviews under rule 255-40-005;

(b) Special requests for reduction supported by the superintendent which do not coincide with the periodic interviews shall be scheduled for a hearing or considered by file pass at the discretion of the chairperson.

(3) A recommendation shall be requested from the institution superintendent by the prisoner. Requests for reductions shall be accompanied by the superintendent's recommendation.

(4) The prisoner shall have the burden of establishing that his/her conduct meets the criteria for a date reduction.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-979, f. & ef. 2-1-79; 2PB 14-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82

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

Who May Appear

255-40-030 (1) No person, other than the prisoner, shall appear in the prisoner's behalf unless the prisoner is incapable of presenting his/her position due to illiteracy, language barriers, or lack of mental capacity. Assistance will be provided to prisoners meeting these criteria by persons recommended by the institution superintendent and appointed by the chairperson of the Board.

(2) The prisoner may waive the personal appearance in writing or by voluntary absence from the institution.

Stat. Auth.: ORS Ch. 144

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

Notice; Disclosure; Record

255-40-035 The notice, disclosure, and record making provisions of Division 30 shall apply to all hearings and interviews in this Division.

Stat. Auth.: ORS Ch. 144

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

**OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 50 — BOARD OF PAROLE**

DIVISION 50

**EXTENDING A PAROLE RELEASE
DATE FOR SERIOUS MISCONDUCT**

Procedure for Extension of Parole Release Dates; Required Recommendations and Guidelines; Classification of Conduct; Amount of Time; When Parole Release Date is Set; If After Parole Ordered

255-50-005 A parole release date may be reset to a later date for serious misconduct according to the following procedure:

(1) The institution disciplinary committee or the Corrections Division Hearings Officer may recommend an extension of a prisoner's parole release date as a disciplinary sanction;

(2) Recommendation to extend a parole release date shall be made according to the following guidelines:

(a) The prisoner must be given an opportunity for a disciplinary hearing and have been found to have violated an adopted rule governing conduct. The recommendation must be approved by the institutional superintendent or Regional Manager and the Administrator of the Corrections Division before the Board can consider an extension;

(b) In no instance shall an extension of a parole release date be recommended unless all other disciplinary options have been specifically considered and deemed to be, individually and in combination, inadequate to the seriousness of the misconduct in terms of the following factors:

(A) Effectiveness of the sanction as a disciplinary measure, both to the prisoner and to the general prisoner population;

(B) Degree of hazard posed by the misconduct to human health and/or life, facility security, or to property;

(C) Seriousness of the misconduct had it been committed in the wider community;

(D) Circumstances of the misconduct; and

(E) The prisoner's prior record of conduct.

(3) A parole release date shall not be extended unless the misconduct can be classified within one of the four following categories. The extension must be set within the range for the category of misconduct unless the Board finds aggravation or mitigation based on those factors listed in rule 255-35-035, Exhibit E. If a basis for aggravation or mitigation is found by the Board, the maximum variation allowed to a majority of the Board would be 25 percent of the sanction recommended. Any greater variation than 25 percent or resets in excess of two years will require concurrence by at least four voting members of the Board. (See Table 1 at the end of this division);

(4) When the amount of time recommended for the parole release date extension exceeds the prisoner's sentence or statutory good time date, the effect is to deny parole. An extension in the parole release date may not be beyond the prisoner's maximum statutory release date;

(5) If serious misconduct occurs before a prisoner's parole release date has been set and an extension of the parole release date would be justified, the term for misconduct will be added to the release date at the time of the misconduct;

(6) If serious misconduct occurs after a parole has been ordered and an extension of the parole release date would be otherwise justified, the chairperson of the Board may take immediate steps to suspend release and order a rescission hearing to consider resetting the release date upon receiving notice from an institution superintendent, Regional Manager, or a Board member;

(7) Upon recommendation of the disciplinary committee or hearings officer, the Board may suspend imposition of the reset subject to a period of acceptable conduct.

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

Reset Procedures: Hearing by Board; Board Action

255-50-010 (1) When the Board is notified by the Administrator of the Corrections Division that an extension of a prisoner's parole release date has been recommended, a duly constituted panel of the Board shall conduct a hearing to determine whether the misconduct was serious:

(a) The prisoner shall be given notice of the hearing and its purpose; the provisions of Division 30 as to appearance, disclosure, and record shall apply;

(b) A prisoner may waive his/her right to appear in writing or by voluntary absence from the institution;

(c) A prisoner may not relitigate facts which he/she has had a full opportunity to contest and have been decided against him/her in another forum.

(2) Serious misconduct is misconduct which the Board classified within one of the four categories listed in rule 255-50-005.

(3) The Board may request the prisoner be given another hearing before the disciplinary committee originating the recommendation for reset, or choose not to extend a parole release date if the Board does not find that all other disciplinary options are inadequate to the seriousness of the misconduct, considering the following factors:

(a) Effectiveness of the sanction as a disciplinary measure, both to the inmate and to the general institution population;

(b) Degree of hazard posed by the misconduct to human health and/or life, institution security, or to property;

(c) Seriousness of the misconduct had it been committed in the wider community;

(d) The prisoner's prior record of conduct.

(4) The Board may continue the reset hearing and order a psychiatric examination when it appears that a severe emotional disturbance is present. If there is a psychiatric or psychological diagnosis of present severe emotional disturbance, the Board may defer release to a specified future date. In choosing not to set a parole release date, rule 255-35-025 shall control.

(5) If the Board resets a parole release date, the prisoner shall be given:

(a) A written statement of the facts and specific reasons for the decision, including the individual votes of the Board members; and

(b) Notice of the right to administrative appeal under Division 80.

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

Rescission of Parole: Hearing; Suspension of Release

255-50-015 (1) The chairperson may, on his/her own motion or upon notification by the Chief of Release Services, suspend the release date of a prisoner when there is reason to believe the person has engaged in serious misconduct. Suspension shall be for such time as is reasonably necessary to conduct the rescission hearing and make a decision.

(2) The Board may rescind a parole after it has been ordered but prior to release from custody based upon the written findings of either the institution disciplinary committee or a hearing conducted at the order of the Chairperson. The Board shall also consider the recommendation for disposition provided by the institution superintendent, Regional Manager, Parole Board members or Parole Board Hearings Officer. Action to rescind parole shall be taken by a panel of the Board.

(3) The Board may rescind a parole after it has been ordered and after release from custody when the Board is informed of reasonable grounds to believe a person has violated a law prior to the parole release date and knowledge of the law violation was not known by the Board on the date of

**OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 60 — BOARD OF PAROLE**

DIVISION 60

PAROLE RELEASE

Parole Release Interviews: Purpose; Review of Parole Plan; Procedure if Plan is Inadequate; Maximum Deferred and Scheduling

255-60-005 (1) At any time prior to ninety (90) days of the scheduled release on parole of any prisoner, the Board, on its own initiative or at the request of the Corrections Division, may conduct an exit interview to review the parole plan, the prisoner's psychiatric or psychological report, if any, and the record of the prisoner's conduct during confinement. The Board may order, pursuant to ORS 144.125, any psychiatric or psychological reports held by the division not endorsed by the examiner in a manner to preclude disclosure.

(2) Exit interviews shall be conducted by one or more voting members of the Board. The purpose of the interview shall be to examine the prisoner's parole plan, his/her psychological report, if any, and the record of his/her conduct during confinement. If information available to the Board is deficient or unverified, the interviewer may continue the interview and hold the record open for a period up to ninety (90) days. In no case shall an exit interview be continued past the scheduled release date unless the Board takes action under sections (3), (4) or (5) of this rule to defer release in accordance with ORS 144.125.

(3) The interviewer shall examine the prisoner's plans for residence, employment, or other situation in the community to determine whether the parole plan is adequate:

(a) An acceptable plan may include employment, school, or other situation (e.g., retirement income), and verifiable residence; it may require treatment programs and prescribed medication;

(b) If any portion of the plan is deficient or unverified, the Board may order deferred release to a verified plan approved by a panel, or to a plan approved by the Administrator of the Corrections Division;

(c) Parole release may be deferred up to (ninety) 90 days from the parole release date when a plan is deficient or unverified in order to obtain verification of a satisfactory plan from the Corrections Division. A report shall be presented to the Board after sixty (60) days by the Corrections Division, according to its letter of agreement with the Board;

(d) A prisoner requesting an out-of-state parole waives the ninety (90) day limitation on postponements for developing an adequate parole plan.

(4) If the record indicates that a psychiatric or psychological condition of severe emotional disturbance, such as to constitute a danger to the health or safety of the community, is present, the Board may order the postponement of the scheduled parole release until a specified future date or until the prisoner or institution presents evidence that the emotional disturbance is over or in remission:

(a) In determining if a severe emotional disturbance exists, the Board may order a psychiatric or psychological evaluation;

(b) If ordered, the psychiatric or psychological evaluation shall be conducted to determine if a severe emotional disturbance exists and the prisoner's potential for rehabilitation. An evaluation shall be provided which may consist of a diagnostic study, including a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural, social and environmental factors which bear on the individual's handicap to employment and rehabilitation potential, and, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes, and interests, personal and social adjustments, employment

opportunities, or other pertinent data helpful in determining the nature and scope of services needed. The evaluation should include recommendations for treatment or medication if necessary to assist in the rehabilitation of the prisoner or to protect the health and safety of the community. After considering the evaluation, the panel may require that the prisoner develop a plan with provisions which are recommended in the evaluation and specific evaluations of emotional stability;

(c) The Board may not deny release on parole solely because of a prisoner's severe emotional disturbance. Should the prisoner be diagnosed as a danger to himself or others or unable to provide for the basic personal needs necessary for his health or safety, the Board may initiate the civil commitment procedure as provided in ORS Chapter 426.

(5) If the prisoner has engaged in serious institutional misconduct, a hearing shall be conducted by the Board to consider deferring the parole release date. The procedure for hearings in Divisions 30 and 50 shall apply.

(6) In all cases involving deferral or postponement of the parole release date, the Board shall clearly state the facts and specific reasons for its decision. The individual votes of the Board members shall be listed.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80; 2PB 1-1981, f. 1-20-81, ef. 2-15-81; 2PB 8-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

Waiver of 90-Day Limitation; Deferral for Serious Misconduct

255-60-010 (1) A prisoner requesting an out-of-state parole waives the ninety (90) day limitation on postponements for developing an adequate parole plan.

(2) If the prisoner has engaged in serious institutional misconduct, the provisions of Division 50 shall apply.

(3) The Board shall clearly state the facts and specific reasons for its decision. The individual votes of the Board members shall be indicated.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1980, f. & ef. 5-20-80; 2PB 1-1981, f. 1-20-81, ef. 2-15-81; 2PB 8-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

Instate Parole Release Interview Procedures

255-60-015 (1) Notice: At a reasonable time prior to a parole release interview, the prisoner shall be notified at his/her place of confinement of the scheduled parole release interview and shall be advised that information may be provided to the Board in writing or by persons sending written information to the Board.

(2) Disclosure of information considered by the Board shall be governed by Division 30.

(3) The prisoner shall receive notice of the interview results, including the facts and specific reasons for the decision and the individual votes of the Board members.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 8-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 65 — BOARD OF PAROLE

DIVISION 65

RESTITUTION

When Restitution is Ordered Upon Parole Release: Establishing a Payment Schedule; Limitations

255-65-005 When a person has been sentenced pursuant to ORS 137.106 to pay restitution for a crime committed after October 4, 1977, and any portion of that payment is deferred until after release from imprisonment, the Board shall establish a schedule of payments:

(1) In establishing and supervising a schedule of payments, the Board shall consider:

(a) The prisoner's financial resources, including salary, savings, and liquid assets;

(b) The burden that it will impose in light of the person's overall obligations (e.g., family and necessary living expenses);

(c) Ability to pay on an installment or other conditional basis;

(d) The rehabilitative effect of the payment and the method of payment.

(2) Normal payments shall range from 10 to 20 percent of a person's take-home salary without voluntary payroll deductions, unless significant savings or liquid assets permit larger amounts;

(3) The Board shall provide to the sentencing court a copy of the schedule of payments and any modifications thereof.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 6-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

Sentence Including Restitution as Mitigation

255-65-010 Restitution is a form of punishment which requires an offender to assume responsibility for his/her criminal conduct by assuming the costs of compensating the actual victim of the crime, or the state when it has provided compensation to the victim, under ORS 147.005 to 147.365. The Board shall consider a sentence to pay restitution after a term of imprisonment as mitigation in setting a parole release date.

Stat. Auth.: ORS Ch. 144

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

Supervision of Payments; Conditions of Parole; Default by Parolee; Effect on Discharge

255-65-015 (1) Payment of restitution shall be included as a special condition of parole:

(a) Any applicable schedule shall be clearly stated on the Order of Parole;

(b) Payments shall be made to the clerk of the court of the county of sentencing, or as directed by the Board;

(c) The method and manner of payment shall be supervised by the individual's parole officer.

(2) When a parolee defaults on any scheduled payment, the supervising parole officer shall notify the Board. The default shall be grounds for revocation of parole unless the parolee shows:

(a) The default was not due to an intentional refusal to make the payment;

(b) The default occurred despite a good faith effort to make the payment.

(3) If payment of restitution has not been completed by the parolee's tentative discharge date, the parolee shall be continued on parole until completion of payment or the expiration of his/her sentence, whichever is first.

(4) The Board shall provide to the sentencing court a copy of the discharge of parole in cases where restitution has been ordered.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 6-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

Establishment of Supervision Fees; Criteria; Disbursement of Fees

255-65-020 (1) When a person is placed on parole, subject to supervision by either the Corrections Division or a community corrections program established under ORS 423.500 to 423.560, the person shall be required to pay a monthly fee to offset costs of supervising parole. The fee shall be \$10 unless a greater fee is recommended by the supervising officer and approved by the Board using the same criteria set forth in rule 255-65-005(1)(a), (b) and (c). In no case shall the fee be less than \$10 per month.

(2) The fee established pursuant to section (1) of this rule shall be a condition of parole and intentional and willful failure to pay such fee shall be grounds for revocation of parole or extension of the supervision period.

(3) In cases of financial hardship or when otherwise advisable in the interest of the released person's rehabilitation, the community program director or the Assistant Director of Corrections, whichever is appropriate, may waive the payment of the fee in whole or in part.

(4) Fees collected shall be transferred to the Corrections Division or retained by the county as provided by statute.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 6-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

**OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 75 — BOARD OF PAROLE**

DIVISION 75

**PROCEDURES FOR
REVOCAION OF PAROLE**

Hearing Requirement: Time; Place; Presiding Officer

255-75-005 Before the Board can revoke parole, it shall conduct a hearing according to the procedures in this Division:

(1) The hearing shall be held within a reasonable time after the Board is notified of the alleged violations and reasonably near the place of the alleged violations or the place of confinement;

(2) The hearing may be conducted by a Parole Board Hearings Officer.

Stat. Auth.: ORS Ch. 144

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

Method of Hearing; Utilization of Conference Call Hearing; Objections to Conference Call Procedure; Determination of Situation Requiring On-Site Hearings

255-75-006 All hearings under Division 75 shall be conducted by conference telephone call. Exceptions to the rule will be made only in the following situations:

(1) Where the alleged violations are contested and there is an affirmative showing by either the parolee or his/her attorney that credibility of the witnesses, including observation of their demeanor, would be a primary issue for determination by the Hearings Officer;

(2) Physical exhibits are to be made a part of the record and viewing of the exhibits would be essential in determining whether a violation of parole has occurred;

(3) At the discretion of the Hearings Officer in situations not covered by either sections (1) or (2) of this rule.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 7-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

Board Action Upon Notification of Alleged Parole Violation: Criteria for; Release of Parolee Pending Hearing

255-75-010 (1) When the Board is informed of reasonable grounds to believe a person has violated the conditions of his/her parole and that revocation of parole may be justified, the Board may:

(a) Suspend parole and order the parolee arrested and detained pending a parole revocation hearing;

(b) Suspend parole pending a parole revocation hearing without detaining the parolee;

(c) Continue parole and order a parole revocation hearing.

(2) In determining whether to allow a parolee to remain in the community pending the parole revocation hearing, the Board shall consider:

(a) The risk presented by the parolee in light of the nature and seriousness of the allegations;

(b) The risk of the parolee absconding or failing to appear for the hearing;

(c) The availability of bail when applicable;

(d) The availability of resources or special situations in the community, including employment or school, evaluation or placement in a treatment program, medical emergencies or work release;

(e) Any recommendation by the parole officer.

Stat. Auth.: ORS Ch. 144

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

Procedures When Parolee is in Another Jurisdiction: Return of Parolee; Hearing Requirement

255-75-015 (1) The Board may suspend a parole and order the parolee's return to prison in Oregon without first conducting a hearing when:

(a) The parolee has left the state to which he/she was paroled without permission and is in custody in another jurisdiction;

(b) The parolee is in federal custody;

(c) The parolee has absconded from supervision and his/her whereabouts are unknown;

(d) The parolee has been convicted of a new crime in another jurisdiction.

(2) After the parolee is returned to prison in Oregon, he/she shall be given a parole revocation hearing according to the provisions of this division.

Stat. Auth.: ORS Ch. 144

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

Rights of a Parolee at a Formal Hearing

255-75-020 The parolee shall have the rights listed in ORS 144.343(4) at a parole revocation hearing.

Stat. Auth.: ORS Ch. 144

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

Notice of Alleged Parole Violation and Hearing

255-75-025 (1) The parolee shall be given written notice, as required by ORS 144.343(3), within a reasonable time before a hearing which may result in revocation of parole.

(2) Notice shall be given at a personal interview with the parolee or by other means which will assure that the parolee has received and understood the required notice.

Stat. Auth.: ORS Ch. 144

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

Waiver of Parole Revocation Hearing: When; Rejection of Waiver; Record Submitted to Board When Hearing Waived

255-75-030 (1) After receiving notice and a full explanation of his/her rights, a parolee may waive the parole revocation hearing and the rights provided in rule 255-75-025. The parolee may submit a statement to the Board to accompany his/her waiver.

(2) If the Board is not satisfied that the waiver was made knowingly and intelligently or if it believes more information is necessary before making its decision, it may order a hearing.

(3) The record submitted to the Board shall consist of:

(a) Notice forms properly executed;

(b) A statement by the parolee that he/she has waived a parole revocation hearing and understands the significance of that waiver;

(c) Evidence supporting the alleged violations; and

(d) Any statements made by the parolee.

Stat. Auth.: ORS Ch. 144

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

Appointment of Counsel: Criteria; Case by Case; Affidavit of Indigency

255-75-035 (1) If requested, the Board shall appoint counsel to represent indigent parolees at parole revocation hearings if the parolee makes a timely and colorable claim that:

(a) He/she has not committed the alleged violation; or

(b) There are substantial complex mitigating circumstances which make revocation inappropriate even if violation is admitted or a matter of record; or

(c) The parolee appears incapable of speaking effectively in his/her behalf.

**OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 75 — BOARD OF PAROLE**

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

Record of Parole Revocation Hearing

255-75-060 (1) A record shall be made of the parole revocation hearing, including all evidence received and considered and a manual or mechanical recording of all oral testimony and presentations.

(2) The record shall include evidence presented at the parole revocation hearing. Upon request, the presiding officer may hold the record open for a specified period of time to receive further evidence deemed material to the proceeding.

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

Hearings Officer's Report: Content; Copy to Parolee; Ten-Day Waiting Period for Parolee's Arguments and Exceptions

255-75-065 (1) After the hearing, the record of the hearing shall be given to the Board along with the report of the Hearings Officer, which shall include:

- (a) Grounds for denial of a request for Board-appointed counsel, if applicable;
- (b) Findings of fact;
- (c) A recommendation as to disposition of the case, with reasons for the recommendations; and
- (d) A proposed order;
- (e) The report may also include any exhibits submitted and a summary of the record.

(2) Within a reasonable time after the hearing, the Hearings Officer's report shall be provided to the parolee. Unless the right is waived, the parolee shall have 10 days from the date the report is mailed to make written exceptions and arguments to the report for the Board's consideration.

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

Final Action by the Board: Quorum to Decide; Final Order; Notice of Decision

255-75-070 (1) The Board shall consider the record, Hearings Officer's report, and exceptions and arguments. A quorum of the Board shall enter a final order including findings of fact, the decision, reasons for the decision, and the individual votes of the Board members. The Board may choose to adopt the findings and recommendation with reasons of the Hearings Officer as its own when entering the final order.

(2) A copy of the final order shall be forwarded to the parolee with notice of his/her right to administrative review under Division 80 of these rules and judicial review under ORS 144.335.

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

Parolees Convicted of a New Crime in Another Jurisdiction: Return; Jurisdictional Reinstatement

255-75-075 If a parolee has violated his/her parole as a result of a conviction of a new crime in another jurisdiction and has been sentenced to a term in prison, the Board may:

(1) Suspend parole and order the parolee returned to Oregon for a parole revocation hearing after serving the new sentence; or

(2) Reinstate parole to the prison sentence in the other jurisdiction in order to consolidate jurisdiction over the parolee and allow the Oregon sentence to run concurrently. Reinstatement under these circumstances is not a recommendation for parole release.

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

Reinstatement Based on Time Served: Necessary Findings by Board; Effect on History/Risk Score

255-75-080 (1) If the Board finds that a parolee has committed a violation of parole conditions which is sufficiently serious to require revocation of parole and the time the parolee has spent in custody pending final action on the parole revocation hearing is an adequate punishment for the violation, the Board may reinstate parole.

(2) Reinstatement of parole under this rule shall be counted as a parole failure in computing a criminal history/risk assessment score under rule 255-35-015.

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

Authority of Revocation Panel to Set New Parole Release Date for Parole Violators

255-75-082 [2PB 7-1981(Temp), f. & ef. 11-4-81]

Future Disposition Hearing: Procedures; Scheduling; Board Action

255-75-085 (1) After parole is revoked, the Board shall conduct a hearing to establish future disposition of the prisoner within 90 days after his/her return. This hearing shall follow the procedures of a prison term hearing as provided in Division 30.

(2) At the future disposition hearing, the Board may:

(a) Set a new parole release date according to the guidelines in rule 255-75-085 and choose not to give credit for statutory good time earned until suspension of parole; or

(b) Deny further parole consideration, according to the guidelines in rule 255-75-090, and return all or part of the statutory good time to which the prisoner is entitled.

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

Guidelines for Re-Release of Parole Violators: Technical Violators; New Convictions; Denial of Further Parole

255-75-090 (1) Parole violators returned with a technical violation and no prison commitment for a new conviction shall be given an additional prison term based on the following guidelines:

(a) If the violations did not involve a finding at the parole revocation hearing of new criminal activity, the prisoner shall serve from four to eight months unless the Board decides that the aggravation or mitigation found at the parole revocation hearing is sufficient to justify variation from this range. Variation shall not exceed two months without concurrence of at least four voting members of the Board;

(b) If the violation involved a finding at the parole revocation hearing that new criminal activity has occurred, the prisoner shall serve from eight to 12 months unless the Board decides that the aggravation or mitigation found at the parole revocation hearing is sufficient to justify variation from this range. Variation shall not exceed four months without concurrence of at least four voting members of the Board;

(c) Usual, but not exclusive, factors in aggravation and mitigation are shown in Exhibit G. When applicable, the factors shown in Exhibit E may be consulted;

(d) In setting a re-release date, the Board may consider the seriousness of the parole violator's original offense and history/risk score.

(2) Parole violators returned with a new prison commitment shall be given a prison term according to the guidelines in Division 35:

(a) A history/risk score reflecting the new conviction shall be calculated. When applicable, the original conviction and incarceration and the parole failure shall result in lost points;

(b) If the sentence on the new conviction is imposed consecutive to the original commitment offense, the provisions

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 80 — BOARD OF PAROLE

DIVISION 80

ADMINISTRATIVE APPEAL

Method of Appeal

255-80-005 (1) Administrative appeal may be requested by a prisoner or a Board member. If the chairperson of the Board determines the request is consistent with the Board's criteria as defined in rule 255-80-010, the chairperson shall order an Administrative Review by the original panel, where practical, either by file pass or a hearing.

(2) When the chairperson was a member of a panel from which an appeal is generated and finds the request does not meet the Board's criteria, he/she shall refer the matter to a member who was not on the panel for review. In such case, that member may concur or call for a rehearing.

(3) The chairperson shall inform the prisoner in writing of the specific reasons for denial of the appeal and leaving the prior decision in effect.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-979, f. & ef. 2-1-79; 2PB 11-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82

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

Criteria for Appeal

255-80-010 The criteria for meritorious appeal are:

(1) The Board action is not supported by the written findings, or the written findings are inaccurate; or

(2) Pertinent information was available at the time of the original hearing which, through no fault of the prisoner, was not considered; or

(3) The action of the Board is inconsistent with its rules or policies or is contrary to law; *and*

(4) The matters raised on appeal may have an effect on the original decision.

Stat. Auth.: ORS Ch. 144

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

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 90 — BOARD OF PAROLE

DIVISION 90

DISCHARGE

Definitions

255-90-001 (1) "Active Parole Supervision": supervision requiring periodic contact with the supervising officer or monitoring by supervising officer to assure that parolee has committed no new crimes or monitoring by supervising officer to assure repayment of a restitution amount.

(2) "Intensive Parole Supervision":

(a) Supervision requiring at least monthly contact with the supervising officer; or

(b) Monitoring of parole by the supervising officer to assure adherence to special conditions of parole by the parolee which are by direction of the Board and not left to the discretion of the supervising officer.

(3) "Major Technical Violation": A violation of a parole condition involving the possession of a weapon or firearm, absconding supervision by leaving the state of Oregon without permission, a new law violation not resulting in a new felony sentence, or a finding pursuant to a hearing conducted under Division 75 that new criminal activity has occurred which would constitute a class "A" misdemeanor or felony.

(4) "Minor Technical Violation": "Violations" as described by ORS 161.565 and 161.575 and all parole violations except major technical violations and law violations.

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

Stat. Auth.: ORS Ch. 144

Hist: 2PB 5-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

Discharge of Parolees

255-90-002 (1) Pursuant to ORS 144.310 the Board shall establish a discharge date from active supervised parole. The period of supervised parole shall be as shown in the guideline matrix, Exhibit H-1, unless the Board provides written reasons for an extended supervision period. Extended supervision periods shall not exceed thirty-six (36) months.

(2) Notwithstanding section (1) of this rule, active supervision, shall extend until expiration of the sentence if restitution remains unpaid.

Stat. Auth.: ORS Ch. 144

Hist: 2PB 2-1980, f. & ef. 5-20-80; 2PB 1-1981, f. 1-20-81, ef. 2-15-81; 2PB 5-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

Period of Time to Serve on Supervised Parole

255-90-003 (1) The guidelines set forth in Exhibit H-1 shall govern the establishment of discharge dates. The date shall be set at the prison term hearing, periodic review, or rescission action and shall be written on the Order of Parole. For discharge to be effective, the parolee must display acceptable parole performance as indicated by Exhibit H-1 during the term of active parole supervision.

(2) During the pendency of any parole violation proceeding, the running of the parole period is stayed and the Board shall retain jurisdiction over the parolees until the proceedings are resolved.

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

Stat. Auth.: ORS Ch. 144

Hist: 2PB 2-1980, f. & ef. 5-20-80; 2PB 1-1981, f. 1-20-81, ef. 2-15-81; 2PB 5-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82

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

Effective Date of Discharge

255-90-005 When discharge is granted by the Board prior to the maximum expiration date of the paroled prisoner's sentence, the discharge shall not be considered effective until the certificate of discharge is received by the paroled prisoner.

Stat. Auth.: ORS Ch. 144

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

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

Procedure: Approving and Denying Discharge; Further Proceedings

255-90-010 (1) A minimum of 30 days prior to the discharge date on the Order of Parole, the supervising parole officer shall send to the Board a supervisory report. This report shall recommend one of two courses:

(a) That the parolee be discharged;

(b) That the discharge not be granted;

(A) In this case, the supervisory report shall contain information showing why discharge is not warranted and recommend a new discharge date in accordance with OAR 255-90-015.

(B) The case shall receive a Board review;

(C) After consideration of the parole officer's recommendation, the Board shall either discharge the parolee or issue a written explanation for denial of the request.

(D) The supervising officer shall either notify the parolee of the new discharge date and reasons or notify the parolee in writing that he has been discharged.

(2) If the Board desires further information on which to base its decision, it may conduct a hearing according to the procedures in Division 75.

(3) Notwithstanding section (1) of this rule, the supervising officer may submit a recommendation with written reasons for early conditional discharge at any time after six months supervised parole.

Stat. Auth.: ORS Ch. 144

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

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

Extension of Parole Discharge Dates

255-90-015 (1) In addition to the power of the Board to revoke parole, it may extend a discharge date one time for six months without a hearing and thereafter up to a one year period if the Board finds, after a hearing pursuant to Division 75, that the parolee has violated the conditions of parole.

(2) Nothing contained in this rule shall be interpreted to preclude more than one extension of a discharge date by the Board. However, no extension of parole shall exceed the maximum term of sentence imposed by the court.

OREGON ADMINISTRATIVE RULES
CHAPTER 255, DIVISION 95 — BOARD OF PAROLE

DIVISION 95

MISCELLANEOUS

Uniform Presentence Report

255-95-005 (1) The Advisory Commission on Prison Terms and Parole Standards shall propose to the Board and the Board shall adopt rules establishing a uniform presentence report form.

(2) Presentence reports shall be prepared according to the format outlined in Exhibit I.

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

Stat. Auth.: ORS Ch. 144

Hist: 2PB 1-1979, f. & ef. 2-1-79; 2PB 1-1982, f. & ef. 5-19-82