

Black Binder

Board Rules

May 1988 - 1989

JK

5-19-58

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

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

on May 16, 1988

to become effective

May 19 2 18 PM '88

May 19, 1988

(Date)

SECRET
STATE

The within matter having come before the Board of Parole

(Agency)

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:

Notice of Intended Action published in OAR Bulletin: NO YES Date Published: April 1, 1988

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken:

(List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

PERM or TEMP.

ADOPT: 255-01-060, 255-05-005, 255-20-020, 255-25-030,
255-30-023, 255-35-018, 255-35-021, 255-38-010,
255-40-026, 255-40-028, 255-40-040, 255-50-013,
255-50-025, 255-60-030, 255-70-015, 255-75-004,
255-75-098, 255-75-100, 255-80-015.

AMEND: 255-01-005, 010, 016, 020, 255-10-005, 015,
255-15-002, 005, 010, 015, 255-20-005, 010, 015,
255-25-005, 010,
255-30-010, 013, 015, 021, 025, 027, 035, 040, 055,
255-32-010, 015, 025, 035, 040, 255-35-013, 016, 020, 025, 030,
255-38-005, 255-40-005, 010, 020, 025, 035,
255-50-005, 010, 015, 016, 255-60-006, 020,
255-65-005, 015, 020, 255-70-001,
255-75-002, 003, 005, 006, 007, 015, 020, 026, 030, 031, 035, 036, 04
2, 045, 046, 055, 056, 065, 070, 075, 078, 080, 085, 090, 095, 096,
255-80-005, 010, 255-90-002, 003, 010, 255-92-030, 040,
255-95-005.

REPEAL: 255-10-010, 020, 255-15-020, 030, 255-25-015, 020, 025,
255-30-005, 020, 030, 040, 050, 056,
255-35-005, 010, 015, 024, 035, 255-65-010, 255-70-010,
255-75-001, 076, 255-92-010.

Administrative Rules of the Board of Parole

(Agency)

DATED this 19th day of May, 19 88

By:

(Authorized Signer)

Title: Chairman, Board of Parole

Stat. Authority: ORS Chapter 144.

Notes:

Statement of Need Attached:

Fiscal Impact Attached:

378-2334

BEFORE THE
OREGON STATE BOARD OF PAROLE

In the Matter of the Amending)
of the Rules Governing the Board)
of Parole.

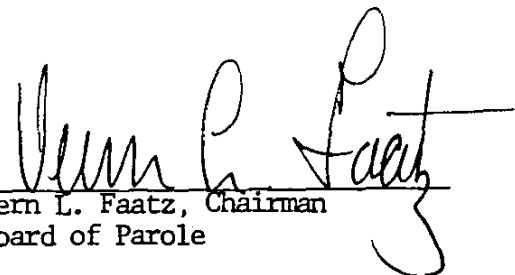
STATEMENT OF JUSTIFICATION

The Board of Parole is permanently adopting, amending and
repealing the above named rules to comply with statute and to
clarify and streamline the Board's procedures.

- (a) Statutory Authority : ORS Chap. 144.
- (b) Need for Rule : Theses rules are being
permanently adopted so
that the Board's rules
comply with statute, and
to clarify and streamline
the Board's procedures.
- (c) Documents Relied Upon : ORS Chap. 144. and the
Board's 1985 Rules.

Date

5/19/88


Vern L. Faatz, Chairman
Board of Parole

FISCAL ANALYSIS OF RULE
PER ORS 183.335

Administrative Rules, Division 1 through 95

<u>Effect on Revenue (By Fund)</u>	<u>Current Biennium</u>	<u>Future Biennium</u>
None	None	None
<u>Effect on Expenditures (By Fund)</u>	<u>Current Biennium</u>	<u>Future Biennium</u>
None	None	None

Organizational Impact:

None

Positions:

All staff required to administer the Board of Parole's Administrative Rules have been provided by the Legislature and are contained in the present Parole Board biennium's budget.

Economic Impact:

None

Reference for Data and Methods Used RE Above

Parole Board Budget

Prepared by: Georgina Dews

Agency: Board of Parole

Title: Law Clerk

Date: March 16, 1988

DIVISION 1

RULEMAKING PROCEDURE

Notice of Rulemaking: Time and Manner 255-01-005

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

(a) [(1)] ⁱ In the Secretary of State's Bulletin referred to in ORS 183.360[.];

(b) [(2)] ^b By mailing a copy of the notice to persons on the Board mailing list established pursuant to ORS 183.335(7)[.]; and

(c) [(3)] B by mailing or furnishing a copy of the notice to:

- (A) [(a)] Oregon State Bar Bulletin;
- (B) [(b)] United Press International and Associated Press;
- (C) [(c)] Release Services, Field Services, and Regional Offices, State of Oregon Department of Corrections [Division];
- (D) [(d)] Oregon District Attorneys Association;
- (E) [(e)] Oregon Criminal Defense Attorneys Association;
- (F) [(f)] All County Public Defender Offices [Multnomah County Public Defender];
- (G) [(g)] All County Law Libraries [Washington County Public Defender];
- (H) [(h)] Attorney General's Office [Lane County Public Defender];
- (I) [(i)] State Public Defender [Douglas County Public Defender];
- (J) [(j)] Supreme Court Law Library [Coos County Public Defender];
- (K) [(k)] University of Oregon Law School [State Public Defender];
- (L) [(l)] Northwestern College of Law, Lewis and Clark College [Oregon Prisoners Legal Services];
- (M) [(m)] College of Law, Willamette University [University of Oregon Law School];
- (N) [(n)] American Civil Liberties Union [Northwestern College of Law, Lewis and Clark College];

- (O) [(o)] The Oregonian, Portland, Oregon
[College of Law, Willamette University];
- (P) [(p)] Pendleton Eastern Oregonian,
Pendleton, Oregon [American Civil Liberties
Union];
- (Q) [(q)] The Oregon Statesman Journal, Salem,
Oregon [The Oregonian, Portland, Oregon];
- (R) [(r)] Medford Mail Tribune [Pendleton
Eastern Oregonian, Pendleton, Oregon];
- (S) [(s)] The Register Guard, Eugene, Oregon;
and [The Oregon Statesman Journal, Salem,
Oregon;]
- (T) [(t)] Others upon formal written request of
the Board. [Medford Mail Tribune, Medford,
Oregon;]
- [(u)] The Register Guard, Eugene, Oregon;]
- [(v)] Superintendents of State Correctional
Institutions;]
- [(w)] Administrator, Corrections Division;]
- [(x)] 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.]

(2) When the Board has filed a temporary rule with the Secretary of State's Office, the Board shall mail a copy of the certificate and order and a copy of the temporary rule to the persons on the Board's mailing list, and to those listed in subsection (1)(c) of this section.

(3) Notwithstanding subsection (2) of this section, when the Board has filed a temporary rule with the Secretary of State's Office, newspapers and media services shall only receive a copy of the certificate and order.

Rulemaking Procedure
255-01-010

(1) All new and revised rules will be adopted in accordance with the provisions of ORS 183.310 to 183.550, [and] the Model Rules of Procedures adopted by the Oregon Attorney General and ORS 192.610 to 192.690. Only those sections of the Model Rules which relate to rulemaking will be utilized by the Board.

(2) The Board shall hold a business meeting, pursuant to Division 20, when a change in the rules is being considered and a notice of intent has been filed.

Contents of Notice of Rulemaking when Public Hearing will be held Only if Requested

255-01-015

(deleted)

Obtaining Copies of Board Rules

255-01-016

- (1) A copy of the Board's rules shall be provided free of charge to the inmate libraries at each of the Department of Corrections [Division] institutions and to any state agency or legislative entity that [who] requests a copy.
- (2) Others who desire copies of Board's rules shall make their requests in writing. [A charge of t] Ten (.10) cents per page will be levied to cover the costs for individual rules, [associated with printing and distribution.] Payment must be received in advance [by money order made payable to the Oregon State Parole Board].

Submitting Draft of Rule to Legislative Counsel

255-01-020

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

Postponing Intended Action

255-01-025

(deleted)

Conduct of Hearing

255-01-030

(deleted)

Presiding Officer's Report

255-01-035

(deleted)

Action of the Board

255-01-040

(deleted)

Notice of Board Action: Certification to Secretary of State; Submitting Copy to Legislative Counsel

255-01-045

(deleted)

3/15/88*

Petition to Adopt, Amend, or Repeal Rule: Contents of
Petition; Filing of Petition

255-01-050

(deleted)

Temporary Rules

255-01-055

(deleted)

The Adoption, Designation and Changes of Rules With Other
Agencies

255-01-060

- (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) Jointly adopted rules shall be specifically designated as
joint rules, and the appropriate agency shall be
identified in the rules

DIVISION 5
DEFINITIONS

Definitions
255-05-005

- (1) "Active Community Supervision": An uninterrupted period of at least six months supervision in the community, requiring regular contact and monitoring by the supervising officer to assure that the conditions of parole are being met, that the parolee has committed no new crimes and to assure repayment of restitution, if required.
- (2) "Active Supervision": Supervision requiring regular contact and monitoring by the supervising officer to assure continued compliance with the conditions of parole. (Div.92)
- "Active Supervision" shall not include:
- (a) the period of confinement in local, state, or federal correctional facilities during the parole;
 - (b) the period of time between the suspension of parole and the date parole is continued; and
 - (c) inactive parole. (Div. 92)
- (3) "Aggravation": The factors or elements surrounding the crime which appear to increase the seriousness of the criminal episode or reflects on the character of the offender pursuant to Exhibit E-1.
- (4) "Base range": The range for each crime category reflected in Exhibit C under the "excellent" column.
- (5) "Board Review Packet": The information the Board shall consider at the inmate's hearing. The contents of the packet shall be listed in each of the Divisions which establishes a hearing.
- (6) "Correctional facility": any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order.
- "Correctional facility" does not include a juvenile facility and applies to a state hospital only as to persons detained therein after acquittal of a crime by reason of mental disease or defect.
- (7) "Crime severity rating": A classification from a low of one (1) to a high of seven (7) assigned to each crime, based on the seriousness of the crime pursuant to Exhibit A.

- (8) "De novo hearing": a new initial prison term hearing, required when there are additional consecutive sentences for crimes which occurred prior to the first prison term hearing.
- (9) "Exemplary Behavior": Behavior which is consistent with the conditions of parole.
- (10) "Future Disposition Hearing": The hearing at which the sanction for a parole violation is established.
- (11) History/risk score": A rating from a high of eleven (11) to a low of zero (0) points, reflecting the prisoner's prior record and other factors which predict the likelihood of success on parole pursuant to Exhibit B.
- (12) "Inactive Parole" includes:
(a) general parole conditions;
(b) no supervision by a parole officer;
(c) no parole fees; and
(d) name and status maintained on the LEDS and EPR computer systems.
- (13) "In camera hearing": the inspection of a document by the Hearings Officer in private before the document may be introduced as evidence.
- (14) "Initial parole release date": A fixed date, by month, day and year, assigned to a prisoner for parole release based on the prisoner's matrix range, aggravation, mitigation, and judicially imposed minimum sentence(s).
- (15) "Inoperative time": time spent outside a state correctional facility without the authorization of the Department of Corrections.
- (16) "Less than the sum of the terms": an action by the Board whereby one or more of the consecutive ranges are treated as if they are concurrent.
- (17) "Matrix ranges": Ranges of months within which the Board has the discretion to set a prison term. The ranges are based on crime severity ratings and history/risk scores.
- (18) "The matrix": A table which displays the matrix ranges by showing the intersection of the crime severity rating and the history/risk score pursuant to Exhibit C.
- (19) "Mitigation": The factors or elements surrounding the crime which appear to decrease the seriousness of the criminal episode or reflects on the character of the prisoner pursuant Exhibit E-2.

- (20) "Parole": A conditional release from a state correctional facility into the community.
- (21) "Parole Revocation Hearing": A hearing to determine whether a parole violation occurred.
- (22) "Particularly violent or otherwise dangerous criminal conduct": Conduct which is not merely unpleasant or offensive, but which is indifferent to the value of human safety or property.
- (23) "Parole Board Record": The file the Board maintains for each prisoner containing the information listed in ORS 144.185.
- (24) "Period under review" under Division 40, the three year period prior to the hearing.
- (25) "Principal range": The range of months for the crime holding the highest crime severity rating. When the ranges are the same, one shall be designated as the principal range.
- (26) "Preponderance": evidence which as a whole shows that the fact sought to be proved is more probable than not.
- (27) "Probable Cause": a substantial objective basis for believing that more likely than not an offense or violation has been committed and the person to be arrested has committed it.
- (28) "Prison Term": The time established by the Board of Parole to be served before the parole release date.
- (29) "Prison term hearing": The hearing at which the Board establishes an inmate's prison term.
- (30) "Serious physical injury": Any physical injury which creates a substantial risk of death, or which causes serious disfigurement, or impairment of health or the loss or impairment of the function of any bodily organ.
- (31) "Subcategory": the criteria for rating criminal conduct within the crime categories based on the seriousness of the offense (Exhibit A).
- (32) "Subordinate range": Any range less than or equal to the principal range.
- (33) "Subpoena duces tecum": a subpoena requiring the party to appear at a hearing with a document or piece of evidence to be examined at the hearing.

- (34) "Summing the ranges": An action taken to produce a unified range when there are consecutive sentences.
- (35) "Unauthorized absence": time spent outside a state correctional facility without the authorization of the Department of Corrections.
- (36) "Unified range": the total range computed under OAR 255-35-021 for consecutive sentences.
- (37) "Variations": The time periods which the Board may use to set a prison term above or below the matrix range pursuant to Exhibit D.
- (38) "Victim": The actual victim of the crime, a representative selected by the victim, or the victim's next of kin. In the case of a minor or incompetent victim, this term shall include the guardian of the victim.

DIVISION 10

ORGANIZATION

Membership

255-10-005

The Board of Parole shall consist of those members [five (5) voting members,] appointed by the Governor pursuant to ORS 144.005. [, and the Administrator of the Corrections Division, who shall have no vote, but act as an advisor.]

Chairperson; Vice-Chairperson; Selection; Term

255-10-010

[The Governor shall select one (1) of the members of the State Board of Parole as chairperson and another as vice-chairperson, for such terms as the Governor determines.]

Chairperson; Vice-Chairperson; Powers and Duties

255-01-015

- (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] the office, as determined by the Governor. Such powers and duties shall include, but are not limited to:
- (a) [A] assigning [voting] Board members to panels and designat[el]ing the presiding members in order to conduct hearings and reviews;
 - (b) servng as the presiding member when on a panel or a Full Board;
 - (c) [(b)A] apportioning matters to the panels and Full Board for decision;
 - (d) [(c)R] reassigning matters to different panels when required by rule, law, or procedure;
 - (e) [(d)S] schedul[e]ing business meetings and establishing the agenda; and
 - (f) [(e)I] informing 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] the powers and duties [as are] determined by the Governor [as] to be necessary for the performance of [such] the office.

[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.]

DIVISION 15
REQUEST FOR BOARD RECORDS OR FILES

Parole Board [Inmate File] Records
255-15-002

[The Parole Board Inmate File shall contain the Board Review Packet, miscellaneous correspondence, and all other materials not germane to the determination of the inmate's prison term.]

The Board will maintain a separate file on each person under its jurisdiction which will contain the materials obtained pursuant to ORS 144.185.

[Board Review Packet] Oral Record of Hearing
255-15-003

A tape of the oral proceedings of any hearing shall be kept by the Board for at least two years.

[(1) The Parole Board shall consider only that information included in the Board Review Packet when establishing the inmate's prison term or in any further consideration of the inmate's case.]

[(2) The Board Review Packet shall contain the materials listed in OAR 255-15-030.]

Procedures for Obtaining Information from Parole Board Records
255-15-005

(1) Any interested party may apply for [selected file or record] information from a selected record.

(2) The[ir] request must be in writing, addressed to the [C]chairperson of the Parole Board and must specify the information requested.

(3) The chairperson or designee will review the record to determine what may be disclosed in accordance with OAR 255-15-010, and within ten (10) working days will advise the person or agency whether the requested information is available and may be disclosed. [will designate one (1) or more employees to review files or records for disclosure.]

[(4) The designated staff member(s), upon direction from the chairperson, will review the files or records as necessary and will determine what may be and what may not be disclose, in accordance with OAR 255-15-010]

[(5) Within ten (10) working days the designated staff member will advise the interested party if the requested information is not subject to disclosure.]

Criteria for Disclosure or Denial of Disclosure of File or Record
255-15-010

- (1) The records of the Board of Parole shall be disclosed to any person or agency unless:
 - (a) disclosure would interfere with the rehabilitation of the person concerned;
 - (b) disclosure would substantially interfere with the carrying out of the functions of the Parole Board or the Department of Corrections;
 - (c) disclosure would endanger the inmate or other persons;
 - (d) disclosure would compromise the privacy of the inmate or another person; or
 - (e) the public interest in confidentiality clearly outweighs the public interest in disclosure.
- (2) When disclosure of information is denied to a prisoner a written statement of the reasons of denial must be entered into the record.
- (3) Where a particular document contains information that is exempt from disclosure, exempt material shall be separated from nonexempt material and the nonexempt material must be disclosed.

[Files or records which pertain to persons who are presently, or who were formerly under the jurisdiction of the Parole Board may be disclosed to the interested party(ies) if the disclosure will not:]

- [(1) Interfere with the rehabilitation of the person concerned;]
- [(2) Endanger other persons;]
- [(3) Substantially interfere with the carrying out of the functions of the Parole Board or the Corrections Division;]
- [(4) Compromise the privacy of another person;or].
- [(5) Conflict with the provisions of ORS 192.500 (2) (d).]

Fees for [Disclosure of] Board Records [or Files]
255-15-015

- (1) The fees for documents shall be as follows:
 - (a) If the request is for specific, indentified, disclosable information from the Board Review Packet, the cost of the duplication will be fifty (50) cents per page; or
 - (b) If the request requires a review of the Parole Board Record, a determination of availability will be made by the reviewer. The cost will be fifty (50) cents a page plus a cost for staff time.
 - (2) The fee for the duplication of oral records shall be \$5.00 per tape.
 - (3) All computed costs including staff time for review, reproduction, materials, and first class postage may be waived by the chairperson of the Board.
 - (4) Unless the chairperson decides that the person or agency may be billed at a later date, no reproduction of material is authorized until payment has been received in advance.
 - (5) Payments will be deposited in the Miscellaneous Receipts account in accordance with Business Office instructions.
- [(1) If the request is for specific, releaseable information from the Board Review Packet, the cost of the duplication will be fifty (50) cents per page.]
- [(2) If the request requires review of the Parole Board Inmate File, a determination of availability will be made by the reviewer. The cost will be one dollar and twenty-five cents (\$1.25) per page.]
- [(3) All computed costs including staff time for review, reproduction, materials, and first class postage will be determined by the Chairperson of the Board.]
- [(4) Except as noted below, no reproduction of file material is authorized until payment for the services has been received in the form of a Postal Money Order, Trust Account Check, or cashier's check made payable to the Oregon State Parole Board.]
- [(5) Payments will be deposited in Miscellaneous Receipts account in accordance with Business Office instructions.]

Victim and District Attorney Access to Board Review Packet
255-15-020

- [(1) A copy of the Board Review Packet, contents as listed in DAR 255-15-030, shall be made available to the victim and the District Attorney thirty (30) days prior to the scheduled hearing.]
- [(2) If the victim, his/her representative, or the District Attorney requests copies of the Board Review Packet, the fee for duplication shall be fifty (50) cents per page.]
- [(3) Copies of the Board Review packet shall be mailed to the victim, his/her representative, or the District Attorney, upon request, at a cost of fifty (50) cents per page plus an additional fee to cover the mailing expense.]

Contents of Board Review Packet
255-15-030

[The Board Review Packet may contain one or more of the following:

- (1) Face Sheet.
- (2) Board Action Forms.
- (3) Presentence Investigation (PSI)/Post Sentence Report (PSR) or similar comparable report.
- (4) Psychological Evaluations - two most recent reports (see provisions of DAR 255-15-010 and 255-30-045).
- (5) Statements of Imprisonment.
- (6) Court Orders.
- (7) Revocation Recommendations.
- (8) Morrissey Hearing Findings.
- (9) Parole Revocation Action Sheet (pink).
- (10) Final Order of Parole Revocation/Parole Reinstatement Order.
- (11) Disciplinary Reports - current commitment.
- (12) Recommendation for Date Cut.
- (13) Administrative Review Request Form and related documents.
- (14) Information from victim(s), or their representatives, District Attorney(s), and inmate pursuant to Measure 10.
- (15) Any other information used by the Board and deemed pertinent to the inmate's case.
- (16) After Sentence Reports (144.210) only on crimes committed prior to September 20, 1985.]

DIVISION 20

BUSINESS MEETING

Scheduling

255-20-005

Business meetings shall be held as scheduled by the chairperson or upon the request of at least three (3) [two (2)] members of the Board.

Quorum

255-20-010

A business meeting requires the presence of at least three (3) voting members of the Board[.], one of whom shall be the chairperson, vice-chairperson or chairperson's designee.

Matters for Consideration; Majority Vote

255-20-015

[The b] Business meetings shall consider matters relating to Board policy and administration [raised by the agenda] presented by the chairperson or by Board members. Three (3) affirmative votes are required to make a Board decision at a business meeting.

Procedure

255-20-020

A business meeting under this Division is a public meeting as defined in ORS 192.610 to 192.690. Adequate public notice, public access, and public minutes are required.

DIVISION 25

ADJUSTED COMMITMENT DATE

[Date Service of Sentence Commences] Date Prison Term Starts to Run
255-25-005

- (1) The commencement date for the prison term is the date on which the prisoner is delivered to custody of the Department of Corrections for the purpose of serving the sentence.
- (2) In the case of additional consecutive sentences, the existing parole release date shall be rescinded and shall become the commencement date for the new sentence.

[Pursuant to ORS 137.370, service of a sentence of imprisonment commences to run on the date on which the person is delivered to custody of the Corrections Division regardless of whether the sentence is to be served in a state or federal institution.]

Credit for Time Served
255-25-010

- (1) Time served credit shall be granted towards the prison term for the following time periods:
 - (a) the actual and certified time served in the County Jail after arrest until the prison term begins; or
 - (b) the actual and certified time served in the County Jail as a condition of probation.
- (2) When credit is granted towards the prison term under subsection (1) of this section, the time served credits shall be deducted from the parole release date after a prison term has been established.
- (3) If additional time served credits are received after the prison term has been calculated, the Board may take action administratively to correct the parole release date. The person so affected shall receive notice in writing of the Board's action.

- (4) If arrest and conviction occurs during the period in which the person is under the jurisdiction of the Board of Parole, no time served credits shall be granted towards the subsequent prison term.

[Pursuant to ORS 137.320, each person received by the Corrections Division shall be allowed credit toward the service of his/her sentence for any days spent in custody prior to delivery to which sentence was imposed. The statement so provided shall constitute "certifications" of time served credits.]

Calculation of Adjusted Commitment Date
255-25-015

- [(1) In computing the prison release date, the Board shall establish the adjusted commitment date, the date which will be considered the starting date for the prison term, on the most recent sentence being considered.]
- [(2) The adjusted commitment date shall be calculated by subtracting the number of days the person was in custody from the date the person was received by the Corrections Division.]
- [(3) Only those periods of time certified by the sheriff of the county where the person was confined shall be considered by the Board in establishing the adjusted commitment date.]

Method of Certification/Disagreement with Time Served Calculation
255-25-020

- [(1) The Board shall consider only those time served credits which have been reported to the Corrections Division pursuant to ORS 137.320.]
- [(2) If an interested party disagrees with the time served calculation certified pursuant to ORS 137.320, it becomes the responsibility of the person to resolve the matter with the agency who prepared the certification.]

Adjustment of Adjusted Commitment Date
255-25-025

[If additional time served credits are certified and received after the adjusted commitment date has been calculated, the Board may take action administratively to correct the commitment date. The person so affected shall receive notice in writing of the Board's action.]

Effect of Inoperative Time on Prison Terms
255-25-030

Inoperative time shall not count towards the completion of the prison term. In resetting the parole release date, the inoperative time shall be added to the prison term. The Board shall notify the inmate of its action.

DIVISION 30

PRISON TERM HEARING PROCEDURE

Policy

255-30-002

(deleted)

Definitions

255-30-005

- [(1) "Prison term hearing": The hearing given a prisoner within six (6) 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 time to be served before the initial parole release date.]
- [(3) "Victim": The actual victim, a representative selected by the victim, or the victim's next of kin.]

Scheduling Prison Term Hearings

255-30-010

- (1) The Board shall [schedule] conduct a [prison term] hearing to establish a prison term for each new prisoner within six (6) months of admission to a Department of Corrections [Division] facility, or within one year of admission if the prisoner's sentence is fifteen (15) years or more.
- (2) [The Board may continue the hearing to obtain additional information. The continuance may not extend past six (6) months from admission plus thirty (30) days.]

A prison term hearing shall be scheduled within six (6) months of sentencing for any additional sentence received while in custody of a Department of Corrections facility, or within one year of sentencing if the new sentence is fifteen (15) years or more.

- (3) [A prison term hearing shall be scheduled within six (6) months of commitment for any additional sentence received while in custody of a Corrections Division facility.]

For those hearings which must be conducted within six (6) months, the Board may defer setting a prison term for thirty days to obtain additional information.

Scheduling and Hearing Procedure for Aggravated Murder
255-30-012
(deleted)

Notification of Hearing
255-30-013

- (1) The prisoner shall be notified, in writing, of the hearing and its purpose and shall receive a copy of the Board Review Packet at least 14 days prior to the hearing [date].
- (2) If the prisoner did not receive 14 days notice, the hearing may be rescheduled, or the prisoner may waive the notice and the hearing shall be conducted.
- (3) The Parole Board shall attempt to notify the victim, if the victim requests to be notified and furnishes the Board a current address, and the [d]District [a]Attorney of the committing county at least thi[er]ty (30) days before all hearings by sending written notice to the current addresses of both parties .

[Panels: When a Two-Member Panel Conducts a Prison Term Hearing;]
When a 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] conducted by a panel of two voting members of the Board.
- (2) The following hearings may be conducted by a quorum of the Board:
 - (a) cases involving a prisoner sentenced to life imprisonment, to death, for murder, or for aggravated murder (review by the full membership of the Board);
 - (b) cases where the prisoner was convicted of a crime involving the death of a person, whether or not the prosecution directly charged the prisoner with causing the death of the person (review by full membership of the Board);
 - (c) cases where the prisoner was sentenced under ORS 161.725 and 161.735 as a dangerous offender; and
 - (d) cases where the minimum sentence imposed by a judge pursuant to ORS 144.110 exceeds the matrix range and the variations permitted a panel (review by at least four members of the Board).
 - (e) cases where an extension of over two years is recommended for misconduct.

- (3) The Full Board or a quorum thereof shall review and make a final decision in the following cases:
- (a) whenever a panel recommends a decision to exceed the allowable variation from the matrix permitted to the panel and a third vote;
 - (b) whenever the panel recommends denying parole;
 - (c) whenever a panel recommends a decision below a judicially set minimum sentence;
 - (d) whenever a panel lacks a quorum and is unable to come to a unanimous decision to set a prisoner's prison term; and
 - (e) whenever a panel recommends unsuming a unified range.
- (4) If a Board member is not present at a full Board hearing, and review is compelled by statute, rule, or the vote may affect the outcome of the hearing, the Board member shall vote administratively after reviewing the record of the hearing, or may request that a hearing be rescheduled. The Board's action shall be considered final if the absent member's vote is not required for a final decision.

[(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 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 (1) year is recommended]

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] a 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 denying parole, except when denial is because the guideline range exceeds the good time date on a sentence.]
- [(c) Extending a prison term, in any case, for longer than one (1) 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.]

[Procedures for Hearings Involving Out of State Jurisdictions]
Teleconference hearing
255-30-021

- (1) A prisoner in custody in another jurisdiction may have a hearing [be returned to Oregon or heard] by teleconference call, or may be returned to Oregon for a hearing. [whether a full board or panel is applicable.]
- (2) A prisoner who resides outside of Marion County may have a hearing by teleconference call.

Prisoner Appearance at Parole Board Hearing
255-30-023

- (1) The prisoner shall be present in person or by telephone at the Parole Board hearing.
- (2) A prisoner who refuses to appear may be compelled to do so by the Board.
- (3) The Board may elect not to compel the prisoner to attend the hearing, in this instance, the Board may reschedule the hearing to see the prisoner at a later date, or set the prison term in the prisoner's absence.

Who May Appear at a Parole Board Hearing
255-30-025

- [(1) The prisoner shall appear at the Parole Board hearing. Willful failure to appear does not relieve the Board of its statutory responsibility to make a decision in the prisoner's case.]
- (1) [(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] Department of Corrections rule governing visiting. [At the conclusion of the hearing, the person accompanying the prisoner may make a statement, not to exceed three (3) minutes.]
- (2) [(3)] Assistance shall be provided to prisoners incapable of presenting their position due to a foreign language barrier[s], or a documented mental or emotional incapacity [or educational deficiency].
- (3) [(4)] If the prisoner has an assistant provided pursuant to subsection (2) of this rule, this shall not preclude the prisoner from being accompanied to the hearing by a person of the prisoner's choice.
- (4) [(5)] The victim, personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction shall have the right to appear at Parole Board Hearings.)

Victim, [and] District Attorney and Inmate Statements
255-30-027

- (1) At the conclusion of the hearing, the victim, personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction, may make statements not to exceed three minutes.
- (2) Following the victim and the District Attorney statements, the person accompanying the prisoner may make a statement not to exceed three minutes. [At their discretion, the victim and/or the District Attorney may submit written statements adequately and reasonably expressing their views concerning the crime and person responsible, in lieu of a personal appearance. These statements shall be received by the Board at least seven (7) days prior to the Parole Board hearing.]
- [(3) Written statements provided by the victim and/or the District Attorney in lieu of personal appearances shall be included in the Board Review Packet.]

Panel Decision: 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 members must be unanimous. In the absence of a unanimous decision, there is a no quorum vote. In such a case, each panel member shall forward his/her recommendation to the chairperson for reassignment. No matter so reassigned shall be decided by fewer than three (3) affirmative votes. This may be done by another two-member panel reaching a unanimous decision in agreement with a member of the prior panel. Should a unanimous decision by three members not be obtained, the case will be reassigned to a the Full Board.]

Information the Board Shall Consider at a Prison Term Hearing
255-30-035

- (1) [The Board Shall consider all information in the Board Review Packet pursuant to OAR 255-15-030.]

The Board Review Packet shall contain:

- (a) inmate's notice of rights and notice of administrative appeal;
 - (b) PSI, PAR, PSR;
 - (c) sentencing/judgement orders;
 - (d) face sheet;
 - (e) certification of time served credits;
 - (f) Board Actiob Forms;
 - (g) information pursuant to Ballot Measure 10;
 - (h) material submitted by the inmate or representative relating to the calculation of the prison term;
 - (i) current psychological/psychiatric evaluations; and
 - (j) other material selected at the Board's discretion.
- [(2) The Corrections Division will provide a Presentence Investigation Report or similar report to the Board within 90 days of admission to a correctional facility. This report shall be prepared according to the sectional outline in Exhibit F. Any transcripts forwarded by the sentencing judge shall be attached to the Pre-sentence Investigation.]

- (2) [(3)] Additional information and recommendations from those [others] with a special interest in the case may be considered. If considered, such information shall be included in the Board Review Packet. Any information submitted pursuant to this section must be received by the Board at least seven (7) days prior to the hearing.
- (3) [(4)] If the victim, his/her representative, or the District Attorney wishes to rebut any of the material in the Board Review Packet, the response [rebuttal] must be received by the Board seven (7) [ten (10)] days prior to the hearing.
- (4) Information from the inmate or representative shall be submitted at least seven (7) days prior to the hearing.
- [(5) All rebuttal information shall be included in the Board Review Packet and shall be released to the inmate in accordance with OAR 255-15-010.]

Prisoner's Access to the Written Materials Considered at Hearings and Interviews
255-30-040

- (1) The prisoner shall have access to all the material in the Board Review Packet except that exempted by OAR 255-15-010 [and 255-30-045].
- (2) [Information in the Board Review Packet subject to disclosure shall be sent to the inmate 30 days prior to the scheduled hearing or when the material is made available to the Board.]

The prisoner shall have access to all the responses made by the victim and the District Attorney pursuant to OAR 255-30-035. The responses shall be included with the Board Review Packet or they shall be given to the inmate as soon as they are available to the Board.

- [(3) The prisoner shall have access to all personal statements made by the victim and the District Attorney pursuant to OAR 255-30-027, and all rebuttal information pursuant to OAR 255-30-035.]

Exemptions from Disclosure
255-30-045

- [(1) Prisoners shall have access to written materials, including psychiatric and psychological reports prepared for Board use, which the Board considers, with the following exception:]

DIVISION 32

AGGRAVATED MURDER

Prison Term Hearing to be Held
255-32-005

A person convicted of Aggravated Murder under ORS 163.095 shall receive a prison term hearing under the provisions of Division 30 of these rules.

Minimum Period of Confinement Pursuant to ORS 163.105
255-32-010

- (1) The minimum period of confinement for a person convicted of Aggravated Murder as defined by ORS 163.105(1) shall be thirty (30) years.
- (2) The minimum period of confinement for a person convicted of Aggravated Murder as defined by ORS 163.105(2) prior to Dec. 6, 1984 shall be twenty (20) years.

Petition/Purpose for Hearing
255-32-015

The prisoner may petition and the Board shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(1); or
- (2) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(2).

[At any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(1), or at any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(2), upon petition of a prisoner so confined, the Board shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period to time.]

Purpose of Hearing
255-32-020

The sole issue of the hearing shall be to determine whether or not the prisoner is likely to be rehabilitated within a reasonable period of time.

Manner of Hearing
255-32-025

- (1) The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The prisoner shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) The prisoner shall have the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the Board, at state expense.
- (2) If upon hearing all the evidence, the Full Board upon a unanimous vote of all five members finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole or work release. Otherwise, the Board shall deny the relief sought in the petition.

Effect of Denying Relief Request
255-32-035

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

Record/Notice
255-32-040

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

- [(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 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 nonexempt material and the nonexempt material must be disclosed.]

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 (2) 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 exceptions 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.)]

Notification of Decision: Parties Notified; Content
255-30-055

- (1) Following a Board decision concerning the prison term of an inmate, the prisoner, sentencing court, district attorney, the [Corrections Division] Department of Corrections, and upon request, the victim shall be notified in writing of the Board's final order [action].
- (2) The Board's final order shall contain:
 - (a) the prison term commencement date;
 - (b) the history/risk assessment score;
 - (c) the crime category with the subcategory rationale;
 - (d) the matrix range;
 - (e) when there are consecutive sentences, whether the range is unsummed and the the reason for unsumming;
 - (f) when there is a variation from the range, the reason for the variation;
 - (g) aggravation;
 - (h) mitigation;
 - (i) the votes on minimum sentences;
 - (j) the prison term set;
 - (k) the votes of the individual Board members; and
 - (l) the parole release date.

[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 as set forth in Division 80 of these rules.]

Notification of Release; Parties Notified
255-30-056

- [(1) The Board shall notify the Sentencing Judge, the District Attorney, and the victim, if so requested under ORS 144.120(7), at least 30 days prior to the release from actual physical custody, whether by work release, institutional leave, or any other means, of any convicted person.]
- [(2) Notification of release shall be accomplished with cooperation from the Corrections Division.]

DIVISION 35

APPLICATIONS OF THE GUIDELINES TO ESTABLISH A PRISON TERM

Definitions

255-035-005

- [(1) "Crime severity rating": The classification given to a prisoner's commitment crime according to the seriousness.]
- [(2) History/risk score": Refers to the criminal history/risk assessment. It is a rating, from a high of eleven (11) to a low of zero (0) points, based on the seriousness of the s 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 crime severity rating and history/risk score.]
- [(4) "Guideline Matrix": A table which displays the guideline range by showing the intersection of the crime severity rating and the history/risk score.]
- [(5) "Initial parole release date": A fixed date, by month, day 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 aggravation, mitigation, and minimum sentence(s).]
- [(6) "Particularly violent or otherwise dangerous criminal conduct": Conduct which is not merely unpleasant or offensive, but which is indifferent to the value of human safety or property.]
- [(7) "Serious physical injury": Any 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.]
- [(8) "Harm-loss": The actual or immediately threatened injury associated with particular criminal conduct, whether to person or property.]
- [(9) "Principal range": The range for the crime holding the highest severity.]

- [(10) "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.]
- [(11) "Base range": The range for each crime category reflected in Exhibit C under the "excellent" column.]
- [(12) "Summing the ranges": An action taken in cases where sentences have been imposed consecutively in which the base range for each consecutive sentence is added to the principal range.]

Rating Crime Severity: Generally, Multiple Concurrent Convictions
255-35-010

- [(1) The Board shall assign a crime severity rating from one to seven, according to Exhibit A, for each prisoner's commitment crimes(s).]
- [(2) Two or more convictions with sentences to be served at the same time (concurrent sentences) shall be rated according to the most serious crime. The prisoner shall be given a prison term that results in the longest incarceration.]
- [(3) When there are two (2) or more sentences that have been imposed consecutively, each crime shall be rated separately in accordance with rule 255-35-022.]

Board to Make Findings of Fact Regarding Offense Severity; Waiver of Exit Interview; Establishing Conditions of Parole
255-35-012
(deleted)

Factors which Determine An Initial Parole Release Date
255-35-013

- [(1) Except in those cases under OAR 255-32-025 the Board shall make findings of fact regarding a prisoner:
 - (a) Crime severity rating (Exhibit A):
 - (b) History/risk score (Exhibit C):
 - (c) Guideline range (Exhibit C);
 - (d) Aggravation/mitigation (Exhibit E).]

- (2) The Board shall then, except as provided by OAR 255-35-030 (parole denial) and 255-38-005 (dangerous offender), establish an initial parole release date and inform the prisoner of that date.]

During the prison term hearing the Board shall make findings of fact concerning:

- (1) the prison term commencement date;
- (2) the crime severity rating and subcategory rational (Exhibit A);
- (3) the prisoner's history/risk assessment score (Exhibit B);
- (4) the matrix range;
- (5) when there is a variation from the range, the reason for the variation;
- (6) aggravation (Exhibit E-1);
- (7) mitigation (Exhibit E-20; and
- (8) minimum sentences.

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 (0) to eleven (11) as set forth in Exhibit B as a formal finding of fact in the prisoner's presence at the prison term hearing.]

[Establishing Conditions of Parole] Variations From the Ranges for Aggravation or Mitigation
255-35-016

- (1) The Board may depart from the appropriate range only upon making a specific finding, that there is aggravation or mitigation which justifies departure from the range pursuant to Exhibit E-1 and E-2. The Board shall clearly state on the record the facts and specific reasons for its finding.
- (2) If a panel finds that the matrix range and the variations permitted a panel are inadequate to establish a prison term because of the panel's findings of aggravation or mitigation, it shall secure a third vote for an additional variation or refer the matter to the Full Board.
- (3) The maximum allowable variations from a range are shown in Exhibit D. A portion or all of the variation allowed may be applied.
- (4) These provisions shall apply equally to unified ranges.

- [(1) If the Board in setting a release date waives a parole release hearing it shall specify condition(s) of parole including special conditions that shall be added to the parole order in accordance with OAR 255-70-001]
- [(2) The Board may order an exit interview prior to the release of the prisoner on parole.]
- [(3) Parole conditions may be amended administratively by a panel of the Board; changes shall be supported by written findings.]

Multiple Concurrent Convictions
255-35-018

When concurrent sentences exist, the prisoner shall be given a matrix range based on the crime with greatest range.

[Effect of Time on Escape on Prison Terms] Consecutive Sentences:
Board Bound by Court Order
255-35-020

The Board of Parole does not have the authority to run a sentence currently or consecutively to an out of state jurisdiction, but is bound by the final judgement order issued by the Oregon courts.

[Inoperative Time on Escape: In establishing the parole release date for a person who has escaped from a state correctional facility, 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.]

Consecutive Sentences: Creating a Unified Matrix Range
255-35-021

- (1) Notwithstanding subsection (4) of this section, the Board shall establish the principal range for the most serious of the felonies committed during the time period under consideration. If two or more felonies are determined to be equally the most serious, the Board shall establish a principal range for only one of those felonies.
- (2) The Board shall then establish a range for each of the remaining felonies committed during the same period using the appropriate base range for the crime pursuant to Exhibit C.

- (3) The unified range for crimes committed during the same period shall be determined by summing the range established under subsection (1) of this section with the ranges established under subsection (2) of this section.
- (4) The method established by subsections (1) to (3) of this section for determining the unified range shall not apply if any of the crimes involved is:
- (a) murder, as defined in ORS 163.115 or any aggravated form thereof;
 - (b) assault in the first degree, as defined in ORS 163.185;
 - (c) kidnapping in the first degree, as defined in ORS 163.235;
 - (d) rape in the first degree, as defined in ORS 163.375;
 - (e) sodomy in the first degree, as defined in ORS 163.405;
 - (f) sexual penetration with a foreign object, as defined in ORS 163.411;
 - (g) arson in the first degree, as defined in ORS 164.325; or
 - (h) treason, as defined in ORS 166.005.
- (5) To determine the unified range for inmates with consecutive sentences which involve a crime listed in subsection (4) of this section, the Board shall establish the matrix range for each crime by using the inmate's history/risk score pursuant to Exhibit B and the applicable crime category national. The unified range shall be the sum of the ranges established under this subsection.
- (6) The unified range may be subject to the variations established in accordance with OAR 255-35-016 and Exhibit D.

Consecutive Sentences: [Effect of Consecutive Sentences on Establishing a Prison Term] Referring a Case to the Full Board; Going Below the Range; Additional Consecutive Sentences
255-35-022

- [(1) When consecutive sentences have been imposed, a crime severity rating, history/risk score and a matrix range shall be assigned for each crime.]
- [(2) The term of imprisonment may be subject to variations established in accordance with OAR 255-35-035 and Exhibit D.]
- [(3) The Board shall consider the summed ranges as a single unified range.]

- [(4). In summing the ranges, the Board shall first establish the crime category, history/risk score and appropriate range for the principal crime. Subordinate ranges will then be established by taking each consecutive crime and establishing the applicable crime category and base range. The unified range will be determined by adding the base range for each subordinate crime to the principal range.]
- [(5) The Board may, by four (4) affirmative votes, choose to unsum one (1) or all of the ranges. Once unsummed, the Board will treat one or more consecutive sentences as concurrent sentences.]
- [(6) The following factors are considered by the Board in determining whether or not to unsum the ranges:
- (a) consecutive sentences are not appropriate penalties for the criminal offenses involved; and
 - (b) the combined terms of imprisonment are not necessary to protect the community security.]
- [(7) When a two-member panel recommends that the Board choose to unsum one (1) or all the ranges, the case will be referred to the Full Board.]
- [(8) If the panel finds that the matrix range is inadequate to establish a prison term based upon findings of aggravation or mitigation, it shall secure a third vote or refer the matter to the Full Board.]
- [(9) When additional consecutive sentence(s) are imposed, the prison term shall be established as for a single new sentence.
- (a) When a sentence is imposed consecutively to a sentence on which parole has been granted, the matrix range shall be assigned as for a single new sentence.
 - (b) Minimum sentences will be considered separately under the provisions of OAR 255-35-023 and 255-35-024.]
- [(1) When a panel recommends that a range be less than the sum of the terms under OAR 255-35-021, the case shall be referred to the Full Board.]

- (2) The duration of imprisonment for consecutive sentences may be less than the sum of the terms under OAR 255-35-021, if the Board finds by four affirmative votes that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect community security.
- (3) When additional sentences are imposed for crimes which took place during the period under consideration at a prior prison term hearing and the additional sentences are consecutive to the crimes already considered the Board shall:
- (a) conduct a de novo prison term hearing pursuant to the provisions of Division 30 for all the crimes. The unified range for the additional sentences and the sentences which were already considered shall be computed under the provisions of OAR 255-35-021; or
- (b) conduct a hearing to consider only the additional consecutive sentences using base ranges for the additional crimes. The commencement date for the new prison term under this subsection shall be the parole release date set at the previous prison term hearing.
- (4) The provisions of subsection (3) of this section apply only to crimes which occurred on or after July 11, 1987, unless one of the crimes involved is listed in OAR 255-35-021 (4).
- (5) If the Board votes to unsum the consecutive sentences at the begining of the hearing, then a hearing under subsection (3) of this section is not required, unless one of the crimes involved is listed in OAR 255-35-021 (4). The new crime will be considered as a principal range.
- (6) If one of the crimes involved is listed in OAR 255-35-021 (4) and is consecutive, then a denov hearing under subsection (3)(a) of this section must be conducted.
- (7) If a new crime is consecutive to crimes already considered, and is the most serious offense with the highest crime severity rating and/or longest sentence, a de novo hearing under subsection (3)(a) of this section must be conducted.
- (8) When additional sentences are imposed for crimes which took place after the period considered at a prior prison term hearing and the additional sentences are consecutive to the crimes already considered, the matrix range for the additional crimes shall be established as if it were a new sentence. If the inmate has not yet been released on parole, the commencement date for the new crimes shall be the parole release date established at the previous prison term hearing.

Effect of Judicial Minimum Sentences on Prison Terms Under ORS 144.110; Consecutive Minimum Sentences
255-35-023

- (1) The Board shall not release a prisoner on parole until a judicially imposed minimum prison term has been served, except upon the affirmative vote of four members who have found that:
 - (a) the minimum term is not an appropriate penalty for the criminal offense; and
 - (b) the minimum term is not necessary to protect the public.
- (2) If at least four members of the Board have made the findings listed in subsection (1) of this section, The Board shall establish a prison term using the guideline range and the standard variations allowed.
- (3) When there are consecutive minimum sentences, and the Board finds that the combined minimums are not appropriate penalties for the criminal offenses involved, and are not necessary to protect community security, the Board, by four concurring votes, may override one or more of the judicially imposed minimums and set a prison term which is less than the sum of the minimum terms.
- (4) The Board shall set a parole release date in accordance with OAR 255-35-013, and shall state the facts and reasons for its actions.

Effect of Judicial Mandatory Minimum Sentences on Prison Terms Under 161.610
255-35-024

- [(1) In no case shall any person punishable under ORS 161.610 become eligible for work release or parole until the minimum term of imprisonment is served, less reductions of imprisonment for good time served.]
- [(2) The Board shall establish the prisoner's release date pursuant to OAR 255-35-015.]

Setting a Parole Release Date: When [Guideline] Matrix Range Exceeds Good Time Date
255-35-025

When the Board chooses to set a parole release date on a sentence with a statutory good time date which calls for an earlier release than the guideline range indicates, the guideline range shall be as follows in order to allow a period of parole supervision:

- [(1)] Up to the statutory good time date on a sentence of one year or less;]
- (1) [(2)] Six months from the statutory good time date on a sentence of at least [more than] one year and less than three years;
- (2) [(3)] Nine months from the statutory good time date on a sentence of three years up to six years.
- (3) Twelve months from the statutory good time date on a sentence of six or more years

Parole Denial: When Parole May be Denied
255-35-030

- (1) The Board with four (4) affirmative votes may [choose not to set a parole release date] deny parole pursuant to ORS 144.1210(4) when:
 - (a) The offense [crime] of commitment included particularly violent or otherwise dangerous criminal conduct as defined by section 255-35-005(6); [or]
 - (b) The offense [crime] was preceded by two (2) or more Class A or Class B felony convictions. [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 such as to constitute a danger to the health or safety of the community. [and/or the prisoner.]
- [(2)] Notwithstanding provisions of ORS 144.120, parole may be denied when the prisoner's guideline range is longer than the statutory good time date on the sentence imposed.]
- (2) [(3)] If a] A two-member panel [decides that parole should be denied, it shall] may refer the matter to the Full Board [for consideration] with [its] the recommendation that parole should be denied based on the criteria listed in subsection (1) of this section.
- (3) [(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.

Variations From the Ranges for Aggravation or Mitigation:
Statements for Record, Prior Disclosure to Prisoners
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 aggravating circumstances if the prisoner has pled 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 has not been brought or has 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 imposed as aggravating or mitigating factor: 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.]

[(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.]

Resetting Pre-Guideline Parole Hearing Dates for Category 7
Offenders
255-35-040
(deleted)

- [(a) A report prepared by medical a authority which attests to validity of the condition with reasons why continued incarceration would be cruel and inhumane; and]
 - [(b) Recommendation from superintendent of institution; and]
 - [(c) Recommendation from Administrator of Corrections Division.]
- [(4) Reductions other than those granted for severe medical conditions or cooperation with authorities shall be limited to a maximum of 20% of the prison term under review:]
- [(a) Reductions shall customarily be considered at personal reviews under rule 255-40-005;]
- (3) [(b)] Special requests for reduction [supported by] from the superintendent of the parent institution and the Director of the Department of Corrections [which do not coincide with the personal interviews shall] may be scheduled for a hearing with the concurrence of the majority of the Board, or may be considered administratively.
- (4) The criteria for a special request reduction shall be:
- (a) when an inmate's documented cooperation with authorities has contributed significantly to the safety and security of the facility; or
 - (b) when cooperation with law enforcement officials results in the apprehension, interruption and conviction of persons involved in significant on going criminal activity.
- (5) The prisoner shall have the burden of establishing that his/her conduct meets the criteria for [a] any date reduction under consideration.

DIVISION 40

REOPENING CASES, REVIEWS, AND REDUCTIONS IN PRISON TERMS

Scheduling of Personal Reviews
255-40-005

- (1) Personal reviews [shall] may be conducted every three years.[after the prisoner has served five (5) years of his prison term and every three (3) years thereafter,] The Board will only conduct a personal review hearing after it has received a recommendation for a seven month reduction for the period under review as described in OAR 255-40-025(1).
- (2) Personal review dates shall be computed from the date of admission to the institution, [starting with the date the prisoner's sentence begins to run.]
- (3) [Such review will be conducted] The purpose of a personal review hearing shall be to determine the progress of the prisoner and whether such progress indicates outstanding reformation so [is exceptional] as to warrant a reduction in the prison term under the criteria listed in OAR 255-40-025(2) .
- (4) [(2)]Prisoners sentenced for aggravated murder or as dangerous offenders, and those parole denied are not subject to personal reviews.

Procedure for Personal Reviews
255-40-010

Personal reviews shall be conducted by a panel or a Full Board pursuant to OAR 255-30-015.

Purpose
255-40-015
(deleted)

Reopening Cases: [When; What is Necessary]
255-40-020

- (1) Any three (3) Board members may reopen any case for reconsideration [The Board may reopen any case for reconsideration] upon the formal written request of a prisoner [to the chairperson or by the motion of a Board member] if:
- [(1) Substantial new information, which was unknown at the time of the prison term hearing, has been received;]
 - [(2) Substantial information that a prisoner, or any other person, willfully concealed or misrepresented information pertinent to a prior Board action has been received;]
 - (a) [(3)S] statutory changes [has] have reclassified the criminal conduct involved;
 - (b) documented new information is received which is relevant to a recalculation of the prison term;
 - (c) [(4)R] rule changes would effect the inmate's prison term [have resulted in a shorter range]; or
 - (d) [(5)C] clerical error is established. The Board [shall] may at its discretion take administrative action [by file pass to correct the error.] or schedule a hearing to correct the error. The prisoner shall be notified in writing of Board action. If the Board [takes action which] finds that the corrected error would be adverse to the prisoner, the Board shall [reopen the] schedule a hearing.
- (2) The Board may review a case administratively under subsections (1)(b) and (c) of this section if the range changes benefit the prisoner and an equal adjustment or lower is made.
- (3) [(6)] The Board shall state the specific reasons for denial of a request to reopen a hearing.
- (4) An individual Board member with the concurrence of two other Board members may move to reopen a hearing.
- (5) The inmate may waive the right to adequate notice and receipt of the Board Review Packet, and the hearing may be reopened based on the criteria listed in subsection (1) of this section.

[20% Reductions in Prison Terms : Effect of Minimum Terms]
Resetting the Parole Release Date to an Earlier Date
255-40-025

(1) An established prison term as defined in section 255-30-005(2), may be reduced under subsection (2) of this section upon the prisoner's application for a hearing and the receipt of a recommendation from the parent institution. [with the concurrence of the institution superintendent.] Such a request for a hearing must come to the chairperson of the Board, [and with the concurrence of the majority of the board,] and upon receipt, a hearing will be scheduled. [;]

[(a) If the prisoner has a judicial minimum sentence under ORS 144.110 such minimum must be overturned by four (4) concurring votes before a reduction can be granted.]

[(b) If the prisoner has a mandatory minimum sentence under ORS 161.610 a reduction cannot be granted below the mandatory minimum sentence.]

(2) [Reductions in the prison term may be granted by the Board only upon showing by] If the prisoner displays an extended course of conduct indicating outstanding reformation, the Board may grant a reduction of up to seven months of the three year period under review, under this section. Cases will be [determined] reviewed based on the following criteria:

(a) [on] the individual merits of each case [; however, the criteria may include[;];

[(a) A five (5) year period of good conduct;]

(b) the seriousness of the crime;

(c) the protection of the public

(d) [(b)D] demonstrable achievement in dealing with problems present at the time of incarceration and associated with criminal conduct (e.g., psychological disorder, drug or alcohol dependency, lack of educational or vocational skills);

(e) [(c)C] documented cooperation with authorities while in custody where a substantial benefit is derived by the authorities; and [.]

(f) the absence of disciplinary actions resulting from violation of rules within the three year period..

[(3) Reductions in prison terms may be considered where the prisoner is suffering from a severe medical condition. The request for reduction must be accompanied by:]

Effect of Minimum Terms on Reductions

255-40-026

- (1) If the prisoner has a judicial minimum sentence which was previously upheld pursuant to ORS 144.110, the minimum must be overturned by four (4) concurring votes of the Board before a reduction can be granted from the previously established minimum set.
- (2) If the prisoner has a mandatory minimum sentence pursuant to ORS 161.610, a reduction cannot be granted below the mandatory minimum sentence and the statutory reduction for goodtime.

Reductions for a Severe Medical Condition

255-40-028

- (1) Reductions in prison terms may be considered where the prisoner is suffering from a severe medical condition. The request for reduction must be accompanied by:
 - (a) a report prepared by a medical authority which attests to validity of the condition with reasons why continued incarceration would be cruel and inhumane; and
 - (b) a recommendation from the superintendent of the institution; and
 - (c) a recommendation from the Director of the Department of Corrections.
- (2) Should the medical condition be such that a hearing may be threatening to the health and safety of the prisoner or the Board, the reduction shall be granted administratively, with the concurrence of the majority of the Board.

Who May Appear

255-40-030

(deleted)

Notice; Disclosure; Record

255-40-035

The notice, disclosure, and record making provisions of Division 30 shall apply to all hearings, and reviews (and interviews in] granted under this Division.

Personal Review Packets
255-40-040

The Personal Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) psych evaluations (last 6 months);
- (4) recommendation for a date cut;
- (5) correspondence;
- (6) field parole analysis report; and
- (7) court orders.

DIVISION 50

POSTPONING A PAROLE RELEASE DATE FOR SERIOUS MISCONDUCT

Postponing a Parole Release Date for Serious Misconduct
255-50-005

- (1) The Board shall postpone a prisoner's scheduled release date, if it finds, after a hearing, that the prisoner engaged in serious misconduct during confinement [A prison term may be extended to a later date for serious misconduct] according to the [following] procedures set forth in this section. [;]
- (2) [(1) The institution disciplinary committee or t] The Director of the Department of Corrections or designee [Corrections Division Hearings Officer] may recommend an extension of a prisoner's parole release date as a disciplinary sanction. [;]
- (3) [(2)] A [R] recommendation to extend a prison term shall be made according to the following guidelines:
- (a) [T] the prisoner must be given an opportunity for a disciplinary hearing, and have been found to have violated [an adopted] a rule governing conduct; and [.]
- [The recommendation by the presiding officer of the disciplinary court must be approved by the institutional superintendent and the Administrator of the Corrections Division before the Board can consider an extension;]
- (b) [I] in no instance shall an extension of a prison term be recommended unless all other disciplinary options have been specifically considered and deemed to be, individually and in combination, inadequate [to] for the seriousness of the misconduct, [in terms of]
- (4) [t] The following factors shall be considered in determining whether an extension is appropriate:
- (a) [(A)E] effectiveness of the sanction as a disciplinary measure, both to the prisoner and to the general prison [er] population;
- (b) [(B)D] degree of hazard posed by the misconduct to human health and/or life, facility security, or to property;

- (c) [(C)S] seriousness of the misconduct had it been committed in the wider community;
- (d) [(D)C] circumstances of the misconduct; and
- (e) [(E)T] the prisoner's prior record of institutional conduct.

(5) [(3)] A prison term shall not be extended on a recommendation from the institution unless the misconduct can be classified within one (1) of the following four (4) categories:

- (a) hazard to human life or health;
- (b) hazard to security;
- (c) hazard to property; or
- (d) third in a series of rule violations within a three month period, while assigned to any Department of Corrections program.

[as listed in Exhibit G. 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 255-35-005, 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 twenty-five (25) percent of the sanction recommended. Any greater variation than twenty-five (25) percent or]

(6) [(r)] Resets [in excess of] under two years will be panel cases, unless it has been previously designated a Full Board case. [require concurrence by at least four (4) voting members of the Board. (See Exhibit D).]

(7) [(4)] When the recommended extension of the prison term exceeds the prisoner's statutory good time date or the expiration date the prison term may be extended up to one day less than the good time date or expiration date. [of the sentence the effect is to deny parole.]

(8) [(5)] If serious misconduct occurs before a prisoner's prison term has been established and an extension of the prison term would be justified, the time for misconduct will be added to the prison term.

(9) [(6)] If serious misconduct occurs after a prison term has been established and an extension of the prison term would be justified, [the chairperson of] the Board may take steps to postpone release and order a postponement hearing to consider extending the prison term.

- (10) The Board may extend a parole release date on its own motion, when the Board is informed of reasonable grounds to believe that a prisoner has violated a law or has engaged in serious misconduct. A fact finding hearing shall be held by a Hearings Officer to determine if the law violation or misconduct occurred.

Postponement Procedures: Hearing by Board; Board Action
255-50-010

- (1) When the Board is notified by the Director [Administrator] of the Department of Corrections [Division] that an extension of a prison term has been recommended, the Board may consider the recommendation by administrative file pass or a hearing may be scheduled.[, a panel or the Full Board may conduct a hearing to determine whether the misconduct requires extension. The recommendation also may be resolved by Administrative File Pass.]
- (2) When a hearing is [to be] held, the following procedure will apply:
- (a) [T] 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] a prisoner may not waive his/her right to appear;
 - (c) [A] a prisoner may not relitigate facts which have been found at the institution disciplinary court.
- (3) [(2)] Serious misconduct is classified within one of the following four categories:
- (a) hazard to human life or health;
 - (b) hazard to security;
 - (c) harzad to property; or
 - (d) third in a series of rule violations within a three month period, while assigned to any Department of Corrections program.
- [listed in Exhibit G.]
- (4) [(3)] The Board may request that the prisoner be given another hearing before the disciplinary committee originating the recommendation for extension, or choose not to extend a prison term if the Board [does not] finds that [all] other disciplinary options are [in]adequate [to] the seriousness of the misconduct, considering the factors found in rule 255-50-005. *for*

(5) [(4)] The Board may continue the postponement hearing and order a psychiatric or psychological examination when it appears that a severe emotional disturbance may be present. If there is a psychiatric or psychological diagnosis of present severe emotional disturbance, such as to constitute a danger to the health and safety of the community [himself, others], the Board may defer release to a specified future date. In choosing not to set a parole release date, rule 255-35-030 shall control.

(6) [(5)] If the Board extends the prison term, 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.

Postponement for Refusing to Participate in a Psychiatric or Psychological Evaluation
255-50-013

(1) Notwithstanding rules 255-50-005 and 255-50-010, the Board may administratively rescind a parole release date for serious misconduct, when a prisoner has refused to participate in psychiatric or psychological evaluation, which was ordered by the Board pursuant to ORS 144.125(3), prior to the prisoner's release on parole.

(2) When a parole release date is rescinded under this section, the Board shall conduct a hearing to postpone the prisoner's release date.

(3) The Board may postpone the parole release date up to one day before the prisoner's goodtime date.

Rescission of Parole: [Voluntary] Unauthorized Absence; Law Violation
255-50-015

(1) The Board may administratively rescind a parole release date when the Board is informed of reasonable grounds to believe a person has violated a law or otherwise engaged in serious misconduct. A fact-finding hearing shall be held by a Hearings Officer to determine if the law violation or serious misconduct [did] occurred. However, if the prisoner has received an additional sentence, no hearing is required.

- (2) The parole release date of a prisoner who is on unauthorized absence [voluntarily absent] from a correctional facility shall be administratively rescinded by a majority of the Board. [voided by the chairperson.] A hearing may be scheduled when the prisoner is available or the Board may administratively reset the parole release date by adding the inoperative time to the prison term.

Postponement Procedure:[Voluntary] Unauthorized Absence; Law Violation
255-50-016

The procedure for a postponement hearing shall be in accordance with the provisions of rule 255-50-010 (2).

Waiver
255-50-017
(deleted)

Hearing After Rescission of Parole
255-50-018
(deleted)

Basis for Rescission
255-50-020
(deleted)

Misconduct Board Review Packet
255-50-025

The Misconduct Board Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) psych evaluations (last 6 months);
- (4) disciplinary report from the institution;
- (5) correspondence;
- (6) field parole analysis report; and
- (7) court orders.

DIVISION 60

PAROLE RELEASE AND EXIT INTERVIEWS

Exit Interviews; [Purpose: To Reveiw] Parole Plan; [Prison] and
Psychiatric Records [Notification of Prisoner]
255-60-006

- (1) At any time prior to a prisoner's scheduled parole release date, the Board on its own initiative or on the request of the Department of Corrections, may conduct an exit interview [parole release hearing] to review the prisoner's parole plan, psychiatric/psychological reports, if any, and conduct while in confinement. Pursuant to ORS 144.125, the Board may order any available psychiatric/psychological report(s) from the Department of Corrections [Division].
- (2) The procedures governing exit interviews shall be the same as the the procedures outlined in Divisions 15 and 30.

[At a reasonable time prior to the hearing, the Board shall notify the prisoner of the scheduled hearing. The prisoner may provide to the Board may information he/she feels is pertinent to release.]

- [(3) Disclosure of information is governed by the rules of Division 30.]
- [(4) The parole release hearing shall be convicted by a panel or Full Board in accordance with OAR 255-30-015.]
- (3) [(5)] The Board shall examine the prisoner's plans for residence, employment, or other situation in the community to determine whether the parole plan is adequate. [,] The plan may include, but is not limited to:

- (a) [An acceptable plan may include] employment; [,]
(b) school, or other situation (e.g., retirement income); [,]
(c) [and] verifiable residence;
(d) [,it may require] treatment programs; and
(e) prescribed medication. [;]

- (4) [(b) 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 Department of Corrections [Division]. [A report shall be presented to the Board after sixty (60) days by the Corrections Division, pursuant to ORS 144.125(4).]

- (5) [(c)] A prisoner requesting an out-of-state parole waives the ninety (90) day limitation on deferral of release. Such waiver is for the purpose of an adequate parole plan in the accepting state.
- (6) The prisoner shall receive notice of the parole release hearing results, including the facts and specific reasons for the decision and the individual votes of the Board members.
- (7) The Board may order a psychiatric/psychological report anytime prior to release. 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 a psychiatric/psychological report to] consider deferring [the deferral of the scheduled] parole release until a specified future date. [:]
- (8) If the evaluation does not make a finding of a severe emotional disturbance such as to constitute a danger to the health or safety of the community, the Board shall affirm the parole release date and set parole conditions.
- [(a) The psychiatric or psychological evaluation shall be conducted to determine if a severe emotional disturbance still exists or is in remission. The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other pertinent data. The evaluation should include recommendations for treatment or medication that would assist the prisoner in performing satisfactorily in the community upon release.]
- (9) The majority of the Board may defer a scheduled parole release date up to two years. A panel may defer a scheduled parole release date up to 18 months.
- (10) [(b)] The Board may not deny release on parole solely because of a prisoner's severe emotional disturbance.
- (11) When a prisoner has a detainer from another jurisdiction, the detainer shall take precedence and parole will begin upon the prisoner's release into the community from the holding jurisdiction.
- (12) [(8)] If a parolee is released by the Department of Corrections [Division] to a detainer from [of] another jurisdiction and is recommitted to the Oregon Department of Corrections, [Division] the previous parole order shall be voided.

Waiver of 90-Day Limitation; Deferral for Serious Misconduct
255-60-010
(deleted)

Instate Parole Release Interview Procedures
255-60-015
(deleted)

Out-of-State Parole Release Hearing Procedures
255-60-020

A prisoner [who is] in the custody of the Department of Corrections [Division] who is housed in an out-of-state facility may [shall] receive an exit interview [parole release hearing] if ordered by the Board in conformance with rule 255-60-005. All proceedings may be conducted by teleconference [conference telephone call].

Parole Consideration for Prisoners in a Local Jail
255-60-025
(deleted)

Exit Interview Board Review Packet
255-60-030

The exit interview Board Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) psych evaluations (previous 6 months);
- (4) correspondence;
- (5) field parole analysis report; and
- (6) court orders.

DIVISION 65

RESTITUTION AND SUPERVISION FEES

When Restitution is Ordered Upon Parole Release: Establishing a
Payment Schedule; Limitations
255-65-005

- (1) When a person has been sentenced pursuant to ORS 137.106 to pay restitution, or when restitution is recommended by the court, 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 restitution as a condition of parole. Restitution must be noted as restitution in the court order.
- (2) When a person has been sentenced pursuant to ORS 137.101 to pay a compensatory fine for a crime committed after Nov. 1, 1981, and any portion of that payment is deferred until after release from imprisonment, the Board shall establish a compensatory fine as a condition of parole. The compensatory fine must be for a specific amount, and must be noted as a compensatory fine in the court order.
- (3) [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 not including place of residence, or those tools or vehicles essential to personal livelihood;
 - (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] in installment or other conditions to be set by the Board [al basis]; and
 - (d) The rehabilitative [e]affect of the payment and the method of payment.
- (4) [(2)] Normal payments shall range up [from ten (10)] to twenty (20) percent of a person's take-home salary without voluntary payroll deductions, unless significant savings or liquid assess not including place of residence or those tools or vehicle essential to personal livelihood permit larger amounts. [;]

- (5) . [(3)] The Board shall provide to the sentencing court a copy of the schedule of payments and any modifications [thereof].

Sentencing 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 loss incurred. The Board shall consider a sentence to pay restitution after a term of imprisonment as mitigation in setting a parole release date.]

Supervision of Payments; Conditions of Parole; Default by Parolee; Effect on Discharge
255-65-015

- (1) The [P] payment of restitution shall be included as a special condition of parole[:].
- (2) [(a)] Payments shall be made to the clerk of the court of the county of sentencing[:].
- (3) [(b)] The method and manner of payment shall be established by the individual's parole officer and approved by the Board.
- (4) [(2)] When a parolee defaults on any scheduled payment, the supervising parole officer shall notify the Board. The default may [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; or
- (b) The default occurred despite a good faith effort to make the payment.
- (5) [(3)] If total payment of restitution has not been made by the completion of the designated minimum period of supervision, the parolee shall be continued on parole until completion of payment or the expiration of his/her sentence, whichever is first.

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 Department of 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 the costs of supervising parole.
- (2) The fee [shall] may range [be] between ten dollars (\$10) and twenty dollars (\$20) a month, unless a greater fee is recommended by the Department of Corrections [Division] and approved by the Board using the same criteria set forth in rule 255-65-005(2) [(1)(a), (b), and (c)]. In no case shall the fee be less than ten dollars (\$10) per month.
- (3) [(2)] The fee established pursuant to subsection (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.
- (4) 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 the Department of Corrections, whichever is appropriate, may waive the payment of the fee in whole or in part.
- (5) Fees collected shall be transferred to the Department of Corrections [Division] or retained by the county as provided by statute.

DIVISION 70

CONDITIONS OF PAROLE

Conditions of Parole

255-70-001

Conditions of parole may be imposed by the Board pursuant to OAR [255-35-016] 255-70-015. Conditions of parole are not limited to those shown in Exhibit J.

Parolee Placement in Community Corrections Centers: Standards; Limitations

255-70-005

(deleted)

Guidelines on General Condition Relating to "Best Interest" Return
255-70-010

[As used in the general 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 which led to the initial incarceration.]
- [(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).]

Establishing the Conditions of Parole

255-70-015

- (1) The Board may order an exit interview prior to the prisoner's parole release date to review the prisoner's case and set parole conditions.

- (2) If the Board decides to waive an exit interview, it shall specify the condition(s) of parole to be added to the parole order the prison term hearing.
- (3) Once the conditions of parole have been established, the conditions may be altered according to the following procedures:
- (a) by administrative file pass, if the alteration is before the prisoner's release on parole; and
- (b) at a cite to show cause hearing, if the alteration is after parole release.
- (4) A cite to show cause hearing under subsection (1) of this section shall be conducted pursuant to the rules governing parole revocation hearings in Division 75.
- (5) When a parole officer would like the Board to add conditions to the parole order, before the prisoner is released on parole, the request must be submitted to the Board at least two weeks prior to the release date.

DIVISION 75

PROCEDURES FOR REVOCATION OF PAROLE

Definitions
255-75-001

- [(1) "Active Parole Supervision": Supervision requiring periodic contact and monitoring by the supervising officer to assure that the conditions of parole are being met, that the parolee has committed no new crimes and to assure repayment of restitution, if required.]
- [(2) "Active Supervision" will not include:
- (a) Period of confinement in local, state, or federal correctional facilities during the parole.
 - (b) The period of time between suspension of parole and the date parole is reinstated.]
- [(3) "Major Technical Violation": A violation of 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 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.]

Suspension of Parole; Citation
244-75-002

When the Board is informed of reasonable grounds to believe that a person has violated the conditions of parole, or that parole is no longer in the best interests of the parolee or the community, and that the revocation of parole or an extension of supervised parole [the conditional discharge date] may be justified, the Board may:

- (1) [S] suspend parole and order the parolee arrested and detained pending a parole violation hearing; or

- (2) [[I] issue a citation to show cause why parole should not be revoked [appear at a parole revocation hearing,] without first suspending parole or ordering detention. The citation may be issued [effected] by the Board or the Board may expressly authorize its designated representative to issue a citation.

Criteria for Allowing Parolee to Remain in Community Pending Hearing

255-75-003

In determining whether to allow a parolee to remain in the community pending the parole violation hearing, the Board may consider:

- (1) [[T] the seriousness of the allegations and the risk to the parolee or the community;
- (2) [[T] the likelihood of the parolee absconding or failing to appear at the hearing;
- (3) [[T] the availability of bail (when applicable);
- (4) [[T] the availability of resources in the community such as residence [and/] or employment; or
- (5) [[A] any recommendation by the parole officer.

Guidelines for "Best Interest" Return

255-75-004

Revocation of parole when it is not "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 the parolee dangerous to self or others if left in the community. The emotional or psychological disturbance may be indicated but not limited to threatening behavior in the form of:
 - (a) showing a present capacity to carry out any statements or threats of violence against the parolee or the community; or
 - (b) The substantial duplication of circumstances and conduct which led to the initial incarceration;
- (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, or other treatment programs);

- (3) Upon release on parole an existing probation is revoked, resulting in the prisoner's return to the custody of the Department of Corrections for criminal activity which did not occur while on parole; or
- (4) The prisoner receives a new commitment to the custody of the Department of Corrections for criminal activity which did not occur while on parole.

Hearing Requirement: Procedure
255-75-005

- (1) Before the Board can revoke parole, [it shall conduct] a parole violation hearing shall be conducted.
- (2) 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 violation or the place of confinement.
- (3) Before a Hearings Officer can hold an out of custody hearing, the parole officer responsible for supervising the parolee must obtain a citation to appear from the Board.
- (4) For an in custody parole revocation hearing, the parole officer must request a non bailable suspend and detain warrant from the Board.
- (5) A citation to appear or a suspend and detain warrant requires three affirmative votes by the Board.

Method of Hearing
255-75-006

Hearings may [shall] be conducted by teleconference. [telephone call. Exceptions will be made in the following situations by the hearings officer when:] Person to person hearings shall be conducted by a Hearings Officer in the following situations:

- (1) [T] the alleged violations are contested and the parolee or the parolee's attorney shows that the credibility of the witness, including the observation of [his/her] the witness's demeanor would be necessary; [.]
- (2) [P] physical exhibits are to be part of the record and viewing [of] the exhibits would be essential; [.]
- (3) [T] there are unusual circumstances not covered by this section, to be determined at the discretion of the Hearings Officer; or [.]

- (4) [W] when circumstances dictate that hearings cannot be conducted by [telephone] teleconference [call] (i.e., no telephone available for hearings in the confining facility).

[Hearings Officer/]Designated Representative to Conduct Hearing
255-75-007

- (1) The Board's [or its] designated representative shall conduct the parole revocation hearing.
- (2) "Designated representative" shall include those persons designated by the Department of Corrections or the Board of Parole [Division] as Hearings Officers.

Locations of Hearing
255-75-008
(deleted)

Board Action Upon Notification of Alleged Parole Violation:
Criteria for; Release of Parolee Pending Hearing
255-75-010
(deleted)

Procedures When Parolee is in Another Jurisdiction: Return of Parolee
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) [T] the parolee has left the state to which the parolee [he/she] was paroled without permission, and is in custody in another jurisdiction;
 - (b) [T] the parolee is in [federal] custody in another correctional facility;
 - (c) [T] the parolee has absconded from supervision and the parolee's [his/her] whereabouts are unknown; or
 - (d) [T] the parolee has been convicted of a new crime [in another jurisdiction].
- (2) After the parolee is returned to prison in Oregon, the parolee [he/she] shall be given a parole revocation hearing [according to the provisions of this Division].

Rights of a Parolee at a Formal Hearing
255-75-026

- (1) The parolee shall be provided with a written hearing at least three (3) [calendar] worki the hearing.
- (2) The hearing notice will include:
 - (a) a Notice of Rights;
 - (b) [W] a written statement of alleged
 - (c) [A] any documents or evidence which of the alleged violations.
- (3) The parolee may elect to waive the three working day [3-day] notification period prior to the hearing and begin the hearing immediately, [with the hearings officer taping the parolee's verbal statement.]
- (4) The Hearings Officer shall tape the parolee's verbal statement waiving the three working day notification period.

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Waiver of Hearing
255-75-026

- (1) In all cases, the parolee may waive the right to a hearing by signing a Notice of Rights form.
- (2) When the purpose of a parole hearing is to consider a parole violation, the [W]waiver of the right to a hearing acknowledges that there has been a violation of the conditions of parole in whole or in part.
- (3) When the purpose of the hearing is to modify parole conditions or to consider extending active community supervision, the waiver of the hearing indicates acceptance of the modifications.
- (4) If the parolee waives the right to a hearing, the parolee [he/she] may offer a written or verbal statement pertaining to the violation. [:]
- (5) [(a)] The [W] written waiver of the right to a hearing [statement] must be submitted to the Parole Board's [or its] designated representative within five (5) days after the parolee has waived [r of] the hearing.
- (6) [(b)] Any statement made to the designated representative at the time of waiver must be tape recorded.

(7) [(4)] If the parolee waives the right to a hearing, the [h] Hearings [o] Officer will submit to the Parole Board the following:

- (a) a Notice of Rights form;
- (b) [A] any parolee statements;
- (c) the Hearing Report Summary; and
- (d) [A] any supporting information.

Board Rejection of Waiver

255-75-030

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 new hearing.

Hearings Process

255-75-031

- (1) The parole officer will present information at the hearing and arrange for the presence of witnesses for the state [/ county,] and present [/or] evidence, unless the hearing is waived.
- (2) The [h] Hearings [o] Officer will make a tape recording of the hearing.

Representation/Determination of Ability to Pay Attorney Fees

255-75-035

[In all cases, the parolee is entitled to:]

- [(1) Board-appointed counsel at parolee's request to represent indigent parolee if the parolee makes a timely and colorable claim that:
 - (a) He/She has not committed the alleged violation;
 - (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) Representation by an attorney at the parolee's own expense;]

[(3) Upon completion of the violation hearing, the Hearings Officer shall notify the Board of payment to be made to the appointed attorney. In those instances where counsel is refused, the grounds for refusal shall be succinctly stated in the record. Where payment is approved, such payment shall not exceed \$150 per case.]

(1) In all cases, the parolee is entitled to representation by an attorney at the parolee's own expense.

(2) If the parolee is deemed indigent, and unable to pay for an attorney, the parolee may request to be represented by a Board appointed attorney if the parolee makes a timely and colorable claim that:

(a) the parolee has not committed the alledged violation;

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

(c) the parolee appears incapable of representing himself/herself.

(3) If a Board appointed attorney is requested by the parolee, the Hearings Officer shall notify the Board of payment to be made to the appointed attorney. Where payment is approved, such payment shall not exceed \$30 per hour and \$200 per case. Billing must be received within 90 days.

(4) In those instances where counsel is refused by the parolee, the grounds for refusal shall be succinctly stated in the record.

Board Subpoenas; Witness or Documents
255-75-036

(1) Upon the request of any party to the hearing, and upon a proper showing of the relevance and reasonable scope of the testimony to be offered, the Parole Board or [a] designated representative shall, or the Parole Board on its own motion may, issue subpoenas requiring the attendance and testimony of witnesses. [The p] Parolees will make their [his/her] own arrangements for presenting witnesses. In addition, the Board or its designated representative may subpoena documents when relevant.

- (2) Witnesses appearing under subpoena, other than the parties, state officers or employes, shall be reimbursed fees and mileage by the Parole Board as prescribed by law, provided the [h] Hearings [o] Officer certifies that the witness's testimony [of the witness] was relevant and material to the hearing.
- (3) The parolee may present witnesses who may have relevant information, and has the right to confront the [of confrontation of] persons or witnesses who have [has] presented [adverse] information against the parolee.
- (4) Confrontation of witnesses by the parolee may be denied if the [h] Hearings [o] Officer finds that confrontation would subject the witness to the risk of harm if the witness's [his/her] identity was disclosed.
- (5) [(4)] If confrontation of witnesses by the parolee is denied, the [h] Hearings [o] Officer shall state the reason(s) for the decision and conduct an independent examination of the witness on the record.

Compelling Appearance of Witnesses: If Subpoena Requested; Board Motion; Failure to Obey
255-75-040

The Board, or its designated representative or party requesting a subpoena, may seek contempt proceedings in the circuit court of any county against any person refusing to honor the subpoena.

Probable Cause; Effect of Preliminary Hearing; Definition of Term; Deferral of Revocation Hearing
255-75-042

- (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]
- (2) [s] Should the parolee waive the right to a preliminary hearing, [such] the waiver shall [also] constitute a waiver of a hearing by the Board to determine whether there is a probable cause to believe that a violation of one or more of the conditions of parole has occurred.

["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).]

- (3) A finding of probable cause [Such findings] shall be used to support the Board's decision to suspend and detain a parolee charged with the commission of a new crime. The Board may then defer completion of a parole violation hearing until the trial is over [has been completed] and the Board is notified of the final disposition of the case.
- (4) [In no case, however, shall] Notwithstanding subsection (3) of this section, a deferral following a finding of probable cause may not be extended for a period greater than 120 [ninety (90)] days from the date of the preliminary hearing or waiver.

Evidence
255-75-045

- (1) The following evidence may be received at a parole violation hearing:
- (a) [(1)O] oral testimony under oath;
 - (b) [(2)A] affidavits or other sworn statements;
- [(3) Evidence determined to be material, relevant, and reliable, regardless of its nature, including:]
- (c) [(a)L] letters;
 - (d) [(b)D] documents;
 - (e) [(c)R] reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole officers, doctors, psychologists, attorneys);
 - (f) [(d)U] uncertified copies of letters, documents, or reports shall be admissible in a parole violation hearing if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable; [.]
 - (g) [(4)E] evidence of criminal activity even when charges have been dismissed, not brought, or the parolee has been acquitted at trial; [.]
 - (h) [(5)H] hearsay evidence shall be admissible; however, hearsay 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; or [.]

(i) any evidence determined to be material, relevant, and reliable, regardless of its nature.

- (2) [(6)] Upon the request of any party to the hearing, the Parole Board, or its designated representative, may issue a subpoena duces tecum upon a proper showing of relevant and reasonable scope of the documentary or [/] physical evidence being sought. The parolee may make the parolee's [his/her] own arrangements for presenting evidence.
- (3) [(7)] The [h] Hearings [o] Officer may exclude documents or [/] physical evidence upon making a finding that such evidence would pose a hazard to facility security or would not assist in the resolution of the allegation(s). The reason for exclusion shall be made part of the record.
- (4) [(8)] The [h] Hearings [o] Officer may classify documents or [/] physical evidence as confidential upon making a finding that revealing such evidence would pose a threat to the safety of the person providing the evidence.
- (5) [(9)] Evidence received without disclosing the identity of the witness shall be made a sealed part of the record.
- (6) [(10)] When a witness is unavailable, the [his/her] statements may be received in the form of documentary evidence when the [h] Hearings [o] Officer determines at an in-camera hearing that good cause for non[-]disclosure exists and supporting evidence establishes the reliability of the absent witness's statement.

Postponement
255-75-046

- (1) A hearing may be postponed by the [h] Hearings [o] Officer for good cause and for a reasonable period of time.
- (2) The criteria for "Good cause" includes, but is not limited to:
- (a) the [P] preparation of defense;
 - (b) [I] illness or unavailability of the parolee or other persons;
 - (c) [G] gathering of additional evidence; or
 - (d) [A] avoiding interference with an ongoing police investigation or pending prosecution.

Procedure for Receiving Evidence if Good Cause Exists Not to
Require Confrontation or Disclosure of an Informat's Identity
255-75-050

(deleted)

Reopening Hearings for New Information: Criteria; Procedure
255-75-055

- (1) After the completion of a parole violation 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.

Hearings Record
255-75-056

- (1) The hearings record shall include:
 - (a) a Hearings Report Summary; including tape of hearing;
 - [(b) The tape recording will be sent to and retained by the Parole Board for two (2) years.]
 - (b) [(2)W] a written statement of alleged violations;
 - (c) [(3)S] supporting materials;
 - (d) [(4)] a Notice of Rights; and
 - (e) [(5)] the Order of Parole.
- (2) The tape recording used in subsection (1)(a) of this rule shall be sent to and retained by the Parole Board for two (2) years.

Record of Parole Revocation Hearing
255-75-060
(deleted)

3/16/88*

Ten-Day Waiting Period for Parolee's Arguments and Exceptions
255-75-065

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

Final Action by the Board: Procedure [Quorum to Decide/Final Order/Notice of Decision]
255-75-070

- (1) The Board shall consider [the record,] the Hearings Officer's report, and exceptions and arguments. A majority [quorum] of the Board shall enter a decision, and the individual votes of the Board members shall be recorded in accordance with Exhibit K. The Board shall indicate the adopted [the] findings.
- (2) The Board may adopt or reject any or all the recommendations of the Hearings Officer. [When the recommendations are rejected the Board shall state the reasons for rejections].
- (3) [(2)] A copy of the final order of parole revocation shall be forwarded to the parolee with notice of the right to administrative and judicial review.

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) [S] suspend parole and order the parolee returned to Oregon for a parole revocation hearing after serving the new sentence; or
- (2) [Reinstate] continue 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] A continuance under these circumstances is not a recommendation for parole release.

[Designation of Parole Failure
255-75-076]

[If the Board finds that a parolee has violated the conditions of parole but chooses to reinstate or continue parole, the reinstatement or continuation may be designated a parole failure.]

Parole Violator with New Prison Commitment; Action Required
255-75-078

- (1) Parole violators [returned] with pending charges [a new prison commitment] shall be given a future disposition hearing within 120 days of the parolee's return to the institution followed by a prison term hearing in accordance with Division 30 of these rules.
- (2) A parole violator with a new conviction shall see the Board for the violation at the prison term hearing for the new conviction.
- (3) The following procedure shall apply to parole violators with new commitments which are concurrent to their parole violations:
 - (a) a future disposition hearing will be conducted and a sanction shall be imposed for the parole violation according to guidelines in rule 255-75-090; and
 - (b) the commencement date for the new commitment shall be the sentencing date for the new crime.
- (4) The following procedures shall apply to parole violators with new commitments which are consecutive to their parole violations:
 - (a) a future disposition hearing shall be conducted, and a parole release date shall be established on the violation according to the guidelines in rule 255-75-090 prior to the prison term hearing for the new commitment; and
 - (b) the commencement date for the new commitment shall be the parole release date established for the parole violation. or
- (5) Notwithstanding subsection (4) of this section, when the new commitment is consecutive to a parole violation, the panel or Full Board may treat the parole violation and the new commitment as if they were concurrent. The commencement date for the new commitment shall be the sentencing date for the new crime.

ask
Arlene
what this
means

- (6) If the parolee is returned with a parole violation and a new sentence which is consecutive to the sentence for which the parolee was on parole, the commencement date for the new crime shall be the date parole was revoked, if so stated on the court order.

[Reinstatement] Continuance 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 a revocation hearing [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] continue 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 255-35-013.]

Authority of Revocation Panel to Set New Parole Release Date for Parole Violators
255-75-082
(deleted)

Parole Violators with No New Commitment;[/] Action Required
255-75-085

- (1) Parole violators returned with no new prison commitment shall receive a future disposition hearing within [90] 120 days of the date of return to Department of Corrections [Division] custody.
- (2) The hearing shall follow the procedures of a prison term hearing as provided in Division 30 of these rules.
- (3) At the future disposition hearing, the Board may:
- (a) [S] set a new parole release date according to the guidelines in rule 255-75-090 [and choose not to give credit for statutory good time earned until suspension of parole]; or
 - (b) [D] deny further parole consideration, pursuant to ORS 144.390 [according to the guidelines in rule 255-75-090,]; and [may]
 - (c) return all or part of the forfeited statutory good time [to which the prisoner is entitled].

Guidelines for Reparole [When No New Prison Commitment is Present]
255-75-090

- (1) Parole violators [returned with no new prison commitment] shall be given a sanction [an additional prison term] within the following guidelines: [unless the Board finds aggravation [mitigation] or denies parole:]
 - (a) [(1)V] violations not involving a finding of new criminal activity, shall result in an additional term of [four] six to eight months unless the Board finds aggravation or denies parole; and [.]
 - (b) [(2)V] violations involving a finding of new criminal activity shall result in an additional term of eight to twelve months unless the Board finds aggravation, mitigation, denies parole.
 - (c) In establishing a sanction, the commencement date shall be the date of arrest for the parole violation which resulted in the revocation of parole.

Variation From Guidelines for Aggravation/Mitigation Permitted
255-75-095

- (1) Variation from the terms set fourth in rule 255-75-090 (a), (b), is permitted if the Board finds aggravation or mitigation as shown in either Exhibit E or Exhibit H [G].
- (2) Variations from the terms set forth in rule 255-75-090 (a), (b) shall be those established in Division 35 of these rules and shown in Exhibit D.

Denial of Reparole Consideration
255-75-096

- (1) The Board may deny reparole consideration and require the parole violator to serve to the statutory good time date. This action requires the affirmative vote of at least four voting members.
- (2) In cases where setting a parole violator within the guidelines set forth in rule 255-75-090 (a) and (b) would require the parole violator to serve to the end of the sentence, four votes are not required.

Restoration of Parole Violation Goodtime
255-75-098

The Board may restore forfeited parole violation goodtime when:

- (1) there is no violation of parole and a recommendation to restore parole violation goodtime is received from the superintendent of the institution; or
- (2) parole is revoked on a best interest basis and there was no actual parole violation, and a recommendation to restore parole violation goodtime is received from the superintendent of the institution.

Future Disposition Hearing Packet
255-75-100

The Future Disposition Hearing Packet shall contain:

- (1) institution face sheet;
- (2) revocation recommendation;
- (3) final order of revocation;
- (4) administrative action sheet;
- (5) revocation hearing findings;
- (6) Board Action Form ordering parole;
- (7) disciplinary report, when extension is recommended;
- (8) recommendation for parole violation goodtime;
- (9) correspondence
- (10) statements of imprisonment for parole violation; and
- (11) face sheet from old parole analysis report.

DIVISION 80

ADMINISTRATIVE APPEAL

Procedure for Requesting a Review [Method of Appeal]
255-80-005

- (1) A request for an Administrative Review [Appeal] may be filed by a prisoner or initiated by a Board member. If the [chairperson of the] Board determines that the request [appeal] is consistent with the Board's criteria as defined in rule 255-80-010, the matter will be resolved by an Administrative Review Hearing or by an Administrative Review. Administrative Reviews may [will] be resolved by file pass. [conducted without a hearing.] In either instance, the prisoner will be informed in writing of the Board's decision.
- (2) [Application] Requests for administrative review [appeal] must be made within forty-five (45) days after the Board's final action on the reviewed issue [by the Board].
- (3) A waiver of the 45 day deadline will be granted only, if relevent new information is submitted which was particularly difficult to obtain.
- (4) An administrative review will be conducted if there is a change in the prisoner's sentence, or a change is made to the Board's rules or the statutes or case law which would effect the prisoner.
- (5) When the appeal is denied the chairperson or designee shall inform the prisoner in writing of the specific reasons for denial and the prior decision remains in effect.
- (6) An administrative review initiated by a Board member is not subject to the 45 day deadline.

Criteria for Granting a Review [Appeal]
244-80-010

The criteria for granting a review [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 initial prison term or de novo [original] hearing which, through no fault of the prisoner, was not considered; or

- (3) Pertinent information was not available at the time of the initial prison term or de novo hearing. i.e. information concerning convictions from other jurisdictions.
- (4) [(3)] The action of the Board is inconsistent with its rules or policies or is contrary to law; or [and]
- (5) [(4)] The matters raised on review [appeal] may have an affect on the original decision.

Administrative Reveiw Hearing Packet
255-80-015

The Administrative Review Hearing Packet shall contain:

- (1) institution face sheet;
- (2) Board Action Form granting administrative review;
- (3) all information attached to the Board Action Form granting review;
- (4) administrative review request;
- (5) all Board Action Forms since the prison term hearing;
- (6) psych evaluations (last 6 months);
- (7) correspondence;
- (8) field parole analysis report; and
- (9) court orders.

DIVISION 90

PAROLE SUPERVISION AND DISCHARGE
FOR INMATES WITH CRIMES PRIOR TO DEC. 4, 1986

Definitions

255-90-001

(deleted)

Establishing the Period of Parole Supervision [Conditional Discharge Date]; Effect of Restitution Obligation; Effect of Ballot Measure 10.

255-90-002

- (1) The Board shall establish a [conditional discharge date. It shall also set a] period of active supervised parole as shown in [the conditional discharge matrix,] Exhibit I. The Board may order an extended supervision period [after a hearing] if it finds that such an extension is appropriate [mandated]. [That extended supervision shall in no case exceed thirty-six (36) months.]
- (2) Notwithstanding subsection (1) of this rule, active supervision, as shown in the [conditional discharge matrix] Exhibit E, shall extend until the maximum expiration of the prison sentence if restitution remains unpaid.
- (3) *Must be I* Discharge for inmates who committed crimes on or after December 4, 1986 shall be governed by Division 92 of the Board's rules.

Period of Time to Serve on Supervised Parole

255-90-003

- (1) The guidelines set forth in Exhibit I shall govern the period of supervised parole. [establishment of discharge dates.] The period of supervision [date] may be set by administrative file pass or at any hearing, personal review, or postponement action and shall be written on the Order of Parole.
- (2) [For] Before discharge, the Board must find that the parolee's final release is not incompatible with the parolee's welfare and that of society. [to be effective, the parolee must display acceptable parole performance during the term of active parole supervision.]

- (3) [(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.

Procedure: Approving or Denying 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.

Extension of [Parole Discharge Date] Period of Supervision;
Procedure: Approving or Denying Discharge; Further Proceedings
255-90-010

- (1) Prior to the expiration of the parolee's period of supervision [discharge date on the Order of Parole,] the supervising parole officer shall send to the Board a closing summary. This summary shall include:
- (a) an evaluation of the parolee's performance;
 - (b) the status of the parolee's restitution obligation, if any;
 - (c) the parolee's employment status; and
 - (d) the parolee's residence;
 - (e) any fines or fees;
 - (f) treatment programs; and
 - (g) any new criminal activity.
- (2) The summary [and] shall recommend one of two courses:
- (a) [T] that the parolee be discharged and a certificate of discharge be issued; or
 - (b) [T] that the discharge not be granted, with supporting reasons for this action in the recommendation;
- (3) [(c)] When discharge is not granted, a parole revocation hearing shall be conducted to determine if parole should be revoked [the recommendation for] or if the parole period should be extended[ion shall be executed].
- (4) [(d)] The Board shall notify the parolee in writing of the extension of the parole supervision period [new discharge date if mandated with stated] setting forth the reasons for the extension. The date of extension shall be from the date of the Board's review. [or reasons]

(5) . When discharge is granted, the Board shall [or] notify the parolee in writing that the parolee [he] has been discharged.

(6) [~~2~~] Notwithstanding subsections (1) to (5) of this rule, the supervising parole officer may submit a written recommendation to the Board [with written reasons] for early [conditional] discharge at any time after six months of supervised parole, providing that fees and restitution are paid in full.

Discharge
255-90-015

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.

DIVISION 92

Parole Supervision Under BM10

Application of Division 92
255-92-005

Division 92 applies to parole supervision for all prisoners who committed crimes on or after December 4, 1986. (See Ballot Measure 10, passed November 4, 1986.)

Definitions
255-92-010

- [(1) "Active Supervision": Supervision requiring contact and monitoring by the supervising officer to assure continued compliance with the conditions of parole.]
- [(2) "Active Supervision" shall not include:
 - (a) the period of confinement in local, state, or federal correctional facilities during the parole;
 - (b) the period of time between the suspension of parole and the date parole is continued; and
 - (c) inactive parole.]
- [(3) "Exemplary Behavior": Behavior which is consistent with the conditions of parole.]
- [(4) "Inactive Parole" includes:
 - (a) general parole conditions;
 - (b) no supervision by a parole officer;
 - (c) no parole fees; and
 - (d) name and status maintained on the LEDS and EPR computer systems.]

Duration of Parole
255-92-015

- (1) Parole shall extend the entire term of a prisoner's sentence.
- (2) Notwithstanding subsection (1) of this section, active supervision on parole may be discontinued after three years, if the Board finds that:
 - (a) the parolee does not constitute a threat to the parolee or society;

(b) the parolee's behavior has been exemplary; and

(c) any restitution owed has been paid.

- (3) When active parole supervision is discontinued, the parolee shall be placed on inactive parole. However, this subsection shall not prohibit the Board from reinstating active parole supervision.

Period of Active Supervision; Exceptions

255-92-020

- (1) The minimum period of active supervision on parole shall be the length of the prisoner's sentence or three years, whichever is shorter.
- (2) Notwithstanding subsection (1) of this section, a parolee will only be removed from active supervision if the Board finds that the parolee has satisfied the provisions of OAR 255-92-015 (a), (b) and (c).
- (3) During parole violation proceedings, the period of active supervision is suspended and the Board shall retain jurisdiction over the parolee until the proceedings are resolved.
- (4) The Board may reinstate a parole on active supervision under the provisions of OAR 255-92-040.

Parole Summary; Active Supervision Review

255-92-025

- (1) Within fifteen (15) days after the parolee has completed a period of active supervision established by the Board, the supervising officer shall send to the Board a parole summary. The parole summary shall contain:
- (a) an evaluation of the parolee's behavior;
 - (b) an update on the status of the parolee's restitution obligation, if any; and
 - (c) a recommendation that the parolee be removed from active supervision; or
 - (d) a recommendation that the parolee be continued on active supervision.
- (2) If the supervising officer recommends that active supervision be continued, supporting reasons for this recommendation shall be included in the parole summary.

- (3) As soon as the parole summary is received by the Board, any three (3) Board members will conduct an active supervision review by administrative file pass to examine the parolee's record on active supervision.

Continued Active Supervision; Procedure
255-92-030

When continued active supervision is recommended by the supervising officer, the Board shall determine at the active supervision review if a continuance is appropriate. If the Board decides that continuing active supervision is appropriate, the Board shall:

- (1) use the guidelines set forth in Exhibit L to establish the length of the parolee's next period of active supervision; and
- (2) notify the parolee and the parole officer of its decision, the length of the parolee's next period active supervision, and the reasons for continuing active supervision.

Removal From Active Supervision; Procedure
255-92-035

- (1) When the Board decides to remove a parolee from active supervision, the Board shall:
 - (a) delete any special conditions which the parolee has been required to follow; and
 - (b) issue a new parole order certifying inactive status.
- (2) A parolee shall be considered to be on inactive parole as of the date the parole order certifying inactive status is signed by the Board.

Bases for Reinstating Active Supervision; Procedure
255-92-040

- (1) Active supervision may be reinstated for the following reasons:
 - (a) failure to abide by the general conditions of parole; or
 - (b) inactive parole is no longer in the best interests of the parolee or society.

- (2) When the Board receives information indicating that reinstatement on active parole supervision may be warranted pursuant to subsection (1) of this section, the Board shall review the parolee's conduct by administrative file pass to decide whether or not to cite the parolee to a show cause hearing.
- (3) After the show cause hearing, the Board shall notify the parolee of its decision. If the Board decides to reinstate active parole supervision, the Board shall also notify the parolee of the length of the parolee's next period of active supervision, and the reasons for reinstating active supervision.
- (4) Show cause hearings under this section shall be conducted under the same procedures as parole revocation hearings in Division 75.
- (5) If a parolee is on inactive parole and parole is revoked following a parole revocation hearing, in addition to any other sanctions imposed by the Board, when the parolee is released from custody the parolee will be reinstated on active supervision. The new period of active supervision will be set at the prisoner's future disposition hearing.
- (6) If a parolee is on active parole and parole is revoked following a parole revocation hearing, in addition to any other sanctions imposed by the Board, when the parolee is released from custody the parolee will be reinstated on active supervision. The new period of active supervision will be set at the prisoner's future disposition hearing.
- (7) The new period of active supervision under this section shall be determined pursuant to the guidelines set forth in Exhibit L.

DIVISION 95

PRESENTENCE INVESTIGATION

Uniform Presentence Report
255-95-005

- (1) The Board, in consultation with the Advisory Commission on Prison Terms and Parole Standards, shall propose to the Department of Corrections a uniform presentence report form. [The Advisory Commission on Prison Terms and Parole Standards shall propose to the Board and the Board shall adopt the format for [preparation of] the pesentence report.]
- (2) The proposed [P]presentence reports shall be prepared according to the format outlined in Exhibit M

eff

6-23-88

AMENDED 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
(Agency)

on MAY 16, 1988
(Date)

JUN 23 4 54 PM '88
to become effective MAY 19, 1988

DATE: _____
SECRETARY OF STATE

(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:

Notice of Intended Action published in OAR Bulletin: NO YES Date Published: APRIL 1, 1988

RECEIVED

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

JUN 23 1988

	PERM. <input checked="" type="checkbox"/>	or	TEMP. <input type="checkbox"/>	LEG. COUNSEL'S OFF.
ADOPT:	255-01-060, 255-05-005, 255-20-020, 255-25-030, 255-30-023, 255-35-018, 255-35-021, 255-38-010, 255-40-026, 255-40-028, 255-40-040, 255-50-013, 255-50-025, 255-60-030, 255-70-015, 255-75-004, 255-75-098, 255-75-100, 255-80-015.			
AMEND:	255-01-005, 010, 016, 020, 255-10-005, 015, 255-15-002, 005, 010, 015, 255-20-005, 010, 015, 255-25-005, 010, 255-30-010, 013, 015, 021, 025, 027, 035, 040, 055, 255-32-010, 015, 025, 035, 040, 255-35-013, 016, 020, 025, 030, 255-38-005, 255-40-005, 010, 020, 025, 035, 255-50-005, 010, 015, 016, 255-60-006, 020, 255-65-005, 015, 020, 255-70-001, 255-75-002, 003, 005, 006, 007, 015, 020, 026, 030, 031, 035, 036, 04 2, 045, 046, 055, 056, 065, 070, 075, 078, 080, 085, 090, 095, 096, 255-80-005, 010, 255-90-002, 003, 010, 255-92-030, 040, 255-95-005.			
REPEAL:	255-10-010, 020, 255-15-020, 030, 255-25-015, 020, 025, 255-30-005, 020, 030, 040, 050, 056, 255-35-005, 010, 015, 024, 035, 255-65-010, 255-70-010, 255-75-001, 076, 255-92-010.			

as Administrative Rules of the BOARD OF PAROLE
(Agency)

DATED this 23 day of JUNE, 19 88

By: Vernon P. Faust
(Authorized Signature)

Title: CHAIRMAN, BOARD OF PAROLE

Authority: ORS CHAPTER 144

Subject Matter: _____

Statement of Need Attached:

Fiscal Impact Attached:

DIVISION 1

RULEMAKING PROCEDURE

Notice of Rulemaking: Time and Manner 255-01-005

- (1) Prior to the permanent adoption, amendment, or repeal of any rule, the chairperson of the Board shall give notice of the proposed action at least fifteen (15) days prior to the effective date:
- (a) in the Secretary of State's Bulletin referred to in ORS 183.360;
 - (b) by mailing a copy of the notice to persons on the Board mailing list established pursuant to ORS 183.335(7); and
 - (c) by mailing or furnishing a copy of the notice to:
 - (A) Oregon State Bar Bulletin;
 - (B) United Press International and Associated Press;
 - (C) Release Services, Field Services, and Regional Offices, State of Oregon Department of Corrections;
 - (D) Oregon District Attorneys Association;
 - (E) Oregon Criminal Defense Attorneys Association;
 - (F) All County Public Defender Offices;
 - (G) All County Law Libraries;
 - (H) Attorney General's Office;
 - (I) State Public Defender;
 - (J) Supreme Court Law Library;
 - (K) University of Oregon Law School;
 - (L) Northwestern College of Law, Lewis and Clark College;
 - (M) College of Law, Willamette University;
 - (N) American Civil Liberties Union;
 - (O) The Oregonian, Portland, Oregon;
 - (P) Pendleton Eastern Oregonian, Pendleton, Oregon;
 - (Q) The Oregon Statesman Journal, Salem, Oregon;
 - (R) Medford Mail Tribune;
 - (S) The Register Guard, Eugene, Oregon; and
 - (T) Others upon formal written request of the Board.

- (2) When the Board has filed a temporary rule with the Secretary of State's Office, the Board shall mail a copy of the certificate and order and a copy of the temporary rule to the persons on the Board's mailing list, and to those listed in subsection (1)(c) of this section.
- (3) Notwithstanding subsection (2) of this section, when the Board has filed a temporary rule with the Secretary of State's Office, newspapers and media services shall only receive a copy of the certificate and order.

Rulemaking Procedure

255-01-010

- (1) All new and revised rules will be adopted in accordance with the provisions of ORS 183.310 to 183.550, the Model Rules of Procedure adopted by the Oregon Attorney General and ORS 192.610 to 192.690. Only those sections of the Model Rules which relate to rulemaking will be utilized by the Board.
- (2) The Board shall hold a business meeting, pursuant to Division 20, when a change in the rules is being considered and a notice of intent has been filed.

Contents of Notice of Rulemaking when Public Hearing will be held Only if Requested

255-01-015

(deleted)

Obtaining Copies of Board Rules

255-01-016

- (1) A copy of the Board's rules shall be provided free of charge to the inmate libraries at each of the Department of Corrections institutions and to any state agency or legislative entity that requests a copy.
- (2) Others who desire copies of Board's rules shall make their requests in writing. Ten (.10) cents per page will be levied to cover the costs for individual rules. Payment must be received in advance.

Submitting Draft of Rule to Legislative Counsel

255-01-020

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

Postponing Intended Action

255-01-025

(deleted)

Conduct of Hearing

255-01-030

(deleted)

Presiding Officer's Report

255-01-035

(deleted)

Action of the Board

255-01-040

(deleted)

Notice of Board Action: Certification to Secretary of State; Submitting Copy to Legislative Counsel

255-01-045

(deleted)

Petition to Adopt, Amend, or Repeal Rule: Contents of Petition; Filing of Petition

255-01-050

(deleted)

Temporary Rules

255-01-055

(deleted)

The Adoption, Designation and Changes of Rules With Other Agencies

255-01-060

- (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) Jointly adopted rules shall be specifically designated as joint rules, and the appropriate agency shall be identified in the rules.

DIVISION 5
DEFINITIONS

Definitions
255-05-005

- (1) "Active Community Supervision": An uninterrupted period of at least six months supervision in the community, requiring regular contact and monitoring by the supervising officer to assure that the conditions of parole are being met, that the parolee has committed no new crimes and to assure repayment of restitution, if required.
- (2) "Active Supervision": Supervision requiring regular contact and monitoring by the supervising officer to assure continued compliance with the conditions of parole. (Div.92)

"Active Supervision" shall not include:
 - (a) the period of confinement in local, state, or federal correctional facilities during the parole;
 - (b) the period of time between the suspension of parole and the date parole is continued; and
 - (c) inactive parole. (Div. 92)
- (3) "Aggravation": The factors or elements surrounding the crime which appear to increase the seriousness of the criminal episode or reflects on the character of the offender pursuant to Exhibit E-1.
- (4) "Base range": The range for each crime category reflected in Exhibit C under the "excellent" column.
- (5) "Board Review Packet": The information the Board shall consider at the inmate's hearing. The contents of the packet shall be listed in each of the Divisions which establishes a hearing.
- (6) "Correctional facility": any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order.

"Correctional facility" does not include a juvenile facility and applies to a state hospital only as to persons detained therein after acquittal of a crime by reason of mental disease or defect.
- (7) "Crime severity rating": A classification from a low of one (1) to a high of seven (7) assigned to each crime, based on the seriousness of the crime pursuant to Exhibit A.

- (8) "De novo hearing": a new initial prison term hearing, required when there are additional consecutive sentences for crimes which occurred prior to the first prison term hearing.
- (9) "Exemplary Behavior": Behavior which is consistent with the conditions of parole.
- (10) "Future Disposition Hearing": The hearing at which the sanction for a parole violation is established.
- (11) "History/risk score": A rating from a high of eleven (11) to a low of zero (0) points, reflecting the prisoner's prior record and other factors which predict the likelihood of success on parole pursuant to Exhibit B.
- (12) "Inactive Parole" includes:
 (a) general parole conditions;
 (b) no supervision by a parole officer;
 (c) no parole fees; and
 (d) name and status maintained on the LEDS and EPR computer systems.
- (13) "In camera hearing": the inspection of a document by the Hearings Officer in private before the document may be introduced as evidence.
- (14) "Initial parole release date": A fixed date, by month, day and year, assigned to a prisoner for parole release based on the prisoner's matrix range, aggravation, mitigation, and judicially imposed minimum sentence(s).
- (15) "Inoperative time": time spent outside a state correctional facility without the authorization of the Department of Corrections.
- (16) "Less than the sum of the terms": an action by the Board whereby one or more of the consecutive ranges are treated as if they are concurrent.
- (17) "Matrix ranges": Ranges of months within which the Board has the discretion to set a prison term. The ranges are based on crime severity ratings and history/risk scores.
- (18) "The matrix": A table which displays the matrix ranges by showing the intersection of the crime severity rating and the history/risk score pursuant to Exhibit C.
- (19) "Mitigation": The factors or elements surrounding the crime which appear to decrease the seriousness of the criminal episode or reflect on the character of the prisoner pursuant to Exhibit E-2.

- (20) "Parole": A conditional release from a state correctional facility into the community.
- (21) "Parole Revocation Hearing": A hearing to determine whether a parole violation occurred.
- (22) "Particularly violent or otherwise dangerous criminal conduct": Conduct which is not merely unpleasant or offensive, but which is indifferent to the value of human safety or property.
- (23) "Parole Board Record": The file the Board maintains for each prisoner containing the information listed in ORS 144.185.
- (24) "Period under review" under Division 40, the three year period prior to the hearing.
- (25) "Principal range": The range of months for the crime holding the highest crime severity rating. When the ranges are the same, one shall be designated as the principal range.
- (26) "Preponderance": evidence which as a whole shows that the fact sought to be proved is more probable than not.
- (27) "Probable Cause": a substantial objective basis for believing that more likely than not an offense or violation has been committed and the person to be arrested has committed it.
- (28) "Prison Term": The time established by the Board of Parole to be served before the parole release date.
- (29) "Prison term hearing": The hearing at which the Board establishes an inmate's prison term.
- (30) "Serious physical injury": Any physical injury which creates a substantial risk of death, or which causes serious disfigurement, or impairment of health or the loss or impairment of the function of any bodily organ.
- (31) "Subcategory": the criteria for rating criminal conduct within the crime categories based on the seriousness of the offense (Exhibit A).
- (32) "Subordinate range": Any range less than or equal to the principal range.
- (33) "Subpoena duces tecum": a subpoena requiring the party to appear at a hearing with a document or piece of evidence to be examined at the hearing.

- (34) "Summing the ranges": An action taken to produce a unified range when there are consecutive sentences.
- (35) "Unauthorized absence": time spent outside a state correctional facility without the authorization of the Department of Corrections.
- (36) "Unified range": the total range computed under OAR 255-35-021 for consecutive sentences.
- (37) "Variations": The time periods which the Board may use to set a prison term above or below the matrix range pursuant to Exhibit D.
- (38) "Victim": The actual victim of the crime, a representative selected by the victim, or the victim's next of kin. In the case of a minor or incompetent victim, this term shall include the guardian of the victim.

DIVISION 10
ORGANIZATION

Membership
255-10-005

The Board of Parole shall consist of those members appointed by the Governor pursuant to ORS 144.005.

Chairperson; Vice-Chairperson; Selection; Term
255-10-010
(deleted)

Chairperson; Vice-Chairperson; Powers and Duties
255-01-015

- (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 the office, as determined by the Governor. Such powers and duties shall include, but are not limited to:
 - (a) assigning Board members to panels and designating the presiding members in order to conduct hearings and reviews;
 - (b) serving as the presiding member when on a panel or a Full Board;
 - (c) apportioning matters to the panels and Full Board for decision;
 - (d) reassigning matters to different panels when required by rule, law, or procedure;
 - (e) scheduling business meetings and establishing the agenda; and
 - (f) informing the sentencing judge, district attorney, sheriff, or arresting agency of the scheduled release of each prisoner.

- (2) The vice-chairperson shall have the powers and duties determined by the Governor to be necessary for the performance of the office.

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

255-10-020

(deleted)

DIVISION 15
REQUEST FOR BOARD RECORDS OR FILES

Parole Board Records
255-15-002

The Board will maintain a separate file on each person under its jurisdiction which will contain the materials obtained pursuant to ORS 144.185.

Oral Record of Hearing
255-15-003

A tape of the oral proceedings of any hearing shall be kept by the Board for at least two years.

Procedures for Obtaining Information from Parole Board Records
255-15-005

- (1) Any interested party may apply for information from a selected record.
- (2) The request must be in writing, addressed to the chairperson of the Parole Board and must specify the information requested.
- (3) The chairperson or designee will review the record to determine what may be disclosed in accordance with OAR 255-15-010, and within ten (10) working days will advise the person or agency whether the requested information is available and may be disclosed.

Criteria for Disclosure or Denial of Disclosure of File or Record
255-15-010

- (1) The records of the Board of Parole shall be disclosed to any person or agency unless:
 - (a) disclosure would interfere with the rehabilitation of the person concerned;
 - (b) disclosure would substantially interfere with the carrying out of the functions of the Parole Board or the Department of Corrections;
 - (c) disclosure would endanger the inmate or other persons;

- (d) disclosure would compromise the privacy of the inmate or another person; or
 - (e) the public interest in confidentiality clearly outweighs the public interest in disclosure.
- (2) When disclosure of information is denied to a prisoner a written statement of the reasons for denial must be entered into the record.
 - (3) Where a particular document contains information that is exempt from disclosure, exempt material shall be separated from nonexempt material and the nonexempt material must be disclosed.

Fees for Board Records
255-15-015

- (1) The fees for documents shall be as follows:
 - (a) If the request is for specific, identified, disclosable information from the Board Review Packet, the cost of the duplication will be fifty (50) cents per page; or
 - (b) If the request requires a review of the Parole Board Record, a determination of availability will be made by the reviewer. The cost will be fifty (50) cents a page plus a cost for staff time.
- (2) The fee for the duplication of oral records shall be \$5.00 per tape.
- (3) All computed costs including staff time for review, reproduction, materials, and first class postage may be waived by the chairperson of the Board.
- (4) Unless the chairperson decides that the person or agency may be billed at a later date, no reproduction of material is authorized until payment has been received in advance.
- (5) Payments will be deposited in the Miscellaneous Receipts account in accordance with Business Office instructions.

Victim and District Attorney Access to Board Review Packet
255-15-020
(deleted)

Contents of Board Review Packet
255-15-030
(deleted)
5/16/88

DIVISION 20

BUSINESS MEETING

Scheduling

255-20-005

Business meetings shall be held as scheduled by the chairperson or upon the request of at least three (3) members of the Board.

Quorum

255-20-010

A business meeting requires the presence of at least three (3) voting members of the Board, one of whom shall be the chairperson, vice-chairperson or chairperson's designee.

Matters for Consideration; Majority Vote

255-20-015

Business meetings shall consider matters relating to Board policy and administration presented by the chairperson or by Board members. Three (3) affirmative votes are required to make a Board decision at a business meeting.

Procedure

255-20-020

A business meeting under this Division is a public meeting as defined in ORS 192.610 to 192.690. Adequate public notice, public access, and public minutes are required.

DIVISION 25

ADJUSTED COMMITMENT DATE

Date Prison Term Starts to Run

255-25-005

- (1) The commencement date for the prison term is the date on which the prisoner is delivered to custody of the Department of Corrections for the purpose of serving the sentence.
- (2) In the case of additional consecutive sentences, the existing parole release date shall be rescinded and shall become the commencement date for the new sentence.

Credit for Time Served

255-25-010

- (1) Time served credit shall be granted towards the prison term for the following time periods:
 - (a) the actual and certified time served in the County Jail after arrest until the prison term begins; or
 - (b) the actual and certified time served in the County Jail as a condition of probation.
- (2) When credit is granted towards the prison term under subsection (1) of this section, the time served credits shall be deducted from the parole release date after a prison term has been established.
- (3) If additional time served credits are received after the prison term has been calculated, the Board may take action administratively to correct the parole release date. The person so affected shall receive notice in writing of the Board's action.
- (4) If arrest and conviction occurs during the period in which the person is under the jurisdiction of the Board of Parole, no time served credits shall be granted towards the subsequent prison term.

Calculation of Adjusted Commitment Date

255-25-015

(deleted)

Method of Certification/Disagreement with Time Served

Calculation

255-25-020

(deleted)

Adjustment of Adjusted Commitment Date

255-25-025

(deleted)

Effect of Inoperative Time on Prison Terms

255-25-030

Inoperative time shall not count towards the completion of the prison term. In resetting the parole release date, the inoperative time shall be added to the prison term. The Board shall notify the inmate of its action.

DIVISION 30

PRISON TERM HEARING PROCEDURE

Policy

255-30-002

(deleted)

Definitions

255-30-005

(deleted)

Scheduling Prison Term Hearings

255-30-010

- (1) The Board shall conduct a hearing to establish a prison term for each new prisoner within six (6) months of admission to a Department of Corrections facility, or within one year of admission if the prisoner's sentence is fifteen (15) years or more.
- (2) A prison term hearing shall be scheduled within six (6) months of sentencing for any additional sentence received while in custody of a Department of Corrections facility, or within one year of sentencing if the new sentence is fifteen (15) years or more.
- (3) For those hearings which must be conducted within six (6) months, the Board may defer setting a prison term for thirty days to obtain additional information.

Scheduling and Hearing Procedure for Aggravated Murder

255-30-012

(deleted)

Notification of Hearing

255-30-013

- (1) The prisoner shall be notified, in writing, of the hearing and its purpose and shall receive a copy of the Board Review Packet at least 14 days prior to the hearing.
- (2) If the prisoner did not receive 14 days notice, the hearing may be rescheduled, or the prisoner may waive the notice and the hearing shall be conducted.

- (3) The Parole Board shall attempt to notify the victim, if the victim requests to be notified and furnishes the Board a current address, and the District Attorney of the committing county at least thirty (30) days before all hearings by sending written notice to the current addresses of both parties.

When a 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 conducted by a panel of two voting members of the Board.
- (2) The following hearings may be conducted by a quorum of the Board, more votes may be necessary for a final decision:
- (a) cases involving a prisoner sentenced to life imprisonment, to death, for murder, or for aggravated murder (review by the full membership of the Board);
 - (b) cases where the prisoner was convicted of a crime involving the death of a [person] victim, whether or not the prosecution directly charged the prisoner with causing the death of the [person] victim (review by full membership of the Board);
 - (c) cases where the prisoner was sentenced under ORS 161.725 and 161.735 as a dangerous offender;
 - (d) cases where the minimum sentence imposed by a judge pursuant to ORS 144.110 exceeds the matrix range and the variations permitted a panel (review by at least four members of the Board);
 - (e) cases where an extension of [over] more than two years in the prison term is recommended for misconduct;
- [(3) The Full Board or a quorum thereof shall review and make a final decision in the following cases:]
- (f)[(a)]whenever a panel recommends a decision to exceed the allowable variation from the matrix permitted to the panel and a third vote (review by at least four members of the Board);
 - (g)[(b)]whenever the panel recommends denying parole (review by at least four members of the Board);
 - (h)[(c)]whenever a panel recommends a decision below a judicially set minimum sentence (review by at least four members of the Board);

5/16/88

(i)[(d)]whenever a panel lacks a quorum and is unable to come to a unanimous decision to set a prisoner's prison term, and a second panel is assigned to hear the case, and no quorum occurs in the second panel; and

(j)[(e)]whenever a panel recommends unsuming a unified range (review by at least four members of the Board).

(3)[(4)]If a Board member is not present at a Full Board hearing, and review is compelled by statute, rule, or the vote may affect the outcome of the hearing, the Board member may vote administratively after reviewing the record of the hearing, or may request that a hearing be rescheduled. The Board's action shall be considered final if the absent member's vote is not required for a final decision.

Procedures for Full Board Decisions
255-30-020
(deleted)

Teleconference Hearing
255-30-021

- (1) A prisoner in custody in another jurisdiction may have a hearing by teleconference call, or may be returned to Oregon for a hearing.
- (2) A prisoner who resides outside of Marion County may have a hearing by teleconference call.

Prisoner Appearance at Parole Board Hearing
255-30-023

- (1) The prisoner shall be present in person or by telephone at the Parole Board hearing.
- (2) A prisoner who refuses to appear may be compelled to do so by the Board
- (3) The Board may elect not to compel the prisoner to attend the Hearing. In this instance, the Board may reschedule the hearing to see the prisoner at a later date, or set the prison term in the prisoner's absence.

Who May Appear at a Parole Board Hearing
255-30-025

- (1) 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 Department of Corrections rule governing visiting.

- (2) Assistance shall be provided to prisoners incapable of presenting their position due to a foreign language barrier, or a documented mental or emotional incapacity.
- (3) If the prisoner has an assistant provided pursuant to subsection (2) of this rule, this shall not preclude the prisoner from being accompanied to the hearing by a person of the prisoner's choice.
- (4) The victim, personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction shall have the right to appear at Parole Board Hearings.

Victim, District Attorney and Inmate Statements
255-30-027

- (1) At the conclusion of the hearing, the victim, personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction, may make statements not to exceed three minutes.
- (2) Following the victim and the District Attorney statements, the person accompanying the prisoner may make a statement not to exceed three minutes.

Panel Decision: Use of Guidelines; Unanimity Requirement
255-30-030
(deleted)

Information the Board Shall Consider at a Prison Term Hearing
255-30-035

- (1) The Board Review Packet shall contain:
 - (a) inmate's notice of rights and notice of administrative appeal;
 - (b) PSI, PAR, PSR;
 - (c) sentencing/judgement orders;
 - (d) face sheet;
 - (e) certification of time served credits;
 - (f) Board Action Forms;
 - (g) information pursuant to Ballot Measure 10;
 - (h) material submitted by the inmate or representative relating to the calculation of the prison term;
 - (i) current psychological/psychiatric evaluations;
 - (j) other material selected at the Board's discretion.
- (2) Additional information and recommendations from those with a special interest in the case may be considered. If considered, such information shall be included in the Board Review Packet. Any information submitted pursuant to

this section must be received by the Board at least seven (7) days prior to the hearing.

Prisoner's Access to the Written Materials Considered at Hearings and Interviews
255-30-040

- (1) The prisoner shall have access to all the material in the Board Review Packet except that exempted by OAR 255-15-010.
- (2) The prisoner shall have access to all the responses made by the victim and the District Attorney pursuant to OAR 255-30-035. The responses shall be included with the Board Review Packet or they shall be given to the inmate as soon as they are available to the Board.
- (3) If the victim, his/her representative, or the District Attorney wishes to rebut any of the material in the Board Review Packet, the response must be received by the Board seven (7) days prior to the hearing.
- (4) Information from the inmate or representative shall be submitted at least seven (7) days prior to the hearing.

Exemptions from Disclosure
255-30-045
(deleted)

Record of Hearing: Content; Time to be Maintained
255-30-050
(deleted)

Notification of Decision: Parties Notified; Content
255-30-055

- (1) Following a Board decision concerning the prison term of an inmate, the prisoner, sentencing court, District Attorney, the Department of Corrections, and upon request, the victim shall be notified in writing of the Board's final order.
- (2) The Board's final order shall contain:
 - (a) the prison term commencement date;
 - (b) the history/risk assessment score;
 - (c) the crime category with the subcategory rationale;
 - (d) the matrix range;
 - (e) when there are consecutive sentences, whether the range is unsummed and the reason for unsumming;
 - (f) when there is a variation from the range, the reason for the variation;
 - (g) aggravation;
 - (h) mitigation;
 - (i) the votes on minimum sentences;
 - (j) the prison term set;
 - (k) the votes of the individual Board members; and
 - (l) the parole release date.

Notification of Release; Parties Notified
255-30-056
(deleted)

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DIVISION 32
AGGRAVATED MURDER

Prison Term Hearing to be Held
255-32-005

A person convicted of Aggravated Murder under ORS 163.095 shall receive a prison term hearing under the provisions of Division 30 of these rules.

Minimum Period of Confinement Pursuant to ORS 163.105
255-32-010

- (1) The minimum period of confinement for a person convicted of Aggravated Murder as defined by ORS 163.105(1) shall be thirty (30) years.
- (2) The minimum period of confinement for a person convicted of Aggravated Murder as defined by ORS 163.105(2) prior to Dec. 6, 1984 shall be twenty (20) years.

Petition/Purpose for Hearing
255-32-015

The prisoner may petition and the Board shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(1); or
- (2) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(2).

Purpose of Hearing
255-32-020

The sole issue of the hearing shall be to determine whether or not the prisoner is likely to be rehabilitated within a reasonable period of time.

Manner of Hearing
255-32-025

- (1) The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The prisoner shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) The prisoner shall have the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the Board, at state expense.
- (2) If upon hearing all the evidence, the Full Board upon a unanimous vote of all five members finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole or work release. Otherwise, the Board shall deny the relief sought in the petition.

Effect of Denying Relief Request
255-32-035

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

Record/Notice
255-32-040

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

DIVISION 35

APPLICATIONS OF THE GUIDELINES TO ESTABLISH A PRISON TERM

Definitions

255-035-005

(deleted)

Rating Crime Severity: Generally, Multiple Concurrent Convictions

255-35-010

(deleted)

Board to Make Findings of Fact Regarding Offense Severity; Waiver of Exit Interview; Establishing Conditions of Parole

255-35-012

(deleted)

Factors which Determine An Initial Parole Release Date

255-35-013

During the prison term hearing the Board shall make findings of fact concerning:

- (1) the prison term commencement date;
- (2) the crime severity rating and subcategory rationale (Exhibit A);
- (3) the prisoner's history/risk assessment score (Exhibit B);
- (4) the matrix range;
- (5) when there is a variation from the range, the reason for the variation;
- (6) aggravation (Exhibit E-1);
- (7) mitigation (Exhibit E-2); and
- (8) minimum sentences.

Criminal History/Risk Assessment

255-35-015

(deleted)

Variations From the Ranges for Aggravation or Mitigation

255-35-016

- (1) The Board may depart from the appropriate range only upon making a specific finding that there is aggravation or mitigation which justifies departure from the range pursuant to Exhibit E-1 and E-2. The Board shall clearly state on the record the facts and specific reasons for its finding.

- (2) If a panel finds that the matrix range and the variations permitted a panel are inadequate to establish a prison term because of the panel's findings of aggravation or mitigation, it shall secure a third vote for an additional variation or refer the matter to the Full Board.
- (3) The maximum allowable variations from a range are shown in Exhibit D. A portion or all of the variation allowed may be applied.
- (4) These provisions shall apply equally to unified ranges.

Multiple Concurrent Convictions
255-35-018

When concurrent sentences exist, the prisoner shall be given a matrix range based on the crime with greatest range.

Consecutive Sentences: Board Bound by Court Order
255-35-020

The Board of Parole does not have the authority to run a sentence concurrently or consecutively to an out of state jurisdiction, but is bound by the final judgement order issued by the Oregon courts.

Consecutive Sentences: Creating a Unified Matrix Range
255-35-021

- (1) Notwithstanding subsection (4) of this section, the Board shall establish the principal range for the most serious of the felonies committed during the time period under consideration. If two or more felonies are determined to be equally the most serious, the Board shall establish a principal range for only one of those felonies.
- (2) The Board shall then establish a range for each of the remaining felonies committed during the same period using the appropriate base range for the crime pursuant to Exhibit C.
- (3) The unified range for crimes committed during the same period shall be determined by summing the range established under subsection (1) of this section with the ranges established under subsection (2) of this section.

- (4) The method established by subsections (1) to (3) of this section for determining the unified range shall not apply if any of the crimes involved is:
- (a) murder, as defined in ORS 163.115 or any aggravated form thereof;
 - (b) assault in the first degree, as defined in ORS 163.185;
 - (c) kidnapping in the first degree, as defined in ORS 163.235;
 - (d) rape in the first degree, as defined in ORS 163.375;
 - (e) sodomy in the first degree, as defined in ORS 163.405;
 - (f) sexual penetration with a foreign object, as defined in ORS 163.411;
 - (g) arson in the first degree, as defined in ORS 164.325; or
 - (h) treason, as defined in ORS 166.005.
- (5) To determine the unified range for inmates with consecutive sentences which involve a crime listed in subsection (4) of this section, the Board shall establish the matrix range for each crime by using the inmate's history/risk score pursuant to Exhibit B and the applicable crime category rationale. The unified range shall be the sum of the ranges established under this subsection.
- (6) The unified range may be subject to the variations established in accordance with OAR 255-35-016 and Exhibit D.

Consecutive Sentences; Referring a Case to the Full Board; Going Below the Range; Additional Consecutive Sentences
255-35-022

- (1) When a panel recommends that a range be less than the sum of the terms under OAR 255-35-021, the case shall be referred to the Full Board.
- (2) The duration of imprisonment for consecutive sentences may be less than the sum of the terms under OAR 255-35-021, if the Board finds by four affirmative votes that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect community security.
- (3) When additional sentences are imposed for crimes which took place during the period under consideration at a prior prison term hearing and the additional sentences are consecutive to the crimes already considered the Board shall:

- (a) conduct a de novo prison term hearing pursuant to the provisions of Division 30 for all the crimes. The unified range for the additional sentences and the sentences which were already considered shall be computed under the provisions of OAR 255-35-021; or
 - (b) conduct a hearing to consider only the additional consecutive sentences using base ranges for the additional crimes. The commencement date for the new prison term under this subsection shall be the parole release date set at the previous prison term hearing.
- (4) The provisions of subsection (3) of this section apply only to crimes which occurred on or after July 11, 1987, unless one of the crimes involved is listed in OAR 255-35-021 (4).
 - (5) If the Board votes to unsum the consecutive sentences at the beginning of the hearing, then a hearing under subsection (3) of this section is not required, unless one of the crimes involved is listed in OAR 255-35-021 (4). The new crime will be considered as a principal range.
 - (6) If one of the crimes involved is listed in OAR 255-35-021 (4) and is consecutive, then a de novo hearing under subsection (3)(a) of this section must be conducted.
 - (7) If a new crime is consecutive to crimes already considered, and is the most serious offense with the highest crime severity rating and/or longest sentence, a de novo hearing under subsection (3)(a) of this section must be conducted.
 - (8) When additional sentences are imposed for crimes which took place after the period considered at a prior prison term hearing and the additional sentences are consecutive to the crimes already considered, the matrix range for the additional crimes shall be established as if it were a new sentence. If the inmate has not yet been released on parole, the commencement date for the new crimes shall be the parole release date established at the previous prison term hearing.

Effect of Judicial Minimum Sentences on Prison Terms Under ORS
144.110; Consecutive Minimum Sentences
255-35-023

- (1) The Board shall not release a prisoner on parole until a judicially imposed minimum prison term has been served, except upon the affirmative vote of four members who have found that:
 - (a) the minimum term is not an appropriate penalty for the criminal offense; and

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- (b) the minimum term is not necessary to protect the public.
- (2) If at least four members of the Board have made the findings listed in subsection (1) of this section, The Board shall establish a prison term using the guideline range and the standard variations allowed.
- (3) When there are consecutive minimum sentences, and the Board finds that the combined minimums are not appropriate penalties for the criminal offenses involved, and are not necessary to protect community security, the Board, by four concurring votes, may override one or more of the judicially imposed minimums and set a prison term which is less than the sum of the minimum terms.
- (4) The Board shall set a parole release date in accordance with OAR 255-35-013, and shall state the facts and reasons for its actions.

Effect of Judicial Mandatory Minimum Sentences on Prison Terms
Under 161.610
255-35-024
(deleted)

Setting a Parole Release Date: When Matrix Range
Exceeds Good Time Date
255-35-025

When the Board chooses to set a parole release date on a sentence with a statutory good time date which calls for an earlier release than the guideline range indicates, the guideline range shall be as follows in order to allow a period of parole supervision:

- (1) Six months from the statutory good time date on a sentence of at least one year and less than three years;
- (2) Nine months from the statutory good time date on a sentence of three years up to six years.
- (3) Twelve months from the statutory good time date on a sentence of six or more years.

Parole Denial: When Parole May be Denied
255-35-030

- (1) The Board with four (4) affirmative votes may deny parole pursuant to ORS 144.120(4) when:

- (a) The offense of commitment included particularly violent or otherwise dangerous criminal conduct as defined by section 255-35-005(6);
 - (b) The offense was preceded by two (2) or more Class A or Class B felony convictions; or
 - (c) The prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance such as to constitute a danger to the health or safety of the community.
- (2) A two-member panel may refer the matter to the Full Board with the recommendation that parole should be denied based on the criteria listed in subsection (1) of this section.
- (3) 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.

Variations From the Ranges for Aggravation or Mitigation:

Statements for Record, Prior Disclosure to Prisoners

255-35-035

(deleted)

Resetting Pre-Guideline Parole Hearing Dates for Category 7 Offenders

255-35-040

(deleted)

DIVISION 38

DANGEROUS OFFENDERS

Permissible Action: Setting Parole Consideration Hearing Instead of a Release Date, Setting Release Dates and Statutory 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 (6) months after commitment to the custody of the Corrections Division set a parole consideration hearing date instead of a parole release date as otherwise required by Division 60. The parole consideration hearing date 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 a severe personality disorder indicating a propensity toward criminal activity) is still present, reviews will be scheduled at least every two (2) 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 parole consideration hearing date pursuant to the provisions in Division 35.]
- [(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 (2) 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.]
- (1) Notwithstanding the provisions of Division 60, the Board shall set a date for a parole consideration hearing instead of an initial release date for a person sentenced under ORS 161.725 and 161.735 as a dangerous offender.

- (2) The Board shall set a date for a parole consideration hearing pursuant to the provisions of Division 35, within six (6) months after commitment to the custody of the Department of Corrections.
- (3) The date set for parole consideration shall be the date upon which the prisoner would otherwise be set for parole release.
- (4) If the condition which made the prisoner dangerous is still present on the parole consideration hearing date, reviews will be scheduled at least once every two (2) years until the condition is absent or in remission.
- (5) The Board shall not set a release date unless the psychiatric report reveals that the condition which made the prisoner dangerous is absent or in remission. The report required under this subsection shall be made within two (2) months of the date of its consideration.
- (6) The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other pertinent data. The evaluation should include recommendations for treatment or medication that would assist the prisoner in performing satisfactorily in the community upon release.
- (7) If, at the parole consideration hearing or at any subsequent review, the condition is determined to be absent or in remission, the Board shall order parole release subject to the provisions of 144.125.
- (8) At any hearing or review, the Board shall consider:
 - (a) the written report of the examining psychiatrist as defined by ORS 144.226 (1) and (2);
 - (b) a written report to be made by the executive officer of the penal or correctional institution in which the prisoner has been confined pursuant to the standards set forth in ORS 144.228(2)(b); and
 - (c) all other information available regarding the prisoner.
- (9) [(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 prior to the earliest time the prisoner is eligible for parole or a two year review.

(10) The Board shall review the request pursuant to subsection (9) of this section by administrative file pass. Should the Board find, based upon the request and the information therein, [that] there is a reasonable cause to believe the dangerous condition is in remission, the Board shall conduct a review as soon as reasonably convenient. [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.]

The Parole Consideration Hearing Packet
255-38-010

The Parole Consideration Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) Oregon State Hospital [psych] psychiatric evaluations, and reports pursuant to ORS 144.226 to ORS 144.228
- (4) documents listed in OAR 255-38-005(B);
- (5) correspondence;
- (6) field parole analysis report; and
- (7) court orders.

DIVISION 40

REOPENING CASES, REVIEWS, AND REDUCTIONS IN PRISON TERMS

Scheduling of Personal Reviews
255-40-005

- (1) Personal reviews may be conducted every three years. The Board will only conduct a personal review hearing after it has received a recommendation for a seven month reduction for the period under review as described in OAR 255-40-025(1).
- (2) Personal review dates shall be computed from the date of admission to the institution.
- (3) The purpose of a personal review hearing shall be to determine the progress of the prisoner and whether such progress indicates outstanding reformation so as to warrant a reduction in the prison term under the criteria listed in OAR 255-40-025(2).
- (4) Prisoners sentenced for aggravated murder or as dangerous offenders, and those parole denied are not subject to personal reviews.

Procedure for Personal Reviews
255-40-010

Personal reviews shall be conducted by a panel or a Full Board pursuant to OAR 255-30-015.

Purpose
255-40-015
(deleted)

Reopening Cases: When; What is Necessary
255-40-020

- (1) Any three (3) Board members may reopen any case for reconsideration upon the formal written request of a prisoner if:
 - (a) statutory changes have reclassified the criminal conduct involved;
 - (b) documented new information is received which is relevant to a recalculation of the prison term;

- (c) rule changes would effect the inmate's prison term;
or
 - (d) clerical error is established. The Board may at its discretion take administrative action or schedule a hearing to correct the error. The prisoner shall be notified in writing of Board action. If the Board finds that the corrected error would be adverse to the prisoner, the Board shall schedule a hearing.
- (2) The Board may review a case administratively under subsections (1)(b) and (c) of this section if the range changes benefit the prisoner and an equal adjustment or lower is made.
 - (3) The Board shall state the specific reasons for denial of a request to reopen a hearing.
 - (4) An individual Board member with the concurrence of two other Board members may move to reopen a hearing.
 - (5) The inmate may waive the right to adequate notice and receipt of the Board Review Packet, and the hearing may be reopened based on the criteria listed in subsection (1) of this section.

Resetting the Parole Release Date to an Earlier Date
255-40-025

- (1) An established prison term as defined in section 255-30-005(2), may be reduced under subsection (2) of this section upon the prisoner's application for a hearing and the receipt of a recommendation from the parent institution. Such a request for a hearing must come to the chairperson of the Board, and upon receipt, a hearing will be scheduled.
- (2) If the prisoner displays an extended course of conduct indicating outstanding reformation, the Board may grant a reduction of up to seven months of the three year period under review, under this section. Cases will be reviewed based on the following criteria:
 - (a) the individual merits of each case;
 - (b) the seriousness of the crime;
 - (c) the protection of the public

- (d) demonstrable achievement in dealing with problems present at the time of incarceration and associated with criminal conduct (e.g., psychological disorder, drug or alcohol dependency, lack of educational or vocational skills);
 - (e) documented cooperation with authorities while in custody where a substantial benefit is derived by the authorities; and
 - (f) the absence of disciplinary actions resulting from violation of rules within the three year period.
- (3) Special requests for reduction from the superintendent of the parent institution and the Director of the Department of Corrections may be scheduled for a hearing with the concurrence of the majority of the Board, or may be considered administratively.
- (4) The criteria for a special request reduction shall be:
- (a) when an inmate's documented cooperation with authorities has contributed significantly to the safety and security of the facility; or
 - (b) when cooperation with law enforcement officials results in the apprehension, interruption and conviction of persons involved in significant on going criminal activity.
- (5) The prisoner shall have the burden of establishing that his/her conduct meets the criteria for any date reduction under consideration.

Effect of Minimum Terms on Reductions
255-40-026

- (1) If the prisoner has a judicial minimum sentence which was previously upheld pursuant to ORS 144.110, the minimum must be overturned by four (4) concurring votes of the Board before a reduction can be granted from the previously established minimum set.
- (2) If the prisoner has a mandatory minimum sentence pursuant to ORS 161.610, a reduction cannot be granted below the mandatory minimum sentence and the statutory reduction for goodtime.

Reductions for a Severe Medical Condition
255-40-028

- (1) Reductions in prison terms may be considered where the prisoner is suffering from a severe medical condition. The request for reduction must be accompanied by:
 - (a) a report prepared by a medical authority which attests to validity of the condition with reasons why continued incarceration would be cruel and inhumane; and
 - (b) a recommendation from the superintendent of the institution; and
 - (c) a recommendation from the Director of the Department of Corrections.
- (2) Should the medical condition be such that a hearing may be threatening to the health and safety of the prisoner or the Board, the reduction shall be granted administratively, with the concurrence of the majority of the Board.

Who May Appear
255-40-030

(deleted)

Notice; Disclosure; Record
255-40-035

The notice, disclosure, and record making provisions of Division 30 shall apply to all hearings, and reviews granted under this Division.

Personal Review Packets
255-40-040

The Personal Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) [psych] psychological evaluations (last 6 months);
- (4) recommendation [for a date cut] to reset to an earlier date
- (5) correspondence;
- (6) field parole analysis report; and
- (7) court orders.

DIVISION 50

POSTPONING A PAROLE RELEASE DATE FOR SERIOUS MISCONDUCT

Postponing a Parole Release Date for Serious Misconduct
255-50-005

- (1) The Board shall postpone a prisoner's scheduled release date, if it finds, after a hearing, that the prisoner engaged in serious misconduct during confinement according to the procedures set forth in this section.
- (2) The Director of the Department of Corrections or designee may recommend an extension of a prisoner's parole release date as a disciplinary sanction.
- (3) A recommendation to extend a prison term 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 a rule governing conduct; and
 - (b) in no instance shall an extension of a prison term be recommended unless all other disciplinary options have been specifically considered and deemed to be, individually and in combination, inadequate for the seriousness of the misconduct.
- (4) The following factors shall be considered in determining whether an extension is appropriate:
 - (a) effectiveness of the sanction as a disciplinary measure, both to the prisoner and to the general prison 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 institutional conduct.

- (5) A prison term shall not be extended on a recommendation from the institution unless the misconduct can be classified within one (1) of the following four (4) categories:
 - (a) hazard to human life or health;
 - (b) hazard to security;
 - (c) hazard to property; or
 - (d) third in a series of rule violations within a three month period, while assigned to any Department of Corrections program.
- (6) Resets under two years will be panel cases, unless it has been previously designated a Full Board case.
- (7) When the recommended extension of the prison term exceeds the prisoner's statutory good time date or the expiration date the prison term may be extended up to one day less than the good time date or expiration date.
- (8) If serious misconduct occurs before a prisoner's prison term has been established and an extension of the prison term would be justified, the time for misconduct will be added to the prison term.
- (9) If serious misconduct occurs after a prison term has been established and an extension of the prison term would be justified, the Board may take steps to postpone release and order a postponement hearing to consider extending the prison term.
- (10) The Board may extend a parole release date on its own motion, when the Board is informed of reasonable grounds to believe that a prisoner has violated a law or has engaged in serious misconduct. A fact finding hearing shall be held by a Hearings Officer to determine if the law violation or misconduct occurred.

Postponement Procedures: Hearing by Board; Board Action
255-50-010

- (1) When the Board is notified by the Director of the Department of Corrections that an extension of a prison term has been recommended, the Board may consider the recommendation by administrative file pass or a hearing may be scheduled.
- (2) When a hearing is held, the following procedure will apply:
 - (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 not waive his/her right to appear;
 - (c) a prisoner may not relitigate facts which have been found at the institution disciplinary court.
- (3) Serious misconduct is classified within one of the following four categories:
- (a) hazard to human life or health;
 - (b) hazard to security;
 - (c) hazard to property; or
 - (d) third in a series of rule violations within a three month period, while assigned to any Department of Corrections program.
- (4) The Board may request that the prisoner be given another hearing before the disciplinary committee originating the recommendation for extension, or choose not to extend a prison term if the Board finds that other disciplinary options are adequate for the seriousness of the misconduct, considering the factors found in rule 255-50-005.
- (5) The Board may continue the postponement hearing and order a psychiatric or psychological examination when it appears that a severe emotional disturbance may be present. If there is a psychiatric or psychological diagnosis of present severe emotional disturbance, such as to constitute a danger to the health and safety of the community, the Board may defer release to a specified future date. In choosing not to set a parole release date, rule 255-35-030 shall control.
- (6) If the Board extends the prison term, 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.

Postponement for Refusing to Participate in a Psychiatric or Psychological Evaluation
255-50-013

- (1) Notwithstanding rules 255-50-005 and 255-50-010, the Board may administratively rescind a parole release date for serious misconduct, when a prisoner has refused to participate in psychiatric or psychological evaluation, which was ordered by the Board pursuant to ORS 144.125(3), prior to the prisoner's release on parole.

- (2) When a parole release date is rescinded under this section, the Board shall conduct a hearing to postpone the prisoner's release date.
- (3) The Board may postpone the parole release date up to one day before the prisoner's goodtime date.

Rescission of Parole: Unauthorized Absence; Law Violation
255-50-015

- (1) The Board may administratively rescind a parole release date when the Board is informed of reasonable grounds to believe a person has violated a law or otherwise engaged in serious misconduct. A fact-finding hearing shall be held by a Hearings Officer to determine if the law violation or serious misconduct occurred. However, if the prisoner has received an additional sentence, no hearing is required.
- (2) The parole release date of a prisoner who is on unauthorized absence from a correctional facility shall be administratively rescinded by a majority of the Board. A hearing may be scheduled when the prisoner is available or the Board may administratively reset the parole release date by adding the inoperative time to the prison term.

Postponement Procedure: Unauthorized Absence; Law Violation
255-50-016

The procedure for a postponement hearing shall be in accordance with the provisions of rule 255-50-010 (2).

Waiver
255-50-017
(deleted)

Hearing After Rescission of Parole
255-50-018
(deleted)

Basis for Rescission
255-50-020
(deleted)

Misconduct Board Review Packet
255-50-025

The Misconduct Board Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) [psych] psychological evaluations (last 6 months);
- (4) disciplinary report from the institution;
- (5) correspondence;
- (6) field parole analysis report; and
- (7) court orders.

DIVISION 60

PAROLE RELEASE AND EXIT INTERVIEWS

Exit Interviews; Parole Plan; and Psychiatric Records
255-60-006

- (1) At any time prior to a prisoner's scheduled parole release date, the Board on its own initiative or on the request of the Department of Corrections, may conduct an exit interview to review the prisoner's parole plan, psychiatric/psychological reports, if any, and conduct while in confinement. Pursuant to ORS 144.125, the Board may order any available psychiatric/psychological report(s) from the Department of Corrections.
- (2) The procedures governing exit interviews shall be the same as the the procedures outlined in Divisions 15 and 30.
- (3) The Board shall examine the prisoner's plans for residence, employment, or other situation in the community to determine whether the parole plan is adequate. The plan may include, but is not limited to:
 - (a) employment;
 - (b) school, or other situation (e.g., retirement income);
 - (c) verifiable residence;
 - (d) treatment programs; and
 - (e) prescribed medication.
- (4) 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 Department of Corrections.
- (5) A prisoner requesting an out-of-state parole waives the ninety (90) day limitation on deferral of release. Such waiver is for the purpose of an adequate parole plan in the accepting state.
- (6) The prisoner shall receive notice of the parole release hearing results, including the facts and specific reasons for the decision and the individual votes of the Board members.

- (7) The Board may order a psychiatric/psychological report anytime prior to release. 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 consider deferring parole release until a specified future date.
- (8) If the evaluation does not make a finding of a severe emotional disturbance such as to constitute a danger to the health or safety of the community, the Board shall affirm the parole release date and set parole conditions.
- (9) The majority of the Board may defer a scheduled parole release date up to two years. A panel may defer a scheduled parole release date up to 18 months.
- (10) The Board may not deny release on parole solely because of a prisoner's severe emotional disturbance.
- (11) When a prisoner has a detainer from another jurisdiction, the detainer shall take precedence and parole will begin upon the prisoner's release into the community from the holding jurisdiction.
- (12) If a parolee is released by the Department of Corrections to a detainer from another jurisdiction and is recommitted to the Oregon Department of Corrections, the previous parole order shall be voided.

Waiver of 90-Day Limitation; Deferral for Serious Misconduct
255-60-010
(deleted)

Instate Parole Release Interview Procedures
255-60-015
(deleted)

Out-of-State Parole Release Hearing Procedures
255-60-020

A prisoner in the custody of the Department of Corrections who is housed in an out-of-state facility may receive an exit interview if ordered by the Board in conformance with rule 255-60-005. All proceedings may be conducted by teleconference.

Parole Consideration for Prisoners in a Local Jail
255-60-025
(deleted)
5/16/88

Exit Interview Board Review Packet
255-60-030

The exit interview Board Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) psychological evaluations (previous 6 months);
- (4) correspondence;
- (5) field parole analysis report; and
- (6) court orders.

DIVISION 65

RESTITUTION AND SUPERVISION FEES

When Restitution is Ordered Upon Parole Release: Establishing a
Payment Schedule; Limitations
255-65-005

- (1) When a person has been sentenced pursuant to ORS 137.106 to pay restitution, or when restitution is recommended by the court, 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 restitution as a condition of parole. Restitution must be noted as restitution in the court order.
- (2) When a person has been sentenced pursuant to ORS 137.101 to pay a compensatory fine for a crime committed after Nov. 1, 1981, and any portion of that payment is deferred until after release from imprisonment, the Board shall establish a compensatory fine as a condition of parole. The compensatory fine must be for a specific amount, and must be noted as a compensatory fine in the court order.
- (3) In establishing and supervising a schedule of payments, the Board shall consider:
 - (a) The prisoner's financial resources, including salary, savings, and liquid assets not including place of residence, or those tools or vehicles essential to personal livelihood;
 - (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 in installment or other conditions to be set by the Board; and
 - (d) The rehabilitative affect of the payment and the method of payment.
- (4) Normal payments shall range up to twenty (20) percent of a person's take-home salary without voluntary payroll deductions, unless significant savings or liquid assess not including place of residence or those tools or vehicle essential to personal livelihood permit larger amounts.
- (5) The Board shall provide to the sentencing court a copy of the schedule of payments and any modifications.

Sentencing Including Restitution as Mitigation
255-65-010
(deleted)

Supervision of Payments; Conditions of Parole; Default by Parolee;
Effect on Discharge
255-65-015

- (1) The payment of restitution shall be included as a special condition of parole.
- (2) Payments shall be made to the clerk of the court of the county of sentencing.
- (3) The method and manner of payment shall be established by the individual's parole officer and approved by the Board.
- (4) When a parolee defaults on any scheduled payment, the supervising parole officer shall notify the Board. The default may be grounds for revocation of parole unless the parolee shows:
 - (a) The default was not due to an intentional refusal to make the payment; or
 - (b) The default occurred despite a good faith effort to make the payment.
- (5) If total payment of restitution has not been made by the completion of the designated minimum period of supervision, the parolee shall be continued on parole until completion of payment or the expiration of his/her sentence, whichever is first.

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 Department of Corrections 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 the costs of supervising parole.
- (2) The fee may range between ten dollars (\$10) and twenty dollars (\$20) a month, unless a greater fee is recommended by the Department of Corrections and approved by the Board using the same criteria set forth in rule 255-65-005(2). In no case shall the fee be less than ten dollars (\$10) per month.

- (3) The fee established pursuant to subsection (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.
- (4) In cases of financial hardship or when otherwise advisable in the interest of the released person's rehabilitation, the community program director or the Director of the Department of Corrections, whichever is appropriate, may waive the payment of the fee in whole or in part.
- (5) Fees collected shall be transferred to the Department of Corrections or retained by the county as provided by statute.

DIVISION 70

CONDITIONS OF PAROLE

Conditions of Parole
255-70-001

Conditions of parole may be imposed by the Board pursuant to OAR 255-70-015. Conditions of parole are not limited to those shown in Exhibit J.

Parolee Placement in Community Corrections Centers: Standards; Limitations
255-70-005
(deleted)

Guidelines on General Condition Relating to "Best Interest" Return
255-70-010
(deleted)

Establishing the Conditions of Parole
255-70-015

- (1) The Board may order an exit interview prior to the prisoner's parole release date to review the prisoner's case and set parole conditions.
- (2) If the Board decides to waive an exit interview, it shall specify the condition(s) of parole to be added to the parole order at the prison term hearing.
- (3) Once the conditions of parole have been established, the conditions may be altered according to the following procedures:
 - (a) by administrative file pass, if the alteration is before the prisoner's release on parole; and
 - (b) at a cite to show cause hearing, if the alteration is after parole release.
- (4) A cite to show cause hearing under subsection (1) of this section shall be conducted pursuant to the rules governing parole revocation hearings in Division 75.
- (5) When a parole officer would like the Board to add conditions to the parole order, before the prisoner is released on parole, the request must be submitted to the Board at least two weeks prior to the release date.

DIVISION 75PROCEDURES FOR REVOCATION OF PAROLEDefinitions255-75-001

(deleted)

Suspension of Parole; Citation255-75-002

When the Board is informed of reasonable grounds to believe that a person has violated the conditions of parole, or that parole is no longer in the best interests of the parolee or the community, and that the revocation of parole or an extension of supervised parole may be justified, the Board may:

- (1) suspend parole and order the parolee arrested and detained pending a parole violation hearing; or
- (2) issue a citation to show cause why parole should not be revoked without first suspending parole or ordering detention. The citation may be issued by the Board or the Board may expressly authorize its designated representative to issue a citation.

Criteria for Allowing Parolee to Remain in Community Pending Hearing255-75-003

In determining whether to allow a parolee to remain in the community pending the parole violation hearing, the Board may consider:

- (1) the seriousness of the allegations and the risk to the parolee or the community;
- (2) the likelihood of the parolee absconding or failing to appear at the hearing;
- (3) the availability of bail (when applicable);
- (4) the availability of resources in the community such as residence or employment; or
- (5) any recommendation by the parole officer.

Guidelines for "Best Interest" Return
255-75-004

Revocation of parole when it is not "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 the parolee dangerous to self or others if left in the community. The emotional or psychological disturbance may be indicated but not limited to threatening behavior in the form of:
 - (a) showing a present capacity to carry out any statements or threats of violence against the parolee or the community; or
 - (b) The substantial duplication of circumstances and conduct which led to the initial incarceration;
- (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, or other treatment programs);
- (3) Upon release on parole an existing probation is revoked, resulting in the prisoner's return to the custody of the Department of Corrections for criminal activity which did not occur while on parole; or
- (4) The prisoner receives a new commitment to the custody of the Department of Corrections for criminal activity which did not occur while on parole.

Hearing Requirement: Procedure
255-75-005

- (1) Before the Board can revoke parole, a parole violation hearing shall be conducted.
- (2) 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 violation or the place of confinement.
- (3) Before a Hearings Officer can hold an out of custody hearing, the parole officer responsible for supervising the parolee must obtain a citation to appear from the Board.
- (4) For an in custody parole revocation hearing, the parole officer must request a non bailable suspend and detain warrant from the Board.

- (5) A citation to appear or a suspend and detain warrant requires three affirmative votes by the Board.

Method of Hearing

255-75-006

Hearings may be conducted by teleconference. Person to person hearings shall be conducted by a Hearings Officer in the following situations:

- (1) the alleged violations are contested and the parolee or the parolee's attorney shows that the credibility of the witness, including the observation of the witness's demeanor would be necessary;
- (2) physical exhibits are to be part of the record and viewing the exhibits would be essential;
- (3) there are unusual circumstances not covered by this section, to be determined at the discretion of the Hearings Officer; or
- (4) when circumstances dictate that hearings cannot be conducted by teleconference (i.e., no telephone available for hearings in the confining facility).

Designated Representative to Conduct Hearing

255-75-007

- (1) The Board's designated representative shall conduct the parole revocation hearing.
- (2) "Designated representative" shall include those persons designated by the Department of Corrections or the Board of Parole as Hearings Officers.

Locations of Hearing

255-75-008

(deleted)

Board Action Upon Notification of Alleged Parole Violation:

Criteria for; Release of Parolee Pending Hearing

255-75-010

(deleted)

Procedures When Parolee is in Another Jurisdiction: Return of Parolee
255-75-015

- (1) The Board may suspend 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 the parolee was paroled without permission, and is in custody in another jurisdiction;
 - (b) the parolee is in custody in another correctional facility;
 - (c) the parolee has absconded from supervision and the parolee's whereabouts are unknown; or
 - (d) the parolee has been convicted of a new crime.
- (2) After the parolee is returned to prison in Oregon, the parolee shall be given a parole revocation hearing.

Rights of a Parolee at a Formal Hearing
255-75-020

- (1) The parolee shall be provided with a written notice of the hearing at least three (3) working days prior to the hearing.
- (2) The hearing notice will include:
 - (a) a Notice of Rights;
 - (b) a written statement of alleged violations; and
 - (c) any documents on the basis of the alleged violation.
- (3) The parolee may elect a notification period prior to the hearing immediately.
- (4) The Hearings Officer shall provide a written statement waiving the notification period.

This is supposed to be 255-75-025

020 was repealed in 1985

Waiver of Hearing
255-75-026

- (1) In all cases, the parolee may waive the right to a hearing by signing a Notice of Rights form.
- (2) When the purpose of a parole hearing is to consider a parole violation, the waiver of the right to a hearing acknowledges that there has been a violation of the conditions of parole in whole or in part.
- (3) When the purpose of the hearing is to modify parole conditions or to consider extending active community supervision, the waiver of the hearing indicates acceptance of the modifications.
- (4) If the parolee waives the right to a hearing, the parolee may offer a written or verbal statement pertaining to the violation.
- (5) The written waiver of the right to a hearing must be submitted to the Parole Board's designated representative within five (5) days after the parolee has waived the hearing.
- (6) Any statement made to the designated representative at the time of waiver must be tape recorded.
- (7) If the parolee waives the right to a hearing, the Hearings Officer will submit to the Parole Board the following:
 - (a) a Notice of Rights form;
 - (b) any parolee statements;
 - (c) the Hearing Report Summary; and
 - (d) any supporting information.

Board Rejection of Waiver
255-75-030

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 new hearing.

Hearings Process
255-75-031

- (1) The parole officer will present information at the hearing and arrange for the presence of witnesses for the state and present evidence, unless the hearing is waived.
- (2) The Hearings Officer will make a tape recording of the hearing.

Representation/Determination of Ability to Pay Attorney Fees
255-75-035

- (1) In all cases, the parolee is entitled to representation by an attorney at the parolee's own expense.
- (2) If the parolee is deemed indigent, and unable to pay for an attorney, the parolee may request to be represented by a Board appointed attorney if the parolee makes a timely and colorable claim that:
 - (a) the parolee has not committed the alleged violation;
 - (b) there are substantial or complex mitigating circumstances which make revocation inappropriate even if violation is admitted or a matter of record; or
 - (c) the parolee appears incapable of representing himself/herself.
- (3) If a Board appointed attorney is requested by the parolee, the Hearings Officer shall notify the Board of payment to be made to the appointed attorney. Where payment is approved, such payment shall not exceed \$30 per hour and \$200 per case. Billing must be received within 90 days.
- (4) In those instances where counsel is refused by the parolee, the grounds for refusal shall be succinctly stated in the record.

Board Subpoenas; Witness or Documents
255-75-036

- (1) Upon the request of any party to the hearing, and upon a proper showing of the relevance and reasonable scope of the testimony to be offered, the Parole Board or designated representative shall, or the Parole Board on its own motion may, issue subpoenas requiring the attendance and testimony of witnesses. Parolees will make their own arrangements for presenting witnesses. In addition, the Board or its designated representative may subpoena documents when relevant.
- (2) Witnesses appearing under subpoena, other than the parties, state officers or employes, shall be reimbursed fees and mileage by the Parole Board as prescribed by law, provided the Hearings Officer certifies that the witness's testimony was relevant and material to the hearing.
- (3) The parolee may present witnesses who may have relevant information, and has the right to confront the persons or witnesses who have presented information against the parolee.
- (4) Confrontation of witnesses by the parolee may be denied if the Hearings Officer finds that confrontation would subject the witness to the risk of harm if the witness's identity was disclosed.
- (5) If confrontation of witnesses by the parolee is denied, the Hearings Officer shall state the reason(s) for the decision and conduct an independent examination of the witness on the record.

Compelling Appearance of Witnesses: If Subpoena Requested; Board Motion; Failure to Obey
255-75-040

The Board, or its designated representative or party requesting a subpoena, may seek contempt proceedings in the circuit court of any county against any person refusing to honor the subpoena.

Probable Cause; Effect of Preliminary Hearing; Definition of Term; Deferral of Revocation Hearing
255-75-042

- (1) Evidence received, 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.

- (2) Should the parolee waive the right to a preliminary hearing, the waiver shall constitute a waiver of a hearing by the Board to determine whether there is a probable cause to believe that a violation of one or more of the conditions of parole has occurred.
- (3) A finding of probable cause shall be used to support the Board's decision to suspend and detain a parolee charged with the commission of a new crime. The Board may then defer completion of a parole violation hearing until the trial is over and the Board is notified of the final disposition of the case.
- (4) Notwithstanding subsection (3) of this section, a deferral following a finding of probable cause may not be extended for a period greater than 120 days from the date of the preliminary hearing or waiver.

Evidence
255-75-045

- (1) The following evidence may be received at a parole violation hearing:
 - (a) oral testimony under oath;
 - (b) affidavits or other sworn statements;
 - (c) letters;
 - (d) documents;
 - (e) reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole officers, doctors, psychologists, attorneys);
 - (f) uncertified copies of letters, documents, or reports shall be admissible in a parole violation hearing if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable;
 - (g) evidence of criminal activity even when charges have been dismissed, not brought, or the parolee has been acquitted at trial;
 - (h) hearsay evidence shall be admissible; or
 - (i) any evidence determined to be material, relevant, and reliable, regardless of its nature.

- (2) Upon the request of any party to the hearing, the Parole Board, or its designated representative, may issue a subpoena duces tecum upon a proper showing of relevant and reasonable scope of the documentary or physical evidence being sought. The parolee may make the parolee's own arrangements for presenting evidence.
- (3) The Hearings Officer may exclude documents or physical evidence upon making a finding that such evidence would pose a hazard to facility security or would not assist in the resolution of the allegation(s). The reason for exclusion shall be made part of the record.
- (4) The Hearings Officer may classify documents or physical evidence as confidential upon making a finding that revealing such evidence would pose a threat to the safety of the person providing the evidence.
- (5) Evidence received without disclosing the identity of the witness shall be made a sealed part of the record.
- (6) When a witness is unavailable, the statements may be received in the form of documentary evidence when the Hearings Officer determines at an in-camera hearing that good cause for nondisclosure exists and supporting evidence establishes the reliability of the absent witness's statement.

Postponement
255-75-046

- (1) A hearing may be postponed by the Hearings Officer for good cause and for a reasonable period of time.
- (2) The criteria for "Good cause" includes, but is not limited to:
 - (a) the preparation of defense;
 - (b) illness or unavailability of the parolee or other persons;
 - (c) gathering of additional evidence; or
 - (d) avoiding interference with an ongoing police investigation or pending prosecution.

Procedure for Receiving Evidence if Good Cause Exists Not to Require Confrontation or Disclosure of an Informat's Identity
255-75-050
(deleted)

Reopening Hearings for New Information: Criteria; Procedure
255-75-055

- (1) After the completion of a parole violation 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.

Hearings Record
255-75-056

- (1) The hearings record shall include:
 - (a) a Hearings Report Summary including tape of hearing;
 - (b) a written statement of alleged violations;
 - (c) supporting materials;
 - (d) a Notice of Rights; and
 - (e) the Order of Parole.
- (2) The tape recording used in subsection (1)(a) of this rule shall be sent to and retained by the Parole Board for two (2) years.

Record of Parole Revocation Hearing
255-75-060
(deleted)

Ten-Day Waiting Period for Parolee's Arguments and Exceptions
255-75-065

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

Final Action by the Board: Procedure
255-75-070

- (1) The Board shall consider the Hearings Officer's report, and exceptions and arguments. A majority of the Board shall enter a decision, and the individual votes of the Board members shall be recorded in accordance with Exhibit K. The Board shall indicate the adopted findings.
- (2) The Board may adopt or reject any or all the recommendations of the Hearings Officer.
- (3) A copy of the final order of parole revocation shall be forwarded to the parolee with notice of the right to administrative and judicial review.

Parolees Convicted of a New Crime in Another Jurisdiction: Return;
Jurisdictional Reinstatement
255-75-075

If a parolee has violated 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) continue 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. A continuance under these circumstances is not a recommendation for parole release.

Designation of Parole Failure
255-75-076
(deleted)

Parole Violator with New Prison Commitment; Action Required
255-75-078

- (1) Parole violators [returned] with pending charges [a new prison commitment] shall be given a future disposition hearing within 120 days of the parolee's return to the institution followed by a prison term hearing in accordance with Division 30 of these rules.
- (2) A parole violator with a new conviction shall see the Board for the violation at the prison term hearing for the new conviction.
- (3) The following procedure shall apply to parole violators with new commitments which are concurrent to their parole violations:
 - (a) a future disposition hearing will be conducted and a sanction shall be imposed for the parole violation according to guidelines in rule 255-75-090; and
 - (b) the commencement date for the new commitment shall be the sentencing date for the new crime.
- (4) The following procedures shall apply to parole violators with new commitments which are consecutive to their parole violations:
 - (a) a future disposition hearing shall be conducted, and a parole release date shall be established on the violation according to the guidelines in rule 255-75-090 prior to the prison term hearing for the new commitment; and
 - (b) the commencement date for the new commitment shall be the parole release date established for the parole violation.
- (5) Notwithstanding subsection (4) of this section, when the new commitment is consecutive to a parole violation, the panel or Full Board may treat the parole violation and the new commitment as if they were concurrent. The commencement date for the new commitment shall be the sentencing date for the new crime.
- (6) If the parolee is returned with a parole violation and a new sentence which is consecutive to the sentence for which the parolee was on parole, the commencement date for the new crime shall be the date parole was revoked, if so stated on the court order.

Continuance Based on Time Served: Necessary Findings by Board
255-75-080

If the Board finds that a parolee has committed a violation of parole conditions which is sufficiently serious to require a revocation hearing 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 continue parole.

Authority of Revocation Panel to Set New Parole Release Date for
Parole Violators
255-75-082
(deleted)

Parole Violators with No New Commitment; Action Required
255-75-085

- (1) Parole violators returned with no new prison commitment shall receive a future disposition hearing within 120 days of the date of return to Department of Corrections custody.
- (2) The hearing shall follow the procedures of a prison term hearing as provided in Division 30 of these rules.
- (3) At the future disposition hearing, the Board may:
 - (a) set a new parole release date according to the guidelines in rule 255-75-090; or
 - (b) deny further parole consideration, pursuant to ORS 144.390; and
 - (c) return all or part of the forfeited statutory good time.

Guidelines for Reparole
255-75-090

- (1) Parole violators shall be given a sanction within the following guidelines:
 - (a) violations not involving a finding of new criminal activity, shall result in an additional term of six to eight months unless the Board finds aggravation or denies parole; and

- (b) violations involving a finding of new criminal activity shall result in an additional term of eight to twelve months unless the Board finds aggravation, mitigation, denies parole.
- (c) In establishing a sanction, the commencement date shall be the date of arrest for the parole violation which resulted in the revocation of parole.

Variation From Guidelines for Aggravation/Mitigation Permitted
255-75-095

- (1) Variation from the terms set fourth in rule 255-75-090 (a) and (b), is permitted if the Board finds aggravation or mitigation as shown in either Exhibit E or Exhibit H.
- (2) Variations from the terms set forth in rule 255-75-090 (a) and (b), shall be those established in Division 35 of these rules and shown in Exhibit D.

Denial of Reparole Consideration
255-75-096

- (1) The Board may deny reparole consideration and require the parole violator to serve to the statutory good time date. This action requires the affirmative vote of at least four voting members.
- (2) In cases where setting a parole violator within the guidelines set forth in rule 255-75-090 (a) and (b) would require the parole violator to serve to the end of the sentence, four votes are not required.

Restoration of Parole Violation Goodtime
255-75-098

The Board may restore forfeited parole violation goodtime when:

- (1) there is no violation of parole and a recommendation to restore parole violation goodtime is received from the superintendent of the institution; or
- (2) parole is revoked on a best interest basis and there was no actual parole violation, and a recommendation to restore parole violation goodtime is received from the superintendent of the institution.

Future Disposition Hearing Packet
255-75-100

The Future Disposition Hearing Packet shall contain:

- (1) institution face sheet;
- (2) revocation recommendation;
- (3) final order of revocation;
- (4) administrative action sheet;
- (5) revocation hearing findings;
- (6) Board Action Form ordering parole;
- (7) disciplinary report, when extension is recommended;
- (8) recommendation for parole violation goodtime;
- (9) correspondence
- (10) statements of imprisonment for parole violation; and
- (11) face sheet from old parole analysis report.

DIVISION 80

ADMINISTRATIVE APPEAL

Procedure for Requesting a Review 255-80-005

- (1) A request for an Administrative Review may be filed by a prisoner or initiated by a Board member. If the Board determines that the request is consistent with the Board's criteria as defined in rule 255-80-010, the matter will be resolved by an Administrative Review Hearing or by an Administrative Review. Administrative Reviews may be resolved by file pass. In either instance, the prisoner will be informed in writing of the Board's decision.
- (2) Requests for administrative review must be made within forty-five (45) days after the Board's final action on the reviewed issue.
- (3) A waiver of the 45 day deadline will be granted only, if relevant new information is submitted which was particularly difficult to obtain.
- (4) An administrative review will be conducted if there is a change in the prisoner's sentence, or a change is made to the Board's rules or the statutes or case law which would effect the prisoner.
- (5) When the appeal is denied the chairperson or designee shall inform the prisoner in writing of the specific reasons for denial and the prior decision remains in effect.
- (6) An administrative review initiated by a Board member is not subject to the 45 day deadline.

Criteria for Granting a Review 244-80-010

The criteria for granting a review 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 initial prison term or de novo hearing which, through no fault of the prisoner, was not considered; or

- (3) Pertinent information was not available at the time of the initial prison term or de novo hearing. i.e. information concerning convictions from other jurisdictions.
- (4) The action of the Board is inconsistent with its rules or policies or is contrary to law; or
- (5) The matters raised on review may have an affect on the original decision.

Administrative Review Hearing Packet
255-80-015

The Administrative Review Hearing Packet shall contain:

- (1) institution face sheet;
- (2) Board Action Form granting administrative review;
- (3) all information attached to the Board Action Form granting review;
- (4) administrative review request;
- (5) all Board Action Forms since the prison term hearing;
- (6) [psych] psychological evaluations (last 6 months);
- (7) correspondence;
- (8) field parole analysis report; and
- (9) court orders.

DIVISION 90

PAROLE SUPERVISION AND DISCHARGE
FOR INMATES WITH CRIMES PRIOR TO DEC. 4, 1986

Definitions

255-90-001

(deleted)

Establishing the Period of Parole Supervision; Effect of
Restitution Obligation; Effect of Ballot Measure 10.

255-90-002

- (1) The Board shall establish a period of active supervised parole as shown in Exhibit I. The Board may order an extended supervision period if it finds that such an extension is appropriate.
- (2) Notwithstanding subsection (1) of this rule, active supervision, as shown in the Exhibit E, shall extend until the maximum expiration of the prison sentence if restitution remains unpaid.
- (3) Discharge for inmates who committed crimes on or after December 4, 1986 shall be governed by Division 92 of the Board's rules.

Period of Time to Serve on Supervised Parole

255-90-003

- (1) The guidelines set forth in Exhibit I shall govern the period of supervised parole. The period of supervision may be set by administrative file pass or at any hearing, personal review, or postponement action and shall be written on the Order of Parole.
- (2) Before discharge, the Board must find that the parolee's final release is not incompatible with the parolee's welfare and that of society.
- (3) 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.

Procedure: Approving or Denying 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.

Extension of Period of Supervision; Procedure: Approving or Denying Discharge; Further Proceedings
255-90-010

- (1) Prior to the expiration of the parolee's period of supervision the supervising parole officer shall send to the Board a closing summary. This summary shall include:
 - (a) an evaluation of the parolee's performance;
 - (b) the status of the parolee's restitution obligation, if any;
 - (c) the parolee's employment status; and
 - (d) the parolee's residence;
 - (e) any fines or fees;
 - (f) treatment programs; and
 - (g) any new criminal activity.
- (2) The summary shall recommend one of two courses:
 - (a) that the parolee be discharged and a certificate of discharge be issued; or
 - (b) that the discharge not be granted, with supporting reasons for this action in the recommendation;
- (3) When discharge is not granted, a parole revocation hearing shall be conducted to determine if parole should be revoked or if the parole period should be extended.
- (4) The Board shall notify the parolee in writing of the extension of the parole supervision period setting forth the reasons for the extension. The date of extension shall be from the date of the Board's review.
- (5) When discharge is granted, the Board shall notify the parolee in writing that the parolee has been discharged.
- (6) Notwithstanding subsections (1) to (5) of this rule, the supervising parole officer may submit a written recommendation to the Board for early discharge at any time after six months of supervised parole, providing that fees and restitution are paid in full.

Discharge
255-90-015

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.

DIVISION 92

Parole Supervision Under BM10

Application of Division 92
255-92-005

Division 92 applies to parole supervision for all prisoners who committed crimes on or after December 4, 1986. (See Ballot Measure 10, passed November 4, 1986.)

Definitions
255-92-010
(deleted)

Duration of Parole
255-92-015

- (1) Parole shall extend the entire term of a prisoner's sentence.
- (2) Notwithstanding subsection (1) of this section, active supervision on parole may be discontinued after three years, if the Board finds that:
 - (a) the parolee does not constitute a threat to the parolee or society;
 - (b) the parolee's behavior has been exemplary; and
 - (c) any restitution owed has been paid.
- (3) When active parole supervision is discontinued, the parolee shall be placed on inactive parole. However, this subsection shall not prohibit the Board from reinstating active parole supervision.

Period of Active Supervision; Exceptions
255-92-020

- (1) The minimum period of active supervision on parole shall be the length of the prisoner's sentence or three years, whichever is shorter.
- (2) Notwithstanding subsection (1) of this section, a parolee will only be removed from active supervision if the Board finds that the parolee has satisfied the provisions of OAR 255-92-015 (a), (b) and (c).

- (3) During parole violation proceedings, the period of active supervision is suspended and the Board shall retain jurisdiction over the parolee until the proceedings are resolved.
- (4) The Board may reinstate a parolee on active supervision under the provisions of OAR 255-92-040.

Parole Summary; Active Supervision Review
255-92-025

- (1) Within fifteen (15) days after the parolee has completed a period of active supervision established by the Board, the supervising officer shall send to the Board a parole summary. The parole summary shall contain:
 - (a) an evaluation of the parolee's behavior;
 - (b) an update on the status of the parolee's restitution obligation, if any; and
 - (c) a recommendation that the parolee be removed from active supervision; or
 - (d) a recommendation that the parolee be continued on active supervision.
- (2) If the supervising officer recommends that active supervision be continued, supporting reasons for this recommendation shall be included in the parole summary.
- (3) As soon as the parole summary is received by the Board, any three (3) Board members will conduct an active supervision review by administrative file pass to examine the parolee's record on active supervision.

Continued Active Supervision; Procedure
255-92-030

When continued active supervision is recommended by the supervising officer, the Board shall determine at the active supervision review if a continuance is appropriate. If the Board decides that continuing active supervision is appropriate, the Board shall:

- (1) use the guidelines set forth in Exhibit L to establish the length of the parolee's next period of active supervision; and

- (2) notify the parolee and the parole officer of its decision, the length of the parolee's next period of active supervision, and the reasons for continuing active supervision.

Removal From Active Supervision; Procedure
255-92-035

- (1) When the Board decides to remove a parolee from active supervision, the Board shall:
 - (a) delete any special conditions which the parolee has been required to follow; and
 - (b) issue a new parole order certifying inactive status.
- (2) A parolee shall be considered to be on inactive parole as of the date the parole order certifying inactive status is signed by the Board.

Bases for Reinstating Active Supervision; Procedure
255-92-040

- (1) Active supervision may be reinstated for the following reasons:
 - (a) failure to abide by the general conditions of parole; or
 - (b) inactive parole is no longer in the best interests of the parolee or society.
- (2) When the Board receives information indicating that reinstatement on active parole supervision may be warranted pursuant to subsection (1) of this section, the Board shall review the parolee's conduct by administrative file pass to decide whether or not to cite the parolee to a show cause hearing.
- (3) After the show cause hearing, the Board shall notify the parolee of its decision. If the Board decides to reinstate active parole supervision, the Board shall also notify the parolee of the length of the parolee's next period of active supervision, and the reasons for reinstating active supervision.
- (4) Show cause hearings under this section shall be conducted under the same procedures as parole revocation hearings in Division 75.

- (5) If a parolee is on inactive parole and parole is revoked following a parole revocation hearing, in addition to any other sanctions imposed by the Board, when the parolee is released from custody the parolee will be reinstated on active supervision. The new period of active supervision will be set at the prisoner's future disposition hearing.
- (6) If a parolee is on active parole and parole is revoked following a parole revocation hearing, in addition to any other sanctions imposed by the Board, when the parolee is released from custody the parolee will be reinstated on active supervision. The new period of active supervision will be set at the prisoner's future disposition hearing.
- (7) The new period of active supervision under this section shall be determined pursuant to the guidelines set forth in Exhibit L.

DIVISION 95

PRESENTENCE INVESTIGATION

Uniform Presentence Report
255-95-005

- (1) The Board, in consultation with the Advisory Commission on Prison Terms and Parole Standards, shall propose to the Department of Corrections a uniform presentence report form.
- (2) The proposed presentence reports shall be prepared according to the format outlined in Exhibit M

ebb

6-30-88

RECEIVED

AMENDED
CERTIFICATE AND ORDER
FOR FILING

JUN 30 4 55 PM '88

PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

BAIRD
SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on May 16, 1988

(Date)

by the Board of Parole

(Department)

(Division)

to become effective May 19, 1988

(Date)

The within matter having come before the Board of Parole

(Department)

(Division)

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:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: April 1, 1988

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

Adopted:
(New Total Rules)

Amended:
(Former Rules)

OAR 255-75-025

Repealed:
(Total Rules Only)

as Administrative Rules of the Board of Parole

(Department)

(Division)

DATED this 30th day of June, 19 88

By:

Verne L. Faatz

(Authorized Signer)

Title: Verne Faatz, Chairman, Board of Parole

Statutory Authority: ORS ORS Chapter 144

or

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: Rights of a Parolee at a Formal Hearing

A clerical error was made on past certificates. The OAR was cited as 255-75-020 when it should have been 255-75-025.

For Further Information Contact: Cindy J. Burgess

Cindy J. Burgess

(Rule Coordinator)

Phone: 378-2334

Rights of a Parolee at a Formal Hearing
255-75-025

- (1) The parolee shall be provided with a written notice of the hearing at least three (3) [calendar] working days prior to the hearing.
- (2) The hearing notice will include:
 - (a) a Notice of Rights;
 - (b) [W] a written statement of alleged violations; and
 - (c) [A] any documents or evidence which form the basis of the alleged violations.
- (3) The parolee may elect to waive the three working day [3-dau] notification period prior to the hearing and begin the hearing immediately. [with the hearings officer taping the parolee's verbal statement.]
- (4) The Hearings Officer shall tape the parolee's verbal statement waiving the three working day notification period.

ok

7-1-88

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

RECEIVED

JUL 14 5 51 PM '88

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the Board of Parole on June 13 and June 27, 1988 to become effective July 1, 1988

(Date)

The within matter having come before the 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:

Notice of Intended Action published in OAR Bulletin: NO [] YES [X] Date Published: May 15, 1988

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

PERM. [X] or TEMP. []

Adopted: (New Rules)

Amended: (Existing Rules)

Exhibit E-1, E-2, and E-3

Added: (Temporary Only)

Repealed: (Existing Rules)

as Administrative Rules of the Board of Parole (Agency)

DATED this 1st day of July, 1988

By: [Signature] (Authorized Signer) Title: Chairman

Statutory Authority: ORS 144.785, 144.787

Subject Matter: The Exhibit is being amended to comply with statutory changes and to update rules to reflect the Board's current procedures.

Statement of Need Attached: [X]

Fiscal Impact Attached: [X]

For Further Information Contact: Cindy J. Burgess, Rules Coordinator Phone: 378-2334

BEFORE THE
OREGON STATE BOARD OF PAROLE

In the Matter of the Amending)
of the Exhibit Governing Aggra-)
vating and Mitigating Factors.)

STATEMENT OF JUSTIFICATION

The Board of Parole is permanently amending the above named Exhibit to comply with statutory changes, and to update the Board's procedures.

- (a) Statutory Authority : ORS 144.785, 144.787, ORS Chap. 144.
- (b) Need for Rule : The Exhibit is being amended to comply with statutory changes and to update the rules to reflect the Board's current procedures.
- (c) Documents Relied Upon : HB 3384 (1987), ORS 144.787.

7-1-88
Date

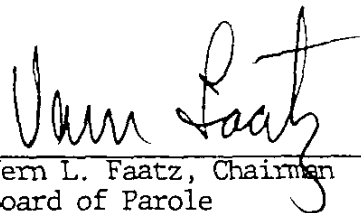

Vern L. Faatz, Chairman
Board of Parole

EXHIBIT E-1 AGGRAVATING FACTORS

- _____ A. Production or use of any weapon during the criminal episode.

- _____ B. Threat or violence toward witness or victim.

- _____ C. Knew or had reason to know the victims were particularly vulnerable i.e., aged, handicapped, very young.
(Pursuant to ORS 144.787, in cases of physical or sexual assault, a victim's particular vulnerability to injury shall constitute an aggravating factor, whether or not it is an element of the crime.)

- _____ D. Ability to make restitution or reparation and failed to do so.

- _____ E. Violation of position of trust or recognized professional ethics.

- _____ F. Degree of property loss, personal injury or threatened personal injury substantially greater than characteristic for the crime.

- _____ G. There is a single conviction for a crime involving multiple victims or incidents.

- _____ H. Concurrently imposed convictions not arising out of same criminal episode.

- _____ I. Verified instances of repetitive assaultive conduct only when criminal episode(s) involved assaultive behavior.

- _____ J. More than 3 trust violations in last 5 years as relates to Item E of the Matrix Computation.

_____ K. Persistent involvement in similar criminal offenses.

_____ L. Repetition of behavior pattern which contributes to criminal conduct (e.g., return to drug or alcohol abuse).

_____ M. Criminal history more extensive or serious than reflected by History/Risk Score.

_____ N. Pursuant to a Guilty or No Contest plea, other crimes were dismissed or not prosecuted.

_____ O. Consecutive sentences pursuant to Section 4. Chapter 634, Oregon Laws 1987.

_____ P. Persistent criminal misconduct while under supervision.

_____ Q. Other. _____

Inmate: _____
Inst. _____

EXHIBIT E-2 - MITIGATING FACTORS

_____ A. Evidence that misconduct by victim contributed to the criminal episode.

_____ B. Sustained effort to make restitution or reparation.

_____ C. Degree of property loss, personal injury or threatened personal injury substantially less than characteristic for the crime.

_____ D. Evidence of withdrawal, or lack of sustained criminal intent.

_____ E. Evidence of reduced responsibility or lack of mental capacity (e.g., mental retardation and/or severe mental/emotional disorder which is insufficient to constitute a defense but is indicative of reduced culpability.)

_____ F. Successful period of community supervision, at least 18 months immediately preceding commission of crime.

_____ G. Successful completion of treatment program and abstinence from substance abuse for 3 years immediately preceding commission of crime.

_____ H. Criminal history less extensive or serious than reflected by History/Risk Score.

_____ I. Probation violation is technical in nature and not indicative of ongoing criminal pattern.

_____ J. The crimes were part of a "crime spree" and that the spree is not indicative of a persistent criminal orientation.

_____ K. Other. _____

Inmate: _____
Inst: _____

EXHIBIT E-3

AGGRAVATING/MITIGATING FACTORS

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

In the case of a physical or sexual assault, pursuant to ORS 144.787, a victim's particular vulnerability to injury (such as youth, handicapped condition or advanced age) shall constitute an aggravating factor whether or not it was an element of the crime.

Pursuant to Section 4, Chapter 634, Oregon Laws 1987, for crimes committed on or after July 11, 1987, consecutive sentences shall be considered an aggravating factor.

For the purpose of Exhibit E-2, 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.

RECEIVED

JUL 15 60 PM '88

CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE
PAROLE BOARD
SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on June 27, 1988
(Date)

by the Board of Parole
(Department) (Division)

to become effective July 1, 1988
(Date)

The within matter having come before the Board of Parole
(Department) (Division) 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:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: June 1, 1988

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

Adopted: (New Total Rules) EXHIBITS N AND O

Amended: (Existing Rules) EXHIBITS AI, AII, C, D, G, H, I, J, K, and L.

Adopted: (New Rules Only)

as Administrative Rules of the Board of Parole
(Department) (Division)

DATED this 1st day of July, 19 88

By: Vern Faatz
(Authorized Signer)
Title: Vern Faatz, Chairman

Statutory Authority: ORS Chapter 144 or

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: Crime Severity Ratings, Time to Be Served, Guideline Matrix, Misconduct Factors, Aggravation and Mitigation in Parole Violation Cases, Parole Conditions, Voting Requirements for Parole Revocation Cases, Guidelines for Reviewing Active Supervision, Inmates Rights and Board of Parole Procedures, Administrative Review Request Form

For Further Information Contact Cindy J. Burgess (Rule Coordinator) Phone 378-2334

BEFORE THE
BEFORE THE OREGON STATE BOARD OF PAROLE

In the Matter of the)
Amending of the Exhibits)

STATEMENT OF JUSTIFICATION

The Board of Parole is permanently amending its Exhibits to reflect the changes made by the Board in the administrative rules which were adopted permanently on May 19, 1988.

- a. Statutory Authority : ORS Chapter 144
- b. Need for Rule : The Exhibits are being permanently amended to reflect the changes made in the Board's rules which were adopted May 19, 1988.
- c. Documents Relied Upon : Divisions 1-95 of the Board's administrative rules adopted May 19, 1988.

7-1-88
Date

Vern L. Faatz
Vern L. Faatz, Chairman
Board of Parole

FISCAL ANALYSIS OF RULE
PER ORS 183.335

<u>Effect on Revenue (By Fund)</u>	<u>Current Biennium</u>	<u>Future Biennium</u>
None	None	None
<u>Effect on Expenditures (By Fund)</u>	<u>Current Biennium</u>	<u>Future Biennium</u>
None	None	None

Organizational Impact:

None

Positions:

All staff required to administer the Board of Parole's Administrative Rules have been provided by the Legislature and are contained in the present Parole Board biennium's budget.

Economic Impact:

None

Reference for Data and Methods Used RE Above

Parole Board Budget

Prepared by: Georgina Dews Agency: Board of Parole
Title: Law Clerk Date: May 19, 1988

EXHIBIT A

CRIME SEVERITY RATINGS

<u>ORS</u>	<u>CRIME</u>	<u>FELONY CLASS</u>	<u>RATING</u>
163.535	Abandonment of Child	C	2
166.085	Abuse of Corpse	C	3
475.993	Act By Registrant	C	1
163.095	Aggravated Murder	U	7,8
164.057	Aggravated Theft I	B	4
164.325	Arson I	A	6,5
164.315	Arson II	C	2
163.185	Assault I	A	6,5
163.175	Assault II	B	4
163.165	Assault III	C	3,2
161.405	Attempt - The highest crime severity rating for the felony one level below the crime attempted. (e.g., Attempted Burglary I would receive the highest rating for a Class B Felony.)		
163.515	Bigamy	C	1
162.015	Bribe Giving	B	3
162.025	Bribe Receiving	B	3
162.275	Bribe Receiving by a Witness	C	2
162.265	Bribing a Witness	C	2
164.225	Burglary I	A	5,4,3
164.215	Burglary II	C	3,2,1
164.220	Carrying Weapon With Intent to Use	C	2
163.275	Coercion	C	4,3
167.017	Compelling Prostitution	B	4
164.377(2)(3)	Computer Crime	C	2,1
161.450	Conspiracy - Classified at same level as conspired crime, except murder or treason which are reduced to a felony. (e.g., Conspiracy to Commit Burglary I is an A Felony.)		
803.080	Counterfeit Vehicle Title	C	1
163.005	Criminal Homicide	A	2
164.365	Criminal Mischief I	C	1
163.205	Criminal Mistreatment I	C	2
163.555	Criminal Nonsupport	C	1
165.022	Criminal Possession Forged Instrument I	C	1
165.032	Criminal Possession Forgery Device	C	1
164.140	Criminal Possession Rented/Leased Property	C	2,1
163.145	Criminally Negligent Homicide	C	4,3
163.257	Custodial Interference I	B	3
163.245	Custodial Interference II	C	1
162.672	Dealing in Depictions of Child's Sexual Conduct	B	4

475.995(1)	Delivery of Controlled Substance to Minor	A	4
475.995(2)	Delivery of Controlled Substance to Minor	B	3
475.992(2)	Delivery of Marijuana for Payment	B	3,2,1
475.995(5)	Delivery of Marijuana to Minor	A	1
167.365	Dogfighting	C	1
811.182	Driving While Suspended or Revoked	C	1
164.885	Endangering Aircraft	C	2
162.165	Escape I	B	5
162.155	Escape II	C	2,1
166.270	Exconvict in Possession	C	2
162.205	Failure to Appear I	C	2
811.705	Failure to Perform Duties of a Driver Where There is Death	C	3
811.705	Failure to Perform Duties of a Driver Where There is Injury	C	2
822.605	False Swearing Relating to Regulation Vehicle Related Business	C	1
803.230	Forge/Alter Vehicle Title Reg.	C	1
165.013	Forgery I	C	3,2,1
59.055; 59.135;			
59.730; 59.740;			
59.750; 59.760	Fraud Involving Securities	C	2,1
59.770; 59.780;			
59.790; 59.800			
165.055(3b)	Fraudulent Use of Credit Card	C	1
811.185	Habitual Traffic Offender (OMVCO)	C	1
162.325	Hindering Prosecution	C	1
471.440	Illegal Manufacture of Mash; Operating Distillery Without a License	C	1
166.410	Illegal Manufacture, Importation, Sale, Gift, Loan or Possession of Firearms	C	1
163.525	Incest	C	1
166.165	Intimidation I	C	2
163.235	Kidnapping I	A	6
163.225	Kidnapping II	B	4
163.118	Manslaughter I	A	6
163.125	Manslaughter II	B	5,4,3
475.992(1)	Manufacture or Delivery of Controlled Substance	A,B,C	4,3,2,1
481.990(2-5, 8,9)	Motor Vehicle Title Offenses		1
163.115	Murder	U	7,8
165.065(3b)	Negotiating a Bad Check	C	3,2,1
166.450	Obliteration of ID Marks (Firearm)	C	1
163.680	Paying for Viewing Childs Sexual Conduct	C	1
162.065	Perjury	C	2
496.992	Poaching	C	2
475.992(4)	Possession of a Controlled Substance	B,C	2,1
165.071	Possession of a Fraudulent Communications Device	C	2,1
167.137	Possession of Gambling Records	C	1

819.300	Possession of a Stolen Vehicle	C	1
166.275	Possession of Weapon By Inmate of Penal Institution	A	5
167.127	Promoting Gambling I	C	1
167.012	Promoting Prostitution	C	2
166.720	Racketeering	A	5,4
163.375	Rape I	A	6,5
163.365	Rape II	B	4,3
163.355	Rape III	C	2
166.015	Riot	C	2
164.415	Robbery I	A	6
164.405	Robbery II	B	4
164.395	Robbery III	C	2
167.062(4)	Sadomasochistic Abuse or Sexual Conduct in Live Show	C	1
163.425	Sexual Abuse I	C	3
163.411	Sexual Penetration Foreign Obj. I	A	6,5
163.406	Sexual Penetration Foreign Obj. II	B	4
163.405	Sodomy I	A	6,5
163.395	Sodomy II	B	4
163.385	Sodomy III	C	2
161.435	Solicitation - Classified one level below crime solicited.		
165.090	Sports Bribe Receiving	C	2
165.085	Sports Bribery	C	2
162.185	Supplying Contraband	C	4,3,2,1
167.212	Tampering With Drug Records	C	1
162.285	Tampering With a Witness	C	2
164.085	Theft by Deception	C	2,1
164.075	Theft By Extortion	B	4,3
164.095	Theft By Receiving	C	2
164.055	Theft I	C	2,1
164.125(4b)	Theft of Services	C	2,1
164.065	Theft, Lost/Mislaid Property	C	1
819.310	Trafficking in Stolen Vehicles	C	3
163.677	Transporting Pornographic Material (child)	B	4
166.005	Treason	U	7
164.135	Unauthorized Use of Vehicle	C	2,1
475.992(3)	Unlawful Creation or Delivery a Counterfeit Substance	A,B,C	3,2,1
475.995	Unlawful Delivery of Controlled Substance to A Minor	A,B	4,3,2
166.660	Unlawful Paramilitary Activity	C	1
166.250	Unlawful Possession of Firearms	C	2
163.670	Using a Child in a Display of Sexually Explicit Conduct	A	6,5
411.630; 411.640			
411.690; 411.840	Welfare/Food Stamp Fraud	C	2,1

EXHIBIT A

PART II

Aggravated Murder

163.095

Subcategory 1 - Rating of 8:

Stranger to stranger; cruelty to victim; prior conviction of murder or manslaughter; evidence of significant planning or preparation.

Subcategory 2 - Rating of 7:

All other cases of aggravated murder.

Arson I

164.325

Subcategory 1 - Rating of 6:

Knew or should have known premises were occupied at time of act or injury.

Subcategory 2 - Rating of 5:

All other cases of Arson I.

Assault I

163.185

Subcategory 1 - Rating of 6:

Cases of Assault I in which there is intentional cause of serious physical injury to another by means of a deadly or dangerous weapon.

Subcategory 2 - Rating of 5:

Cases of Assault I in which the victim(s) provoke the crime to a substantial degree or other evidence that misconduct by the victim(s) contributed substantially to the criminal episode.

Assault III

163.165

Subcategory 1 - Rating of 3:

Assault III/Vehicular where defendant has at least 2 prior DUII convictions within a 5 year period.

Subcategory 2 - Rating of 2:

All other cases of Assault III.

Burglary I

164.225

Subcategory 1 - Rating of 5:

Entry into a dwelling or non-dwelling, where defendant used or threatened to use, by word or gesture, a dangerous weapon or caused/threatened serious physical injury. Entry into a dwelling or non-dwelling in which goods taken are valued at \$5,000 or over.

Subcategory 2 - Rating of 4:

Entry into a dwelling or non-dwelling in which goods taken exceeds \$1,000 but is less than \$5,000.

Subcategory 3 - Rating of 3:

All other entries into dwelling or non-dwelling and the value of goods taken is less than \$1,000.

Burglary II

164.215

Subcategory 1 - Rating of 3:

Theft or destruction over \$5,000 in property.

Subcategory 2 - Rating of 2:

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

Subcategory 3 - Rating of 1:

Theft of less than \$1,000.

Coercion

163.275

Subcategory 1 - Rating of 4:

Compelling another to act through threat of serious physical harm or property damage; blackmail.

Subcategory 2 - Rating of 3:

All others.

Computer Crime

164.377(2)(3)

Breakdown is the same as for Theft I.

Criminal Possession Rented/Leased Property

164.140

Breakdown is the same as for Theft I.

Criminally Negligent Homicide

163.145

Subcategory 1 - Rating of 4:

Vehicular Homicide where defendant with criminal negligence causes the death of another person.

Subcategory 2 - Rating of 3:

Cases where the victim's misconduct contributed to the criminal episode (i.e. victim was drinking buddy of def.).

Delivery of Marijuana for Payment

475.992(2)

Breakdown is the same as for Manufacture or Delivery of Controlled Substance.

Escape II

162.155

Subcategory 1 - Rating of 2:

Use or threat to use physical force escaping from custody; or, having been convicted or found guilty of a felony, escapes from custody imposed as a result thereof; or escapes from a correctional facility or, while otherwise under the jurisdiction of the Psychiatric Security Review Board, departs from state without authorization of Board.

Subcategory 2 - Rating of 1:

All other cases.

Failure to Perform Duties of a Driver Where There
is Injury or Death
811.705

Subcategory 1 - Rating 3:

If death results.

Subcategory 2 - Rating 2:

Injury and all other cases.

Forgery I
165.013

Subcategory 1 - Rating of 3:

Loss, potential loss, or receiving of over \$5,000.

Subcategory 2 - Rating of 2:

Loss, potential loss, or receiving of \$1,000 to \$5,000.

Subcategory 3 - Rating of 1:

Loss, potential loss, or receiving of under \$1,000.

Fraud Involving Securities

59.055; 59.135; 59.730; 59.740; 59.750; 59.760; 59.770; 59.780;
59.790; 59.800

Breakdown is the same as for Theft I.

Manslaughter II
163.125

Subcategory 1 - Rating of 5:

Cases where death of a victim, usually a child, results from prolonged abuse; failure to provide for victim's welfare resulting in death; medical treatment withheld to conceal physical signs of abuse.

Subcategory 2 - Rating of 4:

Causes another to commit suicide or aids, cases where death of victim involves use of a weapon or follows an assault; cases where death is by negligent use of

vehicle and defendant has at least 2 prior DUII convictions within 5 years.

Subcategory 3 - Rating of 3:

Cases where death is by negligent use of a vehicle; all other cases.

Manufacture or Delivery of Controlled Substance
475.992(1)

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.

Murder
163.115

Breakdown is the same as for Aggravated Murder
All other cases of murder.

Negotiating a Bad Check
165.065(3b)

Breakdown is the same as for Theft I.

Possession of Controlled Substance
475.992(4)

Subcategory 1 - Rating of 2:

Possession of large amounts of schedule 1 or 2 drugs,
presumption of possession with intent to sell.

Subcategory 2 - Rating of 1:

Possession of small amounts of schedule 1 or 2 drugs,
rebuttable presumption of possession for own use.

Possessing Fraudulent Communications Devices
165.070

Breakdown is the same as for Theft I.

Racketeering
166.720

Subcategory 1 - Rating of 5:

The principle party involved in violation of the
Racketeering statute. Involvement is that of planning,
directing or participating in the scheme or schemes
resulting in direct profit or gain.

Subcategory 2 - Rating of 4:

The subordinate party involved in violation of the
Racketeering statute. Involvement is limited to acting
as an agent or employee of the principle. There is no
involvement in planning, directing or participating in
the scheme or schemes in violation of this statute.

Rape I
163.375

Subcategory 1 - Rating of 6:

Stranger to stranger; breaking and entering; threat to
use or use of weapon; actual or threat of serious bodily
or emotional harm; intercourse with female or male under
12.

Subcategory 2 - Rating of 5:

All other cases.

Rape II
163.365

Subcategory 1 - Rating of 4:

Cases in which the female is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; or the female is under 14 years of age.

Subcategory 2 - Rating of 3:

All other cases.

Sexual Penetration with Foreign Object I
163.411

Subcategory 1 - Rating of 6:

Sexual Penetration with Foreign Object I is broken down in the same manner as Rape I.

Subcategory 2 - Rating of 5:

All other cases.

Sodomy I
163.405

Subcategory 1 - Rating of 6:

Sodomy I is broken down in the same manner as Rape I.

Subcategory 2 - Rating of 5:

All other cases.
Supplying Contraband
162.185

Subcategory 1 - Rating of 4:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses any firearm; knowingly introduces any firearm into a correctional facility, juvenile facility, or state hospital.

Subcategory 2 - Rating of 3:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses dangerous weapon; knowingly introduces any dangerous weapon into a correctional facility, juvenile facility or state hospital.

Subcategory 3 - Rating of 2:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses any Schedule 1 controlled substance except marijuana; knowingly introduces any Schedule 1 controlled substance into a correctional facility, juvenile facility or state hospital.

Subcategory 4 - Rating of 1:

All other cases.

Theft by Deception

164.085

Breakdown is the same as for Theft I.

Theft by Extortion

164.075

Subcategory 1 - Rating of 4:

Threat of serious bodily harm or death.

Subcategory 2 - Rating of 3:

All others.

Theft I

164.005

Subcategory 1 - Rating of 2:

Theft or receiving of \$1,000 to \$10,000.
Theft of a motor vehicle for personal transportation.
Theft of a livestock animal.
Theft of a firearm or explosive.
Theft during riot or catastrophe.

Subcategory 2 - Rating of 1:

Thefts under \$1,000.

Theft of Services

164.125

Breakdown is the same as for Theft I.

Unauthorized Use Motor Vehicle

164.135

Subcategory 1 - Rating of 2:

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

Subcategory 2 - Rating of 1:

All others.

Unlawful Creation or Delivery of Counterfeit Substance
475.992(3)

Breakdown is the same as for Manufacture or Delivery of Controlled Substance.

Unlawful Delivery of Controlled Substance to a Minor
475.995

Subcategory 1 - Rating of 4:

Any delivery of heroin; delivery for compensation of any other drug, except those fitting Sub. 3.

Subcategory 2 - Rating of 3:

All other except those fitting Sub. 3. Subcategory 3 -
Rating of 2:

Any delivery of less than 1 ounce of marijuana.

Using a Child in a Display of Sexually Explicit Conduct
163.670

Subcategory 1 - Rating of 6:

Child 12 years of age or under.

Subcategory 1 - Rating of 5:

All other cases.

Welfare/Food Stamp Fraud
411.639; 411.640; 411.690; 411.840

Breakdown is the same as for Theft I.

EXHIBIT C

TIME TO BE SERVED UNDER DIVISION 35-CHAPTER 255

(All Ranges in Categories 1 - 8 Shown in Months)

<u>CRIME SEVERITY RATING</u>	<u>CRIMINAL HISTORY/RISK ASSESSMENT SCORE</u>			
	11-09 Excellent	08-06 Good	05-03 Fair	02-00 Poor
	<u>Base Range</u>			
Category 1	06-06	06-06	06-10	12-18
Category 2	06-06	06-10	10-14	16-24
Category 3	06-10	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	96-120	120-156	156-192	192-240
Category 8	120-168	168-228	228-288	288-Life

EXHIBIT D

GUIDELINE MATRIX
STANDARD VARIATIONS FROM THE RANGES UNDER RULE 255-35-035

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 (Board)	36	36	36	36
8 (Board)	36	36	36	36

*All numbers represent standard variations in months.

The maximum variation allowed in crime categories 1 through 6 are:

- (a) For a panel: two standard variations.
- (b) For a panel with a concurring vote (3 concurring votes): three times the standard variation.
- (c) For four (4) concurring votes: four times the standard variation.
- (d) For five (5) concurring votes after a hearing before the Board pursuant to OAR 255-30-015; five times the standard variation.

The maximum variations allowed a Board pursuant for Category 7 and 8 crimes are:

- (a) For three (3) concurring votes: the standard variation of 36 months.
- (b) For four (4) concurring votes: two times the standard variation of 36 months (72 months).
- (c) For five (5) concurring votes: three times the standard variation of 36 months (108 months).

The Board may deny parole pursuant to OAR 255-35-030.

EXHIBIT G

MISCONDUCT FACTORS (DIVISION 50)

<u>CATEGORY</u>	<u>AMOUNT OF TIME</u>	
	<u>MINIMUM</u>	<u>MAXIMUM</u>
(1) Hazard to Human Life	50% of the prison term	100% of the prison term. In no instance may the extension exceed 5 years.
(2) Hazard to Security	25% of the prison term	50% of the prison term. In no instance may the extension exceed 2 years.
(3) Hazard to Property	10% of the prison term	20% of the prison term. In no instance may the extension exceed 1 year.
(4) Third in a series of rule violations in a three-month period, while assigned to any Department of Corrections program.	5% of the prison term	10% of the prison term. In no instance may the extension exceed 6 months.

The extension must be set according to Exhibit G above and the category of misconduct, unless the Board finds aggravation or mitigation based on those factors listed in Exhibit E. If a basis for aggravation or mitigation is found by the Board, the maximum variable allowed to a majority of the Board would be twenty-five percent of the sanction recommended. The Board may apply all or a portion of the recommended sanction.

EXHIBIT H

AGGRAVATION/MITIGATION IN PAROLE VIOLATION CASES

AGGRAVATION

Prior parole revocation.

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

Less than three (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 of criminal activity).

MITIGATION

No evidence of new criminal activity

No prior parole difficulty.

More than nine (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

TIME TO BE SERVED ON PAROLE ON CRIMES

OCCURRING ON OR BEFORE 12-3-86

OFFENSE SEVERITY RATING	CRIMINAL 11-9 EXCELLENT	HISTORY/RISK 8-6 Good	ASSESSMENT 5-3 Fair	SCORE 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
8	1 year	1 year	1 year	1 year

(a) In crime categories 1, 2, 3, and 4 extension may be imposed for up to an additional six (6) months supervised parole.

(b) In crime category 5, 6, 7, and 8 extension may be imposed for up to an additional one (1) year supervised parole.

(c) Extensions may be imposed for up to an additional thirty-six (36) months supervised parole.

(d) The period of supervision may exceed 6 months due to the nature of the crime.

EXHIBIT J

GENERAL/SPECIAL PAROLE CONDITIONS

Parole is ordered subject to all listed General Conditions and the designated Special Conditions. Parole may be revoked for violation of any of these conditions.

GENERAL CONDITIONS:

1. Parolee will abide by the direction and counsel of the Department of Corrections and its representatives, and answer all reasonable inquiries of the Board of Parole or the parole officer.
2. Parolee will not change residence without first notifying the parole officer.
3. Upon release parolee will proceed at once to the place of residence and report arrival, within 24 hours to the parole office listed below, or according to instructions at time of release.
4. Parolee will find and maintain gainful employment, approved schooling, or other approved programming.
5. If residence is within the State of Oregon, parolee will not leave the state without first securing permission in writing from the parole officer.
6. If residence is outside the State of Oregon, parolee will not re-enter the State of Oregon without permission in writing from the Director, Department of Corrections.
7. Parolee will make a written and truthful report on the last day of each and every month to the Director, Department of Corrections, on forms which will be furnished, giving information required therein.
8. Parolee is not to own, possess, or be in control of any weapon.
9. Parolee will obey all municipal, county, state, and federal laws.
10. Parolee is to pay a monthly parole supervision fee to the agency administering parole (ORS 423.570, OAR 255-65-020).
11. Parole must continue to be in the best interest of parolee and society.

SPECIAL CONDITIONS:

1. Parolee is to submit person, residence, vehicle and property to search by a parole officer having reasonable grounds to believe such search will disclose evidence of parole violation.
2. Parolee is to become involved in a drug surveillance program.
3. Parolee is to become involved in a drug treatment program.
4. Parolee is to become involved in a mental health treatment program.
- 5A. Parolee is not to use intoxicating beverages.
- 5B. Parolee is not to use intoxicating beverages to excess. The excessive use of intoxicating beverages is understood to mean that the effects disrupt or interfere with my domestic life, employment, or proper community conduct.
- 5C. Parolee is to undertake and maintain an antabuse program, if medically approved. If so approved, antabuse will be implemented prior to release.
- 5D. Parolee is to undertake and maintain an alcohol treatment program.
6. Parolee is not to have a checking account.
7. Parolee is to pay court ordered restitution to the clerk of the court of the county of sentencing who will forward the payment to the victim of the crime (ORS 137.106, OAR 255-65-005).
8. Parolee is to have no contact with minors (male/female) and not to frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades).
9. Parolee is to pay a court ordered compensatory fine to the clerk of the court of the county of sentencing (ORS 137.101, OAR 255-65-005).
10. Other: Special conditions may be imposed that are not listed above when the Board of Parole determines that such conditions are required.

INSTRUCTIONS:

EXHIBIT L

Guidelines for Reviewing Active Supervision
After the Initial 36 Month Period
of Supervision is Completed
Under Division 92
(shown in months)

<u>Crime Severity Rating</u>	<u>Criminal History/Risk Assessment Score</u>			
	11-09 Excellent	08-06 Good	05-03 Fair	02-00 Poor
Category 1	06	06	06	12
Category 2	06	06	12	12
Category 3	06	12	12	18
Category 4	12	12	18	18
Category 5	12	18	18	24
Category 6	18	18	24	24
Category 7	24	24	24	24

These are only guidelines. If three members of the Board vote to go outside the guidelines, the period of active supervision shall be any time period determined by the Board.

EXHIBIT K

VOTING REQUIREMENTS FOR PAROLE REVOCATION CASES

All Board actions require three concurring votes. Any time a vote is recorded in disagreement, additional votes are required to make concurring votes.

1. Suspend and Detain (abscond, major technical, new crime, persistent misbehavior).
2. Cite to Appear at parole violation hearing.
3. Withdraw Suspend and Detain Order.
4. Return (absconder, new crime, no basis to continue).
5. Adopt findings of hearings officer.
6. Continue.
7. Defer formal decision regarding disposition.
8. Adopt findings of hearings officer; reject recommendations.
9. Revoke.
10. Reprimand.
11. Modify Conditions (state reasons).
12. Extend supervision period six months.
13. No action, report noted.
14. Discharge.

EXHIBIT N
INMATES' RIGHTS
AND
BOARD OF PAROLE PROCEDURES

1. Law that Applies

You are scheduled for a hearing before the Oregon State Board of Parole. Based on the hearing results, the Board will issue an order which will affect your release date from the institution. You should note that parole may be denied. The hearing will be conducted as provided in Chapter 183 and Chapter 144 of the Oregon Revised Statutes (as limited by ORS 183.315) and as further provided in the administrative rules of the Oregon Board of Parole, OAR Chapter 255. These statutes and rules are available through the institution's legal library.

2. Right to An Attorney

Parties are not ordinarily and customarily represented by attorneys. The Board of Parole will not be represented by an attorney at the hearing, and you may represent yourself at the hearing. If you choose to represent yourself, but determine in the course of the hearing that an attorney is necessary, you may not request a recess. The Board will not appoint or pay an attorney for you. You may be accompanied by one person of your choice to the hearing.

3. Presiding Officer

Either the Full Board or a Panel of the Board (two members) will hear your case. One of the members will serve as the presiding officer and will rule on all matters that arise at the hearing. The Board will render the final determination.

4. Hearing Procedure

A Board hearing is less formal than a court appearance. The Board will review the documents in your parole packet, including the Presentence Report or a report of similar content, including any additional information provided by police, counsel, the victim, or the district attorney, and any recent psychological/psychiatric evaluations. You have the right to examine these documents before the hearing, subject to the exceptions listed in OAR 255-35-045. You have the right to present additional, relevant information and you have the right to rebut information you believe is inaccurate. You do not have the right to call witnesses or to cross-examine witnesses who have provided information to the Board. In general, information which you wish the Board to consider should be provided in writing prior to the hearing. You, or your representative, may make an oral statement to the Board.

5. Notice and Waiver

You should receive your parole packet and a notice of your hearing at least 14 days before your hearing date. You should bring your copy of the parole packet to your hearing. If you do not receive these materials 14 days prior to your hearing, you may waive the notice period.

6. Continuances

There are normally no continuances granted at the end of a hearing. You should be prepared to proceed at the time of the hearing. However, if you can show that the record should remain open for additional evidence, the presiding Board member may consider that request.

7. Exceptions to Proposed Order

After the hearing, you will be sent an order reflecting the Board's decision in your case. This order will be captioned "Board Action Form". This amounts to the final order of the Board of Parole. If you disagree with the order, you may either seek administrative review or appeal directly to the Oregon Court of Appeals. Ordinarily, there will not be an opportunity after the Board issues its order for you to appear before it to object to the order or present additional arguments.

8. Record

A record will be made of the entire hearing to preserve the testimony and other evidence for appeal. This will be done by tape recorder. Ordinarily the record will not be transcribed unless you appeal to the Court of Appeals. If you appeal, you will not have to pay for the cost of transcribing the record, unless the petition is frivolous. If you do not appeal, a copy of the record will be made available to you upon payment of the cost of making it. The Board only maintains taped records for two years. After two years the record is deleted.

9. Appeals and Administrative Reviews

If you wish to appeal the final order, you must file a Petition for Review with the Oregon Court of Appeals within 60 days after the final order is served upon you. If you cannot afford a lawyer to help you with an appeal, you may have the right to appointed counsel. You should contact the Public Defender's Office about having an attorney appointed for you. You also have the right to an administrative review. The request for review must be made within 45 days after the final action of the Board. The administrative review procedure is allowed generally to correct Board error or deal with new information that was not available to the Board or the inmate at the time of the initial prison term hearing.

EXHIBIT O
BOARD OF PAROLE
ADMINISTRATIVE REVIEW REQUEST FORM
PURSUANT TO DIVISION 80

You may request an administrative review of the Parole Board action taken in your case (final order). Your request must meet at least one of the criteria listed below:

- (1) the Board action is not supported by the 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.

Requests must be specific, they should explain:

- (1) how the written findings are in error; or
- (2) what information was available, and why it was not considered (i.e., documentation of vacated convictions, resentencing, etc.); or
- (3) how the Board's action was contrary to the guideline rules (matrix system) or law; and
- (4) what the effect may be on the original decision.

Requests will be most effective if short and to the point.

Requests for an administrative review must be made within 45 days after final action by the Board, otherwise you will have waived your right to an administrative review. You may request a waiver of the 45 day deadline if you submit your request after the deadline.

REQUEST: Applicant's name _____ Inst.# _____
requests administrative review of the Parole Board action taken
on _____ the final decision was _____
State why your request meets the criteria above _____

ebb

7-14-88

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

RECEIVED

JUL 11 1 20 PM '88

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the Board of Parole on June 27, 1988 to become effective July 12, 1988

(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:

Notice of Intended Action published in OAR Bulletin: NO YES Date Published: _____

RECEIVED

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

JUL 14 1988

PERM. or TEMP.

LEGISLATIVE COUNSEL'S
OFFICE

Exhibit P, Consent to an Order Changing the Terms and Conditions of Parole

as Administrative Rules of the Board of Parole

(Agency)

DATED this 12th day of July, 19 88

By: Vern Faatz

(Authorized Signer)

Title: Vern Faatz, Chairman

Statutory Authority: ORS 144.343, Chapter 144 (OAR 255-75-026 & OAR 255-75-035)

Matter: A consent form to an order changing the terms and conditions of parole. It includes a waiver of hearing and right to an attorney.

Statement of Need Attached:

Fiscal Impact Attached:

For Further Information Contact: Cindy J. Burgess Phone: (503) 378-233

RECEIVED

JUL 14 1 20 PM '88

LAURENCE H. HARTS
SECRETARY OF STATE

BEFORE THE
OREGON STATE BOARD OF PAROLE

In the Matter of the Adoption)
of the Exhibit which is a)
Consent to an Order Changing)
the Terms and Conditions of Parole)

STATEMENT OF JUSTIFICATION

The Board of Parole is temporarily adopting the above named Exhibit to update the rules to reflect the Board's current procedures.

- (a) Statutory Authority : ORS 144.343, ORS Chapter 144
- (b) Need for Rule : The Exhibit is being adopted to update the rules to reflect the Board's current procedures.
- (c) Documents Relied Upon : ORS 144.343, OAR 255-75-026, OAR 255-75-035

7/8/88
Date

Vern Faatz
Vern Faatz, Chairman

FISCAL ANALYSIS OF RULE
PER ORS 183.335

<u>Effect on Revenue (By Fund)</u>	<u>Current Biennium</u>	<u>Future Biennium</u>
None	None	None

<u>Effect on Expenditures (By Fund)</u>	<u>Current Biennium</u>	<u>Future Biennium</u>
None	None	None

Organizational Impact:

None

Economic Impact:

None

Reference for Data and Methods Used Regarding the Above

Parole Board Budget 1987-88

Prepared by: Cindy Burgess Agency: Board of Parole

Title: Rules Coordinator Date: July 6, 1988

EXHIBIT P
IN THE STATE OF OREGON

BOARD OF PAROLE)
STATE OF OREGON)
.)
.)
. VS)
.)
.)
_____.)
PAROLEE)

CASE NO. _____
CONSENT TO AN ORDER
CHANGING TERMS AND
CONDITIONS OF PAROLE

PROPOSED CHANGE:

CONSENT

I HAVE READ THE ABOVE PROPOSED CHANGE TO THE TERMS AND/OR
CONDITIONS OF MY PAROLE. I HAVE BEEN ADVISED BY MY PAROLE
OFFICER THAT I HAVE THE RIGHT TO CONSULT WITH AN ATTORNEY; THAT
I NEED NOT AGREE TO THIS CHANGE AND, IF I DO NOT, A HEARING WILL
BE SCHEDULED AND THE BOARD OF PAROLE WILL DECIDE WHETHER OR NOT
THE PROPOSED CHANGE SHALL BE MADE. I AGREE TO WAIVE MY RIGHT TO
CONSULT WITH AN ATTORNEY AND TO HAVE A HEARING ON THE PROPOSED
CHANGE. I AGREE THAT THE ABOVE PROPOSAL BE MADE A PART OF THE
PAROLE ORDER SETTING FORTH THE TERMS AND CONDITIONS OF MY PAROLE.

DATED THIS _____ DAY OF _____, 1988.

PAROLEE WITNESS

PAROLEE'S ADDRESS: _____

PAROLE OFFICER'S NAME: _____ PHONE: _____
PLEASE PRINT

PAROLE OFFICE: _____
cc: BOARD OF PAROLE (Original), FILE

eb

7-14-01

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

RECEIVED
JUL 14 1 22 PM '88

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the Board of Parole on July 11, 1988 to become effective July 12, 1988

(Date)

The within matter having come before the 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:

Notice of Intended Action published in OAR Bulletin: NO YES Date Published: RECEIVED

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

PERM. or TEMP.

JUL 14 1988

LEGISLATIVE COUNSEL'S
OFFICE

Exhibit A - III be adopted. It is an aid for rating drug crime severities.

Exhibit A - II be amended. The crime severity ratings for drug crimes, burglary and theft are changed.

Exhibit A - I be amended. The crime severity ratings for some crimes are changed and clerical errors are corrected.

as Administrative Rules of the Board of Parole (Agency)

DATED this 12 day of July, 19 88

By: Vern Faatz (Authorized Signer)

Title: Vern Faatz, Chairman

Statutory Authority: ORS 144.780, Chapter 144

Subject Matter: The above exhibits relate to drug crime severity ratings.

Statement of Need Attached:

Fiscal Impact Attached:

For Further Information Contact: Cindy J. Burgess Phone: (503) 378-23

BEFORE THE
OREGON STATE BOARD OF PAROLE

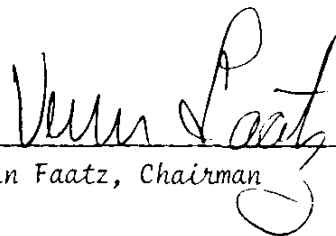
In the Matter of the Adopting and)
Amending of Exhibits Governing)
Crime Severity Ratings)

STATEMENT OF JUSTIFICATION

The Board of Parole is temporarily amending and adopting the above named Exhibits to comply with a request by the Attorney General to rate drug crimes more seriously. In order to minimize the impact on bed space burglary and theft crimes are rated less seriously. It is the Board's belief that drug crimes underlie many other types of crime. The need to address the drug crime problem has become urgent and the temporary adoption and amendment of the above named exhibits is necessary for the protection of the public.

- (a) Statutory Authority : ORS 144.780, ORS Chapter 144
- (b) Need for Rule : The rule is being amended to comply with a recent Attorney General letter, and to address the urgent problem of drug crime.
- (c) Documents Relied Upon : Attorney General Letter
Advisory Commission on Prison Terms
and Parole Standards Minutes
Letters from the Governor

July 12, 1988
Date


Vern Faatz, Chairman

FISCAL ANALYSIS OF RULE
PER ORS 183.335

<u>Effect on Revenue (By Fund)</u>	<u>Current Biennium</u>	<u>Future Biennium</u>
None	None	None

<u>Effect on Expenditures (By Fund)</u>	<u>Current Biennium</u>	<u>Future Biennium</u>
None	None	None

Organizational Impact:

None

Economic Impact:

None

Reference for Data and Methods Used Regarding the Above

Parole Board Budget 1987-88

Prepared by: Cindy Burgess Agency: Board of Parole

Title: Rules Coordinator Date: July 12, 1988

EXHIBIT A
CRIME SEVERITY RATINGS

<u>ORS</u>	<u>CRIME</u>	<u>FELONY CLASS</u>	<u>RATING</u>
163.535	Abandonment of Child	C	2
166.085	Abuse of Corpse	C	3
475.993	Act By Registrant	C	1
163.095	Aggravated Murder	U	7,8
164.057	Aggravated Theft I	B	4
164.325	Arson I	A	6,5
164.315	Arson II	C	2
163.185	Assault I	A	6,5
163.175	Assault II	B	4
163.165	Assault III	C	3,2
161.405	Attempt - The highest crime severity rating for the felony one level below the crime attempted. (e.g., Attempted Burglary I would receive the highest rating for a Class B Felony.)		
163.515	Bigamy	C	1
162.015	Bribe Giving	B	3
162.025	Bribe Receiving	B	3
162.275	Bribe Receiving by a Witness	C	2
162.265	Bribing a Witness	C	2
164.225	Burglary I	A	5,4,3
164.215	Burglary II	C	3,2,1
166.220	Carrying Weapon With Intent to Use	C	2
163.275	Coercion	C	4,3
167.017	Compelling Prostitution	B	4
164.377(2)(3)	Computer Crime	C	2,1
161.450	Conspiracy - Classified at same level as conspired crime, except murder or treason which are reduced to a felony. (e.g., Conspiracy to Commit Burglary I is an A Felony.)		
803.080	Counterfeit Vehicle Title	C	1
163.005	Criminal Homicide	A	2
164.365	Criminal Mischief I	C	1
163.205	Criminal Mistreatment I	C	2
163.555	Criminal Nonsupport	C	1
165.022	Criminal Possession Forged Instrument I	C	1
165.032	Criminal Possession Forgery Device	C	1
164.140	Criminal Possession Rented/Leased Property	C	2,1
163.145	Criminally Negligent Homicide	C	4,3
163.257	Custodial Interference I	B	3
163.245	Custodial Interference II	C	1
163.673	Dealing in Depictions of Child's Sexual Conduct	B	4

7/1/10

475.995(1)	Delivery of Controlled Substance to Minor	A	4
475.995(2)	Delivery of Controlled Substance to Minor	B	3
475.992(2)	Delivery of Marijuana for Payment	B	3,2,1
475.995(5)	Delivery of Marijuana to Minor	A	1
167.365	Dogfighting	C	1
811.182	Driving While Suspended or Revoked	C	1
164.885	Endangering Aircraft	C	2
162.165	Escape I	B	5
162.155	Escape II	C	2,1
166.270	Exconvict in Possession	C	2
162.205	Failure to Appear I	C	2
811.705	Failure to Perform Duties of a Driver Where There is Death	C	3
811.705	Failure to Perform Duties of a Driver Where There is Injury	C	2
822.605	False Swearing Relating to Regulation Vehicle Related Business	C	1
803.230	Forge/Alter Vehicle Title Reg.	C	1
165.013	Forgery I	C	3,2,1
59.055; 59.135;			
59.730; 59.740;			
59.750; 59.760	Fraud Involving Securities	B	2,1
59.770; 59.780;			
59.790; 59.800; 59.165;			
165.055(3b)	Fraudulent Use of Credit Card	C	1
811.185	Habitual Traffic Offender (OMVVCO)	C	1
162.325	Hindering Prosecution	C	1
471.440	Illegal Manufacture of Mash; Operating Distillery Without a License	C	1
166.410	Illegal Manufacture, Importation, Sale, Gift, Loan or Possession of Firearms	C	1
163.525	Incest	C	1
166.165	Intimidation I	C	2
163.235	Kidnapping I	A	6
163.225	Kidnapping II	B	4
163.118	Manslaughter I	A	6
163.125	Manslaughter II	B	5,4,3
475.992(1)	Manufacture or Delivery of Controlled Substance	A,B,C	4,3,2,1
	Motor Vehicle Title Offenses		1
163.115	Murder	U	7,8
165.065(3b)	Negotiating a Bad Check	C	3,2,1
166.450	Obliteration of ID Marks (Firearm)	C	1
163.680	Paying for Viewing Childs Sexual Conduct	C	1
162.065	Perjury	C	2
496.992	Poaching	C	2
475.992(4)	Possession of a Controlled Substance	B,C	2,1
165.070	Possession of a Fraudulent Communications Device	C	2,1
167.137	Possession of Gambling Records	C	1

819.300	Possession of a Stolen Vehicle	C	1
166.275	Possession of Weapon By Inmate of Penal Institution	A	5
167.127	Promoting Gambling I	C	1
167.012	Promoting Prostitution	C	2
166.720	Racketeering	A	5,4
163.375	Rape I	A	6,5
163.365	Rape II	B	4,3
163.355	Rape III	C	2
166.015	Riot	C	2
164.415	Robbery I	A	6
164.405	Robbery II	B	4
164.395	Robbery III	C	2
167.062(4)	Sadomasochistic Abuse or Sexual Conduct in Live Show	C	1
163.425	Sexual Abuse I	C	3
163.411	Sexual Penetration Foreign Obj. I	A	6,5
163.408	Sexual Penetration Foreign Obj. II	B	4
163.405	Sodomy I	A	6,5
163.395	Sodomy II	B	4
163.385	Sodomy III	C	2
161.435	Solicitation - Classified one level below crime solicited.		
165.090	Sports Bribe Receiving	C	2
165.085	Sports Bribery	C	2
162.185	Supplying Contraband	C	4,3,2,1
167.212	Tampering With Drug Records	C	1
162.285	Tampering With a Witness	C	2
164.085	Theft by Deception	C	2,1
164.075	Theft By Extortion	B	4,3
164.095	Theft By Receiving	C	2
164.055	Theft I	C	2,1
164.125(4b)	Theft of Services	C	2,1
164.065	Theft, Lost/Mislaid Property	C	1
819.310	Trafficking in Stolen Vehicles	C	3
163.677	Transporting Pornographic Material (child)	B	4
166.005	Treason	U	7
164.135	Unauthorized Use of Vehicle	C	2,1
475.992(3)	Unlawful Creation or Delivery a Counterfeit Substance	A,B,C	3,2,1
475.995	Unlawful Delivery of Controlled Substance to A Minor	A,B	4,3,2
166.660	Unlawful Paramilitary Activity	C	1
166.250	Unlawful Possession of Firearms	C	2
163.670	Using a Child in a Display of Sexually Explicit Conduct	A	6,5
411.630; 411.640;			
411.675;411.690;			
411.840	Welfare/Food Stamp Fraud	C	2,1

EXHIBIT A

PART II

Aggravated Murder
163.095

SUBCATEGORY 1 - RATING 8:

Stranger to stranger; cruelty to victim; prior conviction of murder or manslaughter; evidence of significant planning or preparation.

SUBCATEGORY 2 - RATING 7:

All other cases of aggravated murder.

Arson I
164.325

SUBCATEGORY 1 - RATING 6:

Knew or should have known premises were occupied at time of act or injury.

SUBCATEGORY 2 - RATING 5:

All other cases of Arson I.

Assault I
163.185

SUBCATEGORY 1 - RATING 6:

Cases of Assault I in which there is intentional cause of serious physical injury to another by means of a deadly or dangerous weapon.

SUBCATEGORY 2 - RATING 5:

Cases of Assault I in which the victim(s) provoke the crime to a substantial degree or other evidence that misconduct by the victim(s) contributed substantially to the criminal episode.

Assault III
163.165

SUBCATEGORY 1 - RATING 3:

Assault III/Vehicular where defendant has at least 2 prior DUII convictions within a 5 year period.

SUBCATEGORY 2 - RATING 2:

All other cases of Assault III.

Burglary I
164.225

SUBCATEGORY 1 - RATING 5:

Entry into a dwelling or non-dwelling, where defendant used or threatened to use, by word or gesture, a dangerous weapon or caused/threatened serious physical injury. Entry into a dwelling or non-dwelling in which goods taken are valued at \$5,000 or over.

SUBCATEGORY 2 - RATING 4:

Entry into a dwelling or non-dwelling in which goods taken exceeds \$1,000 but is less than \$5,000.

SUBCATEGORY 3 - RATING 3:

All other entries into dwelling or non-dwelling and the value of goods taken is less than \$1,000.

Burglary II
164.215

SUBCATEGORY 1 - RATING 3:

Theft or destruction over \$5,000 in property.

SUBCATEGORY 2 - RATING 2:

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

SUBCATEGORY 3 - RATING 1:

Theft of less than \$1,000.

Coercion
163.275

SUBCATEGORY 1 - RATING 4:

Compelling another to act through threat of serious physical harm or property damage; blackmail.

SUBCATEGORY 2 - RATING 3:

All others.

Computer Crime
164.377(2)(3)

Breakdown is the same as for Theft I.

Criminal Possession Rented/Leased Property
164.140

Breakdown is the same as for Theft I.

Criminally Negligent Homicide
163.145

SUBCATEGORY 1 - RATING 4:

Vehicular Homicide where defendant with criminal negligence causes the death of another person.

SUBCATEGORY 2 - RATING 3:

Cases where the victim's misconduct contributed to the criminal episode (i.e. victim was drinking buddy of defendant).

Delivery of Controlled Substance
475.992(1);475.995

SUBCATEGORY 1 - RATING 5:

Operating or participating in the operation of a location in which crack cocaine or heroin is sold. The delivery of heroin as part of a distribution or sales network. See Exhibit A-III.

SUBCATEGORY 2 - RATING 4:

Delivery of an illegal drug (including, but not limited to methamphetamines) other than marijuana where there is evidence that the delivery is part of a drug selling or distribution network or scheme; see Exhibit A-III.

Delivery of any quantity of illegal drug in and on, or within one thousand feet of, the real property comprising a public or private elementary and/or middle school.

Knowingly owning or providing a location for the sale or distribution of illegal drugs other than marijuana.

Delivery or assisting in the delivery of illegal drugs in which a minor is involved.

SUBCATEGORY 3 - RATING 3:

Delivery or assisting in the delivery of illegal drugs for compensation or profit in circumstances other than those listed above.

SUBCATEGORY 4 - RATING 1:

Delivery of a small amount of any illegal drug not for profit or compensation. All other cases of delivery of illegal drugs not noted above.

Escape II
162.155

SUBCATEGORY 1 - RATING 2:

Use or threat to use physical force escaping from custody; or, having been convicted or found guilty of a felony, escapes from custody imposed as a result thereof; or escapes from a correctional facility or, while otherwise under the jurisdiction of the Psychiatric Security Review Board, departs from state without authorization of Board.

SUBCATEGORY 2 - RATING 1:

All other cases.

Failure to Perform Duties of a Driver Where There is Injury or Death
811.705

SUBCATEGORY 1 - RATING 3:

If death results.

SUBCATEGORY 2 - RATING 2:

Injury and all other cases.

Forgery I
165.013

SUBCATEGORY 1 - RATING 3:

Loss, potential loss, or receiving of over \$5,000.

SUBCATEGORY 2 - RATING 2:

Loss, potential loss, or receiving of \$1,000 to \$5,000.

SUBCATEGORY 3 - RATING 1:

Loss, potential loss, or receiving of under \$1,000.

Fraud Involving Securities

59.055; 59.135; 59.165; 59.730; 59.740; 59.750; 59.760; 59.770;
59.780; 59.790; 59.800

Breakdown is the same as for Theft I.

Manslaughter II
163.125

SUBCATEGORY 1 - RATING 5:

Cases where death of a victim, usually a child, results from prolonged abuse; failure to provide for victim's welfare resulting in death; medical treatment withheld to conceal physical signs of abuse.

SUBCATEGORY 2 - RATING 4:

Causes another to commit suicide or aids, cases where death of victim involves use of a weapon or follows an assault; cases where death is by negligent use of vehicle and defendant has at least 2 prior DUII convictions within 5 years.

SUBCATEGORY 3 - RATING 3:

Cases where death is by negligent use of a vehicle; all other cases.

Manufacture of Controlled Substance
475.992(1)

SUBCATEGORY 1 - RATING 5:

Operating or assisting in the operation of a laboratory for the production of methamphetamines. Cultivating or assisting in the manufacture of marijuana for distribution or sale as part of a distribution network or scheme; see Exhibit A-III. Cultivation or assisting in the cultivation of more than 100 marijuana plants.

SUBCATEGORY 2 - RATING 4:

Manufacturing or assisting in the manufacture of illegal drugs other than methamphetamines or marijuana, when there is evidence that the manufacture is part of a drug selling or distribution network or scheme; see Exhibit A-III. Knowingly owning or providing a location for the manufacture of illegal drugs other than marijuana for sale or distribution.

SUBCATEGORY 3 - RATING 3:

Manufacture or assisting in the manufacture of illegal drugs for distribution. Manufacture of marijuana in the amount of 25 or more plants and/or in circumstances other than those listed in Subcategory 1. See Exhibit A-III.

SUBCATEGORY 4 - RATING 1:

Manufacture of illegal drugs for the offender's own use. All other cases of manufacturing of illegal drugs.

Murder
163.115

Breakdown is the same as for Aggravated Murder
All other cases of murder.

Negotiating a Bad Check
165.065(3b)

Breakdown is the same as for Theft I.

Possessing Fraudulent Communications Devices
165.070

Breakdown is the same as for Theft I.

Possession of Controlled Substance
475.992(4)

SUBCATEGORY 1 - RATING 3:

Possession of a large amount of illegal drugs other than marijuana with intent to deliver. See Exhibit A-III. Possession of illegal drugs which constitute the precursors or byproducts of the manufacturing process (as defined by ORS 475.940).

SUBCATEGORY 2 - RATING 2:

Possession of illegal drugs other than cocaine/crack, methamphetamines, and heroin with intent to deliver.

SUBCATEGORY 3 - RATING 1:

Possession of illegal drugs in circumstances other than those listed above.

Racketeering
166.720

SUBCATEGORY 1 - RATING 5:

The principle party involved in violation of the Racketeering statute. Involvement is that of planning, directing or participating in the scheme or schemes resulting in direct profit or gain.

SUBCATEGORY 2 - RATING 4:

The subordinate party involved in violation of the Racketeering statute. Involvement is limited to acting as an agent or employee of the principle. There is no involvement in planning, directing or participating in the scheme or schemes in violation of this statute.

Rape I
163.375

SUBCATEGORY 1 - RATING 6:

Stranger to stranger; breaking and entering; threat to use or use of weapon; actual or threat of serious bodily or emotional harm; intercourse with female or male under 12.

SUBCATEGORY 2 - RATING 5:

All other cases.

Rape II
163.365

SUBCATEGORY 1 - RATING 4:

Cases in which the female is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; or the female is under 14 years of age.

SUBCATEGORY 2 - RATING 3:

All other cases.

Sexual Penetration with Foreign Object I
163.411

SUBCATEGORY 1 - RATING 6:

Sexual Penetration with Foreign Object I is broken down in the same manner as Rape I.

SUBCATEGORY 2 - RATING 5:

All other cases.

Sodomy I
163.405

SUBCATEGORY 1 - RATING 6:

Sodomy I is broken down in the same manner as Rape I.

SUBCATEGORY 2 - RATING 5:

All other cases.

Supplying Contraband
162.185

SUBCATEGORY 1 - RATING 4:

While confined in a correctinal facility, juvenile facility or state hospital makes, obtains or possesses any firearm; knowingly introduces any firearm into a correctional facility, juvenile facility, or state hospital.

SUBCATEGORY 2 - RATING 3:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses dangerous weapon; knowingly introduces any dangerous weapon into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 3 - RATING 2:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses any Schedule 1 controlled substance except marijuana; knowingly introduces any Schedule 1 controlled substance into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 4 - RATING 1:

All other cases.

Theft by Deception
164.085

Breakdown is the same as for Theft I.

Theft by Extortion
164.075

SUBCATEGORY 1 - RATING 4:

Threat of serious bodily harm or death.

SUBCATEGORY 2 - RATING 3:

All others.

Theft I
164.005

SUBCATEGORY 1 - RATING 2:

Theft or receiving of \$1,000 to \$10,000.
Theft of a motor vehicle for personal transportation.
Theft of a livestock animal.
Theft of a firearm or explosive.
Theft during riot or catastrophe.

SUBCATEGORY 2 - RATING 1:

Thefts under \$1,000.

Theft of Services
164.125

Breakdown is the same as for Theft I.

Unauthorized Use Motor Vehicle
164.135

SUBCATEGORY 1 - RATING 2:

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

SUBCATEGORY 2 - RATING 1:

All others.

Unlawful Creation or Delivery of Counterfeit Substance
475.992(3)

Breakdown is the same as for Manufacture or Delivery of Controlled Substance.

Using a Child in a Display of Sexually Explicit Conduct
163.670

SUBCATEGORY 1 - RATING 6:

Child 12 years of age or under.

SUBCATEGORY 2 - RATING 5:

All other cases.

Welfare/Food Stamp Fraud
411.639; 411.640; 411.675; 411.690; 411.840

Breakdown is the same as for Theft I.

EXHIBIT A-III

NOTE: FOR PURPOSES OF THE EXHIBIT A "illegal drugs" MEANS SCHEDULE I, II, AND III SUBSTANCES.

EVIDENCE OF A DRUG SELLING OR DISTRIBUTION SCHEME OR NETWORK INCLUDES, BUT IS NOT LIMITED TO THE FOLLOWING:

- A. Presence of substantial amounts of cash on the premises;
- B. Heavy traffic on the premises;
- C. Presence of weapons on the premises;
- D. Presence of packaging materials such as scales, wrapping or foil;
- E. The presence of drug transaction records or customer lists;
- F. The presence of quantities of stolen property;
- G. Modification of structures by painting, wiring, plumbing, or lighting to facilitate the offense;
- H. Possession of large amounts of illegal drugs creates a presumption of intent to sell or deliver;
- I. Possession of real or personal property of substantial value, directly or by proxy, without plausible means of lawful income;
- J. A showing that the offender has engaged in repeated similiar criminal acts;
- K. The presence of manufacturing paraphernalia, including recipes, precursor chemicals, laboratory equipment, lighting, ventilating, or power generating equipment on the premises;
- L. Use of public lands for the manufacture of drugs;
- M. Deployment of security devices with the potential of injuring intruders, including spring guns or explosives devices; or,
- N. Presence of substantial quantities of controlled substances on the premises.

7/14/88

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

RECEIVED

JUL 20 4 54 PM '88

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the

BOARD OF PAROLE (Agency)

on July 18, 1988 (Date)

SECRETARY OF STATE to become effective

July 20, 1988 (Date)

The within matter having come before the BOARD OF PAROLE (Agency) 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:

Notice of Intended Action published in OAR Bulletin: NO XX YES Date Published:

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

PERM. or TEMP. X

RECEIVED

JUL 20 1988

LEG. COUNSELS OFF.

ADOPTED: Exhibit A-III. It is an aid for rating drug crime severities.

AMENDED: Exhibit A-II and A-I. Crime severity ratings for drug crimes, burglary, securities fraud and robbery are changed and clerical errors are corrected.

This replaces temporary rule filed July 14, 1988.

as Administrative Rules of the BOARD OF PAROLE (Agency)

DATED this 20th day of July 19 88

By: [Signature] (Authorized Officer)

Title: Chairman

Statutory Authority: ORS 144.780, Chapter 144

Subject Matter: Crime severity ratings.

Statement of Need Attached: X

Fiscal Impact Attached: X

For Further Information Contact: Cindy I. Burgess

Phone: 378-2334

RECEIVED

JUL 20 4 54 PM '88

SECRETARY OF STATE

BEFORE THE
OREGON STATE BOARD OF PAROLE

In the Matter of the Adopting and)
Amending of Exhibits Governing)
Crime Severity Ratings)

STATEMENT OF JUSTIFICATION

The Board of Parole is temporarily amending and adopting the above named Exhibits to comply with a request by the Attorney General and the Governor to rate drug crimes more severely. In order to minimize the impact on prison bed space burglary and robbery are rated less severely. The drug crime problem has become urgent and the temporary adoption of the above named exhibits is necessary for the protection of the public. In addition the crime severity rating for securities fraud is amended as a result of statutory change and to comply with current Board procedures.

- (a) Statutory Authority : ORS 144.780, ORS Chapter 144
- (b) Need for the Rule : The rule is being amended to comply with a recent Attorney General letter and to address the urgent problem of drug crime. The rule is also amended to comply with current Board procedures.
- (c) Documents Relied Upon : Attorney General Letter, Advisory Commission on Prison Terms and Parole Standards Minutes, Letters from the Governor, ORS 59.991

July 20, 1988

Date


Vern Faatz, Chairman

RECEIVED

FISCAL ANALYSIS OF RULE
PER ORS 183.335

JUL 20 4 54 PM '88

DAVID ROBERTS
SECRETARY OF STATE

<u>Effect on Revenue (By Fund)</u>	<u>Current Biennium</u>	<u>Future Biennium</u>
None	None	None

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Organizational Impact:

None

Economic Impact:

None

Reference for Data and Methods Used Regarding the Above

Parole Board Budget 1987-88

Prepared by: Cindy Burgess

Agency: Board of Parole

Title: Rules Coordinator

Date: July 20, 1988

RECEIVED

JUL 20 4 54 PM '88

SALES
SECRETARY OF STATE

EXHIBIT A

CRIME SEVERITY RATINGS

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166.270	Exconvict in Possession	C	2
162.205	Failure to Appear I	C	2
811.705	Failure to Perform Duties of a Driver Where There is Death	C	3
811.705	Failure to Perform Duties of a Driver Where There is Injury	C	2
822.605	False Swearing Relating to Regulation Vehicle Related Business	C	1
803.230	Forge/Alter Vehicle Title Reg.	C	1
165.013	Forgery I	C	3,2,1
59.055; 59.115; 59.127;			
59.135; 59.145; 59.165;	Fraud		
59.730; 59.740; 59.750;	Involving Securities	B	4,3
59.760; 59.770; 59.780;			
59.790; 59.800;			
165.055(3b)	Fraudulent Use of Credit Card	C	1
811.185	Habitual Traffic Offender (OMVVC0)	C	1
162.325	Hindering Prosecution	C	1
471.440	Illegal Manufacture of Mash; Operating Distillery Without a License	C	1
166.410	Illegal Manufacture, Importation, Sale, Gift, Loan or Possession of Firearms	C	1
163.525	Incest	C	1
166.165	Intimidation I	C	2
163.235	Kidnapping I	A	6
163.225	Kidnapping II	B	4
163.118	Manslaughter I	A	6
163.125	Manslaughter II	B	5,4,3
475.992(1)	Manufacture or Delivery of Controlled Substance	A,B,C	4,3,2,1
	Motor Vehicle Title Offenses		1
163.115	Murder	U	7,8
165.065(3b)	Negotiating a Bad Check	C	3,2,1
166.450	Obliteration of ID Marks (Firearm)	C	1
163.680	Paying for Viewing Childs Sexual Conduct	C	1
162.065	Perjury	C	2
496.992	Poaching	C	2
475.992(4)	Possession of a Controlled Substance	B,C	2,1
165.070	Possession of a Fraudulent Communications Device	C	2,1
167.137	Possession of Gambling Records	C	1

819.300	Possession of a Stolen Vehicle	C	1
166.275	Possession of Weapon By Inmate of Penal Institution	A	5
167.127	Promoting Gambling I	C	1
167.012	Promoting Prostitution	C	2
166.720	Racketeering	A	5,4
163.375	Rape I	A	6,5
163.365	Rape II	B	4,3
163.355	Rape III	C	2
166.015	Riot	C	2
164.415	Robbery I	A	6,5
164.405	Robbery II	B	4
164.395	Robbery III	C	2
167.062(4)	Sadomasochistic Abuse or Sexual Conduct in Live Show	C	1
163.425	Sexual Abuse I	C	3
163.411	Sexual Penetration Foreign Obj. I	A	6,5
163.408	Sexual Penetration Foreign Obj. II	B	4
163.405	Sodomy I	A	6,5
163.395	Sodomy II	B	4
163.385	Sodomy III	C	2
161.435	Solicitation - Classified one level below crime solicited.		
165.090	Sports Bribe Receiving	C	2
165.085	Sports Bribery	C	2
162.185	Supplying Contraband	C	4,3,2,1
167.212	Tampering With Drug Records	C	1
162.285	Tampering With a Witness	C	2
164.085	Theft by Deception	C	2,1
164.075	Theft By Extortion	B	4,3
164.095	Theft By Receiving	C	2
164.055	Theft I	C	2,1
164.125(4b)	Theft of Services	C	2,1
164.065	Theft, Lost/Mislaid Property	C	1
819.310	Trafficking in Stolen Vehicles	C	3
163.677	Transporting Pornographic Material (child)	B	4
166.005	Treason	U	7
164.135	Unauthorized Use of Vehicle	C	2,1
475.992(3)	Unlawful Creation or Delivery a Counterfeit Substance	A,B,C	3,2,1
475.995	Unlawful Delivery of Controlled Substance to A Minor	A,B	4,3,2
166.660	Unlawful Paramilitary Activity	C	1
166.250	Unlawful Possession of Firearms	C	2
163.670	Using a Child in a Display of Sexually Explicit Conduct	A	6,5
411.630; 411.640; 411.675;411.690;			
411.840	Welfare/Food Stamp Fraud	C	2,1

7/19/88

EXHIBIT A

PART II

Aggravated Murder
163.095

SUBCATEGORY 1 - RATING 8:

Stranger to stranger; cruelty to victim; prior conviction of murder or manslaughter; evidence of significant planning or preparation.

SUBCATEGORY 2 - RATING 7:

All other cases of aggravated murder.

Arson I
164.325

SUBCATEGORY 1 - RATING 6:

Knew or should have known premises were occupied at time of act or injury.

SUBCATEGORY 2 - RATING 5:

All other cases of Arson I.

Assault I
163.185

SUBCATEGORY 1 - RATING 6:

Cases of Assault I in which there is intentional cause of serious physical injury to another by means of a deadly or dangerous weapon.

SUBCATEGORY 2 - RATING 5:

Cases of Assault I in which the victim(s) provoke the crime to a substantial degree or other evidence that misconduct by the victim(s) contributed substantially to the criminal episode.

Assault III

163.165

SUBCATEGORY 1 - RATING 3:

Assault III/Vehicular where defendant has at least 2 prior DUII convictions within a 5 year period.

SUBCATEGORY 2 - RATING 2:

All other cases of Assault III.

Burglary I

164.225

SUBCATEGORY 1 - RATING 5:

Entry into a dwelling, where defendant causes or attempts to cause physical injury to any person; is armed with a deadly weapon; uses or threatens to use a dangerous weapon; or death occurs.

SUBCATEGORY 2 - RATING 4:

Entry into a dwelling in which goods taken had a value of \$5,000 or more.

SUBCATEGORY 3 - RATING 3:

Entry into a dwelling in which goods taken had a value of less than \$5,000.

Burglary II

164.215

SUBCATEGORY 1 - RATING 3:

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

SUBCATEGORY 2 - RATING 2:

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

SUBCATEGORY 3 - RATING 1:

Theft of less than \$1,000.

Coercion
163.275

SUBCATEGORY 1 - RATING 4:

Compelling another to act through threat of serious physical harm or property damage; blackmail.

SUBCATEGORY 2 - RATING 3:

All others.

Computer Crime
164.377(2)(3)

Breakdown is the same as for Theft I.

Criminal Possession Rented/Leased Property
164.140

Breakdown is the same as for Theft I.

Criminally Negligent Homicide
163.145

SUBCATEGORY 1 - RATING 4:

Vehicular Homicide where defendant with criminal negligence causes the death of another person.

SUBCATEGORY 2 - RATING 3:

Cases where the victim's misconduct contributed to the criminal episode (i.e. victim was drinking buddy of defendant).

Delivery of Controlled Substance
475.992(1);475.995

SUBCATEGORY 1 - RATING 5:

Operating or participating in the operation of a location in which crack cocaine or heroin is sold. The delivery of heroin as part of a distribution or sales network. See Exhibit A-III.

SUBCATEGORY 2 - RATING 4:

Delivery of an illegal drug (including, but not limited to methamphetamines) other than marijuana where there is evidence that the delivery is part of a drug selling or distribution network or scheme; see Exhibit A-III.

Delivery of any quantity of illegal drug in and on, or within one thousand feet of, the real property comprising a public or private elementary and/or middle school.

Knowingly owning or providing a location for the sale or distribution of illegal drugs other than marijuana.

Delivery or assisting in the delivery of illegal drugs in which a minor is involved.

SUBCATEGORY 3 - RATING 3:

Delivery or assisting in the delivery of illegal drugs for compensation or profit in circumstances other than those listed above.

SUBCATEGORY 4 - RATING 1:

Delivery of a small amount of any illegal drug not for profit or compensation. All other cases of delivery of illegal drugs not noted above.

Escape II
162.155

SUBCATEGORY 1 - RATING 2:

Use or threat to use physical force escaping from custody; or, having been convicted or found guilty of a felony, escapes from custody imposed as a result thereof; or escapes from a correctional facility or, while otherwise under the jurisdiction of the Psychiatric Security Review Board, departs from state without authorization of Board.

SUBCATEGORY 2 - RATING 1:

All other cases.

Failure to Perform Duties of a Driver Where There
is Injury or Death
811.705

SUBCATEGORY 1 - RATING 3:

If death results.

SUBCATEGORY 2 - RATING 2:

Injury and all other cases.

Forgery I
165.013

SUBCATEGORY 1 - RATING 3:

Loss, potential loss, or receiving of over \$5,000.

SUBCATEGORY 2 - RATING 2:

Loss, potential loss, or receiving of \$1,000 to \$5,000.

SUBCATEGORY 3 - RATING 1:

Loss, potential loss, or receiving of under \$1,000.

Fraud Involving Securities
59.055; 59.115; 59.127; 59.135; 59.145; 59.165; 59.730; 59.740;
59.750; 59.760; 59.770; 59.780; 59.790; 59.800

SUBCATEGORY 1 - RATING 4:

Loss, potential loss, or receiving of \$10,000 or more

SUBCATEGORY 2 - RATING 3:

All other cases of fraud involving securities.

Manslaughter II
163.125

SUBCATEGORY 1 - RATING 5:

Cases where death of a victim, usually a child, results from prolonged abuse; failure to provide for victim's welfare resulting in death; medical treatment withheld to conceal physical signs of abuse.

SUBCATEGORY 2 - RATING 4:

Causes another to commit suicide or aids, cases where death of victim involves use of a weapon or follows an assault; cases where death is by negligent use of vehicle and defendant has at least 2 prior DUII convictions within 5 years.

SUBCATEGORY 3 - RATING 3:

Cases where death is by negligent use of a vehicle; all other cases.

Manufacture of Controlled Substance
475.992(1)

SUBCATEGORY 1 - RATING 5:

Operating or assisting in the operation of a laboratory for the production of methamphetamines. Cultivating or assisting in the manufacture of marijuana for distribution or sale as part of a distribution network or scheme; see Exhibit A-III. Cultivation or assisting in the cultivation of more than 100 marijuana plants.

SUBCATEGORY 2 - RATING 4:

Manufacturing or assisting in the manufacture of illegal drugs other than methamphetamines or marijuana, when there is evidence that the manufacture is part of a drug selling or distribution network or scheme; see Exhibit A-III. Knowingly owning or providing a location for the manufacture of illegal drugs other than marijuana for sale or distribution.

SUBCATEGORY 3 - RATING 3:

Manufacture or assisting in the manufacture of illegal drugs for distribution. Manufacture of marijuana in the amount of 25 or more plants and/or in circumstances other than those listed in Subcategory 1. See Exhibit A-III.

SUBCATEGORY 4 - RATING 1:

Manufacture of illegal drugs for the offender's own use. All other cases of manufacturing of illegal drugs.

Murder
163.115

Breakdown is the same as for Aggravated Murder
All other cases of murder.

Negotiating a Bad Check
165.065(3b)

Breakdown is the same as for Theft I.

Possessing Fraudulent Communications Devices
165.070

Breakdown is the same as for Theft I.

Possession of Controlled Substance
475.992(4)

SUBCATEGORY 1 - RATING 3:

Possession of a large amount of illegal drugs other than marijuana with intent to deliver. See Exhibit A-III.
Possession of illegal drugs which constitute the precursors or byproducts of the manufacturing process (as defined by ORS 475.940).

SUBCATEGORY 2 - RATING 2:

Possession of illegal drugs other than cocaine/crack, methamphetamines, and heroin with intent to deliver.

SUBCATEGORY 3 - RATING 1:

Possession of illegal drugs in circumstances other than those listed above.

Racketeering
166.720

SUBCATEGORY 1 - RATING 5:

The principle party involved in violation of the Racketeering statute. Involvement is that of planning, directing or participating in the scheme or schemes resulting in direct profit or gain.

SUBCATEGORY 2 - RATING 4:

The subordinate party involved in violation of the Racketeering statute. Involvement is limited to acting as an agent or employee of the principle. There is no involvement in planning, directing or participating in the scheme or schemes in violation of this statute.

Rape I
163.375

SUBCATEGORY 1 - RATING 6:

Stranger to stranger; breaking and entering; threat to use or use of weapon; actual or threat of serious bodily or emotional harm; intercourse with female or male under 12.

SUBCATEGORY 2 - RATING 5:

All other cases.

Rape II
163.365

SUBCATEGORY 1 - RATING 4:

Cases in which the female is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; or the female is under 14 years of age.

SUBCATEGORY 2 - RATING 3:

All other cases.

Robbery I
164.415

SUBCATEGORY 1 - RATING 6:

Cases of robbery in which the defendant is armed with a deadly or dangerous weapon; discharges a firearm; uses a dangerous weapon; makes explicit or immediate threats by word or gesture; causes death of or physical injury to the victim.

SUBCATEGORY 2 - RATING OF 5:

All other cases of Robbery I.

Sexual Penetration with Foreign Object I
163.411

SUBCATEGORY 1 - RATING 6:

Sexual Penetration with Foreign Object I is broken down in the same manner as Rape I.

SUBCATEGORY 2 - RATING 5:

All other cases.

Sodomy I
163.405

SUBCATEGORY 1 - RATING 6:

Sodomy I is broken down in the same manner as Rape I.

SUBCATEGORY 2 - RATING 5:

All other cases.

Supplying Contraband
162.185

SUBCATEGORY 1 - RATING 4:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses any firearm; knowingly introduces any firearm into a correctional facility, juvenile facility, or state hospital.

SUBCATEGORY 2 - RATING 3:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses dangerous weapon; knowingly introduces any dangerous weapon into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 3 - RATING 2:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses any Schedule 1 controlled substance except marijuana; knowingly introduces any Schedule 1 controlled substance into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 4 - RATING 1:

All other cases.

Theft by Deception
164.085

Breakdown is the same as for Theft I.

Theft by Extortion
164.075

SUBCATEGORY 1 - RATING 4:

Threat of serious bodily harm or death.

SUBCATEGORY 2 - RATING 3:

All others.

Theft I
164.005

SUBCATEGORY 1 - RATING 2:

Theft or receiving of \$1,000 to \$10,000.
Theft of a motor vehicle for personal transportation.
Theft of a livestock animal.
Theft of a firearm or explosive.
Theft during riot or catastrophe.

SUBCATEGORY 2 - RATING 1:

Thefts under \$1,000.

Theft of Services
164.125

Breakdown is the same as for Theft I.

Unauthorized Use Motor Vehicle
164.135

SUBCATEGORY 1 - RATING 2:

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

SUBCATEGORY 2 - RATING 1:

All others.

Unlawful Creation or Delivery of Counterfeit Substance
475.992(3)

Breakdown is the same as for Manufacture or Delivery of
Controlled Substance.

Using a Child in a Display of Sexually Explicit Conduct
163.670

SUBCATEGORY 1 - RATING 6:

Child 12 years of age or under.

SUBCATEGORY 2 - RATING 5:

All other cases.

Welfare/Food Stamp Fraud
411.639; 411.640; 411.675; 411.690; 411.840

Breakdown is the same as for Theft I.

eff

7-20-88

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EXHIBIT A-III

JUL 20 4 55 PM '88

BARRETT COUNTY
SECRETARY OF STATE
MEANS SCHEDULE

NOTE: FOR PURPOSES OF THE EXHIBIT A "illegal drugs" MEANS SCHEDULE I, II, AND III SUBSTANCES.

EVIDENCE OF A DRUG SELLING OR DISTRIBUTION SCHEME OR NETWORK INCLUDES, BUT IS NOT LIMITED TO THE FOLLOWING:

- A. Presence of substantial amounts of cash on the premises;
- B. Heavy traffic on the premises;
- C. Presence of weapons on the premises;
- D. Presence of packaging materials such as scales, wrapping or foil;
- E. The presence of drug transaction records or customer lists;
- F. The presence of quantities of stolen property;
- G. Modification of structures by painting, wiring, plumbing, or lighting to facilitate the offense;
- H. Possession of large amounts of illegal drugs creates a presumption of intent to sell or deliver;
- I. Possession of real or personal property of substantial value, directly or by proxy, without plausible means of lawful income;
- J. A showing that the offender has engaged in repeated similar criminal acts;
- K. The presence of manufacturing paraphernalia, including recipes, precursor chemicals, laboratory equipment, lighting, ventilating, or power generating equipment on the premises;
- L. Use of public lands for the manufacture of drugs;
- M. Deployment of security devices with the potential of injuring intruders, including spring guns or explosives devices; or,
- N. Presence of substantial quantities of controlled substances on the premises.

7/19/88

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

RECEIVED
JUL 20 4 40 PM '88

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the Board of Parole
(Agency) on July 11, 1988
(Date) to become effective July 20, 1988
(Date)

DEPT. OF JUSTICE
SECRETARY OF STATE

The within matter having come before the Board of Parole
(Agency) 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:

Notice of Intended Action published in OAR Bulletin: NO YES Date Published: _____

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

PERM. or TEMP.

Amend OAR 255-25-010

RECEIVED

JUL 20 1988

LEG. COUNSEL'S OFF.

Handwritten signature

as Administrative Rules of the Board of Parole
(Agency)

DATED this 20th day of July, 19 88

By: Vern Faatz
(Authorized Signer)

Title: Vern Faatz, Chairman

Statutory Authority: ORS 144.120, Chapter 144

ject Matter: Credit for Time Served

Statement of Need Attached:

Fiscal Impact Attached:

For Further Information Contact: Cindy J. Burgess Phone: (503) 378-93

RECEIVED

JUL 20 4 48 PM '88

BARBARA J. JONES
SECRETARY OF STATE

BEFORE THE
OREGON STATE BOARD OF PAROLE

In the Matter of the Amendment)
of the Rule Governing Time)
Served Credits)

STATEMENT OF JUSTIFICATION

The Board of Parole is temporarily amending the above named rule to clarify the intent of the Board in granting credit for time served and to comply with current Board procedures.

(a) Statutory Authority : ORS 144.120, ORS Chapter 144

(b) Need for Rule : The rule is needed to clarify the intent of the Board in granting credit for time served and to comply with current Board procedures.

(c) Documents Relied Upon : ORS 144.120, ORS Chapter 144

~~7/8/88~~ 7/20/88 *VP*
Date

Vern Faatz
Vern Faatz, Chairman

FISCAL ANALYSIS OF RULE
PER ORS 183.335

Effect on Revenue (By Fund) Current Biennium Future Biennium

None

None

None

Effect on Expenditures (By Fund) Current Biennium Future Biennium

None

None

None

Organizational Impact:

None

Economic Impact:

None

Reference for Data and Methods Used Regarding the Above

Parole Board Budget 1987-88

Prepared by: Cindy Burgess

Agency: Board of Parole

Title: Rules Coordinator

Date: July 20 1988 ^{CS}

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
(Agency)

on July 11, 1988
(Date)

to become effective AUG 5 4 58 PM '88

July 20, 1988
(Date)

RECEIVED
BUREAU OF LEGAL SERVICES
SECRETARY OF STATE

The within matter having come before the Board of Parole (Agency) 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:

Notice of Intended Action published in OAR Bulletin: NO YES Date Published: _____

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

PERM. or TEMP.

RECEIVED
AUG 5 1988
LEG. COUNSEL'S OFF.

Amend OAR 255-25-010

as Administrative Rules of the Board of Parole (Agency)

DATED this 20th day of July, 19 88

By: Vern Faatz (Authorized Signer)

Title: Vern Faatz, Chairperson

Statutory Authority: ORS 144.120, Chapter 144

Matter: Credit for Time Served

Statement of Need Attached:

Fiscal Impact Attached:

For Further Information Contact: Cindy J. Burgess

Phone: 378-2334

RECEIVED

DIVISION 25

JUN 20 4 48 PM '88

SECRETARY OF STATE

ADJUSTED COMMITMENT DATE

Date Prison Term Starts to Run

255-25-005

- (1) The commencement date for the prison term is the date on which the prisoner is delivered to custody of the Department of Corrections for the purpose of serving the sentence.

- (2) In the case of additional consecutive sentences, the existing parole release date shall be rescinded and shall become the commencement date for the new sentence.

Credit for Time Served

255-25-010

- (1) Time served credit shall be granted towards the prison term for the following time periods:
 - (a) the actual and certified time served in the County Jail after arrest until the prison term begins; or

 - (b) the actual and certified time served in the County Jail as a condition of probation.

(2) When credit is granted towards the prison term under subsection (1) of this section, the time served credits shall be deducted from the [parole release date after a prison term has been established.] date the person was received by the Department of Corrections.

(3) When credit is granted towards the prison term on a sentence consecutive to one being served, the adjusted commitment date shall become the prior parole release date. The time served credits shall be deducted from the parole release date after a prison term has been established.

[(3)] (4) If additional time served credits are received after the prison term has been calculated, the Board may take action administratively to correct the parole release date. The person so affected shall receive notice in writing of the Board's action.

[(4)] If arrest and conviction occurs during the period in which the person is under the jurisdiction of the Board of Parole, no time served credits shall be granted towards the subsequent prison term.]

Calculation of Adjusted Commitment Date

255-25-015

(deleted)

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

RECEIVED

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the Board of Parole on July 25, 1988 to become effective July 26, 1988
(Agency) (Date) (Date)
August 5, 1988
(Date)

AUG 5 5 00 AM '88
LEG. COUNSEL'S OFF.

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:

Notice of Intended Action published in OAR Bulletin: NO YES Date Published: _____

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

PERM. or TEMP.

RECEIVED
AUG 5 1988
LEG. COUNSEL'S OFF.

Exhibit A-II is being amended to change the subcategory rationale for Theft.

as Administrative Rules of the Board of Parole
(Agency)

DATED this 26th day of July, 19 88

By: Vern L. Faatz
(Authorized Signer)

Title: Vern L. Faatz, Chairperson

Statutory Authority: ORS Chapter 144

Matter: Subcategory rationale for Theft is changed.

Statement of Need Attached: Fiscal Impact Attached:
For Further Information Contact: Cindy J. Burgess Phone: 378-2534

BEFORE THE
Oregon State Board of Parole

In the Matter of the Amending of)
Exhibit A-II Governing Crime) Statement of Justification
Severity Ratings)

The Board of Parole is temporarily amending the above named exhibit because the subcategory rationales need to include thefts of over \$10,000. The Board's failure to act promptly will result in serious prejudice to the public interest because thefts of over \$10,000 currently have no crime severity rating guideline.

- (a) Statutory Authority : ORS 144.780, ORS Chapter 144
- (b) Need for the Rule : The current subcategory rationale does not provide a crime severity rating for thefts over \$10,000 and such a rating is needed.
- (c) Documents Relied Upon : ORS Chapter 144, Exhibit A-II

8/1/88
Date

Vern L. Faatz
Vern L. Faatz, Chairperson

EXHIBIT A

PART II

Aggravated Murder
163.095

SUBCATEGORY 1 - RATING 8:

Stranger to stranger; cruelty to victim; prior conviction of murder or manslaughter; evidence of significant planning or preparation.

SUBCATEGORY 2 - RATING 7:

All other cases of aggravated murder.

Arson I
164.325

SUBCATEGORY 1 - RATING 6:

Knew or should have known premises were occupied at time of act or injury.

SUBCATEGORY 2 - RATING 5:

All other cases of Arson I.

Assault I
163.185

SUBCATEGORY 1 - RATING 6:

Cases of Assault I in which there is intentional cause of serious physical injury to another by means of a deadly or dangerous weapon.

SUBCATEGORY 2 - RATING 5:

Cases of Assault I in which the victim(s) provoke the crime to a substantial degree or other evidence that misconduct by the victim(s) contributed substantially to the criminal episode.

Assault III
163.165

SUBCATEGORY 1 - RATING 3:

Assault III/Vehicular where defendant has at least 2 prior DUII convictions within a 5 year period.

SUBCATEGORY 2 - RATING 2:

All other cases of Assault III.

Burglary I
164.225

SUBCATEGORY 1 - RATING 5:

Entry into a dwelling, where defendant causes or attempts to cause physical injury to any person; is armed with a deadly weapon; uses or threatens to use a dangerous weapon; or death occurs.

SUBCATEGORY 2 - RATING 4:

Entry into a dwelling in which goods taken had a value of \$5,000 or more.

SUBCATEGORY 3 - RATING 3:

Entry into a dwelling in which goods taken had a value of less than \$5,000.

Burglary II
164.215

SUBCATEGORY 1 - RATING 3:

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

SUBCATEGORY 2 - RATING 2:

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

SUBCATEGORY 3 - RATING 1:

Theft of less than \$1,000.

Coercion
163.275

SUBCATEGORY 1 - RATING 4:

Compelling another to act through threat of serious physical harm or property damage; blackmail.

SUBCATEGORY 2 - RATING 3:

All others.

Computer Crime
164.377(2)(3)

Breakdown is the same as for Theft I.

Criminal Possession Rented/Leased Property
164.140

Breakdown is the same as for Theft I.

Criminally Negligent Homicide
163.145

SUBCATEGORY 1 - RATING 4:

Vehicular Homicide where defendant with criminal negligence causes the death of another person.

SUBCATEGORY 2 - RATING 3:

Cases where the victim's misconduct contributed to the criminal episode (i.e. victim was drinking buddy of defendant).

Delivery of Controlled Substance
475.992(1);475.995

SUBCATEGORY 1 - RATING 5:

Operating or participating in the operation of a location in which crack cocaine or heroin is sold. The delivery of heroin as part of a distribution or sales network. See Exhibit A-III.

SUBCATEGORY 2 - RATING 4:

Delivery of an illegal drug (including, but not limited to methamphetamines) other than marijuana where there is evidence that the delivery is part of a drug selling or distribution network or scheme; see Exhibit A-III.

Delivery of any quantity of illegal drug in and on, or within one thousand feet of, the real property comprising a public or private elementary and/or middle school.

Knowingly owning or providing a location for the sale or distribution of illegal drugs other than marijuana.

Delivery or assisting in the delivery of illegal drugs in which a minor is involved.

SUBCATEGORY 3 - RATING 3:

Delivery or assisting in the delivery of illegal drugs for compensation or profit in circumstances other than those listed above.

SUBCATEGORY 4 - RATING 1:

Delivery of a small amount of any illegal drug not for profit or compensation. All other cases of delivery of illegal drugs not noted above.

Escape II
162.155

SUBCATEGORY 1 - RATING 2:

Use or threat to use physical force escaping from custody; or, having been convicted or found guilty of a felony, escapes from custody imposed as a result thereof; or escapes from a correctional facility or, while otherwise under the jurisdiction of the Psychiatric Security Review Board, departs from state without authorization of Board.

SUBCATEGORY 2 - RATING 1:

All other cases.

Failure to Perform Duties of a Driver Where There
is Injury or Death
811.705

SUBCATEGORY 1 - RATING 3:

If death results.

SUBCATEGORY 2 - RATING 2:

Injury and all other cases.

Forgery I
165.013

SUBCATEGORY 1 - RATING 3:

Loss, potential loss, or receiving of over \$5,000.

SUBCATEGORY 2 - RATING 2:

Loss, potential loss, or receiving of \$1,000 to \$5,000.

SUBCATEGORY 3 - RATING 1:

Loss, potential loss, or receiving of under \$1,000.

Fraud Involving Securities
59.055; 59.115; 59.127; 59.135; 59.145; 59.165; 59.730; 59.740;
59.750; 59.760; 59.770; 59.780; 59.790; 59.800

SUBCATEGORY 1 - RATING 4:

Loss, potential loss, or receiving of \$10,000 or more

SUBCATEGORY 2 - RATING 3:

All other cases of fraud involving securities.

Manslaughter II
163.125

SUBCATEGORY 1 - RATING 5:

Cases where death of a victim, usually a child, results from prolonged abuse; failure to provide for victim's welfare resulting in death; medical treatment withheld to conceal physical signs of abuse.

SUBCATEGORY 2 - RATING 4:

Causes another to commit suicide or aids, cases where death of victim involves use of a weapon or follows an assault; cases where death is by negligent use of vehicle and defendant has at least 2 prior DUII convictions within 5 years.

SUBCATEGORY 3 - RATING 3:

Cases where death is by negligent use of a vehicle; all other cases.

Manufacture of Controlled Substance
475.992(1)

SUBCATEGORY 1 - RATING 5:

Operating or assisting in the operation of a laboratory for the production of methamphetamines. Cultivating or assisting in the manufacture of marijuana for distribution or sale as part of a distribution network or scheme; see Exhibit A-III. Cultivation or assisting in the cultivation of more than 100 marijuana plants.

SUBCATEGORY 2 - RATING 4:

Manufacturing or assisting in the manufacture of illegal drugs other than methamphetamines or marijuana, when there is evidence that the manufacture is part of a drug selling or distribution network or scheme; see Exhibit A-III. Knowingly owning or providing a location for the manufacture of illegal drugs other than marijuana for sale or distribution.

SUBCATEGORY 3 - RATING 3:

Manufacture or assisting in the manufacture of illegal drugs for distribution. Manufacture of marijuana in the amount of 25 or more plants and/or in circumstances other than those listed in Subcategory 1. See Exhibit A-III.

SUBCATEGORY 4 - RATING 1:

Manufacture of illegal drugs for the offender's own use. All other cases of manufacturing of illegal drugs.

Murder
163.115

Breakdown is the same as for Aggravated Murder
All other cases of murder.

Negotiating a Bad Check
165.065(3b)

Breakdown is the same as for Theft I.

Possessing Fraudulent Communications Devices
165.070

Breakdown is the same as for Theft I.

Possession of Controlled Substance
475.992(4)

SUBCATEGORY 1 - RATING 3:

Possession of a large amount of illegal drugs other than marijuana with intent to deliver. See Exhibit A-III.
Possession of illegal drugs which constitute the precursors or byproducts of the manufacturing process (as defined by ORS 475.940).

SUBCATEGORY 2 - RATING 2:

Possession of illegal drugs other than cocaine/crack, methamphetamines, and heroin with intent to deliver.

SUBCATEGORY 3 - RATING 1:

Possession of illegal drugs in circumstances other than those listed above.

Racketeering
166.720

SUBCATEGORY 1 - RATING 5:

The principle party involved in violation of the Racketeering statute. Involvement is that of planning, directing or participating in the scheme or schemes resulting in direct profit or gain.

SUBCATEGORY 2 - RATING 4:

The subordinate party involved in violation of the Racketeering statute. Involvement is limited to acting as an agent or employee of the principle. There is no involvement in planning, directing or participating in the scheme or schemes in violation of this statute.

Rape I
163.375

SUBCATEGORY 1 - RATING 6:

Stranger to stranger; breaking and entering; threat to use or use of weapon; actual or threat of serious bodily or emotional harm; intercourse with female or male under 12.

SUBCATEGORY 2 - RATING 5:

All other cases.

Rape II
163.365

SUBCATEGORY 1 - RATING 4:

Cases in which the female is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; or the female is under 14 years of age.

SUBCATEGORY 2 - RATING 3:

All other cases.

Robbery I
164.415

SUBCATEGORY 1 - RATING 6:

Cases of robbery in which the defendant is armed with a deadly or dangerous weapon; discharges a firearm; uses a dangerous weapon; makes explicit or immediate threats by word or gesture; causes death of or physical injury to the victim.

SUBCATEGORY 2 - RATING OF 5:

All other cases of Robbery I.

Sexual Penetration with Foreign Object I
163.411

SUBCATEGORY 1 - RATING 6:

Sexual Penetration with Foreign Object I is broken down in the same manner as Rape I.

SUBCATEGORY 2 - RATING 5:

All other cases.

Sodomy I
163.405

SUBCATEGORY 1 - RATING 6:

Sodomy I is broken down in the same manner as Rape I.

SUBCATEGORY 2 - RATING 5:

All other cases.

Supplying Contraband
162.185

SUBCATEGORY 1 - RATING 4:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses any firearm; knowingly introduces any firearm into a correctional facility, juvenile facility, or state hospital.

SUBCATEGORY 2 - RATING 3:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses dangerous weapon; knowingly introduces any dangerous weapon into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 3 - RATING 2:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses any Schedule 1 controlled substance except marijuana; knowingly introduces any Schedule 1 controlled substance into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 4 - RATING 1:

All other cases.

Theft by Deception
164.085

Breakdown is the same as for Theft I.

Theft by Extortion
164.075

SUBCATEGORY 1 - RATING 4:

Threat of serious bodily harm or death.

SUBCATEGORY 2 - RATING 3:

All others.

Theft I
164.005

SUBCATEGORY 1 - RATING 2:

Theft or receiving of \$1,000 [to \$10,000] or more.
Theft of a motor vehicle for personal transportation.
Theft of a livestock animal.
Theft of a firearm or explosive.
Theft during riot or catastrophe.

SUBCATEGORY 2 - RATING 1:

Thefts under \$1,000.

Theft of Services
164.125

Breakdown is the same as for Theft I.

Unauthorized Use Motor Vehicle
164.135

SUBCATEGORY 1 - RATING 2:

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

SUBCATEGORY 2 - RATING 1:

All others.

Unlawful Creation or Delivery of Counterfeit Substance
475.992(3)

Breakdown is the same as for Manufacture or Delivery of
Controlled Substance.

Using a Child in a Display of Sexually Explicit Conduct
163.670

SUBCATEGORY 1 - RATING 6:

Child 12 years of age or under.

SUBCATEGORY 2 - RATING 5:

All other cases.

Welfare/Food Stamp Fraud
411.630; 411.640; 411.675; 411.690; 411.840

Breakdown is the same as for Theft I.

966

9-20-88

BEFORE THE
OREGON STATE BOARD OF PAROLE

In the Matter of the Amendment
of the Rules Governing the
Board of Parole

)
)
)

STATEMENT OF JUSTIFICATION
AND NEED

The Board of Parole is amending and repealing the above named rules to more closely comply with statute, to conform the rules to existing procedure, to make procedures more efficient, and to correct errors.

(a) Statutory Authority

:

ORS Chapter 144

(b) Need for Rule

:

Due to the pressures of an increasing workloak on Board members, the Board needs to be able to delegate some minor decisions and to make minor changes in prisoners' files without the necessity of a full hearing.

The Board also needs the rules to more closely conform to actual practice and the statutes and to make the rules more precise and clear.

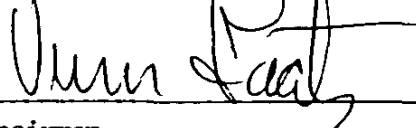
(c) Documents Relied Upon

:

ORS Chapter 144, the Board's 1988 Rules, ORS 421.120

9/20/88

Date



Chairman

FISCAL ANALYSIS OF RULE PER ORS 183.335

<u>Effect on Revenue (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
NONE	NONE	NONE

<u>Effect on Expenditures (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
NONE	NONE	NONE

Organizational Impact: Some tasks now done by Board members may be delegated to the Law Clerk or other clerks.
No additional staff will be hired.

Economic Impact: NONE

Reference for Data and Methods Used Regarding the Above:

Board of Parole Budget for 1987-89 Biennium

Prepared by: *Cindy J. Burgess*
Cindy J. Burgess

Agency: Board of Parole

Title: Rules Coordinator

Date: September 20, 1988

Method of Certification/Disagreement with Time Served
Calculation
255-25-020
(deleted)

Adjustment of Adjusted Commitment Date
255-25-025
(deleted)

Effect of Inoperative Time on Prison Terms
255-25-030

Inoperative time shall not count towards the completion of the prison term. In resetting the parole release date, the inoperative time shall be added to the prison term. The Board shall notify the inmate of its action.

Adjusted Commitment Date for Parole Violations
255-25-035

The adjusted commitment date for parole violators with new convictions or new commitments shall be calculated as outlined in OAR 255-75-078.

DIVISION 40

[REOPENING CASES,] PERSONAL REVIEWS [,] AND REDUCTIONS IN PRISON TERMS

Scheduling of Personal Reviews

255-40-005

(amended 10/88)

- (1) Personal reviews may be conducted every three years. The Board will only conduct a personal review hearing after it has received from the institution a recommendation for a [seven month] reduction in the prison term [for the period under review] as described in OAR 255-40-025(1).
- (2) Personal review dates shall be computed from the date of admission to the institution.
- (3) The purpose of a personal review hearing shall be to determine the progress of the prisoner and whether such progress indicates outstanding reformation so as to warrant a reduction in the prison term under the criteria listed in OAR 255-40-025(2).
- (4) Prisoners sentenced for aggravated murder or as dangerous offenders, and those parole denied are not subject to personal reviews.

Procedure for Personal Reviews

255-40-010

Personal reviews shall be conducted by a panel or a Full Board pursuant to OAR 255-30-015.

Purpose

255-40-015

(deleted)

Reopening Cases: When; What is Necessary

255-40-020

(deleted 9/19/88)

Resetting the Parole Release Date to an Earlier Date

255-40-025

(amended 10/88)

- (1) An established prison term as defined in section [255-30-005(2)] 255-05-005(28), may be reduced under subsection (2) of this section upon the prisoner's application for a hearing and the receipt of a recommendation from the parent institution. Such a request for a hearing must come to the chairperson of the Board, and upon receipt, a hearing will be scheduled. The Board may at its discretion take administrative action to reset the parole release date to an earlier date.
- (2) If the prisoner displays an extended course of conduct indicating outstanding reformation, the Board may grant a reduction of up to seven months of the three year period under review, under this section. Cases will be reviewed based on the following criteria:
 - (a) the individual merits of each case;
 - (b) the seriousness of the crime;
 - (c) the protection of the public
 - (d) demonstrable achievement in dealing with problems present at the time of incarceration and associated with criminal conduct (e.g., psychological disorder, drug or alcohol dependency, lack of educational or vocational skills);
 - (e) documented cooperation with authorities while in custody where a substantial benefit is derived by the authorities; and
 - (f) the absence of disciplinary actions resulting from violation of rules within the three year period.
- (3) Special requests for reduction from the superintendent of the parent institution and the Director of the Department of Corrections may be scheduled for a hearing with the concurrence of the majority of the Board, or may be considered administratively.
- (4) The criteria for a special request reduction shall be:
 - (a) when an inmate's documented cooperation with authorities has contributed significantly to the safety and security of the facility; or
 - (b) when cooperation with law enforcement officials results in the apprehension, interruption and conviction of persons involved in significant on going criminal activity.

- (3) The Parole Board shall attempt to notify the victim, if the victim requests to be notified and furnishes the Board a current address, and the District Attorney of the committing county at least thirty (30) days before all hearings by sending written notice to the current addresses of both parties.

When a 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 conducted by a panel of two voting members of the Board.
- (2) The following hearings may be conducted by a quorum of the Board with final decision by a quorum of the Board: [more votes may be necessary for a final decision:]
- [c](a) cases where the prisoner was sentenced under ORS 161.725 and 161.735 as a dangerous offender;
- [e](b) cases where an extension of more than two years in the prison term is recommended for misconduct.
- [i](c) whenever a panel lacks a quorum and is unable to come to a unanimous decision to set a prisoner's prison term, and a second panel is assigned to hear the case and no quorum occurs in the second panel. [; and]
- (3) The following hearings may be conducted by a quorum of the Board with final decision by at least four members of the Board:
- [d](a) cases where the minimum sentence imposed by a judge pursuant to ORS 144.110 exceeds the matrix range and the variations permitted a panel [(reviewed by at least four members of the Board)];
- [f](b) whenever a panel recommends a decision to exceed the allowable variation from the matrix permitted to the panel and a third vote [(review by at least four members of the Board)];
- [g](c) whenever the panel recommends denying parole [(review by at least four members of the Board)];
- [h](d) whenever a panel recommends a decision below a judicially set minimum sentence [(review by at least four members of the Board)];

[j](e) whenever a panel recommends unsuming a unified range [(review by at least four members of the Board)].

(4) The following hearings may be conducted by a quorum of the Board with final decision by the full Board:

- (a) cases involving a prisoner sentenced to life imprisonment, to death, for murder, or for aggravated murder [(review by the full membership of the Board)];
- (b) cases where the prisoner was convicted of a crime involving the death of a victim, whether or not the prosecution directly charged the prisoner with causing the death of the victim, [(review by full membership of the Board);]

[3](5) If a Board member is not present at a Full Board hearing, and review is compelled by statute, rule, or the vote may affect the outcome of the hearing, the Board member may vote administratively after reviewing the record of the hearing, or may request that a hearing be rescheduled. The Board's action shall be considered final if the absent member's vote is not required for a final decision.

Procedures for Full Board Decisions

255-30-020

(deleted)

Teleconference Hearing

255-30-021

- (1) A prisoner in custody in another jurisdiction may have a hearing by teleconference call, or may be returned to Oregon for a hearing.
- (2) A prisoner who resides outside of Marion County may have a hearing by teleconference call.

Prisoner Appearance at Parole Board Hearing

255-30-023

- (1) The prisoner shall be present in person or by telephone at the Parole Board hearing.
- (2) A prisoner who refuses to appear may be compelled to do so by the Board

- (b) the minimum term is not necessary to protect the public.
- (2) If at least four members of the Board have made the findings listed in subsection (1) of this section, The Board shall establish a prison term using the guideline range and the standard variations allowed.
- (3) When there are consecutive minimum sentences, and the Board finds that the combined minimums are not appropriate penalties for the criminal offenses involved, and are not necessary to protect community security, the Board, by four concurring votes, may override one or more of the judicially imposed minimums and set a prison term which is less than the sum of the minimum terms.
- (4) The Board shall set a parole release date in accordance with OAR 255-35-013, and shall state the facts and reasons for its actions.

Effect of Judicial Mandatory Minimum Sentences on Prison Terms
Under 161.610
255-35-024
(deleted)

Setting a Parole Release Date: When Matrix Range
Exceeds Good Time Date
255-35-025

When the Board chooses to set a parole release date on a sentence with a statutory good time date which calls for an earlier release than the guideline range indicates, the guideline range shall be as follows in order to allow a period of parole supervision:

- (1) Six months from the statutory good time date on a sentence of at least one year and less than three years;
- (2) Nine months from the statutory good time date on a sentence of three years up to six years.
- (3) Twelve months from the statutory good time date on a sentence of six or more years.

Parole Denial: When Parole May be Denied
255-35-030

- (1) The Board with four (4) affirmative votes may deny parole pursuant to ORS 144.120(4) when:

- (a) The offense of commitment included particularly violent or otherwise dangerous criminal conduct as defined by section [255-35-005(6)] 255-05-005(22);
 - (b) The offense was preceded by two (2) or more Class A or Class B felony convictions; or
 - (c) The prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance such as to constitute a danger to the health or safety of the community.
- (2) A two-member panel may refer the matter to the Full Board with the recommendation that parole should be denied based on the criteria listed in subsection (1) of this section.
- (3) 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.

Variations From the Ranges for Aggravation or Mitigation:

Statements for Record, Prior Disclosure to Prisoners

255-35-035

(deleted)

Resetting Pre-Guideline Parole Hearing Dates for Category 7

Offenders

255-35-040

(deleted)

EXHIBIT O: ADMINISTRATIVE REVIEW REQUEST FORM
PURSUANT TO BOARD OF PAROLE RULE: CHAPTER 255, DIVISION 80

You may request an administrative review of the Parole Board action taken in your case (final order). Your request must meet at least one of the criteria listed below:

- (1) the Board action is not supported by the 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.

Requests must be specific, they should explain:

- (1) how the written findings are in error; or
- (2) what information was available, and why it was not considered (i.e., documentation of vacated convictions, resentencing, etc.); or
- (3) how the Board's action was contrary to the guideline rules (matrix system) or law; and
- (4) what the effect may be on the original decision.

Requests will be most effective if short and to the point.

Requests for an administrative review must be made within 45 days after final action by the Board, otherwise you will have waived your right to an administrative review. You may request a waiver of the 45 day deadline if you submit your request after the deadline.

REQUEST: Applicant's name _____ Inst.# _____
SID# _____ requests administrative review of the Parole
Board action taken on _____ the final decision
was _____
State why your request meets the criteria above _____

(7a) "Date of return": The date the prisoner is available for return to the custody of the Department of Corrections following a hold in another in-state or out-of-state jurisdiction.

- (8) "De novo hearing": a new initial prison term hearing, required when there are additional consecutive sentences for crimes which occurred prior to the first prison term hearing.
- (9) "Exemplary Behavior": Behavior which is consistent with the conditions of parole.
- (10) "Future Disposition Hearing": The hearing at which the sanction for a parole violation is established.
- (11) "History/risk score": A rating from a high of eleven (11) to a low of zero (0) points, reflecting the prisoner's prior record and other factors which predict the likelihood of success on parole pursuant to Exhibit B.
- (12) "Inactive Parole" includes:
(a) general parole conditions;
(b) no supervision by a parole officer;
(c) no parole fees; and
(d) name and status maintained on the LEDS and EPR computer systems.
- (13) "In camera hearing": the inspection of a document by the Hearings Officer in private before the document may be introduced as evidence.
- (14) "Initial parole release date": A fixed date, by month, day and year, assigned to a prisoner for parole release based on the prisoner's matrix range, aggravation, mitigation, and judicially imposed minimum sentence(s).
- (15) "Inoperative time": time spent outside a state correctional facility without the authorization of the Department of Corrections.
- (16) "Less than the sum of the terms": an action by the Board whereby one or more of the consecutive ranges are treated as if they are concurrent.
- (17) "Matrix ranges": Ranges of months within which the Board has the discretion to set a prison term. The ranges are based on crime severity ratings and history/risk scores.
- (18) "The matrix": A table which displays the matrix ranges by showing the intersection of the crime severity rating and the history/risk score pursuant to Exhibit C.
- (19) "Mitigation": The factors or elements surrounding the crime which appear to decrease the seriousness of the criminal episode or reflects on the character of the prisoner pursuant Exhibit E-2.

- (20) "Parole": A conditional release from a state correctional facility into the community.
- (21) "Parole Revocation Hearing": A hearing to determine whether a parole violation occurred.
- (22) "Particularly violent or otherwise dangerous criminal conduct": Conduct which is not merely unpleasant or offensive, but which is indifferent to the value of human safety or property.
- (23) "Parole Board Record": The file the Board maintains for each prisoner containing the information listed in ORS 144.185.
- (24) "Period under review" under Division 40, the three year period prior to the hearing.
- (25) "Principal range": The range of months for the crime holding the highest crime severity rating. When the ranges are the same, one shall be designated as the principal range.
- (26) "Preponderance": evidence which as a whole shows that the fact sought to be proved is more probable than not.
- (27) "Probable Cause": a substantial objective basis for believing that more likely than not an offense or violation has been committed and the person to be arrested has committed it.
- (28) "Prison Term": The time established by the Board of Parole to be served before the parole release date.
- (29) "Prison term hearing": The hearing at which the Board establishes an inmate's prison term.
- (30) "Serious physical injury": Any physical injury which creates a substantial risk of death, or which causes serious disfigurement, or impairment of health or the loss or impairment of the function of any bodily organ.
- (31) "Subcategory": the criteria for rating criminal conduct within the crime categories based on the seriousness of the offense (Exhibit A).
- (32) "Subordinate range": Any range less than or equal to the principal range.
- (33) "Subpoena duces tecum": a subpoena requiring the party to appear at a hearing with a document or piece of evidence to be examined at the hearing.
- (34) "Summing the ranges": [An action taken] Adding ranges of consecutive sentences to produce a unified range pursuant to OAR 255-35-021. [when there are consecutive sentences.]

- (35) "Unauthorized absence": time spent outside a state correctional facility without the authorization of the Department of Corrections.
- (36) "Unified range": the total range computed under OAR 255-35-021 for consecutive sentences.
- (36a) "Unsum the ranges" means to establish a prison term at less than the unified range. The effect of unsumming is to treat one or more of the ranges as if concurrent.
- (37) "Variations": The time periods which the Board may use to set a prison term above or below the matrix range pursuant to Exhibit D.
- (38) "Victim": The actual victim of the crime, a representative selected by the victim, or the victim's next of kin. In the case of a minor or incompetent victim, this term shall include the guardian of the victim.

- (3) The Board may postpone the parole release date up to one day before the prisoner's goodtime date.

Rescission of Parole: Unauthorized Absence; Law Violation
255-50-015

- (1) The Board may administratively rescind a parole release date [when] at any time after the Board is informed of reasonable grounds to believe a person has violated a law or otherwise engaged in serious misconduct. A fact-finding hearing shall be held by a Hearings Officer to determine if the law violation or serious misconduct occurred. However, if the prisoner has received an additional sentence, no hearing is required.

- (2) The parole release date of a prisoner who is on unauthorized absence from a correctional facility shall be administratively rescinded by a majority of the Board. A hearing may be scheduled when the prisoner is available or the Board may administratively reset the parole release date by adding the inoperative time to the prison term.

- (3) Inoperative time shall be added to the prison term in the following manner:

(a) If the unauthorized absence occurs prior to the parole release date and the prisoner returns to custody of the Department of Corrections after the parole release date:

(A) Count the first day of unauthorized absence and every day up to the parole release date.

(B) Add the total number of days determined in (A) of this subsection to the date of availability for return to custody of the Department of Corrections following a hold in another in-state or out-of-state jurisdiction.

(b) If the unauthorized absence occurs prior to the parole release date and the prisoner returns to custody of the Department of Corrections prior to the parole release date:

(A) Count the first day of unauthorized absence and every day up to the date of availability for return to the Department of Corrections following a hold in another in-state or out-of-state jurisdiction.

(B) Add the total number of days determined in (A) of this subsection to the previous parole release date.

- (c) For purposes of calculations pursuant to subsection (3) of this section if the initial parole release date was deferred to a specific future date that specific future date is the parole release date.

Postponement Procedure: Unauthorized Absence; Law Violation
255-50-016

The procedure for a postponement hearing shall be in accordance with the provisions of rule 255-50-010 (2).

Waiver
255-50-017
(deleted)

Hearing After Rescission of Parole
255-50-018
(deleted)

Basis for Rescission
255-50-020
(deleted)

Misconduct Board Review Packet
255-50-025

The Misconduct Board Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) [psych] psychological evaluations (last 6 months);
- (4) disciplinary report from the institution;
- (5) correspondence;
- (6) field parole analysis report; and
- (7) court orders.

PROPOSED CHANGE TO OAR 255-01-020

- (2) When the Board has filed a temporary rule with the Secretary of State's Office, the Board shall mail a copy of the certificate and order and a copy of the temporary rule to the persons on the Board's mailing list, and to those listed in subsection (1)(c) of this section.
- (3) Notwithstanding subsection (2) of this section, when the Board has filed a temporary rule with the Secretary of State's Office, newspapers and media services shall only receive a copy of the certificate and order.

Rulemaking Procedure
255-01-010

- (1) All new and revised rules will be adopted in accordance with the provisions of ORS 183.310 to 183.550, the Model Rules of Procedure adopted by the Oregon Attorney General and ORS 192.610 to 192.690. Only those sections of the Model Rules which relate to rulemaking will be utilized by the Board.
- (2) The Board shall hold a business meeting, pursuant to Division 20, when a change in the rules is being considered and a notice of intent has been filed.

Contents of Notice of Rulemaking when Public Hearing will be held Only if Requested
255-01-015
(deleted)

Obtaining Copies of Board Rules
255-01-016

- (1) A copy of the Board's rules shall be provided free of charge to the inmate libraries at each of the Department of Corrections institutions and to any state agency or legislative entity that requests a copy.
- (2) Others who desire copies of Board's rules shall make their requests in writing. Ten (.10) cents per page will be levied to cover the costs for individual rules. Payment must be received in advance.

Submitting Draft of Rule to Legislative Counsel
255-01-020

Prior to a proposed change in the rules, including temporary rules, the Board may [shall] submit a draft of the proposed action to Legislative Counsel.

- (b) violations involving a finding of new criminal activity shall result in an additional term of eight to twelve months unless the Board finds aggravation, mitigation, denies parole.
- (c) In establishing a sanction, the commencement date shall be the date of arrest for the parole violation which resulted in the revocation of parole.

Variation From Guidelines for Aggravation/Mitigation Permitted
255-75-095

- (1) Variation from the terms set fourth in rule 255-75-090 (a) and (b), is permitted if the Board finds aggravation or mitigation as shown in either Exhibit E or Exhibit H.
- (2) Variations from the terms set forth in rule 255-75-090 (a) and (b), shall be those established in Division 35 of these rules and shown in Exhibit D.

Denial of Reparole Consideration
255-75-096

- (1) The Board may deny reparole consideration and require the parole violator to serve to the statutory good time date. This action requires the affirmative vote of at least four voting members.
- (2) In cases where setting a parole violator within the guidelines set forth in rule 255-75-090 (a) and (b) would require the parole violator to serve to the end of the sentence, four votes are not required.

Restoration of [Parole Violation] Statutory and Meritorious
Goodtime
255-75-098

Upon recommendation of the superintendent of the institution, [T]
the Board may restore part or all of forfeited statutory and
meritorious goodtime when:

- (1) there is no violation of parole; [and a recommendation to restore parole violation goodtime is received from the superintendent of the institution;] or
- (2) parole is revoked on a best interest basis and there was no actual parole violation; [, and a recommendation to restore parole violation goodtime is received from the superintendent of the institution.] or
- (3) parole is revoked on a technical violation; or

- (4) parolee is within 180 days of discharge; or
- (5) parole is revoked for new criminal activity which is a misdemeanor or class C felony and:
 - (a) the new criminal activity was already sanctioned at the local level; or
 - (b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.

Future Disposition Hearing Packet
255-75-100

The Future Disposition Hearing Packet shall contain:

- (1) institution face sheet;
- (2) revocation recommendation;
- (3) final order of revocation;
- (4) administrative action sheet;
- (5) revocation hearing findings;
- (6) Board Action Form ordering parole;
- (7) disciplinary report, when extension is recommended;
- (8) recommendations for [parole violation] statutory goodtime and meritorious goodtime;
- (9) correspondence;
- (10) statements of imprisonment for parole violation; and
- (11) face sheet from old parole analysis report.

DIVISION 80

ADMINISTRATIVE APPEAL

Procedure for Requesting a Review

255-80-005

THE TEXT OF THIS RULE IS CHANGED IN ITS ENTIRETY

- (1) A prisoner may request an administrative review by sending Exhibit O to the Board concisely explaining how his/her case fits the criteria for review defined in rule 255-80-010.
- (2) Requests for administrative review must be made within forty-five (45) days after the Board's final action on the reviewed issue.
- (3) A waiver of the 45 day deadline may be granted only if relevant new information is submitted which was particularly difficult to obtain.
- (4) An administrative review may be initiated by a Board member without regard to the 45 day deadline.
- (5) If the Board or its designee determines that the request is consistent with the criteria as defined in rule 255-80-010, and meets the deadline requirements, the matter will be resolved by the procedures outlined in OAR 255-80-012.
- (6) When the appeal is denied, the Board or its designee shall inform the prisoner in writing of the specific reasons for denial and the prior decision remains in effect.

Criteria for Granting an Administrative Review

255-80-010

The criteria for granting review 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 [initial prison term or de novo] hearing which, through no fault of the prisoner, was not considered; or
- (3) Pertinent information was not available at the time of the [initial prison term or de novo] hearing, i.e., information concerning convictions from other jurisdictions; or [.]
- (4) The action of the Board is inconsistent with its rules or policies or is contrary to law; or

9/19/88

- (5) The matters raised on review may have an [affect] effect on the original decision; or [.]
- (6) There is a change in the prisoner's sentence; or
- (7) There is a change in the Board's rules or the statutes or case law which would substantively affect the prisoner, e.g., change his/her prison term, parole status, or parole conditions.

Administrative Review Procedure
255-80-012

- (1) If the Board or its designee determines that the request for review is consistent with the criteria in OAR 255-80-010, the case may be opened for review.
- (2) The review may be conducted by the following methods:
 - (a) administrative file pass, with the number of concurring votes required by OAR 255-30-015; or
 - (c) other administrative action by the Board or its designee, i.e., to correct errors in the history risk score, crime category, credit for time served, inoperative time or adjusted commitment dates; or
 - (c) administrative hearing, in cases where review would cause an adverse result for the prisoner.
- (3) If inmate waives the right to adequate notice and receipt of the Board Review Packet, the administrative review hearing shall be conducted.
- (4) The prisoner shall be notified in writing of the Board decision and findings.

Administrative Review Hearing Packet
255-80-015

The Administrative Review Hearing Packet shall contain:

- (1) institution Face Sheet;
- (2) Board Action Form granting administrative review;
- (3) all information attached to the Board Action Form granting review;
- (4) Administrative Review Request;
- (5) all Board Action Forms since the prison term hearing;
- (6) psychiatric or psychological evaluations within the immediately preceding 6 months;
- (7) correspondence;
- (8) field Parole Analysis Report; and
- (9) court orders.

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SEP 20 4 27 PM '88

CERTIFICATE AND ORDER
FOR FILING
TEMPORARY
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of TEMPORARY rule(s) adopted on September 12, 1988
(Date)

by the Board of Parole
(Department) (Division)

to be effective September 20, 1988 through March 20, 1988 or until replaced by permanent rule.
(Date) (Date)

The within matter having come before the Board of Parole after
(Department) (Division)

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 action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted:
(New Total Rules) _____
Amended:
(Existing Rules) Exhibit D _____
Simplified:
(Simplified Rules Only) _____

RECEIVED

SEP 20 1988

LEG. COUNSELS OFF.

as Administrative Rules of the Board of Parole
(Department) (Division)

DATED this 20th day of September, 19 88

By: [Signature]
(Authorized Signer)
Title: Chairman

This Order amends TEMPORARY Order No.(s): _____

Filed: _____

NOTE: The Expiration date of this Order remains the same as the original Order.

Statutory Authority: ORS Chapter 144, ORS 144.785 or

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: In crime category 6 the standard variation from the matrix ranges is changed to 24.

Notice of Need Attached: Emergency Justification Attached: Do you intend to adopt this rule Permanently? YES NO
If so, have you filed Notice of Proposed Rulemaking for publication in the Oregon Bulletin? YES NO

For Further Information Contact: Cindy Burgess, Rules Coordinator Phone: (503) 378-2334
(Rule Coordinator)

BEFORE THE
OREGON STATE BOARD OF PAROLE

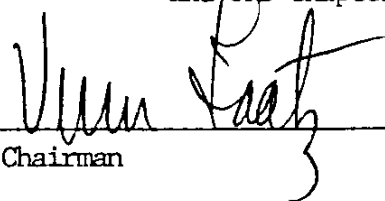
In the Matter of the Amendment)
of the Exhibit Governing)
Standard Variations from the)
Matrix Ranges)

STATEMENT OF JUSTIFICATION
AND NEED

The Board of Parole is temporarily amending the above named exhibit to ensure that the most appropriate prison term is set for certain prisoners with high history/risk scores in crime category six for whom the minimum sentence is not necessary for adequate punishment and protection of the public, but for whom the matrix range is inadequate punishment and protection of the public. The Board finds that failure to amend the above named exhibit immediately will result in serious inequities to prisoners and serious prejudice to the public interest.

- (a) Statutory Authority : ORS Chapter 144, ORS 144.785
- (b) Need for Rule : The variations currently allowed are not great enough to achieve an appropriate prison term for certain inmates who have a good criminal history, have committed a very serious crime and have minimum sentences.
- (c) Documents Relied Upon : Inmates' files, Minutes of the 8/22/88 Advisory Commission on Prison Terms & Parole Standards and ORS Chapter 144.

Date: 9/22/88


Chairman

FISCAL ANALYSIS OF RULE PER ORS 183.335

<u>Effect on Revenue (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
None	None	None

<u>Effect on Expenditures (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
None	None	None

Organizational Impact: None

Economic Impact: None

Reference for Data and Methods Used Regarding the Above:

Board of Parole and Department of Corrections Budgets for the 1987-89 biennium.

Prepared by: Cindy J. Burgess Agency: Board of Parole

Title: Rules Coordinator Date: September 20, 1988

EXHIBIT D

GUIDELINE MATRIX
STANDARD VARIATIONS FROM THE RANGES UNDER RULE 255-35-035

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)	<u>24</u>	<u>24</u>	<u>24</u>	<u>24</u>
7 (Board)	36	36	36	36
8 (Board)	36	36	36	36

*All numbers represent standard variations in months.

The maximum variation allowed in crime categories 1 through 6 are:

- (a) For a panel: two standard variations.
- (b) For a panel with a concurring vote (3 concurring votes): three times the standard variation.
- (c) For four (4) concurring votes: four times the standard variation.
- (d) For five (5) concurring votes after a hearing before the Board pursuant to OAR 255-30-015; five times the standard variation.

The maximum variations allowed a Board pursuant for Category 7 and 8 crimes are:

- (a) For three (3) concurring votes: the standard variation of 36 months.
- (b) For four (4) concurring votes: two times the standard variation of 36 months (72 months).
- (c) For five (5) concurring votes: three times the standard variation of 36 months (108 months).

The Board may deny parole pursuant to OAR 255-35-030.

9/12/88

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CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

SEP 20 4 28 PM '88

LEGISLATIVE COUNSEL
SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on September 12, 1988
(Date)

by the Board of Parole
(Department) (Division)

to become effective September 20, 1988
(Date)

The within matter having come before the Board of Parole
(Department) (Division) 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:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: August 1, 1988

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

Adopted: Exhibit P
(New Total Rules)

Amended: _____
(Existing Rules)

Deleted: _____
(Total Rules Only)

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SEP 20 1988

LEG. COUNSELS OFF.

as Administrative Rules of the Board of Parole
(Department) (Division)

DATED this 20th day of September 19 88

By: [Signature]
(Authorized Signer)

Title: Chairman

Statutory Authority: ORS ORS 144.343, Chapter 144 (OAR 255-75-026 & OAR 255-75-035) or

Chapter(s) _____ Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: A consent form to an order changing the terms and conditions of parole and waiving rights to a hearing and an attorney.

For Further Information Contact: Cindy J. Burgess Phone: (503) 378-2334
(Rule Coordinator)

BEFORE THE
OREGON STATE BOARD OF PAROLE

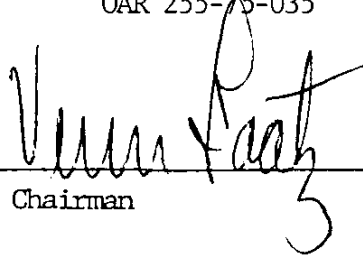
In the Matter of the Adoption)
of the Exhibit which is a)
Consent to an Order Changing)
the Terms and Conditions of Parole)

STATEMENT OF JUSTIFICATION

The Board of Parole is adopting the above named Exhibit to update the rules to reflect the Board's current procedures which allow expeditious and efficient changes in parole terms and conditions.

- (a) Statutory Authority : ORS 144.343, ORS Chapter 144
- (b) Need for Rule : The exhibit is needed to reflect the Board's current procedures and to allow expeditious and efficient changes in parole terms and conditions without a hearing.
- (c) Documents Relied Upon : ORS 144.343, OAR 255-75-026,
OAR 255-75-035

Date: September 20, 1988


Chairman

FISCAL ANALYSIS OF RULE
PER ORS 183.335

<u>Effect on Revenue (By Fund)</u>	<u>Current Biennium</u>	<u>Future Biennium</u>
None	None	None

<u>Effect on Expenditures (By Fund)</u>	<u>Current Biennium</u>	<u>Future Biennium</u>
None	None	None

Organizational Impact:

None

Economic Impact:

None

Reference for Data and Methods Used Regarding the Above

Parole Board Budget 1987-88

Prepared by: Cindy Burgess Agency: Board of Parole
Title: Rules Coordinator Date: September 20, 1988

EXHIBIT P
IN THE STATE OF OREGON

BOARD OF PAROLE)
STATE OF OREGON)
) CASE NO. _____
 vs)
)
)
_____,)
) CONSENT TO AN ORDER
PAROLEE) CHANGING TERMS AND
) CONDITIONS OF PAROLE

PROPOSED CHANGE:

CONSENT

I HAVE READ THE ABOVE PROPOSED CHANGE TO THE TERMS AND/OR CONDITIONS OF MY PAROLE. I HAVE BEEN ADVISED BY MY PAROLE OFFICER THAT I HAVE THE RIGHT TO CONSULT WITH AN ATTORNEY; THAT I NEED NOT AGREE TO THIS CHANGE AND, IF I DO NOT, A HEARING WILL BE SCHEDULED AND THE BOARD OF PAROLE WILL DECIDE WHETHER OR NOT THE PROPOSED CHANGE SHALL BE MADE. I AGREE TO WAIVE MY RIGHT TO CONSULT WITH AN ATTORNEY AND TO HAVE A HEARING ON THE PROPOSED CHANGE. I AGREE THAT THE ABOVE PROPOSAL BE MADE A PART OF THE PAROLE ORDER SETTING FORTH THE TERMS AND CONDITIONS OF MY PAROLE.

DATED THIS _____ DAY OF _____, 1989.

PAROLEE WITNESS

PAROLEE'S ADDRESS: _____

PAROLE OFFICER'S NAME: _____ PHONE: _____

PLEASE PRINT

PAROLE OFFICE: _____
cc: BOARD OF PAROLE (Original), FILE

9/20/88

off

10-488

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Oct 4 4 54 PM '88
SECRETARY OF STATE

CERTIFICATE AND ORDER
FOR FILING
TEMPORARY
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of TEMPORARY rule(s) adopted on October 3, 1988
(Date)

by the Board of Parole
(Department) (Division)

to be effective October 4, 1988 through April 2, 1989
(Date) (Date)

The within matter having come before the Board of Parole after
(Department) (Division)

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 action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted:
(New Total Rules) _____

Amended:
(Existing Rules) OAR 255-40-005

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SECRETARY OF STATE
OFFICE

ed:
(ules Only) _____

is Administrative Rules of the Board of Parole
(Department) (Division)

DATED this 4th day of October, 19 88

By: Thom R. Paetz
(Authorized Signer)

This Order amends TEMPORARY Order No.(s): _____

NOTE: The Expiration date of this Order remains the same as the original Order.

Title: Chairman

Statutory Authority: ORS 144.122 of

Chapter(s) 144 Oregon Laws 19 87 or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: This amendment provides that personal review dates shall be computed from the adjusted commitment date rather than from the date of admission to the institution. This is what the rule was prior to the changes made 4/4/88.

ment of Need Attached: Emergency Justification Attached: Do you intend to adopt this rule Permanently? YES NO
If so, have you filed Notice of Proposed Rulemaking for publication in the Oregon Bulletin? YES NO

For Further Information Contact: Cindy J. Burgess Phone: 378-2334
(Rule Coordinator)

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SECRETARY OF STATE

BEFORE THE

OREGON STATE BOARD OF PAROLE

In the Matter of the)
Amendment of the rule)
relating to the date used)
for computing the personal)
review date.)

STATEMENT OF JUSTIFICATION
AND NEED

The Board of Parole is temporarily amending the above named rule to return to the rule as it was prior to 4/4/88 in regard to the date from which the personal review date is computed. The Board's failure to act promptly will result in serious prejudice and harm to the public security because inmates will not be treated equally otherwise and because the prison overcrowding will be exacerbated by figuring personal review dates based on the admission date rather than the adjusted commitment date. The Board has hearings pending which will be affected by failure to temporarily amend this rule.

- (a) Statutory Authority : ORS Chapter 144, ORS 144.122
- (b) Need for the Rule : For purposes of equity and reduction of prison crowding the Board needs to amend this rule.
- (c) Documents Relied On : Board of Parole Business Meeting Minutes, October 3, 1988, Department of Corrections statistic on Prison Beds.

Date: Oct 4, 1988

Vern Paaf
Chairman

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FISCAL ANALYSIS OF RULE PER ORS 183.335

OCT 4 4 54 PM '88

PAID TO THE
SECRETARY OF STATE

<u>Effect on Revenue (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
None	None	None

<u>Effect on Expenditures (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
None known	None	None

Organizational Impact: This may free up some prison beds at an earlier time than otherwise under the current rule.

Economic Impact:

Reference for Data and Methods Used Regarding the Above: 1987-89 Board of Parole Budget. Corrections statistics on bed space.

Prepared by: Cindy J. Burgess *Cindy J. Burgess* Agency: Board of Parole

Title: Rules Coordinator Date: October 4, 1988

DIVISION 40

[REOPENING CASES,] PERSONAL REVIEWS [,] AND REDUCTIONS IN PRISON TERMS

Scheduling of Personal Reviews

255-40-005

(amended 10/88)

- (1) Personal reviews may be conducted every three years. The Board will only conduct a personal review hearing after it has received from the institution a recommendation for a [seven month] reduction in the prison term [for the period under review] as described in OAR 255-40-025(1).
- (2) Personal review dates shall be computed from the [date of admission to the institution] adjusted commitment date. (temp. amend. 10/4/88)
- (3) The purpose of a personal review hearing shall be to determine the progress of the prisoner and whether such progress indicates outstanding reformation so as to warrant a reduction in the prison term under the criteria listed in OAR 255-40-025(2).
- (4) Prisoners sentenced for aggravated murder or as dangerous offenders, and those parole denied are not subject to personal reviews.

Procedure for Personal Reviews

255-40-010

Personal reviews shall be conducted by a panel or a Full Board pursuant to OAR 255-30-015.

Purpose

255-40-015

(deleted)

Reopening Cases: When; What is Necessary

255-40-020

(deleted 9/19/88)

off

10-18-88

CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

RECEIVED
OCT 16 4 58 PM '88
LEG. COUNSEL'S OFF.

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on October 17, 1988
(Date)

by the Board of Parole
(Department) (Division)

to become effective October 18, 1988
(Date)

The within matter having come before the Board of Parole
(Department) (Division)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: 8/15/88

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

Adopted:
(New Total Rules)

Amended:
(Existing Rules)

Exhibits I, J, & K 255-70-001-J, 255-90-002-I
255-75-070-K

ed:
(Total Rules Only)

as Administrative Rules of the Board of Parole
(Department) (Division)

DATED this 18th day of October, 19 88

By: [Signature]
(Authorized Signer)

Title: Chairperson

Statutory Authority: ORS Chapter 144, ORS 144.270(3), ORS 144.035. or

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: Exhibit I relates to time served on parole on crimes committed on or before 12/3/86 and to extensions of parole supervision in cases of misconduct or parole violation.

Exhibit J relates to general and special conditions of parole.

Exhibit K relates to voting requirements for parole revocation cases.

For Further Information Contact: Cindy Burgess Phone: 378-2334

(Rule Coordinator)

BEFORE THE
OREGON STATE BOARD OF PAROLE

In the Matter of the Amendment of)
Exhibits Relating to Time Served on)
Parole, Extensions of Parole Supervision,) STATEMENT OF JUSTIFICATION
Conditions of Parole, and Voting Require-) AND NEED
ments for Parole Revocation)

The Board of Parole is permanently amending the above named exhibits to update the Board's current procedures and to clarify the exhibits. Exhibit J adds a condition of parole relating to successful completion of treatment programs or the Parole Violators Project which is needed for parolees' rehabilitation.

- (a) Statutory Authority : ORS 144.270(3), ORS 144.035,
ORS Chapter 144.
- (b) Need for Rule : These exhibits are being amended to clarify them, to update the Board's procedures in order to more effectively work with parole officers, and to aid in the rehabilitation of parolees.
- (c) Documents Relied Upon : ORS 144.270(3), ORS 144.035,
ORS Chapter 144, OAR Chapter 255.

10/18/88

Date



Vern L. Faatz, Chairperson

FISCAL ANALYSIS OF RULE PER ORS 183.335

<u>Effect on Revenue (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
None	None	None

<u>Effect on Expenditures (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
None	None	None

Organizational Impact:

More paroles may be revoked because of parolees' failures to successfully complete or be discharged from treatment programs.

Economic Impact:

The changes to Exhibit J may give treatment programs more business.

Reference for Data and Methods Used Regarding the Above:

1987-89 Board of Parole Budget

Prepared by: Cindy Burgess Agency: Board of Parole
Title: Rules Coordinator Date: October 18, 1988

10-18-88

EXHIBIT I

TIME TO BE SERVED ON PAROLE ON CRIMES
OCCURRING ON OR BEFORE 12-3-86

OFFENSE SEVERITY RATING	CRIMINAL 11-9 EXCELLENT	HISTORY/RISK 8-6 Good	ASSESSMENT 5-3 Fair	SCORE 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
8	1 year	1 year	1 year	1 year

The Board may vary the time served on parole on crimes occurring on or before 12/3/86 in cases in which death has occurred or the nature of the offense is of such seriousness that a longer period of supervision is needed than that established by the above guideline.

EXTENSIONS OF PAROLE SUPERVISION PERIOD
IN CASES OF MISCONDUCT OR PAROLE VIOLATION

- (a) In crime categories 1, 2, 3, and 4 extension may be imposed for up to an additional six (6) months supervised parole.
- (b) In crime category 5, 6, 7, and 8 extension may be imposed for up to an additional one (1) year supervised parole.
- (c) After a hearing, extensions may be imposed for up to an additional thirty-six (36) months supervised parole. This is an exception to (a) and (b) above.
- (d) The period of supervision may exceed 6 months due to the nature of the crime.

10/11/88

EXHIBIT J

GENERAL/SPECIAL PAROLE CONDITIONS

Parole is ordered subject to all listed General Conditions and the designated Special Conditions. Parole may be revoked for violation of any of these conditions.

GENERAL CONDITIONS:

1. Parolee will abide by the direction and counsel of the Department of Corrections and its representatives, and answer truthfully all reasonable inquiries of the Board of Parole or the parole officer.
2. Parolee will not change residence without first securing the permission of [notifying] the parole officer.
3. Upon release parolee will proceed at once to the place of residence and report arrival, within 24 hours to the parole office listed below, or according to instructions at time of release.
4. Parolee will find and maintain gainful employment, approved schooling, or other approved programming.
5. If residence is within the State of Oregon, parolee will not leave the state without first securing permission in writing from the parole officer.
6. If residence is outside the State of Oregon, parolee will not re-enter the State of Oregon without permission in writing from the Director, Department of Corrections.
7. Parolee will make a written and truthful report on the last day of each and every month to the Director, Department of Corrections, on forms which will be furnished, giving information required therein.
8. Parolee is not to own, possess, or be in control of any weapon.
9. Parolee will obey all municipal, county, state, and federal laws.
10. Parolee is to pay a monthly parole supervision fee to the agency administering parole (ORS 423.570, OAR 255-65-020).
11. Parole must continue to be in the best interest of parolee and society.

10/11/88

SPECIAL CONDITIONS:

1. Parolee is to submit person, residence, vehicle and property to search by a parole officer having reasonable grounds to believe such search will disclose evidence of parole violation.
2. Parolee is to become involved in a drug surveillance program.
3. Parolee is to [become involved in] enter and complete or be successfully discharged from a drug treatment program.
4. Parolee is to [become involved in] enter and complete or be successfully discharged from a mental health treatment program.
- 5A. Parolee is not to use intoxicating beverages.
- 5B. Parolee is not to use intoxicating beverages to excess. The excessive use of intoxicating beverages is understood to mean that the effects disrupt or interfere with my domestic life, employment, or proper community conduct.
- 5C. Parolee is to undertake and maintain an antabuse program, if medically approved. If so approved, antabuse will be implemented prior to release.
- 5D. Parolee is to undertake and [maintain] complete or be successfully discharged from an alcohol treatment program.
6. Parolee is not to have a checking account.
7. Parolee is to pay court ordered restitution to the clerk of the court of the county of sentencing who will forward the payment to the victim of the crime (ORS 137.106, OAR 255-65-005).
8. Parolee is to have no contact with minors (male/female) and not to frequent any place where minors are likely to congregate (e.g., playgrounds, school grounds, arcades).
9. Parolee is to pay a court ordered compensatory fine to the clerk of the court of the county of sentencing (ORS 137.101, OAR 255-65-005).
10. Other: Special conditions may be imposed that are not listed above when the Board of Parole determines that such conditions are required.
11. Parolee is to enter and successfully complete the Parole Violators Project.

INSTRUCTIONS:

10/11/88

EXHIBIT K

VOTING REQUIRMENTS FOR PAROLE REVOCATION CASES

All Board actions require three concurring votes. Any time a vote is recorded in disagreement, additional votes are required to make concurring votes.

1. Suspend and Detain (abscond, major technical, new crime, persistent misbehavior).
2. Cite to Appear at parole violation hearing.
3. Withdraw Suspend and Detain Order.
4. Return (absconder, new crime, no basis to continue).
5. Adopt findings of hearings officer.
6. Continue.
7. Defer formal decision regarding disposition.
8. Adopt findings of hearings officer; reject recommendations.
9. Revoke.
- 10.
11. Reprimand.
12. Modify Conditions (state reasons).
13. Extend supervision period six months.
14. No action, report noted.
15. Discharge.

10/11/88

966

12-6-88

RECEIVED

DEC 6 3 32 PM '88

CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on November 21, 28 & December 5, 1988
(Date)

by the Oregon Board of Parole
(Department)

to become effective 12/6/88
(Date)

DEC 6 1988

The within matter having come before the Oregon Board of Parole
(Department)

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:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: August 8, October 1, & November 1, 1988

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

Adopted:
(New Total Rules)

OAR 255-25-035, 255-80-012, Exhibit A-III (255-35-010)

Amended:
(Existing Rules)

OAR 255-01-020, 05-005, 25-010, 30-015, 35-030, 40-005, 40-025, 50-015, 75-098, 75-100, 80-005, 80-010, 80-015, 90-005, Exhibit A-I, Exhibit A-II, Exhibit D and Exhibit O (255-35-035) (255-30-013) (255-35-010)
OAR 255-40-020

Deleted:
(Total Rules Only)

as Administrative Rules of the Oregon Board of Parole
(Department)

DATED this 6th day of December, 19 88

By: Wesley H. Samuelsen
(Authorized Signer)

Title: Vice-Chairperson

Statutory Authority: ORS Chapter 144 or

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: Administrative Reviews, Restoration of Goodtime, Addition of Inoperative Time, Credit for Time Served, Date of Discharge from Parole, Crime Severity Ratings, Drug Crimes, Variations from the Range, Personal Reviews, Definitions.

For Further Information Contact: Cindy J. Burgess
(Rule Coordinator)

Phone: 378-2334

BEFORE THE
OREGON STATE BOARD OF PAROLE

In the Matter of the)	
Adoption, Amendment &)	STATEMENT OF JUSTIFICATION
Repeal of Rules Governing)	AND NEED
the Board of Parole)	

The Board of Parole is amending and repealing and adopting the above named rules to more closely comply with statute, to conform the rules to existing procedure, to make procedures more efficient, and to correct errors.

The Board is amending Exhibit D to ensure that the most appropriate prison term is set for certain prisoners with high history/risk scores in crime category six for whom the minimum sentence is not necessary to protect the public and for punishment, but for whom the matrix range is inadequate to protect the public and to punish.

The Board is amending Exhibit A to comply with a request by the Attorney General, the Governor, and the Advisory Commission on Prison Terms and Parole Standards to rate drug crimes more severely. Other adjustments are made in order to minimize the impact on prison bed space and to add ratings for new crimes.

- (a) Statutory Authority: ORS 144.78, ORS Chapter 144
- (b) Need for the Rule: Due to the pressures of an increasing workload on Board members, the Board needs to delegate some minor decisions and to make minor changes to prisoner's files without a full hearing.

The Board needs the rules to more closely conform to actual practice and the statutes and to make the rules more precise and clear.

The Board needs sufficient variations from the matrix range to set the most appropriate prison terms.

The Board needs to amend Exhibit A to comply with requests from the Attorney General, the Governor, and the Advisory Commission on Prison Terms and Parole Standards to address the problems of drug crime, prison crowding and crimes without ratings.

- (c) Documents Relied Upon: Attorney General Letter, Advisory Commission on Prison Terms and Parole Standards Minutes, Letters from the Governor, ORS 59.991, 144.120, ORS 421.120, Inmates Files, ORS Chapter 144.

Dec. 6, 1988
Date

Arline H. Amuckon
Vice-Chairperson

FISCAL ANALYSIS OF RULE PER ORS 183.335

<u>Effect on Revenue (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
NONE	NONE	NONE

<u>Effect on Expenditures (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
NONE	NONE	NONE

Organizational Impact: Some tasks now done by Board members may be delegated to the Law Clerk or other clerks.

No additional staff will be added.

Economic Impact: Hopefully, the changes in the crime severity ratings will act as a deterrent which will decrease the number of property crimes.

Reference for Data and Methods Used Regarding the Above:

Board of Parole Budget for 1987-89 Biennium. May 2, 1988 Advisory Commission on Prison Terms & Parole Standards Minutes.

Prepared by: Cindy J. Burgess
Cindy J. Burgess

Agency: Oregon Board of Parole

Title: Rules Coordinator

Date: December 6, 1988

- (2) When the Board has filed a temporary rule with the Secretary of State's Office, the Board shall mail a copy of the certificate and order and a copy of the temporary rule to the persons on the Board's mailing list, and to those listed in subsection (1)(c) of this section.
- (3) Notwithstanding subsection (2) of this section, when the Board has filed a temporary rule with the Secretary of State's Office, newspapers and media services shall only receive a copy of the certificate and order.

Rulemaking Procedure

255-01-010

- (1) All new and revised rules will be adopted in accordance with the provisions of ORS 183.310 to 183.550, the Model Rules of Procedure adopted by the Oregon Attorney General and ORS 192.610 to 192.690. Only those sections of the Model Rules which relate to rulemaking will be utilized by the Board.
- (2) The Board shall hold a business meeting, pursuant to Division 20, when a change in the rules is being considered and a notice of intent has been filed.

Contents of Notice of Rulemaking when Public Hearing will be held Only if Requested

255-01-015

(deleted)

Obtaining Copies of Board Rules

255-01-016

- (1) A copy of the Board's rules shall be provided free of charge to the inmate libraries at each of the Department of Corrections institutions and to any state agency or legislative entity that requests a copy.
- (2) Others who desire copies of Board's rules shall make their requests in writing. Ten (.10) cents per page will be levied to cover the costs for individual rules. Payment must be received in advance.

Submitting Draft of Rule to Legislative Counsel

255-01-020

Prior to a proposed change in the rules, including temporary rules, the Board may [shall] submit a draft of the proposed action to Legislative Counsel.

DIVISION 5
DEFINITIONS

This section has been renumbered.

Definitions
255-05-005

(1) "Active Community Supervision": An uninterrupted period of at least six months supervision in the community, requiring regular contact and monitoring by the supervising officer to assure that the conditions of parole are being met, that the parolee has committed no new crimes and to assure repayment of restitution, if required.

(2) "Active Supervision": Supervision requiring regular contact and monitoring by the supervising officer to assure continued compliance with the conditions of parole. (Div.92)

"Active Supervision" shall not include:

- (a) the period of confinement in local, state, or federal correctional facilities during the parole;
- (b) the period of time between the suspension of parole and the date parole is continued; and
- (c) inactive parole. (Div. 92)
- (d) involuntary commitment to a state or federal psychiatric facility.

(3) "Aggravation": The factors or elements surrounding the crime which appear to increase the seriousness of the criminal episode or reflects on the character of the offender pursuant to Exhibit E-1.

(4) "Base range": The range for each crime category reflected in Exhibit C under the "excellent" column.

(5) "Board Review Packet": The information the Board shall consider at the inmate's hearing. The contents of the packet shall be listed in each of the Divisions which establishes a hearing.

(6) "Correctional facility": any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order.

"Correctional facility" does not include a juvenile facility and applies to a state hospital only as to persons detained therein after acquittal of a crime by reason of mental disease or defect.

- (7) "Crime severity rating": A classification from a low of one (1) to a high of seven (7) assigned to each crime, based on the seriousness of the crime pursuant to Exhibit A.
- (8) "Crime spree": 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.
- (9) "Date of return": The date the prisoner is physically returned or available for return to the custody of the Department of Corrections following a hold in another in-state or out-of-state jurisdiction.
- (10) "De novo hearing": a new initial prison term hearing, required when there are additional consecutive sentences for crimes which occurred prior to the first prison term hearing.
- (11) "Exemplary Behavior": Behavior which is consistent with the conditions of parole.
- (12) "Future Disposition Hearing": The hearing at which the sanction for a parole violation is established.
- (13) "History/risk score": A rating from a high of eleven (11) to a low of zero (0) points, reflecting the prisoner's prior record and other factors which predict the likelihood of success on parole pursuant to Exhibit B.
- (14) "Inactive Parole" includes:
 (a) general parole conditions;
 (b) no supervision by a parole officer;
 (c) no parole fees; and
 (d) name and status maintained on the LEDS and EPR computer systems.
- (15) "In camera hearing": the inspection of a document by the Hearings Officer in private before the document may be introduced as evidence.
- (16) "Initial parole release date": A fixed date, by month, day and year, assigned to a prisoner for parole release based on the prisoner's matrix range, aggravation, mitigation, and judicially imposed minimum sentence(s).
- (17) "Inoperative time": time spent outside a state correctional facility without the authorization of the Department of Corrections.

- (18) "Less than the sum of the terms": an action by the Board whereby one or more of the consecutive ranges are treated as if they are concurrent.
- (19) "Matrix ranges": Ranges of months within which the Board has the discretion to set a prison term. The ranges are based on crime severity ratings and history/risk scores.
- (20) "The matrix": A table which displays the matrix ranges by showing the intersection of the crime severity rating and the history/risk score pursuant to Exhibit C.
- (21) "Mitigation": The factors or elements surrounding the crime which appear to decrease the seriousness of the criminal episode or reflects on the character of the prisoner pursuant Exhibit E-2.
- (22) "Parole": A conditional release from a state correctional facility into the community.
- (23) "Parole Revocation Hearing": A hearing to determined whether a parole violation ocurred.
- (24) "Particularly violent or otherwise dangerous criminal conduct": Conduct which is not merely unpleasant or offensive, but which is indifferent to the value of human safety or property.
- (25) "Parole Board Record": The file the Board maintains for each prisoner containing the information listed in GRS 144.185.
- (26) "Period under review" under Division 40, the time already served on the prison term, normally the three year period prior to the personal review hearing.
- (27) "Principal range": The range of months for the crime holding the highest crime severity rating. When the ranges are the same, one shall be designated as the principal range.
- (28) "Preponderance": evidence which as a whole shows that the fact sought to be proved is more probable than not.
- (29) "Probable Cause": a substantial objective basis for believing that more likely than not an offense or violation has been committed and the person to be arrested has committed it.
- (30) "Prison Term": The time established by the Board of Parole to be served before the parole release date.

- (31) "Prison term hearing": The hearing at which the Board establishes an inmate's prison term.
- (32) "Serious physical injury": [Any] Physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, or impairment of health or [the] protracted loss or impairment of the function of any bodily organ.
- (33) "Subcategory": the criteria for rating criminal conduct within the crime categories based on the seriousness of the offense (Exhibit A).
- (34) "Subordinate range": Any range less than or equal to the principal range.
- (35) "Subpoena duces tecum": a subpoena requiring the party to appear at a hearing with a document or piece of evidence to be examined at the hearing.
- (36) "Summing the ranges": [An action taken] Adding ranges of consecutive sentences to produce a unified range pursuant to OAR 255-35-021. [when there are consecutive sentences.]
- (37) "Unauthorized absence": time spent outside a state correctional facility without the authorization of the Department of Corrections.
- (38) "Unified range": the total range computed under OAR 255-35-021 for consecutive sentences.
- (39) "Unsum the ranges" means to establish a matrix range at less than the unified range. The effect of unsumming is to treat one or more of the ranges as if concurrent.
- (40) "Variations": The time periods which the Board may use to set a prison term above or below the matrix range pursuant to Exhibit D.
- (41) "Victim": The actual victim of the crime, a representative selected by the victim, or the victim's next of kin. In the case of a minor or incompetent victim, this term shall include the guardian of the victim.

DIVISION 25

ADJUSTED COMMITMENT DATE

Date Prison Term Starts to Run
255-25-005

- (1) The commencement date for the prison term is the date on which the prisoner is delivered to custody of the Department of Corrections for the purpose of serving the sentence.
- (2) In the case of additional consecutive sentences, the existing parole release date shall be rescinded and shall become the commencement date for the new sentence.

Credit for Time Served
255-25-010

- (1) Time served credit shall be granted towards the prison term for the following time periods:
 - (a) the actual, non-overlapping, [and] certified time served in the County Jail after arrest until the prison term begins; or
 - (b) the actual, non-overlapping, [and] certified time served in the County Jail as a condition of probation.
- (2) When credit is granted towards the prison term under subsection (1) of this section, the time served credits shall be deducted from the parole release date after a prison term has been established.
- (3) When credit is granted towards the prison term on a sentence consecutive to one being served, the adjusted commitment date shall be the prior parole release date. The time served credits shall be deducted from the newly established parole release date after a prison term has been established on the new consecutive sentence.
- [(3)](4) If additional time served credits are received after the prison term has been [calculated] established, the Board may [take action] administratively [to] correct the parole release date. The person so affected shall receive notice in writing of the Board's action.

Calculation of Adjusted Commitment Date
255-25-015

(deleted)
12/01/88

Method of Certification/Disagreement with Time Served

Calculation

255-25-020

(deleted)

Adjustment of Adjusted Commitment Date

255-25-025

(deleted)

Effect of Inoperative Time on Prison Terms

255-25-030

Inoperative time shall not count towards the completion of the prison term. In resetting the parole release date, the inoperative time shall be added to the prison term. The Board shall notify the inmate of its action.

Adjusted Commitment Date for Parole Violations

255-25-035

The adjusted commitment date for parole violators with new convictions or new commitments shall be calculated as outlined in OAR 255-75-078.

- (3) The Parole Board shall attempt to notify the victim, if the victim requests to be notified and furnishes the Board a current address, and the District Attorney of the committing county at least thirty (30) days before all hearings by sending written notice to the current addresses of both parties.

When a Full Board is Required; Procedures for Full Board Decision
255-30-015

- (1) Except as otherwise provided in this rule, all prison term hearings shall be conducted by a panel of two voting members of the Board.
- (2) The following hearings may be conducted by a quorum of the Board with final decision by a quorum of the Board: [more votes may be necessary for a final decision:]

- [c](a) cases where the prisoner was sentenced under ORS 161.725 and 161.735 as a dangerous offender;
- [e](b) cases where an extension of more than two years in the prison term is recommended for misconduct.
- [i](c) whenever a panel lacks a quorum and is unable to come to a unanimous decision to set a prisoner's prison term, and a second panel is assigned to hear the case and no quorum occurs in the second panel. [; and]

- (3) The following hearings may be conducted by a quorum of the Board with final decision by at least four members of the Board:

- [d](a) cases where the minimum sentence imposed by a judge pursuant to ORS 144.110 exceeds the matrix range and the variations permitted a panel [(reviewed by at least four members of the Board)];
- [f](b) whenever a panel recommends a decision to exceed the allowable variation from the matrix permitted to the panel and a third vote. [(review by at least four members of the Board)];
- [g](c) whenever the panel recommends denying parole [(review by at least four members of the Board)];
- [h](d) whenever a panel recommends a decision below a judicially set minimum sentence [(review by at least four members of the Board)];

[j](e) whenever a panel recommends unsuming a unified range [(review by at least four members of the Board)].

(4) The following hearings may be conducted by a quorum of the Board with review of the final decision by the full Board:

- (a) cases involving a prisoner sentenced to life imprisonment, to death, for murder, or for aggravated murder [(review by the full membership of the Board)];
- (b) cases where the prisoner was convicted of a crime involving the death of a victim, whether or not the prosecution directly charged the prisoner with causing the death of the victim, [(review by full membership of the Board);]

[3](5) If a Board member is not present at a Full Board hearing, and review is compelled by statute, rule, or the vote may affect the outcome of the hearing, the Board member may vote administratively after reviewing the Board Review Packet and the handwritten Board Action Form with attached exhibits [record of the hearing], or may request that a hearing be rescheduled. The Board's action shall be considered final if the absent member's vote is not required for a final decision.

Procedures for Full Board Decisions

255-30-020

(deleted)

Teleconference Hearing

255-30-021

- (1) A prisoner in custody in another jurisdiction may have a hearing by teleconference call, or may be returned to Oregon for a hearing.
- (2) A prisoner who resides outside of Marion County may have a hearing by teleconference call.

Prisoner Appearance at Parole Board Hearing

255-30-023

- (1) The prisoner shall be present in person or by telephone at the Parole Board hearing.
- (2) A prisoner who refuses to appear may be compelled to do so by the Board

Parole Denial: When Parole May be Denied
255-35-030

- (1) The Board with four (4) affirmative votes may deny parole pursuant to ORS 144.120(4) when:
 - (a) The offense of commitment included particularly violent or otherwise dangerous criminal conduct as defined by section [255-35-005(6)] 255-05-005(24);
 - (b) The offense was preceded by two (2) or more Class A or Class B felony convictions; or
 - (c) The prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance such as to constitute a danger to the health or safety of the community.
- (2) A two-member panel may refer the matter to the Full Board with the recommendation that parole should be denied based on the criteria listed in subsection (1) of this section.
- (3) 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.

Variations From the Ranges for Aggravation or Mitigation:
Statements for Record, Prior Disclosure to Prisoners
255-35-035

(deleted)

Resetting Pre-Guideline Parole Hearing Dates for Category 7
Offenders
255-35-040

(deleted)

DIVISION 40

[REOPENING CASES,] PERSONAL REVIEWS [,] AND REDUCTIONS IN PRISON TERMS

Scheduling of Personal Reviews

255-40-005

(temp amend. 10/4/88, perm. 12/01/88)

- (1) Personal reviews may be conducted every three years. The Board will only conduct a personal review hearing after it has received from the institution a recommendation for a [seven month] reduction in the prison term [for the period under review] as described in OAR 255-40-025(1).
- (2) Personal review dates shall be computed from the [date of admission to the institution] original adjusted commitment date on an uninterrupted period of incarceration.
- (3) The purpose of a personal review hearing shall be to determine the progress of the prisoner and whether such progress indicates outstanding reformation so as to warrant a reduction in the prison term under the criteria listed in OAR 255-40-025(2).
- (4) Prisoners sentenced for aggravated murder or as dangerous offenders, and those parole denied are not subject to personal reviews.

Procedure for Personal Reviews

255-40-010

Personal reviews shall be conducted by a panel or a Full Board pursuant to OAR 255-30-015.

Purpose

255-40-015

(deleted)

Reopening Cases: When; What is Necessary

255-40-020

(Repealed 12/01/88)

- [(1) Any three (3) Board members may reopen any case for reconsideration upon the formal written request of a prisoner if:

- (a) statutory changes have reclassified the criminal conduct involved;
 - (b) documented new information is received which is relevant to a recalculation of the prison term;
 - (c) rule changes would effect the inmate's prison term; or
 - (d) clerical error is established. The Board may at its discretion take administrative action or schedule a hearing to correct the error. The prisoner shall be notified in writing of Board action. If the Board finds that the corrected error would be adverse to the prisoner, the Board shall schedule a hearing.
- (2) The Board may review a case administratively under subsections (1)(b) and (c) of this section if the range changes benefit the prisoner and an equal adjustment or lower is made.
 - (3) The Board shall state the specific reasons for denial of a request to reopen a hearing.
 - (4) An individual Board member with the concurrence of two other Board members may move to reopen a hearing.
 - (5) The inmate may waive the right to adequate notice and receipt of the Board Review Packet, and the hearing may be reopened based on the criteria listed in subsection (1) of this section.]

Resetting the Parole Release Date to an Earlier Date

255-40-025

(amended 11/22/88)

- (1) An established prison term as defined in section [255-30-005(2)] 255-05-005(30), may be reduced under subsection (2) of this section upon the prisoner's application for a hearing and the receipt of a recommendation from the parent institution. Such a request for a hearing must come to the chairperson of the Board, and upon receipt, a hearing will be scheduled. The Board may at its discretion take administrative action to reset the parole release date to an earlier date.
- (2) If the prisoner displays an extended course of conduct indicating outstanding reformation, the Board may grant a reduction of up to seven months of the three year period under review, under this section. Cases will be reviewed based on the following criteria:
 - (a) the individual merits of each case;

- (b) the seriousness of the crime;
 - (c) the protection of the public
 - (d) demonstrable achievement in dealing with problems present at the time of incarceration and associated with criminal conduct (e.g., psychological disorder, drug or alcohol dependency, lack of educational or vocational skills);
 - (e) documented cooperation with authorities while in custody where a substantial benefit is derived by the authorities; and
 - (f) the absence of disciplinary actions resulting from violation of rules within the three year period.
- (3) Special requests for reduction from the superintendent of the parent institution and the Director of the Department of Corrections may be scheduled for a hearing with the concurrence of the majority of the Board, or may be considered administratively.
- (4) The criteria for a special request reduction shall be:
- (a) when an inmate's documented cooperation with authorities has contributed significantly to the safety and security of the facility; or
 - (b) when cooperation with law enforcement officials results in the apprehension, interruption and conviction of persons involved in significant on going criminal activity.
- (5) The prisoner shall have the burden of establishing that his/her conduct meets the criteria for any [date] reduction under consideration.

Effect of Minimum Terms on Reductions

255-40-026

- (1) If the prisoner has a judicial minimum sentence which was previously upheld pursuant to ORS 144.110, the minimum must be overturned by four (4) concurring votes of the Board before a reduction can be granted from the previously established minimum set.
- (2) If the prisoner has a mandatory minimum sentence pursuant to ORS 161.610, a reduction cannot be granted below the mandatory minimum sentence and the statutory reduction for goodtime.

- (3) The Board may postpone the parole release date up to one day before the prisoner's goodtime date.

Rescission of Parole: Unauthorized Absence; Law Violation
255-50-015
(amended 11/22/88)

- (1) The Board may administratively rescind a parole release date [when] at any time after the Board is informed of reasonable grounds to believe a person has violated a law or otherwise engaged in serious misconduct. A fact-finding hearing shall be held by a Hearings Officer to determine if the law violation or serious misconduct occurred. However, if the prisoner has received an additional sentence, no hearing is required.

- (2) The parole release date of a prisoner who is on unauthorized absence from a correctional facility shall be administratively rescinded by a majority of the Board. A hearing may be scheduled when the prisoner is available or the Board may administratively reset the parole release date by adding the inoperative time to the prison term.

- (3) Inoperative time shall be added to the prison term in the following manner:

- (a) If the unauthorized absence occurs prior to the parole release date and the prisoner returns to custody of the Department of Corrections after the parole release date:

(A) Count the first day of unauthorized absence and every day up to the parole release date.

(B) Add the total number of days determined in (A) of this subsection to the date of availability for return to custody of the Department of Corrections following a hold in another in-state or out-of-state jurisdiction.

- (b) If the unauthorized absence occurs prior to the parole release date and the prisoner returns to custody of the Department of Corrections prior to the parole release date:

(A) Count the first day of unauthorized absence and every day up to the date of availability for return to the Department of Corrections following a hold in another in-state or out-of-state jurisdiction.

(B) Add the total number of days determined in (A) of this subsection to the previous parole release date.

(c) For purposes of calculations pursuant to subsection (3) of this section if the initial parole release date was deferred to a specific future date that specific future date is the parole release date.

Postponement Procedure: Unauthorized Absence; Law Violation
255-50-016

The procedure for a postponement hearing shall be in accordance with the provisions of rule 255-50-010 (2).

Waiver
255-50-017
(deleted)

Hearing After Rescission of Parole
255-50-018
(deleted)

Basis for Rescission
255-50-020
(deleted)

Misconduct Board Review Packet
255-50-025

The Misconduct Board Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) [psych] psychological evaluations (last 6 months);
- (4) disciplinary report from the institution;
- (5) correspondence;
- (6) field parole analysis report; and
- (7) court orders.

- (b) violations involving a finding of new criminal activity shall result in an additional term of eight to twelve months unless the Board finds aggravation, mitigation, denies parole.
- (c) In establishing a sanction, the commencement date shall be the date of arrest for the parole violation which resulted in the revocation of parole.

Variation From Guidelines for Aggravation/Mitigation Permitted
255-75-095

- (1) Variation from the terms set fourth in rule 255-75-090 (a) and (b), is permitted if the Board finds aggravation or mitigation as shown in either Exhibit E or Exhibit H.
- (2) Variations from the terms set forth in rule 255-75-090 (a) and (b), shall be those established in Division 35 of these rules and shown in Exhibit D.

Denial of Reparole Consideration
255-75-096

- (1) The Board may deny reparole consideration and require the parole violator to serve to the statutory good time date. This action requires the affirmative vote of at least four voting members.
- (2) In cases where setting a parole violator within the guidelines set forth in rule 255-75-090 (a) and (b) would require the parole violator to serve to the end of the sentence, four votes are not required.

Restoration of [Parole Violation] Statutory and Meritorious
Goodtime
255-75-098

Upon recommendation of the superintendent of the institution,
[T]he Board may restore part or all of forfeited statutory and meritorious goodtime when:

- (1) there is no violation of parole; [and a recommendation to restore parole violation goodtime is received from the superintendent of the institution;] or
- (2) parole is revoked on a best interest basis and there was no actual parole violation; [, and a recommendation to restore parole violation goodtime is received from the superintendent of the institution.] or
- (3) parole is revoked on a technical violation; or

- (4) parolee is within 180 days of discharge; or
- (5) parole is revoked for new criminal activity which is a misdemeanor or class C felony and:
 - (a) the new criminal activity was already sanctioned at the local level; or
 - (b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.

Future Disposition Hearing Packet
255-75-100

The Future Disposition Hearing Packet shall contain:

- (1) institution face sheet;
- (2) revocation recommendation;
- (3) final order of revocation;
- (4) administrative action sheet;
- (5) revocation hearing findings;
- (6) Board Action Form ordering parole;
- (7) disciplinary report, when extension is recommended;
- (8) recommendations for [parole violation] statutory goodtime and meritorious goodtime;
- (9) correspondence;
- (10) statements of imprisonment for parole violation; and
- (11) face sheet from old parole analysis report.

DIVISION 80

ADMINISTRATIVE APPEAL

THE TEXT OF THIS DIVISION IS CHANGED IN ITS ENTIRETY

Procedure for Requesting a Review
255-80-005

- (1) A prisoner may request an administrative review by sending Exhibit 0 to the Board concisely explaining how his/her case fits the criteria for review defined in rule 255-80-010.
- (2) Requests for administrative review must be made within forty-five (45) days after the Board's final action on the reviewed issue.
- (3) A waiver of the 45 day deadline may be granted only if relevant new information is submitted which was particularly difficult to obtain.
- (4) An administrative review may be initiated by a Board member without regard to the 45 day deadline.
- (5) If the Board or its designee determines that the request is consistent with the criteria as defined in rule 255-80-010, and meets the deadline requirements, the matter will be resolved by the procedures outlined in OAR 255-80-012.
- (6) When the appeal is denied, the Board or its designee shall inform the prisoner in writing of the specific reasons for denial and the prior decision remains in effect.

Criteria for Granting an Administrative Review
255-80-010

The criteria for granting review 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 [initial prison term or de novo] hearing which, through no fault of the prisoner, was not considered; or
- (3) Pertinent information was not available at the time of the [initial prison term or de novo] hearing, e.g. [i.e.], information concerning convictions from other jurisdictions; or [.]
- (4) The action of the Board is inconsistent with its rules or policies or is contrary to law; or

- (5) The matters raised on review may have an [affect] effect on the original decision; or [.]
- (6) There is a change in the prisoner's sentence; or
- (7) There is a change in the Board's rules or the statutes which would substantively affect the prisoner, e.q., change his/her prison term, parole status, or parole conditions.

Administrative Review Procedure
255-80-012

- (1) If the Board or its designee determines that the request for review is consistent with the criteria in OAR 255-80-010, the case may be opened for review.
- (2) The review may be conducted by the following methods:
 - (a) administrative file pass, with the number of concurring votes required by OAR 255-30-015; or
 - (b) other administrative action by the Board or its designee, i.e., to correct errors in the history risk score, crime category, credit for time served, inoperative time or adjusted commitment dates; or
 - (c) administrative hearing, in cases where review would cause an adverse result for the prisoner.
- (3) If inmate waives the right to adequate notice and receipt of the Board Review Packet, the administrative review hearing shall be conducted.
- (4) The prisoner shall be notified in writing of the Board decision and findings.

Administrative Review Hearing Packet
255-80-015

The Administrative Review Hearing Packet shall contain:

- (1) institution Face Sheet;
- (2) Board Action Form granting administrative review;
- (3) all information attached to the Board Action Form granting review;
- (4) Administrative Review Request;
- (5) all Board Action Forms since the prison term hearing;
- (6) psychiatric or psychological evaluations within the immediately preceding 6 months;
- (7) correspondence;
- (8) field Parole Analysis Report; and
- (9) court orders [.] ;
- (10) Inmates' Rights and Board of Parole Procedures.

Procedure: Approving or Denying 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] be effective on the date the chair or chair's designee signs the certificate of discharge.

Extension of Period of Supervision; Procedure: Approving or Denying Discharge; Further Proceedings
255-90-010

- (1) Prior to the expiration of the parolee's period of supervision the supervising parole officer shall send to the Board a closing summary. This summary shall include:
 - (a) an evaluation of the parolee's performance;
 - (b) the status of the parolee's restitution obligation, if any;
 - (c) the parolee's employment status; and
 - (d) the parolee's residence;
 - (e) any fines or fees;
 - (f) treatment programs; and
 - (g) any new criminal activity.
- (2) The summary shall recommend one of two courses:
 - (a) that the parolee be discharged and a certificate of discharge be issued; or
 - (b) that the discharge not be granted, with supporting reasons for this action in the recommendation;
- (3) When discharge is not granted, a parole revocation hearing shall be conducted to determine if parole should be revoked or if the parole period should be extended.
- (4) The Board shall notify the parolee in writing of the extension of the parole supervision period setting forth the reasons for the extension. The date of extension shall be from the date of the Board's review.
- (5) When discharge is granted, the Board shall notify the parolee in writing that the parolee has been discharged.
- (6) Notwithstanding subsections (1) to (5) of this rule, the supervising parole officer may submit a written recommendation to the Board for early discharge at any time after six months of supervised parole, providing that fees and restitution are paid in full.

EXHIBIT A

CRIME SEVERITY RATINGS

<u>ORS</u>	<u>CRIME</u>	<u>FELONY CLASS</u>	<u>RATING</u>
163.535	Abandonment of Child	C	2
166.085	Abuse of Corpse	C	3
475.993	Act By Registrant	C	1
163.095	Aggravated Murder	U	7,8
164.057	Aggravated Theft I	B	4
164.325	Arson I	A	6,5
164.315	Arson II	C	2
163.185	Assault I	A	6,5
163.175	Assault II	B	4
163.165	Assault III	C	3,2
161.405	Attempt - The highest crime severity rating for the felony one level below the crime attempted.(e.g., Attempted Burglary I would receive the highest rating for a Class B Felony.)		
163.515	Bigamy	C	1
162.015	Bribe Giving	B	3
162.025	Bribe Receiving	B	3
162.275	Bribe Receiving by a Witness	C	2
162.265	Bribing a Witness	C	2
164.225	Burglary I	A	5,4,3
164.215	Burglary II	C	3,2,1
166.220	Carrying Weapon With Intent to Use	C	2
163.275	Coercion	C	4,3
167.017	Compelling Prostitution	B	4
164.377(2)(3)	Computer Crime	C	2,1
161.450	Conspiracy - Classified at same level as conspired crime, except murder or treason which are reduced to a felony. (e.g., Conspiracy to Commit Burglary I is an A Felony.)		
803.080	Counterfeit Vehicle Title	C	1
163.005	Criminal Homicide	A	2
164.365	Criminal Mischief I	C	1
163.205	Criminal Mistreatment I	C	2
163.555	Criminal Nonsupport	C	1
165.022	Criminal Possession Forged Instrument I	C	1
165.032	Criminal Possession Forgery Device	C	1
164.140	Criminal Possession Rented/Leased Property	C	2,1
163.145	Criminally Negligent Homicide	C	4,3
163.257	Custodial Interference I	B	3
163.245	Custodial Interference II	C	1
163.673	Dealing in Depictions of Child's Sexual Conduct	B	4

475.995(1)	Delivery of Controlled Substance to Minor	A	4
475.995(2)	Delivery of Controlled Substance to Minor	B	3
475.995(5)	Delivery of Marijuana to Minor	A	<u>4</u>
475.992(2)	Delivery of Marijuana for Payment	B	4,3,1
167.365	Dogfighting	C	1
811.175;	Driving While		
811.182	Suspended or Revoked	C	1
260.402; 260.555; 260.575; 260.615;			
260.645; 260.665(2); 260.655(3);	Election Law		
260.665(2)(d)-(f); 260.715	Offenses	C	1
164.885	Endangering Aircraft	C	2
162.165	Escape I	B	5
162.155	Escape II	C	2,1
166.270	Exconvict in Possession	C	2
162.205	Failure to Appear I	C	2
811.705	Failure to Perform Duties of Driver	C	3,2
822.605	False Swearing Relating to Regulation Vehicle Related Business	C	1
532.140; 532.610;	Forest Products		
532.620; 532.990(2)	Offenses	U	1
803.230	Forge/Alter Vehicle Title Regis.	C	1
165.013	Forgery I	C	3,2,1
59.055; 59.115; 59.127;			
59.135; 59.145; 59.165;	Fraud		
59.730; 59.740; 59.750;	Involving Securities	B	4,3
59.760; 59.770; 59.780;			
59.790; 59.800;			
165.055(3b)	Fraudulent Use of Credit Card	C	1
811.185	Habitual Traffic Offender (OMVVCOD)	C	1
162.325	Hindering Prosecution	C	1
471.440	Illegal Manufacture of Mash; Operating Distillery Without a License	C	1
166.410	Illegal Manufacture, Importation, Sale, Gift, Loan or Possession of Firearms	C	1
163.525	Incest	C	1
166.165	Intimidation I	C	2
163.235	Kidnapping I	A	6
163.225	Kidnapping II	B	4
163.118	Manslaughter I	A	6
163.125	Manslaughter II	B	5,4,3
475.992(1);	Manufacture or Delivery of Controlled		
475.993(2a)	Substance	A,B,C	5,4,3,1
163.115	Murder	U	7,8
165.065(3b)	Negotiating a Bad Check	C	2,1
166.450	Obliteration of ID Marks (Firearm)	C	1
815.410	Odometer Tampering		
815.430	or False Report	C	1
163.680	Paying for Viewing Child's Sexual Conduct	C	1
162.065	Perjury	C	2
496.992	Poaching	C	2
475.992(4)	Possession of a Controlled Substance	B,C	3,2,1

165.070	Possession of a Fraudulent Communications Device	C	2,1
167.137	Possession of Gambling Records	C	1
819.300	Possession of a Stolen Vehicle	C	1
166.275	Possession of Weapon By Inmate of Penal Institution	A	5
167.127	Promoting Gambling I	C	1
167.012	Promoting Prostitution	C	2
166.720	Racketeering	A	5,4
163.375	Rape I	A	6,5
163.365	Rape II	B	4,3
163.355	Rape III	C	2
166.015	Riot	C	2
164.415	Robbery I	A	6,5
164.405	Robbery II	B	4
164.395	Robbery III	C	2
167.062(4)	Sadomasochistic Abuse or Sexual Conduct in Live Show	C	1
163.425	Sexual Abuse I	C	3
163.411	Sexual Penetration Foreign Obj. I	A	6,5
163.408	Sexual Penetration Foreign Obj. II	B	4
163.405	Sodomy I	A	6,5
163.395	Sodomy II	B	4
163.385	Sodomy III	C	2
161.435	Solicitation - Classified one level below crime solicited.		
165.090	Sports Bribe Receiving	C	2
165.085	Sports Bribery	C	2
162.185	Supplying Contraband	C	4,3,2,1
167.212	Tampering With Drug Records	C	1
162.285	Tampering With a Witness	C	2
164.085	Theft by Deception	C	2,1
164.075	Theft By Extortion	B	4,3
164.095	Theft By Receiving	C	2
164.055	Theft I	C	2,1
164.125	Theft of Services	C	2,1
164.065	Theft, Lost/Mislaid Property	C	1
819.310	Trafficking in Stolen Vehicles	C	3
163.677	Transporting Child Pornography	B	4
166.005	Treason	U	7
164.135	Unauthorized Use of Vehicle	C	2,1
475.992(3)	Unlawful Creation or Delivery a Counterfeit Substance	A,B,C	5,4,3,1
166.660	Unlawful Paramilitary Activity	C	1
163.670	Using a Child in a Display of Sexually Explicit Conduct	A	6,5
247.121(2); 247.125;	Voter Registration		
247.340(4); 247.420(2)	Offenses	C	1
411.630; 411.640;			
411.675; 411.690;	Welfare/		
411.840	Food Stamp Fraud	C	2,1

EXHIBIT A

PART II

Amendments Permanently Filed and Effective 11/22/88
Effective Dates as Noted.

Aggravated Murder
163.095

Effective 7/1/88

SUBCATEGORY 1 - RATING 8:

Stranger to stranger; cruelty to victim; prior conviction of murder or manslaughter; evidence of significant planning or preparation.

SUBCATEGORY 2 - RATING 7:

All other cases of aggravated murder.

Arson I
164.325

Unchanged since 1985

SUBCATEGORY 1 - RATING 6:

Knew or should have known premises were occupied at time of act or injury.

SUBCATEGORY 2 - RATING 5:

All other cases of Arson I.

Assault I
163.185

Unchanged since 1985

SUBCATEGORY 1 - RATING 6:

Cases of Assault I in which there is intentional cause of serious physical injury to another by means of a deadly or dangerous weapon.

SUBCATEGORY 2 - RATING 5:

Cases of Assault I in which the victim(s) provoke the crime to a substantial degree or other evidence that misconduct by the victim(s) contributed substantially to the criminal episode.

Assault III
163.165

Effective 4/4/88

SUBCATEGORY 1 - RATING 3:

Assault III/Vehicular where defendant has at least 2 prior DUII convictions within a 5 year period.

SUBCATEGORY 2 - RATING 2:

All other cases of Assault III.

Burglary I
164.225

Effective 7/20/88

SUBCATEGORY 1 - RATING 5:

Entry into a dwelling, where defendant causes or attempts to cause physical injury to any person; is armed with a deadly weapon; uses or threatens to use a dangerous weapon; or death occurs.

SUBCATEGORY 2 - RATING 4:

Entry into a dwelling in which goods taken had a value of \$5,000 or more.

SUBCATEGORY 3 - RATING 3:

Entry into a dwelling in which goods taken had a value of less than \$5,000.

Burglary II
164.215

Unchanged since 1985

SUBCATEGORY 1 - RATING 3:

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

SUBCATEGORY 2 - RATING 2:

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

SUBCATEGORY 3 - RATING 1:

Theft of less than \$1,000.

Coercion
163.275

Unchanged since 1985

SUBCATEGORY 1 - RATING 4:

Compelling another to act through threat of serious physical harm or property damage; blackmail.

SUBCATEGORY 2 - RATING 3:

All others.

Computer Crime
164.377(2)(3)

Added 7/1/88; Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Criminal Possession Rented/Leased
Property
164.140

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Criminally Negligent Homicide
163.145

Effective 4/4/88

SUBCATEGORY 1 - RATING 4:

Vehicular Homicide where defendant with criminal negligence causes the death of another person.

SUBCATEGORY 2 - RATING 3:

Cases where the victim's misconduct contributed to the criminal episode [(i.e. victim was drinking buddy of defendant)] .

Delivery of Controlled Substance
475.992(1);475.995;475.993(2)(a)

Effective 7/14/88

SUBCATEGORY 1 - RATING 5:

Operating or participating in the operation of a location in which crack cocaine or heroin is sold. 475.993(2)(a). The delivery of heroin as part of a distribution or sales network. See Exhibit A-III. 475.992(1)(a)-(b).

SUBCATEGORY 2 - RATING 4:

Delivery of an illegal drug (including, but not limited to methamphetamines) (Schedule I, II or III) other than marijuana where there is evidence that the delivery is part of a drug selling or distribution network or scheme; see Exhibit A-III. 475.992(1)(a)-(c).

Knowingly owning or providing a location for the sale or distribution of illegal drugs other than marijuana. 475.993(2)(a) (Schedule I).

Delivery of any quantity of illegal drug in and on, or within one thousand feet of, the real property comprising a public or private elementary and/or middle school. 475.992(1)(a)-(c); 475.992(2); 475.995. (Schedule I, II or III.)

Delivery or assisting in the delivery of illegal drugs in which a minor is involved. 475.995(1) & (5) (includes marijuana, but not Schedule III.)

SUBCATEGORY 3 - RATING 3:

Delivery or assisting in the delivery of illegal drugs for compensation or profit in circumstances other than those listed above. 475.992(1)-(c); 475.992(2)(a); 475.995. (Schedule I, II or III.)

SUBCATEGORY 4 - RATING 1:

Delivery of a small amount of any illegal drug not for profit or compensation. All other cases of delivery of illegal drugs not noted above.

Escape II
162.155

Effective 12/06/88

SUBCATEGORY 1 - RATING 2:

Use or threat to use physical force escaping from custody; or, having been convicted or found guilty of a felony, escapes from custody imposed as a result thereof; or escapes from a correctional facility or, while otherwise under the jurisdiction of the Psychiatric Security Review Board, departs from state without authorization of Board.

SUBCATEGORY 2 - RATING 1:

Escapes while on a pass, terminal leave or work release from a county correctional facility; all other cases.

Failure to Perform Duties of a Driver
Where There is Injury or Death
811.705

Effective 7/1/88

SUBCATEGORY 1 - RATING 3:

If death results.

SUBCATEGORY 2 - RATING 2:

Injury and all other cases.

Forgery I
165.013

Effective 7/1/88

SUBCATEGORY 1 - RATING 3:

Loss, potential loss, or receiving of over \$5,000.

SUBCATEGORY 2 - RATING 2:

Loss, potential loss, or receiving of \$1,000 to \$5,000.

SUBCATEGORY 3 - RATING 1:

Loss, potential loss, or receiving of under \$1,000.

Fraud Involving Securities

Effective 7/20/88

59.055; 59.115; 59.127; 59.135; 59.145; 59.165;
59.730; 59.740; 59.750; 59.760; 59.770; 59.780; 59.790; 59.800

SUBCATEGORY 1 - RATING 4:

Loss, potential loss, or receiving of \$10,000 or more

SUBCATEGORY 2 - RATING 3:

All other cases of fraud involving securities.

Manslaughter II

Effective 4/4/88

163.125

SUBCATEGORY 1 - RATING 5:

Cases where death of a victim, usually a child, results from prolonged abuse; failure to provide for victim's welfare resulting in death; medical treatment withheld to conceal physical signs of abuse.

SUBCATEGORY 2 - RATING 4:

Causes another to commit suicide or aids, cases where death of victim involves use of a weapon or follows an assault; cases where death is by negligent use of vehicle and defendant has at least 2 prior DUII convictions within 5 years.

SUBCATEGORY 3 - RATING 3:

Cases where death is by negligent use of a vehicle; all other cases.

Manufacture of Controlled Substance
475.992(1); 475.993(2)(a)

Effective 7/14/88

SUBCATEGORY 1 - RATING 5:

Operating or assisting in the operation of a laboratory for the production of methamphetamines. Cultivating or assisting in the manufacture of marijuana for distribution or sale as part of a distribution network or scheme; see Exhibit A-III. Cultivation or assisting in the cultivation of more than 100 marijuana plants.

SUBCATEGORY 2 - RATING 4:

Manufacturing or assisting in the manufacture of illegal drugs other than methamphetamines or marijuana, when there is evidence that the manufacture is part of a drug selling or distribution network or scheme; see Exhibit A-III. (Schedule I, II or III.) Knowingly owning or providing a location for the manufacture of illegal drugs other than marijuana for sale or distribution. 475.993(2)(a) (Schedule I).

SUBCATEGORY 3 - RATING 3:

Manufacture or assisting in the manufacture of illegal drugs for distribution. Manufacture of marijuana in the amount of 25 or more plants and/or in circumstances other than those listed in Subcategory 1. See Exhibit A-III. (Schedule I, II or III.)

SUBCATEGORY 4 - RATING 1:

Manufacture of illegal drugs for the offender's own use. All other cases of manufacturing of illegal drugs. (Schedule I, II or III.)

Murder
163.115

Unchanged since 1985

Breakdown is the same as for Aggravated Murder
All other cases of murder.

Negotiating a Bad Check
165.065(3b)

Added 7/1/88; Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Possession of Controlled Substance
475.992(4)

Effective 7/14/88

SUBCATEGORY 1 - RATING 3:

Possession of a large amount of illegal drugs other than marijuana with intent to deliver. (Schedule I, II or III.) See Exhibit A-III. Possession of illegal drugs which constitute the precursors or byproducts of the manufacturing process (as defined by ORS 475.940).

SUBCATEGORY 2 - RATING 2:

Possession of illegal drugs other than cocaine/crack, methamphetamines, and heroin with intent to deliver. (Schedule I, II & III.)

SUBCATEGORY 3 - RATING 1:

Possession of illegal drugs in circumstances other than those listed above. (Schedule I, II or III.)

Possession of a Fraudulent
Communications Device
165.070

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Racketeering
166.720

Unchanged since 1985

SUBCATEGORY 1 - RATING 5:

The principle party involved in violation of the Racketeering statute. Involvement is that of planning, directing or participating in the scheme or schemes resulting in direct profit or gain.

SUBCATEGORY 2 - RATING 4:

The subordinate party involved in violation of the Racketeering statute. Involvement is limited to acting as an agent or employee of the principle. There is no involvement in planning, directing or participating in the scheme or schemes in violation of this statute.

Rape I
163.375

Unchanged since 1985

SUBCATEGORY 1 - RATING 6:

Stranger to stranger; breaking and entering; threat to use or use of weapon; actual or threat of serious bodily or emotional harm; intercourse with female or male under 12.

SUBCATEGORY 2 - RATING 5:

All other cases.

Rape II
163.365

Unchanged since 1985

SUBCATEGORY 1 - RATING 4:

Cases in which the female is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; or the female is under 14 years of age.

SUBCATEGORY 2 - RATING 3:

All other cases.

Robbery I
164.415

Effective 7/20/88

SUBCATEGORY 1 - RATING 6:

Cases of robbery in which the defendant is armed with a deadly or dangerous weapon; discharges a firearm; uses a dangerous weapon; makes explicit or immediate threats by word or gesture; causes death of or physical injury to the victim.

SUBCATEGORY 2 - RATING OF 5:

All other cases of Robbery I.

Sexual Penetration with Foreign Object I
163.411

Unchanged since 1985

SUBCATEGORY 1 - RATING 6:

Sexual Penetration with Foreign Object I is broken down in the same manner as Rape I.

SUBCATEGORY 2 - RATING 5:

All other cases.

Sodomy I
163.405

Unchanged since 1985

SUBCATEGORY 1 - RATING 6:

Sodomy I is broken down in the same manner as Rape I.

SUBCATEGORY 2 - RATING 5:

All other cases.

Supplying Contraband

Effective 12/06/88

162.185

SUBCATEGORY 1 - RATING 4:

While confined in a correctinal facility, juvenile facility or state hospital makes, obtains or possesses any firearm; knowingly introduces any firearm into a correctional facility, juvenile facility, or state hospital.

SUBCATEGORY 2 - RATING 3:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses dangerous weapon; knowingly introduces any dangerous weapon into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 3 - RATING 2:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses any Schedule I, II, or III controlled substance except marijuana; knowingly introduces any Schedule I, II or III controlled substance into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 4 - RATING 1:

All other cases.

Theft by Deception
164.085

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

12/06/88

(10)

Theft by Extortion
164.075

Unchanged since 1985

SUBCATEGORY 1 - RATING 4:

Threat of serious bodily harm or death.

SUBCATEGORY 2 - RATING 3:

All others.

Theft I
164.005

Amended 4/4/88 & 8/5/88; Effective 8/5/88

SUBCATEGORY 1 - RATING 2:

Theft or receiving of \$1,000 [to \$10,000] or more.
Theft of a motor vehicle for personal transportation.
Theft of a livestock animal.
Theft of a firearm or explosive.
Theft during riot or catastrophe.

SUBCATEGORY 2 - RATING 1:

Thefts under \$1,000.

Theft of Services
164.125

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Unauthorized Use of Vehicle
164.135

Unchanged since 1985

SUBCATEGORY 1 - RATING 2:

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

SUBCATEGORY 2 - RATING 1:

All others.

Unlawful Creation or Delivery
of Counterfeit Substance
475.992(3)

Effective 7/14/88

Breakdown is the same as for Manufacture or Delivery of Controlled Substance.

Using a Child in a Display of
Sexually Explicit Conduct
163.670

Effective 4/4/88

SUBCATEGORY 1 - RATING 6:

Child 12 years of age or under.

SUBCATEGORY 2 - RATING 5:

All other cases.

Welfare/Food Stamp Fraud
411.630; 411.640; 411.675;
411.690; 411.840

Added 4/4/88; Theft I amended 8/5/88

Breakdown is the same as for Theft I.

EXHIBIT A-III

Effective 7/14/88

NOTE: FOR PURPOSES OF THE EXHIBIT A "illegal drugs" MEANS SCHEDULE I, II, AND III SUBSTANCES.

EVIDENCE OF A DRUG SELLING OR DISTRIBUTION SCHEME OR NETWORK INCLUDES, BUT IS NOT LIMITED TO THE FOLLOWING:

- A. The presence of substantial amounts of cash on the premises;
- B. Heavy traffic on the premises;
- C. The presence of weapons on the premises;
- D. The presence of packaging materials such as scales, wrapping or foil;
- E. The presence of drug transaction records or customer lists;
- F. The presence of quantities of stolen property;
- G. Modification of structures by painting, wiring, plumbing, or lighting to facilitate the offense;
- H. Possession of large amounts of illegal drugs creates a presumption of intent to sell or deliver;
- I. Possession of real or personal property of substantial value, directly or by proxy, without plausible means of lawful income;
- J. A showing that the offender has engaged in repeated similar criminal acts;
- K. The presence of manufacturing paraphernalia, including recipes, precursor chemicals, or laboratory equipment on the premises;
- L. Use of public lands for the manufacture of drugs;
- M. Deployment of security devices with the potential of injuring intruders, including spring guns or explosive devices; or
- N. The presence of substantial quantities of controlled substances on the premises.

EXHIBIT D

GUIDELINE MATRIX
STANDARD VARIATIONS FROM THE RANGES UNDER RULE 255-35-035

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)	<u>24</u>	<u>24</u>	<u>24</u>	<u>24</u>
7 (Board)	36	36	36	36
8 (Board)	36	36	36	36

*All numbers represent standard variations in months.

The maximum variation allowed for crime categories 1 through 6 are:

- (a) For a panel: two standard variations.
- (b) For a panel with a concurring vote (3 concurring votes): three times the standard variation.
- (c) For four (4) concurring votes: four times the standard variation.
- (d) For five (5) concurring votes after a hearing before the Board pursuant to OAR 255-30-015; five times the standard variation.

The maximum variations allowed for Category 7 and 8 crimes are:

- (a) For three (3) concurring votes: the standard variation of 36 months.
- (b) For four (4) concurring votes: two times the standard variation of 36 months (72 months).
- (c) For five (5) concurring votes: three times the standard variation of 36 months (108 months).

The Board may deny parole pursuant to OAR 255-35-030.

12/6/88

EXHIBIT O: ADMINISTRATIVE REVIEW REQUEST FORM, 12/06/88
PURSUANT TO BOARD OF PAROLE RULE: CHAPTER 255, DIVISION 80

You may request an administrative review of the Parole Board action taken in your case (final order). Your request must meet at least one of the criteria listed below:

- (1) the Board action is not supported by the 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.

Requests must be specific, they should explain:

- (1) how the written findings are in error; or
- (2) what information was available, and why it was not considered (i.e., documentation of vacated convictions, resentencing, etc.); or
- (3) how the Board's action was contrary to the guideline rules (matrix system) or law; and
- (4) what the effect may be on the original decision.

Requests will be most effective if short and to the point.

Requests for an administrative review must be made within 45 days after final action by the Board, otherwise you will have waived your right to an administrative review. You may request a waiver of the 45 day deadline if you submit your request after the deadline.

REQUEST: Applicant's name _____ Inst.# _____
SID# _____ requests administrative review of the Parole
Board action taken on _____ the final decision
was _____

State why your request meets the criteria above _____

ebb

4/19-89

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

RF
APR 19 8 34 AM '89
SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of TEMPORARY rule(s) adopted on April 17, 1989

by the Board of Parole
(Department)

to be effective April 19, 1989 through October 19, 1989
(Date) (Date)

The within matter having come before the Board of Parole after
(Department) (Division)

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 action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted: 255-75-072, 255-75-079, 255-75-097
(New Total Rules)

Amended: 255-75-065, 255-75-070, 255-75-075, 255-75-078, 255-75-096,
255-92-040
(Existing Rules)

Deleted: 255-75-085, 255-75-090, 255-75-095
(Rules Only)

as Administrative Rules of the Board of Parole
(Department)

DATED this 19th day of April, 19 89

By: *Vern E. Faust*
(Authorized Signer)
Title: Chairman

This Order amends TEMPORARY Order No.(s): _____
Filed: _____

NOTE: The Expiration date of this Order remains the same as the original Order.

Statutory Authority: ORS 144.395, 144.780 or

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: **The temporary adoption, amendment and suspension of the above cited rules allows setting the date for rerelease on parole after revocation by administrative action. These rule changes provide that future disposition hearings will not be held in most cases. The Board has been advised that such hearings are not required by law. The Board needs to bring its scheduling of hearings into compliance with statutory time requirements and these changes will contribute to that effort.**

Statement of Need Attached: Emergency Justification Attached: Do you intend to adopt this rule Permanently? YES NO
If so, have you filed Notice of Proposed Rulemaking for publication in the Oregon Bulletin? YES NO

For Further Information Contact: Cindy Burgess *Cindy Burgess* Phone: 378-2334
(Rule Coordinator)

RECEIVED

APR 19 8 25 AM '89

BARBARA J. TENTS
SECRETARY OF STATE

BEFORE THE
OREGON STATE BOARD OF PAROLE

In the Matter of the Amendment)
of the Rules Governing Future)
Disposition of Parole Violators)

STATEMENT OF JUSTIFICATION

The Board of Parole is temporarily adopting, amending, and suspending the above named rules in order to allow the Board to make administrative decisions regarding the future disposition of parole violators rather than requiring hearings prior to future disposition. This change is necessary due to overcrowding in the prisons. Cases can be processed more quickly administratively. These rule changes are also necessary because the Board of Parole is not in compliance with the statutory time requirements for holding hearings. The Board received legal advice that future disposition hearings are not required by law as long as adequate due process is given. Parole revocation hearings will continue to be held and the future disposition decision will be made concurrently with the final revocation decision.

- (a) Statutory Authority : ORS 144.395, 144.780
- (b) Need for the Rule : The Board needs to comply with statutory time requirements for holding hearings and needs to cooperate with the Department of Corrections by processing cases more efficiently.
- (c) Documents Relied Upon : ORS Chapter 144; February 8, 1989 letter from Assistant Attorney General, Jim Russell; Seminar on Administrative Procedure and Techniques for Paroling Authorities, January, 1980, by the Institute for Administrative Justice.

4-18-89
Date

Vern L. Faatz
Vern L. Faatz, Chairman

FISCAL ANALYSIS OF RULE PER ORS 183.335

DE
APR 19 8 34 AM '89

<u>Effect on Revenue (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
None	None	None

<u>Effect on Expenditures (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
None	None	None

Organizational Impact: Board of Parole Members will be freed to do more hearings of other types and more administrative work.
No changes will be made to the number or type of staff.

Economic Impact: None

Reference for Data and Methods Used Regarding the Above: 1987-89 Board of Parole Budget
Monthly report of hearing types and numbers of each.

Prepared by: Cindy J. Burgess Agency: Board of Parole

Title: Rules Coordinator Date: April 19, 1989

P

APR 19 8 34 AM '89

PROCEDURES FOR REVOCATION OF PAROLE

BANK OF AMERICA

255-75-002 through 255-75-056 are ~~not~~ recommended.

Hearings Record
255-75-056

- (1) The hearings record shall include:
 - (a) a Hearings Report Summary, including a tape of the hearing;
 - (b) a written statement of alleged violations;
 - (c) supporting materials;
 - (d) a Notice of Rights; and
 - (e) the Order of Parole.
- (2) The tape recording used in subsection (1)(a) of this rule shall be sent to and retained by the Board of Parole for two (2) years.

Record of Parole Revocation Hearing
255-75-060
(deleted 5/19/88)

Ten Day Waiting Period for Parolee's Evidence and Arguments [and Exceptions]
255-75-065

- (1) Within a reasonable time after the hearing, the Hearings Officer's report shall be provided to the parolee.
- (2) Unless the right to respond is waived, the parolee shall have 10 days from the date the report is mailed to the parolee to submit evidence and make written exceptions [and arguments] to the report for the Board's consideration.
- (3) If the right to respond is waived, the waiver shall be included in the Hearings Officer's report to the Board.

Final Action by the Board: Procedure
255-75-070

- (1) The Board shall consider the Hearings Officer's report, and the parolee's [exceptions] evidence and arguments. A majority of the Board shall enter a decision, and the individual votes of the Board members shall be recorded in accordance with Exhibit K. [The Board shall indicate the adopted findings.]
- (2) The Board may adopt or reject any or all the recommendations of the Hearings Officer. The final order of parole revocation shall indicate the findings adopted by the Board.
- (3) A copy of the final order of parole revocation shall be forwarded to the parolee with notice of the right to administrative and judicial review.

Rerelease Order
255-75-072

- (1) At the time of the revocation decision, an order concerning rerelease on parole shall be made.
- (2) In the rerelease on parole order, the Board may:
 - (a) continue parole pursuant to 255-75-075 or 255-75-080; or
 - (b) set the rerelease date in accordance with rule 255-75-079; or
 - (c) defer the rerelease decision pending a future disposition hearing.

Parolees Convicted of a New Crime in Another Jurisdiction:
Return; Jurisdictional Reinstatement
255-75-075

If a parolee has violated 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) if the parolee has not escaped, continue 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. [A continuance under these circumstances is not a recommendation for parole release.] Oregon parole supervision will resume upon release from custody if the sentence has not expired.

Designation of Parole Failure

255-75-076

(deleted 5/19/88)

[Parole Violator with New Prison Commitment; Action Required]

Commencement Date for Prison Term Following a Parole Violation

255-75-078

[(1) Parole violators with pending charges shall be given a future disposition hearing within 120 days of the parolee's return to the institution followed by a prison term hearing in accordance with Division 30 of these rules.]

[(2) A parole violator with a new conviction shall see the Board for the violation at the prison term hearing for the new conviction.]

[(3) The following procedure shall apply to parole violators with new commitments which are concurrent to their parole violations:

(a) a future disposition hearing will be conducted and a sanction shall be imposed for the parole violation according to guidelines in rule 255-785-090; and

(b)](1) [t]The commencement date for [the] a new commitment which is concurrent to a parole violation shall be the sentencing date for the new crime.

[(4) The following procedure shall apply to parole violators with new commitments which are consecutive to their parole violations:

(a) a future disposition hearing shall be conducted, and a parole release date shall be established on the violation according to the guidelines in rule 255-75-090 prior to the prison term hearing for the new commitment; and

(b)](2) [t]The commencement date for [the] a new commitment which is consecutive to a parole violation shall be either the parole release date established for the parole violation or the sentencing date for the new crime, whichever is later.

(3)](5) Notwithstanding subsection [(4)] (2) of this rule [section], when the new commitment is consecutive to a parole violation, the [panel or] full Board may treat the parole violation and the new commitment as if they were concurrent. If treated as concurrent, [T] the commencement date for the new commitment shall be the sentencing date for the new crime plus adjustment for credit for time served.

(4)[(6)] If the parolee is returned with a parole violation and a new sentence which is consecutive to the sentence for which the parolee was on parole, the commencement date for the new conviction [crime] shall be the date parole was revoked, if so stated on the court order.

Guidelines for Rerelease
255-75-079

- (1) Parolees whose parole has been revoked for technical violation(s) shall serve further incarceration of 6 months.
- (2) Parolees whose parole has been revoked for conduct constituting a crime shall serve further incarceration of 8 months, unless mitigation or aggravation is found pursuant to Exhibit H or E.
- (3) Incarceration in excess of 8 months must be based upon findings of aggravation after a hearing.
- (4) The commencement date for the further term of incarceration as a result of the parole violation shall be the date of arrest for the parole violation which resulted in the revocation of parole.

Continuance Based on Time Served: Necessary Findings by Board
255-75-080

If the Board finds that a parolee has committed a violation of parole conditions which is sufficiently serious to require a revocation hearing 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 continue parole.

Authority of Revocation Panel to Set New Release Date for Parole Violators
255-75-093
(deleted 5/19/88)

Parole Violators with No New Commitment: Action Required
255-75-085
(temporarily repealed 4/11/89)

Guidelines for Reparole
255-75-090
(temporarily repealed 4/11/89)

Variation From Guidelines for Aggravation/Mitigation Permitted
255-75-095
(temporarily repealed 4/11/89)

Denial of [Reparole] Rerelease Consideration
255-75-096

(1) Upon a finding of aggravation pursuant to Exhibit E or Exhibit H, the Board may deny [reparole] rerelease on parole consideration and require the parole violator to serve to the statutory good time date or, in the case of aggravated murder, for life. This action requires the affirmative vote of at least four voting members.

(2) Denial of rerelease on parole requires a future disposition hearing.

[2](3) In cases where setting the parole violator within the guidelines set forth in rule [255-75-090 (a) and (b)] 255-75-079 would require the parole violator to serve to the end of the sentence, four votes are not required.

Time for Future Disposition Hearing
255-75-097

When a future disposition hearing is held pursuant to 255-75-072(4)(c), 255-75-079(3) or 255-75-096, the following timelines will apply:

(1) If the parolee has a new conviction, the future disposition hearing may be scheduled at the same time as the new prison term hearing.

(2) If the parolee has no new conviction, the future disposition hearing shall be scheduled within 120 days of return to the institution.

Restoration of Statutory and Meritorious Goodtime
255-75-098

Upon recommendation of the superintendent of the institution, the Board may restore part or all of forfeited statutory and meritorious goodtime when:

(1) there is no violation of parole; or

(2) parole is revoked on a best interest basis and there is no actual parole violation; or

(3) parole is revoked on a technical violation; or

- (4) parolee is within 180 days of discharge; or
- (5) parole is revoked for new criminal activity which is a misdemeanor or class C felony and:
 - (a) the new criminal activity was already sanctioned at the local level; or
 - (b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.

Future Disposition Hearing Packet
255-75-100

The Future Disposition Hearing Packet shall contain:

- (1) institution face sheet;
- (2) revocation recommendation;
- (3) final order of revocation;
- (4) administrative action sheet;
- (5) revocation hearing findings
- (6) Board Action Form ordering parole;
- (7) disciplinary report, when extension is recommended;
- (8) recommendation for statutory and meritorious goodtime;
- (9) correspondence;
- (10) statements of imprisonment for parole violation; and
- (11) face sheet from old parole analysis report.

Bases for Reinstating Active Supervision; Procedure
255-92-040

Subsections 1 through 4 remain unchanged.

- (5) If a parolee is on inactive parole and parole is revoked following a parole revocation hearing, in addition to any other sanctions imposed by the Board, when the parolee is released from custody, the parolee will be reinstated on active supervision. The new period of active supervision will be set at the [prisoner's future disposition hearing] time the future disposition decision is made.
- (6) If a parolee is on active parole and parole is revoked following a parole revocation hearing, in addition to any other sanctions imposed by the Board, when the parolee is released from custody, the parolee will be reinstated on active supervision. The new period of active supervision will be set at the [prisoner's future disposition hearing] time the future disposition decision is made.

lff

~~G~~

5-23-89

CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

MAY 23 4 45 PM '89

SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on May 22, 1989
(Date)

by the Board of Parole
(Department) (Division)

to become effective May 23, 1989
(Date)

The within matter having come before the Board of Parole
(Department) (Division) 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:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: April 15, 1989

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

Adopted:
(New Total Rules) OAR 255-12-001, -12-005, -12-010, -12-015, -12-020, -12-025, -12-030,
-12-035

Amended:
(Existing Rules)

Deleted:
(Deleted Rules Only)

as Administrative Rules of the Board of Parole
(Department) (Division)

DATED this 23rd day of May, 19 89

By: Vernon L. Pate
(Authorized Signer)
Title: Chairman

Statutory Authority: ORS 144.025, 291.021 or

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: These rules relate to personal service contracts; when contracts are used, limitations, approval and filing, procurement, contractor selection, contract termination and record-keeping.

For Further Information Contact: Cindy J. Burgess Phone: 378-2334
(Rule Coordinator)

BEFORE THE
OREGON STATE BOARD OF PAROLE

In the Matter of the Adoption)
of Rules Governing Service) STATEMENT OF JUSTIFICATION
Contracts)

The Board of Parole is permanently adopting the above named rules because every agency is required by the Executive Department to adopt rules related to personal service contracts.

- (a) Statutory Authority : ORS 144.025, 291.021
- (b) Need for Rule : The Executive Department rules require that all agencies adopt rules related to personal service contracts.
- (c) Documents Relied Upon : OAR 122-20-015, May 24, 1988 letter from Attorney General, June 13, 1988 letter from the Attorney General, February 9, 1988 letter from the Attorney General, February 3, 1989 letter from the Budget and Management Division, OAR Chapter 122, When and How to Acquire Personal Services, issued by the Executive Department Information Systems Division, 1987, March 9, 1988 letter from the Governor's Office, sample contracts, other agency examples.

5-23-89
Date

Vern Faatz
Vern L. Faatz, Chairman

FISCAL ANALYSIS OF RULE PER ORS 183.335

<u>Effect on Revenue (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
None	None	None

<u>Effect on Expenditures (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
There may be some slight impact on postage costs.		

Organizational Impact: Any additional work required will be accomplished using the current Board staff.

Economic Impact:
None

Reference for Data and Methods Used Regarding the Above:

Board of Parole Budget 1987-89, Proposed 255-12-020 and 255-12-035(5).

Prepared by: Cindy Burgess Agency: Board of Parole

Title: Rules Coordinator Date: May 23, 1989

DIVISION 12

PERSONAL SERVICE CONTRACTS

When Personal Service Contracts Are Used
255-12-001

The Board of Parole may contract for services by use of personal service contracts or interagency or intergovernmental service agreements as authorized by the Board's legislatively approved budget when:

- (1) needed specialized skills, knowledge and resources are not available within the Board and its staff; or
- (2) the work cannot be done in a reasonable time with the Board's staff; or
- (3) an independent and impartial evaluation of a situation is required; or
- (4) it is substantially less costly and more efficient, in the long run, to contract for the work and union contracts would not be impaired.

Limitations
255-12-005

- (1) Personal service contracts shall be drafted and processed in accordance with Executive Department rules, OAR 122-10-005 through 122-31-005, ORS 291.021 and any other applicable laws.
- (2) Personal service contracts shall not exceed one fiscal year in duration.
- (3) Personal service contracts shall not exceed the funding provided by the legislatively approved budget.

Approval and Filing
255-12-010

- (1) The Board may enter into a personal service contract for an amount up to \$5000 per contract per fiscal year without Executive Department approval and in an amount up to \$25,000 per contract per fiscal year without Department of Justice approval.

- (2) Personal service contracts, amendments or extensions of contracts exceeding the approved or delegated dollar authority shall be submitted in triplicate originals for Executive Department approval.
- (2) Interagency and intergovernmental service agreements do not require Executive Department approval or review for legal sufficiency by the Department of Justice.
- (3) All personal service contracts and interagency and intergovernmental service agreements must be filed with the Executive Department.
- (4) Any personal service contract or agreement may be submitted for review by the Department of Justice.

Statement of Work
255-12-015

When the need for a personal service contract is established, the Board, or its designee, will draft a Statement of Work which:

- (1) describes specific services that are to be delivered; and
- (2) the conditions or circumstances under which services will be delivered, accepted and expensed.

Procurement
255-12-020

- (1) The Board, or its designee, will request price quotations, proposals, resumes, or vitae from at least three prospective contractors, who are qualified and interested, selected from a list maintained by the Board of Parole or Executive Department, by mailing:
 - (a) a Statement of Work or a proposed contract; and
 - (b) a Request for Proposals.
- (2) If the Chairperson is satisfied that only a single source is available or practical, the Chairperson may waive subsection (1) of this section and shall submit the appropriate justification to the Executive Department.

Contractor Selection
255-12-025

- (1) The Chairperson will screen the contractors and present those chosen for further consideration to the Board for a decision.

(2) Contractors will be chosen based on the following criteria:

- (a) submission of a proposal, resume or vitae within 90 days of mailing the Request for Proposals;
- (b) contractor agrees to the terms and conditions of the Statement of Work;
- (c) contractor has adequate prior experience and education or special expertise in the type of service requested;
- (d) contractor provides three positive business references or the contractor has a past history of good performance for the Board;

Contract Termination
255-12-030

The Board may terminate a personal service contract upon 30 days' written notice delivered by certified mail or in person when:

- (1) Funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of service; or
- (2) Federal or state regulations modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under the contract; or
- (3) Any license or certificate required of the contractor by law or regulation is for any reason denied, revoked or not renewed; or
- (4) The contractor fails to provide services called for by the contract within the time specified; or
- (5) The contractor fails to perform any other provisions of the contract or so fails to pursue the work as to endanger performance of the contract and, after written notice, fails to correct such failure within a specified period of time.
- (6) The reasons for termination of a contract listed in this rule are not exclusive of other possible reasons for termination.

Contract File
255-12-035

The Board shall maintain a contract file, which shall contain:

- (1) statement of justification for the contract;

- (2) written justification for negotiation in lieu of competitive procurements, if applicable;
- (3) copy of the request for proposals;
- (4) list of prospective contractors who were requested to submit proposals, resumes or vitae;
- (5) mailing list used to notify other prospective contractors which shall include:
 - (a) Office of Minority and Women Business Advocate; and
 - (b) Oregon Psychologists' Association; or
 - (c) Local temporary services agencies;
- (6) copy of each proposal, resume or vitae submitted;
- (7) method of evaluating proposals and how the contractor was selected;
- (8) record of negotiations and results;
- (9) resulting contract, including the tax compliance certification.

eff

10-16-89

AMENDED

CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on October 9, 1989
(Date)

by the Oregon Board of Parole and Post-Prison Supervision
(Department) (Division)

to become effective October 16, 1989
(Date)

The within matter having come before the Oregon Board of Parole and Post-Prison Supervision after
(Department) (Division)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: September 15, 1989

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

Adopted:
(New Total Rules) 255-75-072, 255-75-097

Amended:
(Existing Rules) 255-75-002, 75-003, 75-004, 75-005, 75-006, 75-007, 75-015, 75-025,
75-026, 75-031, 75-035, 75-036, 75-042, 75-045, 75-046, 75-055, 75-056,
75-065, 75-070, 75-075, 75-078, 75-080, 75-096, 75-098, 75-100.

Deleted:
(Deleted Rules Only) 255-75-095.

as Administrative Rules of the Oregon Board of Parole and Post-Prison Supervision
(Department) (Division)

DATED this 17th day of October, 19 89.

By: Arlene H. Samuelsen
(Authorized Signer)

Title: Vice-Chairperson

Statutory Authority: ORS ORS 144.040, 144.343, 144.345, 144.349, 144.350, 144.360, 144.370, 144.395, 144.780

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: The permanent adoption, amendment and repeal of the above cited rules allows setting the date for rerelease on parole or post-prison supervision, after revocation, by administrative action. The amendments also provide for revised terms of reincarceration upon revocation and for general language changes necessitate by HB2250, Sentencing Guidelines Bill.

For Further Information Contact: Cindy Burgess Phone: 378-2334
(Rule Coordinator)

(b)](1) [t]The commencement date for [the] a new commitment which is concurrent to an incarceration sanction for a violation of parole or post-prison supervision shall be the sentencing date for the new crime.

[(4) The following procedure shall apply to parole violators with new commitments which are consecutive to their parole violations:

(a) a future disposition hearing shall be conducted, and a parole release date shall be established on the violation according to the guidelines in rule 255-75-090 prior to the prison term hearing for the new commitment; and

(b)](2) [t]The commencement date for [the] a new commitment which is consecutive to an incarceration sanction for a violation of parole or post-prison supervision shall be either the [parole] rerelease date established for the [parole] violation or the sentencing date for the new crime, whichever is later.

(3)](5) Notwithstanding subsection [(4)] (2) of this rule [section], when the new commitment is consecutive to a [parole] sanction for a violation, the [panel or] full Board may treat the [parole] violation sanction and the new commitment as if they were concurrent. If treated as concurrent, [T] the commencement date for the new commitment shall be the sentencing date for the new crime plus adjustment for credit for time served.

(4)](6) If the parolee/offender is returned with a parole or post-prison supervision violation and a new sentence which is consecutive to the sentence for which the parolee/offender was on parole, the commencement date for the new conviction [crime] shall be the date parole was revoked, if so stated on the court order.

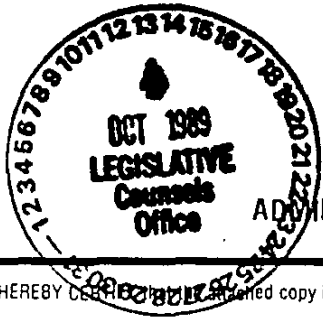
Continuance Based on Time Served:
Necessary Findings by Board
255-75-080

If the Board finds a parolee/offender has committed a violation of [parole] conditions which is sufficiently serious to require a revocation hearing and the time the parolee/offender has spent in custody pending final action on the [parole] revocation hearing is adequate punishment for the violation, the Board may continue parole or post-prison supervision.

Guidelines for Reparole
255-75-090

Parole violators shall be given a sanction within the following guidelines:

- (1) violations not involving a finding of new criminal activity, shall result in an additional term of six to eight months unless the Board finds aggravation or denies parole; and
- (2) violations involving a finding of new criminal activity shall result in an additional term of eight to twelve months unless the Board finds aggravation, mitigation, or denies parole.
- (3) In establishing a sanction, the commencement date shall be the date of arrest for the parole violation which resulted in the revocation of parole.



CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

Oct 13 5 21 PM '89

I HEREBY CERTIFY that the enclosed copy is a true, full and correct copy of PERMANENT rule(s) adopted on October 9, 1989
(Date)

by the Oregon Board of Parole and Post-Prison Supervision
(Department) (Division)

to become effective October 16, 1989
(Date)

The within matter having come before the Oregon Board of Parole and Post-Prison Supervision after
(Department) (Division)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: September 20, 1989

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

Adopted:
(New Total Rules) 255-75-072, 75-079, 75-097;

Amended:
(Existing Rules) 255-75-002, 75-003, 75-004, 75-005, 75-006, 75-007, 75-015, 75-025,
75-026, 75-031, 75-035, 75-036, 75-042, 75-045, 75-046, 75-055, 75-056,
75-065, 75-070, 75-075, 75-078, 75-080, 75-096, 75-098, 75-100.

ed:
(Rules Only) 255-75-090, 75-095.

as Administrative Rules of the Oregon Board of Parole and Post-Prison Supervision
(Department) (Division)

DATED this 13th day of October, 19 89

By: *Debra H. Jamieson*
(Authorized Signer)

Title: Vice-Chairperson

Statutory Authority: ORS ORS 144.395, 144.780, 144.040, 144.343, 144.345, 144.349, 144.350, 144.360, or
144.370,

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: The permanent adoption, amendment and repeal of the above cited rules allows setting the date for rerelease on parole or post-prison supervision, after revocation, by administrative action. The amendments also provide for revised terms of reincarceration upon revocation and for general language changes necessitated by HB2250, Sentencing Guidelines Bill.

For Further Information Contact: Cindy Burgess Phone: 378-2334
(Rule Coordinator)

FISCAL ANALYSIS OF RULE PER ORS 183.335

<u>Effect on Revenue (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
None	None	None

<u>Effect on Expenditures (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
None	None	None

Organizational Impact: Board of Parole Members will be freed to do more hearings of other types and other administrative work.

Violators of supervision will be serving shorter periods of reincarceration which could have some impact on the Department of Corrections workload and prison bed space.

Economic Impact: District Attorneys may have to prosecute more often because the reincarceration periods for violations of supervision are limited.

Reference for Data and Methods Used Regarding the Above: 1989-90 Board of Parole and Post-Prison Supervision Budget
Monthly Report of Hearing Types

Prepared by: Cindy Burgess

Agency: Board of Parole & Post-Prison Supervision

Title: Rules Coordinator

Date: October 13, 1989

DIVISION 75

PROCEDURES FOR REVOCATION OF PAROLE OR POST-PRISON SUPERVISION

Definitions

255-75-001

(deleted)

Suspension of Parole or Post-Prison Supervision; Citation

255-75-002

When the Board is informed of reasonable grounds to believe that a person has violated the conditions of parole or post-prison supervision, or that parole is no longer in the best interests of the parolee or the community, and that the revocation of parole or, in the case of parole only, an extension of [supervised parole] supervision may be justified, the Board may:

- (1) suspend parole or post-prison supervision and order the parolee/offender arrested and detained pending a [parole violation] revocation hearing; or
- (2) issue a citation to show cause why parole or post-prison supervision should not be revoked without first suspending parole or the post-prison supervision term or ordering detention. The citation may be issued by the Board or the Board may expressly authorize its designated representative to issue a citation.

Criteria for Allowing Parolee/Offender to Remain in Community Pending Hearing

255-75-003

In determining whether to allow a parolee/offender to remain in the community pending the [parole violation] revocation hearing, the Board may consider:

- (1) the seriousness of the allegations and the risk to the parolee/offender or the community;
- (2) the likelihood of the parolee/offender absconding or failing to appear at the hearing;
- (3) the availability of bail (when applicable);
- 4) the availability of resources in the community such as residence or employment; or
- (5) any recommendation by the parole and post-prison supervision officer.

Guidelines for "Best Interest" Return
255-75-004

Revocation of parole or post-prison supervision when it is not "in my best interest or in the best interest of society" shall refer to the following situations:

- (1) The parolee/offender is suffering from an emotional or psychological disturbance which makes the parolee/offender dangerous to self or others if left in the community. The emotional or psychological disturbance may be indicated but not limited to threatening behavior in the form of:
 - (a) showing a present capacity to carry out any statements or threats of violence against the parolee/offender or the community; or
 - (b) The substantial duplication of circumstances and conduct which led to the initial incarceration;

(2) The parolee's/offender'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, or other treatment programs);

(3) Upon release on parole or post-prison supervision, an existing probation is revoked, resulting in the prisoner's return to [the] custody of the Department of Corrections for criminal activity which did not occur while on parole or post-prison supervision; or

(4) The [prisoner]parolee/offender receives a new conviction or new commitment to the custody of the Department of Corrections for criminal activity which did not occur while on parole or post-prison supervision.

Hearing Requirement: Procedure
255-75-005

(1) Before the Board can revoke parole or post-prison supervision, a [parole violation] revocation hearing shall be conducted.

(2) Except in the cases set forth in OAR 255-75-015, [T]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 violation or the place of confinement.

(3) Before a Hearings Officer can hold an out of custody hearing, the parole and post-prison supervision officer responsible for supervising the parolee/offender must obtain a citation to appear from the Board.

(4) For an in custody [parole] revocation hearing, the parole and post-prison supervision officer must request a

non-bailable suspend and detain warrant from the Board.

(5) A citation to appear or a suspend and detain warrant requires three affirmative votes by the Board.

Method of Hearing
255-75-006

Hearings may be conducted by teleconference. Person to person hearings shall be conducted by a Hearings Officer in the following situations:

(1) the alleged violations are contested and the parolee/offender or the parolee's/offender's attorney shows that the credibility of the witness, including the observation of the witness's demeanor would be necessary;

(2) physical exhibits are to be part of the record and viewing the exhibits would be essential;

(3) there are unusual circumstances not covered by this section, to be determined at the discretion of the Hearings Officer; or

(4) when circumstances dictate that hearings cannot be conducted by teleconference (i.e., no telephone available for hearings in the confining facility).

Designated Representative to Conduct Hearing
255-75-007

(1) The Board's designated representative shall conduct the [parole] revocation hearing.

(2) "Designated representative" shall include those persons designated by the Department of Corrections or the Board of Parole and Post Prison Supervision as Hearings Officers.

Locations of Hearing

255-75-008

(deleted)

Board Action Upon Notification of Alleged Parole Violation:

Criteria for; Release of Parolee

Pending Hearing

255-75-010

(deleted)

Procedures When Parolee/Offender is in Another Jurisdiction: Return of Parolee/Offender

255-75-015

- (1) The Board may suspend parole or post-prison supervision and order the parolee's/offender's return to prison in Oregon without first conducting a hearing when:
 - (a) the parolee/offender has left the state to which the parolee/offender was released on parole or post-prison supervision [paroled] without permission, and is in custody in another jurisdiction;
 - (b) the parolee/offender is in custody in another correctional facility;
 - (c) the parolee/offender has absconded from supervision and the parolee's/offender's whereabouts are unknown; or
 - (d) the parolee/offender has been convicted of a new crime.
- (2) After the parolee/offender is returned to prison in Oregon, the parolee/offender shall be given a [parole] revocation hearing.

Rights of an Parolee/Offender at a

Formal Hearing

255-75-025

- (1) The parolee/offender shall be provided with a written notice of the hearing at least three (3) working days prior to the hearing.
- (2) The hearing notice will include:
 - (a) a Notice of Rights;
 - (b) a written statement of alleged violations; and
 - (c) any documents or evidence which form the basis of the alleged violations.
- (3) The parolee/offender may elect to waive the three working day notification period prior to the hearing and begin the hearing immediately.
- (4) The Hearings Officer shall tape the parolee's/offender's verbal statement waiving the three working day notification period.

Waiver of Hearing

255-75-026

- (1) In all cases, the parolee/offender may waive the right to a hearing by signing a Notice of Rights form.
- (2) When the purpose of a [parole] hearing is to consider a parole or post-prison supervision violation, the waiver of the right to a hearing acknowledges that there has been a violation of the conditions [of parole] in whole or in part.
- (3) When the purpose of the hearing is to modify parole or post-prison supervision conditions or, in the case of parole, to consider extending active community supervision, the waiver of the hearing indicates acceptance of the modifications.

- (4) If the parolee/offender waives the right to a hearing, the parolee/offender may offer a written or verbal statement pertaining to the violation.
- (5) The written waiver of the right to a hearing must be submitted to the [Parole Board's] Board of Parole and Post-Prison Supervision's designated representative within five (5) days after the parolee/offender has waived the hearing.
- (6) Any statement made to the designated representative at the time of waiver must be tape recorded.
- (7) If the parolee/offender waives the right to a hearing, the Hearings Officer will submit to the [Parole] Board the following:
- (a) a Notice of Rights form;
 - (b) any written parolee/offender statements and/or a summary of oral statements;
 - (c) the Hearing Report Summary; and
 - (d) any supporting information.

Board Rejection of Waiver
255-75-030

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 new hearing.

Hearings Process
255-75-031

- (1) The parole and post-prison supervision officer will present information at the hearing and arrange for the presence of witnesses for the state and present evidence, unless the hearing is waived.

- (2) The Hearings Officer will make a tape recording of the hearing.

Representation/Determination of Ability to Pay Attorney Fees
255-75-035

- (1) In all cases, the parolee/offender is entitled to representation by an attorney at the parolee's/offender's own expense.
- (2) If the parolee/offender is deemed indigent, and unable to pay for an attorney, the parolee/offender may request to be represented by a Board appointed attorney if the parolee/offender makes a timely and colorable claim that:
- (a) the parolee/offender has not committed the alleged violation;
 - (b) there are substantial or complex mitigating circumstances which make revocation inappropriate even if violation is admitted or a matter of record; or
 - (c) the parolee/offender appears incapable of representing himself/herself.
- (3) If a Board appointed attorney is requested by the parolee/offender, the Hearings Officer shall notify the Board of payment to be made to the appointed attorney. Where payment is approved, such payment shall not exceed \$30 per hour and \$200 per case. Billing must be received within 90 days.
- (4) In those instances where [counsel is refused] the [parolee] Hearings Officer refuses to appoint an attorney, the grounds for refusal shall be [succinctly] stated in the record.

Board Subpoenas; Witness or Documents
255-75-036

- (1) Upon the request of any party to the hearing, and upon a proper showing of the relevance and reasonable scope of the testimony to be offered, the [Parole] Board or designated representative shall, or the [Parole] Board on its own motion may, issue subpoenas requiring the attendance and testimony of witnesses. Parolees/Offenders will make their own arrangements for presenting witnesses. In addition, the Board or its designated representative may subpoena documents when relevant.
- (2) Witnesses appearing under subpoena, other than the parties, state officers or employees, shall be reimbursed fees and mileage by the [Parole] Board of Parole and Post-Prison Supervision as prescribed by law, provided the Hearings Officer certifies that the witness's testimony was relevant and material to the hearing.
- (3) The parolee/offender may present witnesses who may have relevant information and has the right to confront the persons or witnesses who have presented information against the parolee/offender.
- (4) Confrontation of witnesses by the parolee/offender may be denied if the Hearings Officer finds that confrontation would subject the witness to the risk of harm if the witness's identity was disclosed.
- (5) If confrontation of witnesses by the parolee/offender is denied, the Hearings Officer shall state the reason(s) for the decision and conduct an independent examination of the witness on the record.

Compelling Appearance of Witnesses:
If Subpoena Requested; Board Motion;
Failure to Obey
255-75-040

The Board, or its designated representative or party requesting a subpoena, may seek contempt proceedings in the circuit court of any county against any person refusing to honor the subpoena.

Probable Cause; Effect of Preliminary
Hearing; Definition of Term; Deferral
of Revocation Hearing
255-75-042

- (1) Evidence received 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 or post-prison supervision has occurred.
- (2) Should the parolee/offender waive the right to a preliminary hearing, the waiver shall constitute a waiver of a hearing by the Board to determine whether there is a probable cause to believe that a violation of one or more of the conditions of parole or post-prison supervision has occurred.
- (3) A finding of probable cause shall be used to support the Board's decision to suspend and detain an parolee/offender charged with the commission of a new crime. The Board may then defer completion of a [parole violation] revocation hearing until the trial is over and the Board is notified of the final disposition of the case.
- (4) Notwithstanding subsection (3) of this section, a deferral following a finding of probable cause may not be extended for a period greater than 120 days from the date of the preliminary hearing or waiver.

Evidence
255-75-045

- (1) The following evidence may be received at a [parole violation] revocation hearing:
 - (a) oral testimony under oath;
 - (b) affidavits or other sworn statements;
 - (c) letters;
 - (d) documents;
 - (e) reports made in the course of official duty or professional practice (e.g., reports of law enforcement agencies, parole and post-prison supervision officers, doctors, psychologists, attorneys);
 - (f) uncertified copies of letters, documents, or reports shall be admissible in a [parole violation] revocation hearing if there is a reasonable showing by the person submitting the exhibit item that the copy is reliable;
 - (g) evidence of criminal activity even when charges have been dismissed, not brought, or the parolee/offender has been acquitted at trial;
 - (h) hearsay evidence shall be admissible; or
 - (i) any evidence determined to be material, relevant, and reliable, regardless of its nature.
- (2) Upon the request of any party to the hearing, the [Parole] Board of Parole and Post-Prison Supervision, or its designated representative, may issue a subpoena duces tecum upon a

proper showing of relevant and reasonable scope of the documentary or physical evidence being sought. The parolee/offender may make the parolee's/offender's own arrangements for presenting evidence.

- (3) The Hearings Officer may exclude documents or physical evidence upon making a finding that such evidence would pose a hazard to facility security or would not assist in the resolution of the allegation(s). The reason for exclusion shall be made part of the record.
- (4) The Hearings Officer may classify documents or physical evidence as confidential upon making a finding that revealing such evidence would pose a threat to the safety of the person providing the evidence.
- (5) Evidence received without disclosing the identity of the witness shall be made a sealed part of the record.
- (6) When a witness is unavailable, the statements may be received in the form of documentary evidence when the Hearings Officer determines at an in-camera hearing that good cause for nondisclosure exists and supporting evidence establishes the reliability of the absent witness's statement.

Postponement
255-75-046

- (1) A hearing may be postponed by the Hearings Officer for good cause and for a reasonable period of time.
- (2) The criteria for "Good cause" includes, but is not limited to:
 - (a) the preparation of defense;

- (b) illness or unavailability of the parolee/offender or other persons;
- (c) gathering of additional evidence; or
- (d) avoiding interference with an ongoing police investigation or pending prosecution.

Procedure for Receiving Evidence if Good Cause Exists Not to Require Confrontation or Disclosure of an Informant's Identity
255-75-050
 (deleted)

Reopening Hearings for New Information: Criteria; Procedure
255-75-055

- (1) After the completion of a [parole violation] 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/offender 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.

Hearings Record
255-75-056

- (1) The hearings record shall include:
 - (a) a Hearings Report Summary including tape of hearing;
 - (b) a written statement of alleged violations;
 - (c) supporting materials;
 - (d) a Notice of Rights; and

(e) the Order of Parole or Post-Prison Supervision.

- (2) The tape recording used in subsection (1)(a) of this rule shall be [sent to and] retained [by the Parole Board] for two (2) years.

Record of Parole Revocation Hearing
255-75-060
 (deleted)

Ten Day Waiting Period for Parolee's/Offender's Evidence [and Arguments] and Exceptions
255-75-065

- (1) Within a reasonable time after the hearing, the Hearings Officer's report shall be provided to the parolee/offender.
- (2) Unless the right to respond is waived, the parolee/offender shall have 10 days from the date the report is mailed to the parolee/offender to submit evidence and make written exceptions [and arguments] to the report for the Board's consideration.
- (3) If the right to respond is waived, the waiver shall be included in the Hearings Officer's report to the Board.

Final Action by the Board: Procedure
255-75-070

- (1) The Board shall consider the Hearings Officer's report, and the parolees/offender's evidence and exceptions [and arguments]. A majority of the Board shall enter a decision, and the individual votes of the Board members shall be recorded in accordance with Exhibit K. [The Board shall indicate the adopted findings.]

- (2) The Board may adopt or reject any or all the recommendations of the Hearings Officer. The final order of revocation shall indicate the findings adopted by the Board.
- (3) A copy of the final order of [parole] revocation shall be forwarded to the parolee/offender with notice of the right to administrative and judicial review.

Rerelease Order
255-75-072

- (1) At the time of the revocation decision, an order concerning rerelease shall be made.
- (2) In the rerelease order, the Board may:
 - (a) continue parole or post-prison supervision pursuant to 255-75-075 or 255-75-080; or
 - (b) set the rerelease date in accordance with rule 255-75-079; or
 - (c) defer the rerelease decision pending a future disposition hearing.

Parolees/Offenders Convicted of a New Crime in Another Jurisdiction: Return; Jurisdictional Reinstatement
255-75-075

If a parolee/offender has violated parole or post-prison supervision 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 or supervision and order the parolee/offender returned to Oregon for a [parole] revocation hearing after serving the new sentence; or

- (2) if the parolee/offender has not absconded from supervision, continue parole or post-prison supervision to the prison sentence in the other jurisdiction in order to consolidate jurisdiction over the parolee/offender and allow the Oregon sentence to run concurrently.
[A continuance under these circumstances is not a recommendation for parole release.] Oregon supervision will resume upon release from custody if the sentence has not expired.

Designation of Parole Failure
255-75-076
(deleted 5/19/88)

[Parole Violator with New Prison Commitment; Action Required] Commencement Date for Prison Term Following a Parole Violation
255-75-078

- [(1) Parole violators with pending charges shall be given a future disposition hearing within 120 days of the parolee's return to the institution followed by a prison term hearing in accordance with Division 30 of these rules.]

- [(2) A parole violator with a new conviction shall see the Board for the violation at the prison term hearing for the new conviction.]

- [(3) The following procedure shall apply to parole violators with new commitments which are concurrent to their parole violations:

- (a) a future disposition hearing will be conducted and a sanction shall be imposed for the parole violation according to guidelines in rule 255-785-090; and

(b)](1) [t]The commencement date for [the] a new commitment which is concurrent to an incarceration sanction for a violation of parole or post-prison supervision shall be the sentencing date for the new crime.

[(4) The following procedure shall apply to parole violators with new commitments which are consecutive to their parole violations:

(a) a future disposition hearing shall be conducted, and a parole release date shall be established on the violation according to the guidelines in rule 255-75-090 prior to the prison term hearing for the new commitment; and

(b)](2) [t]The commencement date for [the] a new commitment which is consecutive to an incarceration sanction for a violation of parole or post-prison supervision shall be either the [parole] rerelease date established for the [parole] violation or the sentencing date for the new crime, whichever is later.

(3)](5) Notwithstanding subsection [(4)] (2) of this rule [section], when the new commitment is consecutive to a [parole] sanction for a violation, the [panel or] full Board may treat the [parole] violation sanction and the new commitment as if they were concurrent. If treated as concurrent, [T] the commencement date for the new commitment shall be the sentencing date for the new crime plus adjustment for credit for time served.

(4)](6) If the parolee/offender is returned with a parole or post-prison supervision violation and a new sentence which is consecutive to the sentence for which the parolee/offender was on parole, the commencement date for the new conviction [crime] shall be the date parole was revoked, if so stated on the court order.

Guidelines for Rerelease
255-75-079

(1) Parolees/Offenders whose parole or post-prison supervision term has been revoked for technical violation(s) may serve further incarceration of 90 days.

(2) Parolees/Offenders whose parole or post-prison supervision term has been revoked for conduct constituting a crime may serve further incarceration of 180 days unless mitigation [or aggravation] is found [pursuant to Exhibit H or E].

(3) Parolees/Offenders sentenced to life imprisonment for murder or aggravated murder may serve further incarceration to the sentence expiration date.

(4) Parolees/Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.

[(3) Incarceration in excess of 8 months must be based upon findings of aggravation after a hearing.]

(5) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest for the violation which resulted in the revocation of parole or post-prison supervision term.

Continuance Based on Time Served:
Necessary Findings by Board
255-75-080

If the Board finds a parolee/offender has committed a violation of [parole] conditions which is sufficiently serious to require a revocation hearing and the time the parolee/offender has spent in custody pending final action on the [parole] revocation hearing is adequate punishment for the violation, the Board may continue parole or post-prison supervision.

Parole Violators with No New Commitment; Action Required
255-75-085
(temporarily repealed 4/11/89)
(repealed 10/16/89)

Guidelines for Reparole
255-75-090
(temporarily repealed 4/11/89)
(repealed 10/16/89)

Authority of Revocation Panel to Set New Release Date for Parole Violators
255-75-093
(deleted 5/19/88)

Variation From Guidelines for Aggravation/Mitigation Permitted
255-75-095
(temporarily repealed 4/11/89)
(repealed 10/16/89)

Denial of [Reparole] Rerelease Consideration
255-75-096

- (1) Upon a finding of aggravation pursuant to Exhibit E or Exhibit H, the Board may deny [reparole] rerelease on parole [consideration] and require the parole violator to serve to the statutory good time date or, in the case of aggravated murder, for life. This action requires the affirmative vote of at least

10

Revocations

four voting members.

- (2) Denial of rerelease on parole requires a future disposition hearing.

- [2](3) In cases where setting the parole violator within the guidelines set forth in rule [255-75-090 (a) and (b)] 255-75-079 would require the parole violator to serve to the end of the sentence, four votes are not required.

Time for Future Disposition Hearing
255-75-097

When a future disposition hearing is held pursuant to 255-75-072(4)(c), 255-75-079(3) or 255-75-096, the following timelines will apply:

- (1) If the parolee/offender has a new conviction, the future disposition hearing may be scheduled at the same time as the new prison term hearing.
- (2) If the parolee/offender has no new conviction or has no prison term hearing, the future disposition hearing shall be scheduled within [120] 60 days of return to the institution.

Restoration of Statutory and Meritorious Goodtime
255-75-098

Upon recommendation of the superintendent of the institution, the Board may restore part or all of forfeited statutory and meritorious goodtime when:

- (1) there is no violation of parole; or
- (2) parole is revoked on a best interest basis and there is no actual parole violation; or
- (3) parole is revoked on a technical violation; or

10/16/89

(4) parolee is within 180 days of discharge; or

(5) parole is revoked for new criminal activity which is a misdemeanor or non person-to-person class C felony and:

(a) the new criminal activity was already sanctioned at the local level; or

(b) the criminal activity is not of the same nature as the crimes for which the parolee was on parole.

(6) A parolee/offender ordered to serve a term of incarceration as a sanction for a post-prison supervision violation is not eligible for earned-credit time.

Future Disposition Hearing Packet
255-75-100

The Future Disposition Hearing Packet shall contain:

- (1) institution face sheet;
- (2) revocation recommendation;
- (3) final order of revocation;
- (4) administrative action sheet;
- (5) revocation hearing findings;
- (6) Board Action Form ordering parole or Board Action Form ordering post-prison supervision conditions;
- (7) disciplinary report, when extension is recommended;
- (8) recommendation regarding [for] statutory and meritorious goodtime;
- (9) correspondence
- (10) statements of imprisonment for [parole] violation; and
- (11) face sheet from old parole analysis report or comparable report.

off

11-1-89

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CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

Nov 1 4 52 PM '89
BARBARA ROBERTS
SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on October 30, 1989
(Date)

By the Oregon Board of Parole & Post-Prison Supervision
(Department) (Division)

to become effective November 1, 1989
(Date)

The within matter having come before the Oregon Board of Parole & Post-Prison Supervision after
(Department) (Division)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: October 1, 1989 & September 15, 1989

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

Adopted:
(New Total Rules)

255-30-032, 255-35-014, 255-50-012, 255-70-003, 255-75-079, 255-37-005
255-37-010, 37-015, 37-020, 37-025, 37-030.

Amended:
(Existing Rules)

255-05-005, 255-10-005, 255-12-001, 255-15-005, 15-010, 255-30-010, 30-011
30-021, 30-023, 30-035, 30-040, 30-055, 255-32-005, 32-025, 255-35-016,
35-018, 255-40-005, 40-028, 40-040, 255-50-005, 50-010, 50-011, 50-013,
50-015, 50-025, 255-65-005, 65-015, 65-020, 255-80-005, 80-015,
255-90-003, 255-92-005, 92-015, 92-025, 92-040, Exhibits AI, AIII, BI,
BII, EI, EII, F and P
255-50-016

Supplanted:
(Total Rules Only)

as Administrative Rules of the Oregon Board of Parole & Post-Prison Supervision
(Department) (Division)

DATED this 1st day of November 19 89

By: Wylene H. ...
(Authorized Signer)

Title: Vice-Chairperson



Statutory Authority: ORS Chapter 144 or

Chapter(s) 790 Oregon Laws 1989 or

House Bill(s) _____ 19 _____ Legislature: or Senate Bill(s) _____ 19 _____ Legislature

Subject Matter: New definitions, Name Change, Grounds for Exemption from Disclosure, Initial Prison Term Time Limit, Waiver of Hearing, Hearing by Teleconference, Hearing Officer, Evidence Rule, Aggravated Murder Review, Dangerous Offenders, Dangerous Offenders & Prison Term Reductions, Reduction for Severe Medical Condition, Board Review Packet, Misconduct, Compensatory Fines, Number of County of Residence, New Crime Severity Ratings, Subcategory Rationale and History/Risk Modifications, Changes in Aggravating & Mitigating Factors, PSR Report Outline, New Sanctions Role and Post-Prison Supervision Violations and general clarifications, corrections and changes prompted by Sentencing Guidelines System.

For Further Information Contact: Cindy Burgess Phone: 378-2334
(Rule Coordinator)

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Nov 1 4 52 PM '89

BEFORE THE

OREGON STATE BOARD OF PAROLE AND POST-PRISON SUPERVISION
BARBARA S. SECRETARY OF STATE

In the Matter of the Adoption,)
Amendment and Repeal of Rules)
Governing the Board of Parole)

STATEMENT OF JUSTIFICATION & NEED

The Board of Parole is adopting, amending and repealing the above referenced rules in order to comply with new legislation and to make clarifying amendments.

- (a) Statutory Authority : ORS Chapter 144, Chapter 790 Oregon Laws (1989)
- (b) Need for Rules : As a result of HB2250 and OAR Chapter 253, HB2436, SB51, SB254, SB255 and bills creating new crimes, the Board must amend and adopt rules. Other rule changes are for the purpose of clarifying or refining the practices of the Board.
- (c) Documents Relied Upon : HB2250, Chapter 790 Oregon Laws (1989); OAR Chapter 253, May 18, 1989; Attorney General Opinion #8207; HB2436, SB51, SB254, SB255, HB2188, HB2373, HB2375, HB2518, HB2784, HB3099, HB2369, HB3470, Chapter 914 Oregon Laws (1989); ORS Chapter 144.

Nov. 1, 1989
Date

Arlene H. Panukorn
Vice-Chairperson, Board of Parole & Post-Prison Supervision

FISCAL ANALYSIS OF RULE PER ORS 183.335

<u>Effect on Revenue (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
413	None	None

<u>Effect on Expenditures (By Fund):</u>	<u>Current Biennium:</u>	<u>Future Biennium:</u>
413	None	None
713	None	Potential for a reduction in G.F. expenditures in 91-93.

Organizational Impact:

These rule changes are primarily a result of the 1989 Legislature; HB2250 (Sentencing Guidelines) may cause an organizational impact (structure and size) on the Board of Parole & Post-Prison Supervision during the 91-93 Biennium.

Economic Impact:

Some of these rule changes may have an economic impact on the Department of Corrections in the future, both in a positive and a negative manner; however, the Board and the Department are now involved in joint planning efforts to implement Sentencing Guidelines.

Reference for Data and Methods Used Regarding the Above:

Board of Parole 89-90 Budget;
Board of Parole Monthly Statistics on Hearings and Board Actions
Board Minutes--Weekly Business Sessions
Minutes of Joint Planning Meetings.

Prepared by: Cindy Burgess Agency: Board of Parole

Title: Rules Coordinator Date: 11/1/89

DIVISION 5

DEFINITIONS

This section has been renumbered.

Definitions

255-05-005

(1) "Active Community Supervision": An uninterrupted period of at least six months supervision in the community, requiring regular contact and monitoring by the supervising officer to assure that the conditions of parole or post-prison supervision are being met, that the [parolee] supervisee has committed no new crimes and to assure repayment of restitution, if required.

(2) "Active Supervision": Supervision requiring regular contact and monitoring by the supervising officer to assure continued compliance with the conditions of parole.

"Active Supervision" shall not include:

- (a) the period of confinement in local, state, or federal correctional facilities during the parole;
- (b) the period of time between the suspension of parole and the date parole is continued; [and]
- (c) inactive parole; [.] (Div. 92)
- (d) involuntary commitment to a state or federal psychiatric facility.

(3) "Aggravation": The factors or elements surrounding the crime which appear to increase the seriousness of the criminal episode or reflect on the character of the offender pursuant to Exhibit E-1.

(4) "Base Range": The range for each crime category reflected in Exhibit C under the "excellent" column.

(5) "Board": Board of Parole and Post-Prison Supervision.

(6) "Board Review Packet": The information the Board shall consider at the inmate's hearing. The contents of the packet shall be listed in each of the Divisions which establishes a hearing.

(7) "Correctional Facility": any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order.

"Correctional Facility" [does not] includes a juvenile facility if the juvenile is confined for a felony charge or conviction and applies to a state hospital only as to persons detained therein after acquittal of a crime by reason of mental disease or defect.

- (8) "Crime Severity Rating": A classification from a low of one (1) to a high of seven (7) assigned to each crime, based on the seriousness of the crime pursuant to Exhibit A.
- (9) "Crime Spree": 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.
- (10) "Date of Return": The date the prisoner is physically returned or available for return to the custody of the Department of Corrections following a hold in another in-state or out-of-state jurisdiction.
- (11) "De Novo Hearing": a new initial prison term hearing, required when there are additional consecutive sentences for crimes which occurred prior to the first prison term hearing.
- (12) "Exemplary Behavior": [Behavior which is consistent with the conditions of parole.] Reasonable compliance with parole conditions and felony crime free during parole supervision.
- (13) "Extreme Cruelty": The facts of the crime demonstrate:
(a) the depraved, evil, mind of a person who has no regard for human life and suffering; or
(b) brutality; or
(c) intentional infliction of pain for the purpose of revenge, extortion, persuasion or to satisfy some other evil propensity.
- (14) "Future Disposition Hearing": The hearing at which the sanction for a parole violation is established.
- (15) "Gang Member": A person who associates with a group which identifies itself through the use of a name, unique appearance, or language (including hand signs), the claiming of geographical territory, or the espousing of a distinctive belief system that results in criminal activity.
- (16) "Gang-Related Activity": Crime committed:
(a) with other known gang members; or
(b) against other known gang members; or
(c) against a person who is not a gang member; or
(d) in order to further the purposes of the gang or impress other gang members.
- (17) "History/Risk Score": A rating from a high of eleven (11) to a low of zero (0) points, reflecting the prisoner's prior record and other factors which predict the likelihood of success on parole pursuant to Exhibit B.

- (18) "Inactive Parole: includes:
(a) general parole conditions;
(b) no supervision by a parole officer;
(c) no parole fees; and
(d) name and status maintained on the LEDS and EPR computer systems.
- (19) "In Camera Hearing": the inspection of a document by the Hearings Officer in private before the document may be introduced as evidence.
- (20) "Initial Parole Release Date": the [A fixed] date, by month, day and year, assigned to a prisoner for parole release based on the prisoner's matrix range, aggravation, mitigation, and judicially imposed minimum sentence(s).
- (21) "Inoperative Time": time spent outside a state correctional facility without the authorization of the Department of Corrections.
- (22) "Less Than the Sum of the Terms": an action by the Board whereby one or more of the consecutive ranges are treated as if they are concurrent.
- (23) "Matrix Ranges": Ranges of months within which the Board has the discretion to set a prison term. The ranges are based on crime severity ratings and history/risk scores.
- (24) "The Matrix": A table which displays the matrix ranges by showing the intersection of the crime severity rating and the history/risk score pursuant to Exhibit C.
- (25) "Mitigation": The factors or elements surrounding the crime which appear to decrease the seriousness of the criminal episode or reflects on the character of the prisoner pursuant Exhibit E-2.
- (26) "Parole": A conditional release from a state correctional facility into the community.
- (27) **Particularly Violent or Otherwise Dangerous Criminal conduct**: Conduct which is not merely unpleasant or offensive, but which is indifferent to the value of human safety or property.
- (28) "Parole Board Record": The file the Board maintains for each prisoner containing the information listed in ORS 144.185.
- (29) "Period Under Review" under Division 40, the time already served on the prison term, normally the three year period prior to the personal review hearing.

- (30) "Principal Range": The range of months for the crime holding the highest crime severity rating. When the ranges are the same, one shall be designated as the principal range.
- (31) "Preponderance": evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. [as a whole shows that the fact sought to be proved is more probable than not.]
- (32) "Probable Cause": a substantial objective basis for believing that more likely than not an offense or violation has been committed and the person to be arrested has committed it.
- (33) "Prison Term": The time established by the Board of Parole to be served before the parole release date.
- (34) "Prison Term Hearing": The hearing at which the Board establishes an inmate's prison term.
- (35) "[Parole]Revocation Hearing": A hearing to determine whether a [parole] violation of conditions of parole or post-prison supervision occurred and whether a recommendation should be made that parole or post-prison supervision should be revoked or continued with additional conditions.
- (36) "Serious Physical Injury": Physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, or impairment of health or protracted loss or impairment of the function of any bodily organ.
- (37) "Stranger": A person who is either unknown to a victim or with whom the victim has a superficial acquaintance or acquaintance of short duration or infrequent contact.
- (38) "Subcategory": the criteria for rating criminal conduct within the crime categories based on the seriousness of the offense (Exhibit A).
- (39) "Subordinate Range": Any range less than or equal to the principal range.
- (40) "Subpoena Duces Tecum": a subpoena requiring the party to appear at a hearing with a document or piece of evidence to be examined at the hearing.
- (41) "Summing the Ranges": Adding ranges of consecutive sentences to produce a unified range pursuant to OAR 255-35-021.

- (42) "Unauthorized Absence": time spent outside a state correctional facility without the authorization of the Department of Corrections whether it is an escape or an unauthorized departure.
- (43) "Unified Range": the total range computed under OAR 255-35-021 for consecutive sentences.
- (44) "Unsum the ranges": to establish a matrix range at less than the unified range. The effect of unsumming is to treat one or more of the ranges as if concurrent.
- (45) "Variations": The time periods which the Board may use to set a prison term above or below the matrix range pursuant to Exhibit D.
- (46) "Victim": The actual victim of the crime, a representative selected by the victim, or the victim's next of kin. In the case of a minor or incompetent victim, this term shall include the guardian of the victim.

DIVISION 10

ORGANIZATION

Membership
255-10-005

The Board of Parole and Post-Prison Supervision shall consist of those members appointed by the Governor pursuant to ORS 144.005.

Chairperson; Vice-Chairperson; Selection; Term
255-10-010
(deleted)

Chairperson; Vice-Chairperson; Powers and Duties
255-01-015

- (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 the office, as determined by the Governor. Such powers and duties shall include, but are not limited to:
 - (a) assigning Board members to panels and designating the presiding members in order to conduct hearings and reviews;
 - (b) serving as the presiding member when on a panel or a Full Board;
 - (c) apportioning matters to the panels and Full Board for decision;
 - (d) reassigning matters to different panels when required by rule, law, or procedure;
 - (e) scheduling business meetings and establishing the agenda; and
 - (f) informing the sentencing judge, district attorney, sheriff, or arresting agency of the scheduled release of each prisoner.
- (2) The vice-chairperson shall have the powers and duties determined by the Governor to be necessary for the performance of the office.

Adopted Rules: Adoption, Designation, and Changes of Rules With Other Agencies
255-10-020
(deleted)

DIVISION 12

PERSONAL SERVICE CONTRACTS

When Personal Service Contracts Are Used

255-12-001 (5/23/89)

The Board of Parole and Post-Prison Supervision may contract for services by use of personal service contracts or interagency or intergovernmental service agreements as authorized by the Board's legislatively approved budget when:

- (1) needed specialized skills, knowledge and resources are not available within the Board and its staff; or
- (2) the work cannot be done in a reasonable time with the Board's staff; or
- (3) an independent and impartial evaluation of a situation is required; or
- (4) it is substantially less costly and more efficient, in the long run, to contract for the work and union contracts would not be impaired.

Limitations

255-12-005 (5/23/89)

- (1) Personal service contracts shall be drafted and processed in accordance with Executive Department rules, OAR 122-10-005 through 122-31-005, ORS 291.021 and any other applicable laws.
- (2) Personal service contracts shall not exceed one fiscal year in duration.
- (3) Personal service contracts shall not exceed the funding provided by the legislatively approved budget.

Approval and Filing

255-12-010 (5/23/89)

- (1) The Board may enter into a personal service contract for an amount up to \$5000 per contract per fiscal year without Executive Department approval and in an amount up to \$25,000 per contract per fiscal year without Department of Justice approval.

- (2) Personal service contracts, amendments or extensions of contracts exceeding the approved or delegated dollar authority shall be submitted in triplicate originals for Executive Department approval.
- (2) Interagency and intergovernmental service agreements do not require Executive Department approval or review for legal sufficiency by the Department of Justice.
- (3) All personal service contracts and interagency and intergovernmental service agreements must be filed with the Executive Department.
- (4) Any personal service contract or agreement may be submitted for review by the Department of Justice.

Statement of Work

255-12-015 (5/23/89)

When the need for a personal service contract is established, the Board, or its designee, will draft a Statement of Work which:

- (1) describes specific services that are to be delivered; and
- (2) the conditions or circumstances under which services will be delivered, accepted and expensed.

Procurement

255-12-020 (5/23/89)

- (1) The Board, or its designee, will request price quotations, proposals, resumes, or vitae from at least three prospective contractors, who are qualified and interested, selected from a list maintained by the Board of Parole or Executive Department, by mailing:
 - (a) a Statement of Work or a proposed contract; and
 - (b) a Request for Proposals.
- (2) If the Chairperson is satisfied that only a single source is available or practical, the Chairperson may waive subsection (1) of this section and shall submit the appropriate justification to the Executive Department.

Contractor Selection

255-12-025 (5/23/89)

- (1) The Chairperson will screen the contractors and present those chosen for further consideration to the Board for a decision.

- (2) Contractors will be chosen based on the following criteria:
- (a) submission of a proposal, resume or vitae within 90 days of mailing the Request for Proposals;
 - (b) contractor agrees to the terms and conditions of the Statement of Work;
 - (c) contractor has adequate prior experience and education or special expertise in the type of service requested;
 - (d) contractor provides three positive business references or the contractor has a past history of good performance for the Board;

Contract Termination
255-12-030 (5/23/89)

The Board may terminate a personal service contract upon 30 days' written notice delivered by certified mail or in person when:

- (1) Funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of service; or
- (2) Federal or state regulations modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under the contract; or
- (3) Any license or certificate required of the contractor by law or regulation is for any reason denied, revoked or not renewed; or
- (4) The contractor fails to provide services called for by the contract within the time specified; or
- (5) The contractor fails to perform any other provisions of the contract or so fails to pursue the work as to endanger performance of the contract and, after written notice, fails to correct such failure within a specified period of time.
- (6) The reasons for termination of a contract listed in this rule are not exclusive of other possible reasons for termination.

Contract File
255-12-035 (5/23/89)

The Board shall maintain a contract file, which shall contain:

- (1) statement of justification for the contract;

- (2) written justification for negotiation in lieu of competitive procurements, if applicable;
- (3) copy of the request for proposals;
- (4) list of prospective contractors who were requested to submit proposals, resumes or vitae;
- (5) mailing list used to notify other prospective contractors which shall include:
 - (a) Office of Minority and Women Business Advocate; and
 - (b) Oregon Psychologists' Association; or
 - (c) Local temporary services agencies;
- (6) copy of each proposal, resume or vitae submitted;
- (7) method of evaluating proposals and how the contractor was selected;
- (8) record of negotiations and results;
- (9) resulting contract, including the tax compliance certification.

DIVISION 15

REQUEST FOR BOARD RECORDS OR FILES

Board Records

255-15-002

The Board will maintain a separate file on each person under its jurisdiction which will contain the materials obtained pursuant to ORS 144.185.

Oral Record of Hearing

255-15-003

A tape of the oral proceedings of any hearing shall be kept by the Board for at least two years.

Procedures for Obtaining Information from [Parole] Board Records

255-15-005

- (1) Any interested party may apply for information from a selected record.
- (2) The request must be in writing, addressed to the chairperson of the [Parole] Board and must specify the information requested.
- (3) The chairperson or designee will review the record to determine what may be disclosed in accordance with OAR 255-15-010, and within ten (10) working days will advise the person or agency whether the requested information is available and may be disclosed.

Criteria for Disclosure or Denial of Disclosure of File or Record

255-15-010

- (1) The records of the Board [of Parole] shall be disclosed to any person or agency unless disclosure would:
 - (a) [disclosure would] interfere with the rehabilitation of the person concerned; or
 - (b) [disclosure would] substantially interfere with the carrying out of the functions of the [Parole] Board or the Department of Corrections; or
 - (c) [disclosure] would endanger the inmate or other persons; or

- (d) [disclosure would] compromise the privacy of the inmate or another person; or
- (e) interfere with frank advisory communications between officials or employees of public agencies; or
- (f) compromise an ongoing criminal investigation; or
- (g) violate ORS 137.077 or 137.530 (relating to the PSI); and

[(e)](h) the public interest in confidentiality clearly outweighs the public interest in disclosure.

- (2) When disclosure of information is denied to a prisoner a written statement of the reasons for denial must be entered into the record for review by the Attorney General and the courts only.
- (3) Where a particular document contains information that is exempt from disclosure, exempt material shall be separated from nonexempt material and the nonexempt material must be disclosed.

Fees for Board Records

255-15-015

- (1) The fees for documents shall be as follows:
 - (a) If the request is for specific, identified, disclosable information from the Board Review Packet, the cost of the duplication will be fifty (50) cents per page; or
 - (b) If the request requires a review of the Parole Board Record, a determination of availability will be made by the reviewer. The cost will be fifty (50) cents a page plus a cost for staff time.
- (2) The fee for the duplication of oral records shall be \$5.00 per tape.
- (3) All computed costs including staff time for review, reproduction, materials, and first class postage may be waived by the chairperson of the Board.
- (4) Unless the chairperson decides that the person or agency may be billed at a later date, no reproduction of material is authorized until payment has been received in advance.
- (5) Payments will be deposited in the Miscellaneous Receipts account in accordance with Business Office instructions.

DIVISION 30

PRISON TERM HEARING PROCEDURE

Policy

255-30-002

(deleted 5/31/85)

Definitions

255-30-005

(deleted 5/19/88)

Scheduling Prison Term Hearings

255-30-010

- (1) The Board shall conduct a hearing to establish a prison term for each new prisoner whose crime was committed prior to November 1, 1989 within:
 - (a) six (6) months of admission to a Department of Corrections facility for those sentenced to five years or less;
 - (b) eight (8) months of admission to a Department of Corrections facility for those sentenced to more than five years but less than fifteen years; or
 - (c) [, or within one year] twelve (12) months of admission to a Department of Corrections facility for those sentenced to life or [if the prisoner's sentence is] fifteen (15) years or more.
- (2) A prison term hearing, [shall be scheduled within six (6) months of sentencing] for any additional sentence received while in custody of a Department of Corrections facility, shall be scheduled pursuant to section (1) of this rule. [or within one year of sentencing if the new sentence is fifteen (15) years or more.]
- (3) For those prison terms hearings which must be conducted within six (6) months, the Board may defer setting a prison term for [thirty] ninety days to obtain additional information.
- (4) Prison terms may be established after hearing or administratively pursuant to 255-30-023.

Scheduling and Hearing Procedure for Aggravated Murder

255-30-012

(deleted 5/31/85)

Notification of Hearing
255-30-013

- (1) The prisoner shall be notified, in writing, of the hearing and its purpose and shall receive a copy of the Board Review Packet at least 14 days prior to the hearing.
- (2) If the prisoner did not receive 14 days notice, the hearing may be rescheduled, or the prisoner may waive the notice and the hearing shall be conducted.
- (3) The [Parole] Board shall attempt to notify the victim (if the victim requests [to be notified] notification and furnishes the Board a current address) and the District Attorney of the committing county at least thirty (30) days before all hearings by sending written notice to the current addresses of both parties.

When a Full Board is Required; Procedures for Full Board Decision
255-30-015

- (1) Except as otherwise provided in this rule, all prison term hearings shall be conducted by a panel of two voting members of the Board.
- (2) The following hearings may be conducted by a quorum of the Board with final decision by a quorum of the Board:
 - (a) cases where the prisoner was sentenced under ORS 161.725 and 161.735 as a dangerous offender;
 - (b) cases where an extension of more than two years in the prison term is recommended for misconduct.
 - (c) whenever a panel lacks a quorum and is unable to come to a unanimous decision to set a prisoner's prison term, and a second panel is assigned to hear the case and no quorum occurs in the second panel. [; and]
- (3) The following hearings may be conducted by a quorum of the Board with final decision by at least four members of the Board:
 - (a) cases where the minimum sentence imposed by a judge pursuant to ORS 144.110 exceeds the matrix range and the variations permitted a panel;
 - (b) whenever a panel recommends a decision to exceed the allowable variation from the matrix permitted to the panel and a third vote;
 - (c) whenever the panel recommends denying parole;

- (d) whenever a panel recommends a decision to set the prison term below a judicially set minimum sentence; (A panel may uphold a judicial minimum.)
 - (e) whenever a panel recommends unsumming a unified range.
- (4) The following hearings may be conducted by a quorum of the Board with review of the final decision by the full Board:
- (a) cases involving a prisoner sentenced to death for aggravated murder or life imprisonment [,to death] for murder or for aggravated murder;
 - (b) cases where the prisoner was convicted of a crime involving the death of a victim, whether or not the prosecution directly charged the prisoner with causing the death of the victim.
- (5) If a Board member is not present at a Full Board hearing, and review is compelled by statute [,] or rule, or the vote may affect the outcome of the hearing, the Board member may vote administratively after reviewing the Board Review Packet and the handwritten Board Action Form with attached exhibits, or may request that a hearing be rescheduled. The Board's action shall be considered final if the absent member's vote is not required for a final decision.
- (6) A panel of one Board member and one hearings officer may conduct prison term hearings for prisoners convicted of Class C felonies. A hearings officer may not participate on a panel in cases where the minimum sentence imposed by a judge pursuant to ORS 144.110 exceeds the matrix range and variations permitted a panel.

Procedures for Full Board Decisions

255-30-020

(deleted 5/19/88)

Teleconference Hearing

255-30-021

At the discretion of the chairperson, any hearing may be conducted by teleconference call.

- [(1) A prisoner in custody in another jurisdiction may have a hearing by teleconference call, or may be returned to Oregon for a hearing.
- (2) A prisoner who resides outside of Marion County may have a hearing by teleconference call.]

Prisoner Appearance at [Parole] Board Hearing
255-30-023

- (1) The prisoner shall be present in person or by telephone at the Parole Board hearing.
- (2) A prisoner who refuses to appear may be compelled to do so by the Board.
- (3) The Board may elect not to compel the prisoner to attend the hearing. In this instance, the Board may reschedule the hearing to see the prisoner at a later date, or set the prison term in the prisoner's absence.
- (4) Notwithstanding subsections 1 - 3 of this section, a prisoner sentenced to a Class C non-person-to-person felony may waive his/her right to a prison term hearing. Within the time limits provided by 255-30-010, the prison term may be set administratively. If the Board is not satisfied that the waiver was made knowingly or intelligently or if it believes more information is necessary before making its decision, the Board may deny the waiver and order a hearing.

Who May Appear at a [Parole] Board Hearing
255-30-025

- (1) The prisoner may be accompanied at a Board of Parole and Post-Prison Supervision hearing by a person of the prisoner's choice [.] , however, the accompanist must be:
 - (a) approved for privileged visiting according to Department of Corrections rules on visiting (OAR 291-127-005 to -065); or
 - (b) an assigned inmate legal assistant, selected pursuant to Department of Corrections rules (OAR 291-139-005 to 045), from the institution where the prisoner is in custody. [Procedures for admission to a Parole Board hearing will be governed by the Department of Corrections rule governing visiting.]
- (2) In addition to a person of the prisoner's choice, an assistant shall be provided by the Department of Corrections or the Board of Parole for [Assistance shall be provided to] prisoners incapable of presenting their position due to a foreign language barrier, or a documented mental or emotional incapacity.
- [(3) If the prisoner has an assistant provided pursuant to subsection (2) of this rule, this shall not preclude the prisoner from being accompanied to the hearing by a person of the prisoner's choice.]
- (4) The victim, personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction shall have the right to appear at [Parole] Board Hearings.

Victim, District Attorney and Inmate Statements
255-30-027

- (1) At the conclusion of the hearing, the victim, personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction, may make statements not to exceed three minutes.
- (2) Following the victim and the District Attorney statements, the person accompanying the prisoner may make a statement not to exceed three minutes.

Panel Decision: Use of Guidelines; Unanimity Requirement
255-30-030
(deleted 5/19/88)

Evidence
255-30-032

- (1) The presiding chairperson at a hearing before the Board of Parole and Post-Prison Supervision shall explain the issues to be decided and shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the Board, which, in the case of a prison term hearing, are those issues set forth in 255-35-013. The Board may pursue lines of inquiry and follow up on potential evidence that may be favorable to the prisoner.
- (2) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible in hearings before the Board, including:
 - (a) The information set forth in 255-30-035;
 - (b) Other relevant evidence concerning the prisoner as may be reasonably available.
- (3) Board orders shall be supported by reliable, probative and substantial evidence. Substantial evidence is found when the record, viewed as a whole, would permit a reasonable person to make a particular finding.
- (4) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. At a prison term hearing, evidence relating to guilt or innocence is irrelevant.
- (5) Evidence objected to by the prisoner may be received by the Board. Rulings on its admissibility or exclusion, if not made during the hearing by the presiding chairperson, shall be made on the record at or before the time a final order is issued.

(6) Erroneous rulings on evidence shall not preclude Board action on the record unless shown to have substantially prejudiced the rights of the prisoner.

Information the Board Shall Consider at a Prison Term Hearing
255-30-035

- (1) The Board Review Packet shall contain:
 - (a) Inmate's Notice of Rights and Notice of Administrative Appeal;
 - (b) PSI, PAR, PSR or report of similar content;
 - (c) sentencing/judgment orders;
 - (d) face sheet;
 - (e) certification of time served credits;
 - (f) Board Action Forms;
 - (g) information pursuant to Ballot Measure 10;
 - (h) material submitted by the inmate or representative relating to the calculation of the prison term;
 - (i) current psychological/psychiatric evaluations;
 - (j) other material selected at the Board's discretion.
- (2) Additional information and recommendations from those with a special interest in the case may be considered. If considered, such information shall be included in the Board Review Packet. Any information submitted pursuant to this section must be received by the Board at least seven (7) days prior to the hearing.

Prisoner's Access to the Written Materials Considered at Hearings and Interviews
255-30-040

- (1) The prisoner shall have access to all the material in the Board Review Packet except that exempted by OAR 255-15-010.
- (2) The prisoner shall have access to all the responses made by the victim and the District Attorney pursuant to OAR 255-30-035 except that exempted by the Board pursuant to OAR 255-15-010. The responses shall be included with the Board Review Packet or they shall be given to the inmate as soon as they are available to the Board.
- (3) If the victim, his/her representative, or the District Attorney wishes to rebut any of the material in the Board Review Packet, the response must be received by the Board seven (7) days prior to the hearing. The victim shall be notified that the response will be included in the Board Review Packet sent to the inmate unless the victim requests confidentiality.
- (4) Information from the inmate or representative shall be submitted at least seven (7) days prior to the hearing.

Exemptions from Disclosure

255-30-045

(deleted 5/19/88)

Record of Hearing: Content; Time to be Maintained

255-30-050

(deleted 5/19/88)

Notification of Decision: Proposed Order; Parties Notified;
Content

255-30-055

- (1) Following a Board decision concerning the prison term of an inmate, the prisoner, sentencing court, District Attorney, the Department of Corrections, and upon request, the victim shall be notified in writing of the Board's final order.
- (2) The Board's final order shall contain:
 - (a) the prison term commencement date;
 - (b) the history/risk assessment score;
 - (c) the crime category with the subcategory rationale;
 - (d) the matrix range;
 - (e) when there are consecutive sentences, whether the range is unsummed and the reason for unsumming;
 - (f) when there is a variation from the range, the reason for the variation;
 - (g) aggravation;
 - (h) mitigation;
 - (i) the votes on minimum sentences;
 - (j) the prison term set;
 - (k) the votes of the individual Board members; [and]
 - (l) the parole release date; [.]
 - (m) when there are conditions of parole or post-prison supervision set, findings concerning the waiver of the residency condition, if any; and
 - (n) sentencing guidelines range, if applicable.

Notification of Release; Parties Notified

255-30-056

(deleted 5/19/88)

DIVISION 32

AGGRAVATED MURDER

Prison Term Hearing to be Held
255-32-005

- (1) A person convicted of Aggravated Murder under ORS 163.095 shall receive a prison term hearing under the provisions of Division 30 of these rules. A review date congruent with the minimum terms set forth in 255-32-010 shall be set rather than a parole release date.
- (2) Persons sentenced to death or life without the possibility of release or parole shall not receive a prison term hearing.

Minimum Period of Confinement Pursuant to ORS 163.105
255-32-010

- (1) The minimum period of confinement for a person convicted of Aggravated Murder as defined by ORS 163.105(1) shall be thirty (30) years.
- (2) The minimum period of confinement for a person convicted of Aggravated Murder as defined by ORS 163.105(2) prior to Dec. 6, 1984 shall be twenty (20) years.

Petition/Purpose for Hearing
255-32-015

The prisoner may petition and the Board shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time:

- (1) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(1); or
- (2) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-32-010(2).

Purpose of Hearing
255-32-020

The sole issue of the hearing shall be to determine whether or not the prisoner is likely to be rehabilitated within a reasonable period of time.

Manner of Hearing

255-32-025

- (1) The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:
 - (a) The prisoner shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and
 - (b) The prisoner shall have the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the Board, at state expense.
- (2) If upon hearing all the evidence, the full Board upon a unanimous vote of all five members finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole or work release and shall set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.

Effect of Denying Relief Request

255-32-035

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

Record/Notice

255-32-040

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

DIVISION 35

APPLICATIONS OF THE GUIDELINES TO ESTABLISH A PRISON TERM

Definitions

255-035-005

(deleted)

Rating Crime Severity: Generally, Multiple Concurrent Convictions

255-35-010

(deleted)

Board to Make Findings of Fact Regarding Offense Severity; Waiver of Exit Interview; Establishing Conditions of Parole

255-35-012

(deleted)

Factors which Determine An Initial Parole Release Date

255-35-013

During the prison term hearing the Board shall make findings of fact concerning:

- (1) the prison term commencement date;
- (2) the crime severity rating and subcategory rationale (Exhibit A);
- (3) the prisoner's history/risk assessment score (Exhibit B);
- (4) the matrix range;
- (5) when there is a variation from the range, the reason for the variation;
- (6) aggravation (Exhibit E-1);
- (7) mitigation (Exhibit E-2); and
- (8) minimum sentences.

Initial Parole Release Date for Offenders Whose Probations are Revoked November 1, 1989 or Later

255-35-014

For those offenders whose crimes were committed prior to November 1, 1989 and whose probations are revoked November 1, 1989 or later the Board shall:

- (1) make the findings of fact listed in OAR 255-35-013 pursuant to Divisions 30 and 35 of the Board of Parole and Post-Prison Supervision rules; and
- (2) make findings of fact pursuant to the Sentencing Guidelines Grid and applicable rules found in OAR Chapter 253 and herein incorporated by reference including:
 - (a) crime category;

- (b) criminal history;
 - (c) guideline ranges (Appendix A to OAR 253);
 - (d) aggravating or mitigating factors, if any
 - (e) upholding or overriding minimum sentences;
 - (f) summing of consecutive ranges (OAR 253-12-002 to 003); and
- (3) Set the prison term pursuant to the Sentencing Guidelines Grid, as long as that prison term is shorter than it otherwise would be under the Board of Parole Matrix Guideline and applicable rules.

Criminal History/Risk Assessment
255-35-015
(deleted)

Variations From the Ranges for Aggravation or Mitigation
255-35-016

- (1) The Board may depart from the appropriate parole matrix range only upon making a specific finding that there is aggravation or mitigation which justifies departure from the range pursuant to Exhibit E-1 and E-2. The Board shall clearly state on the record the facts and specific reasons for its finding. Items of aggravation and mitigation may be given different weight and are not necessarily balanced one for one.
- (2) If a panel finds that the matrix range and the variations permitted a panel are inadequate to establish a prison term because of the panel's findings of aggravation or mitigation, it shall secure a third vote for an additional variation or refer the matter to the Full Board.
- (3) The maximum allowable variations from a range are shown in Exhibit D. A portion or all of the variation allowed may be applied.
- (4) These provisions shall apply equally to unified ranges.

Multiple Concurrent Convictions
255-35-018

When concurrent sentences exist, the prisoner shall be given a [matrix range] prison term based on the crime that [with greatest range] provides for the longest prison term.

Consecutive Sentences: Board Bound by Court Order
255-35-020

The Board of Parole and Post-Prison Supervision does not have the authority to run a sentence concurrently or consecutively to an out of state jurisdiction, but is bound by the final judgement order issued by the Oregon courts.

Consecutive Sentences: Creating a Unified Matrix Range
255-35-021

- (1) Notwithstanding subsection (4) of this section, the Board shall establish the principal range for the most serious of the felonies committed during the time period under consideration. If two or more felonies are determined to be equally the most serious, the Board shall establish a principal range for only one of those felonies.
- (2) The Board shall then establish a range for each of the remaining felonies committed during the same period using the appropriate base range for the crime pursuant to Exhibit C.
- (3) The unified range for crimes committed during the same period shall be determined by summing the range established under subsection (1) of this section with the ranges established under subsection (2) of this section.
- (4) The method established by subsections (1) to (3) of this section for determining the unified range shall not apply if any of the crimes involved is:
 - (a) murder, as defined in ORS 163.115 or any aggravated form thereof;
 - (b) assault in the first degree, as defined in ORS 163.185;
 - (c) kidnapping in the first degree, as defined in ORS 163.235;
 - (d) rape in the first degree, as defined in ORS 163.375;
 - (e) sodomy in the first degree, as defined in ORS 163.405;
 - (f) sexual penetration with a foreign object, as defined in ORS 163.411;
 - (g) arson in the first degree, as defined in ORS 164.325; or
 - (h) treason, as defined in ORS 166.005.
- (5) To determine the unified range for inmates with consecutive sentences which involve a crime listed in subsection (4) of this section, the Board shall establish the matrix range for each crime by using the inmate's history/risk score pursuant to Exhibit B and the applicable crime category rationale. The unified range shall be the sum of the ranges established under this subsection.

- (6) The unified range may be subject to the variations established in accordance with OAR 255-35-016 and Exhibit D.

Consecutive Sentences; Referring a Case to the Full Board; Going Below the Range; Additional Consecutive Sentences
255-35-022

- (1) When a panel recommends that a range be less than the sum of the terms under OAR 255-35-021, the case shall be referred to the Full Board.
- (2) The duration of imprisonment for consecutive sentences may be less than the sum of the terms under OAR 255-35-021, if the Board finds by four affirmative votes that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect community security.
- (3) When additional sentences are imposed for crimes which took place during the period under consideration at a prior prison term hearing and the additional sentences are consecutive to the crimes already considered the Board shall:
- (a) conduct a de novo prison term hearing pursuant to the provisions of Division 30 for all the crimes. The unified range for the additional sentences and the sentences which were already considered shall be computed under the provisions of OAR 255-35-021; or
 - (b) conduct a hearing to consider only the additional consecutive sentences using base ranges for the additional crimes. The commencement date for the new prison term under this subsection shall be the parole release date set at the previous prison term hearing.
- (4) The provisions of subsection (3) of this section apply only to crimes which occurred on or after July 11, 1987, unless one of the crimes involved is listed in OAR 255-35-021 (4).
- (5) If the Board votes to unsum the consecutive sentences at the beginning of the hearing, then a hearing under subsection (3) of this section is not required, unless one of the crimes involved is listed in OAR 255-35-021 (4). The new crime will be considered as a principal range.
- (6) If one of the crimes involved is listed in OAR 255-35-021 (4) and is consecutive, then a de novo hearing under subsection (3)(a) of this section must be conducted.

- (7) If a new crime is consecutive to crimes already considered, and is the most serious offense with the highest crime severity rating and/or longest sentence, a de novo hearing under subsection (3)(a) of this section must be conducted.
- (8) When additional sentences are imposed for crimes which took place after the period considered at a prior prison term hearing and the additional sentences are consecutive to the crimes already considered, the matrix range for the additional crimes shall be established as if it were a new sentence. If the inmate has not yet been released on parole, the commencement date for the new crimes shall be the parole release date established at the previous prison term hearing.

Effect of Judicial Minimum Sentences on Prison Terms Under ORS 144.110; Consecutive Minimum Sentences
255-35-023

- (1) The Board shall not release a prisoner on parole until a judicially imposed minimum prison term has been served, except upon the affirmative vote of four members who have found that:
 - (a) the minimum term is not an appropriate penalty for the criminal offense; and
 - (b) the minimum term is not necessary to protect the public.
- (2) If at least four members of the Board have made the findings listed in subsection (1) of this section, The Board shall establish a prison term using the guideline range and the standard variations allowed.
- (3) Except in the case of consecutive life sentences for aggravated murder, [W] when there are consecutive minimum sentences, and the Board finds that the combined minimums are not appropriate penalties for the criminal offenses involved, and are not necessary to protect community security, the Board, by four concurring votes, may override one or more of the judicially imposed minimums and set a prison term which is less than the sum of the minimum terms.
- (4) The Board shall set a parole release date in accordance with OAR 255-35-013, and shall state the facts and reasons for its actions.

Effect of Judicial Mandatory Minimum Sentences on Prison Terms Under 161.610
255-35-024
(deleted)

Setting a Parole Release Date: When Matrix Range Exceeds Good Time Date
255-35-025

When the Board chooses to set a parole release date on a sentence with a statutory good time date which calls for an earlier release than the guideline range indicates, the guideline range shall be as follows in order to allow a period of parole supervision:

- (1) Six months from the statutory good time date on a sentence of at least one year and less than three years;
- (2) Nine months from the statutory good time date on a sentence of three years [up to] and less than six years.
- (3) Twelve months from the statutory good time date on a sentence of six or more years.

Parole Denial: When Parole May be Denied
255-35-030

- (1) The Board with four (4) affirmative votes may deny parole pursuant to ORS 144.120(4) when:
 - (a) The offense of commitment included particularly violent or otherwise dangerous criminal conduct as defined by section 255-05-005(24);
 - (b) The offense was preceded by two (2) or more Class A or Class B felony convictions; or
 - (c) The prisoner's record includes a psychiatric or psychological diagnosis of a present severe emotional disturbance such as to constitute a danger to the health or safety of the community.
- (2) A two-member panel may refer the matter to the Full Board with the recommendation that parole should be denied based on the criteria listed in subsection (1) of this section.
- (3) 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.

Variations From the Ranges for Aggravation or Mitigation: Statements for Record, Prior Disclosure to Prisoners
255-35-035
(deleted)

Resetting Pre-Guideline Parole Hearing Dates for Category 7 Offenders
255-35-040
(deleted)

DIVISION 37

DANGEROUS OFFENDERS

November 1, 1989 and After

The entire text of this rule is new.

Release Hearings
255-37-005

- (1) Within six (6) months after commitment to the custody of the Department of Corrections of any person sentenced as a dangerous offender, the Board shall set a date for a release hearing which shall be no later than ten (10) days prior to the date the offender is eligible for release on post-prison supervision.
- (2) A person sentenced as a dangerous offender for felonies committed on or after November 1, 1989 is eligible for release on post-prison supervision:
 - (a) after the Board finds the condition which made the prisoner dangerous is absent or in remission; and
 - (b) after having served the presumptive sentence set forth on the judgment order.
- (3) When the Board finds the dangerous condition is not absent or in remission, reviews will be scheduled at least once every two (2) years until the condition is absent or in remission at which time a release date will be set.
- (4) If after finding the dangerous condition is absent or in remission, the Board later has reasonable cause to believe the condition has returned, the Board may order a psychiatric evaluation pursuant to ORS 144.226 and shall conduct a new release hearing.
- (4) If, at the release hearing or at any subsequent review, the Board determines the condition is absent or in remission, the Board shall order release to post-prison supervision subject to the provisions of Sections 32a and 32b of HB2250, regarding supervision conditions and review of release plans and subject to eligibility for release.
- (6) At any hearing or review, the Board may consider:
 - (a) the written report of the examining psychiatrist;
 - (b) a written report to be made by the executive officer of Department of Corrections institution in which the prisoner has been confined;

- (c) any other information regarding the prisoner that the Board finds relevant.

Psychiatric Evaluations
253-37-010

- (1) Within sixty (60) days of the last day of the presumptive sentence and at least every two years thereafter, the Board shall order from the Oregon State Hospital a complete physical, mental and psychiatric examination of the offender.
- (2) The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other information the psychiatrist believes will aid the Board in determining whether the examined person is eligible for release.
- (3) The report of the psychiatrist shall:
- (a) include a statement as to whether or not the dangerous offender has any mental or emotional disturbance, deficiency or condition predisposing him/her to the commission of any crime to a degree rendering the offender a menace to the health or safety of others;
 - (b) state progress or changes in the condition of the examined offender;
 - (c) contain recommendations for treatment or medication that would assist the offender in performing satisfactorily in the community upon release;
 - (d) be filed with the Board within 40 days after the examination;
 - (e) be certified and sent to the offender, the offender's attorney, and to the institution superintendent.

Department of Corrections Written Reports
255-37-015

The written report of the executive officer of the Department of Corrections, which the Board shall review at the release hearing, shall contain:

- (1) a detailed account of the offender's conduct while confined;

- (2) All infractions of rules and discipline, the circumstances, and the punishment imposed;
- (3) extent to which the offender has responded to efforts made in the institution to improve his/her mental and moral condition;
- (4) a statement as to the person's present attitude towards society, the sentencing judge, the district attorney, and the arresting police officer;
- (5) a statement as to the offender's present attitude towards his/her previous criminal career;
- (6) the industrial record, showing average number of hours worked per day and the nature of the occupations;
- (7) a recommendation as to the kind of work, if any, the person is best fitted to perform and at which he/she is most likely to succeed upon leaving the institution.

Request for Review Prior to Release Hearing Date
255-37-020

- (1) Notwithstanding subsection 1 of 255-37-005, a prisoner sentenced as a dangerous offender under ORS 161.725 and 161.735 may, if the prisoner can present evidence that his/her dangerous condition may be absent or in remission, request a release hearing prior to the earliest time the prisoner is eligible for release to post-prison supervision or a two year review.
- (2) The Board shall review the request for a release hearing by administrative file pass.
- (3) If Board finds, based upon the request and the information therein, there is reasonable cause to believe the dangerous condition is absent or in remission, the Board shall conduct a release hearing as soon as reasonably convenient.
- (4) If the Board finds there is not reasonable cause to believe the dangerous condition is absent or in remission, the prisoner's condition will be reviewed at his originally scheduled release hearing pursuant to OAR 255-37-005(1).

The Release Hearing Packet
255-37-025

The Post Prison Supervision Release Hearing Packet shall contain:

- (1) institution face sheet;
- (2) all prior Board Action Forms;
- (3) Oregon State Hospital psychiatric evaluations, and reports pursuant to ORS 144.226 to ORS 144.228.
- (4) documents listed in OAR 255-37-005(5);
- (5) correspondence;
- (6) field parole analysis report or report of similar content; and
- (7) court orders.

Post-Prison Supervision
255-37-030

- (1) A dangerous offender released to post-prison supervision prior to the sentence expiration shall serve the remainder of the sentence term imposed under ORS 161.725 and 161.735 on post-prison supervision.
- (2) The Board of Parole and Post-Prison Supervision may return an offender for a period of 180 days as a sanction for any supervision violation. Notwithstanding ORS 137.010 and the rules of the State Sentencing Guidelines Board, the sanction may be imposed repeatedly for subsequent violations during the term of post-prison supervision.
- (3) The Board may at any time require the offender to submit to a psychiatric examination as provided in ORS 144.226. If the Board finds that the condition that made the offender dangerous is no longer in remission or has otherwise returned, the Board shall return the offender to prison for an indefinite period of time.
- (4) An offender returned to prison is entitled to periodic reviews once every two years as provided in 255-37-005.

DIVISION 40

PERSONAL REVIEWS AND REDUCTIONS IN PRISON TERMS

Scheduling of Personal Reviews

255-40-005

(temp amend. 10/4/88, perm. 12/06/88)

- (1) Personal reviews may be conducted every three years for those prisoner's whose crimes were committed prior to November 1, 1989. The Board will only conduct a personal review hearing after it has received from the institution a recommendation for a reduction in the prison term as described in OAR 255-40-025(1).
- (2) Personal review dates shall be computed from the original adjusted commitment date on an uninterrupted period of incarceration.
- (3) The purpose of a personal review hearing shall be to determine the progress of the prisoner and whether such progress indicates outstanding reformation so as to warrant a reduction in the prison term under the criteria listed in OAR 255-40-025(2).
- (4) Prisoners sentenced for aggravated murder or as dangerous offenders, and those parole denied are not subject to personal reviews. Dangerous offenders whose condition is found absent or in remission and whose parole release date has been set may be eligible for personal reviews upon receipt of a positive recommendation from the Department of Corrections. (Amended November 1, 1989).

Procedure for Personal Reviews

255-40-010

Personal reviews shall be conducted by a panel or a full Board pursuant to OAR 255-30-015.

Purpose

255-40-015

(deleted)

Reopening Cases: When; What is Necessary

255-40-020

(Repealed 12/06/88))

Resetting the Parole Release Date to an Earlier Date

255-40-025

(amended 11/22/88)

- (1) An established prison term as defined in section 255-05-005(30), may be reduced under subsection (2) of this section upon the prisoner's application for a hearing and the receipt of a recommendation from the parent institution. Such a request for a hearing must come to the chairperson of the Board, and upon receipt, a hearing will be scheduled. The Board may, at its discretion, take administrative action to reset the parole release date to an earlier date.
- (2) If the prisoner displays an extended course of conduct indicating outstanding reformation, the Board may grant a reduction of up to seven months of the three year period under review, under this section. Cases will be reviewed based on the following criteria:
 - (a) the individual merits of each case;
 - (b) the seriousness of the crime;
 - (c) the protection of the public
 - (d) demonstrable achievement in dealing with problems present at the time of incarceration and associated with criminal conduct (e.g., psychological disorder, drug or alcohol dependency, lack of educational or vocational skills);
 - (e) documented cooperation with authorities while in custody where a substantial benefit is derived by the authorities; and
 - (f) the absence of disciplinary actions resulting from violation of rules within the three year period.
- (3) Special requests for reduction from the superintendent of the parent institution and the Director of the Department of Corrections may be scheduled for a hearing with the concurrence of the majority of the Board, or may be considered administratively.
- (4) The criteria for a special request reduction shall be:
 - (a) when an inmate's documented cooperation with authorities has contributed significantly to the safety and security of the facility; or
 - (b) when cooperation with law enforcement officials results in the apprehension, interruption and conviction of persons involved in significant on going criminal activity.

- (5) The prisoner shall have the burden of establishing that his/her conduct meets the criteria for any [date] reduction under consideration.

Effect of Minimum Terms on Reductions

255-40-026

- (1) If the prisoner has a judicial minimum sentence which was previously upheld pursuant to ORS 144.110, the minimum must be overturned by four (4) concurring votes of the Board before a reduction can be granted from the previously established minimum set.
- (2) If the prisoner has a mandatory minimum sentence pursuant to ORS 161.610, a reduction cannot be granted below the mandatory minimum sentence and the statutory reduction for goodtime.

Reductions for a Severe Medical Condition

255-40-028

- (1) Reductions in prison terms may be considered [where the] when any prisoner, regardless of whether his/her crime was committed before or after November 1, 1989, is suffering from a severe medical condition. The request for reduction must be accompanied by:
- (a) a report prepared by a medical authority which attests to validity of the condition with reasons why continued incarceration would be cruel and inhumane; and
 - (b) a recommendation from the superintendent of the institution; and
 - (c) a recommendation from the Director of the Department of Corrections.
 - (d) a commutation from the Governor for those sentenced to life in prison or death for aggravated murder.
- (2) Should the medical condition be such that a hearing may be threatening to the health and safety of the prisoner or the Board, the reduction shall be granted administratively, with the concurrence of the majority of the Board.

Who May Appear

255-40-030

(deleted)

Notice, Disclosure, Record
255-40-035

The notice, disclosure, and record making provisions of Division 30 shall apply to all hearings, and reviews granted under this Division.

Personal Review Packets
255-40-040

The Personal Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) psychological evaluations (last 6 months);
- (4) recommendation [for a date cut] to reset the release date to an earlier date;
- (5) correspondence;
- (6) field parole analysis report or report of similar content;
and
- (7) court orders.

DIVISION 50

POSTPONING A PAROLE RELEASE DATE [FOR SERIOUS MISCONDUCT]

This Division is applicable to Prisoner's Who
Committed Crimes Prior to November 1, 1989

Grounds for Postponing a Parole Release Date [for Serious Misconduct]
255-50-005

- (1) The Board shall postpone a prisoner's scheduled release date according to the procedures set forth in 255-50-010, if it finds [after a hearing,] that the prisoner engaged in serious misconduct during confinement [according to the procedures set forth in this section].
- (2) The Board may postpone a prisoner's scheduled release date upon:
- (a) a report of serious misconduct and a recommendation for an extension of the prison term from the Director of the Department of Corrections or designee;
 - (b) reasonable grounds to believe a prisoner has violated a law or engaged in serious misconduct; or
 - (c) the refusal of a prisoner to participate in psychiatric or psychological evaluation ordered by the Board pursuant to ORS 144.223.
 - (d) notification of unauthorized absence.
- [(6) Resets under two years will be panel cases, unless it has been previously designated a Full Board case.]
- [(7) When the recommended extension of the prison term exceeds the prisoner's statutory good time date or the expiration date, the prison term may be extended up to one day less than the good time date or expiration date.]
- [(8)](3) If serious misconduct occurs before a prisoner's prison term has been established and an extension of the prison term would be justified, the time for misconduct will be added to the prison term.
- [(9)](4) If serious misconduct occurs after a prison term has been established and an extension of the prison term would be justified, the Board may [take steps to postpone release] rescind the parole release date and order a postponement hearing to consider extending the prison term.

Postponement Procedures: Hearing by Board; Board Action
255-50-010

- [(1)] When the Board is notified by the Director of the Department of Corrections that an extension of a prison term has been recommended, the Board may consider the recommendation by administrative file pass or a hearing may be scheduled.]
- [(2)](1) When a parole postponement hearing is held, the following procedure will apply:
- (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 except [;]
 - (b) a prisoner may not waive his/her right to appear;
 - (c) a prisoner may not relitigate facts which have been found at the institution's disciplinary [court] hearing.
- [(3)](2) If serious misconduct is found, it will be classified within one of the following four categories and the prison term may be extended as provided in Exhibit G.:
- (a) hazard to human life or health;
 - (b) hazard to security;
 - (c) hazard to property; or
 - (d) third in a series of rule violations within a three month period, while assigned to any Department of Corrections program.
- [(4)](3) The Board may request that the prisoner be given another hearing before the disciplinary committee originating the recommendation for extension, or choose not to extend a prison term if the Board finds that other disciplinary options are adequate for the seriousness of the misconduct, considering the factors found in rule 255-50-005.
- [(5)](4) The Board may continue the postponement hearing and order a psychiatric or psychological examination when it appears that a severe emotional disturbance may be present. If there is a psychiatric or psychological diagnosis of present severe emotional disturbance, such as to constitute a danger to the health [and] or safety of the community, the Board may defer release to a specified future date. In choosing not to set a parole release date, rule 255-35-030 shall apply [control].
- (5) Resets under two years will be panel cases, unless it has been previously designated a Full Board case.
- (6) When the recommended extension of the prison term exceeds the prisoner's statutory good time date or the sentence expiration date, the prison term may be extended up to one day less than the good time date or expiration date.

- [(6)](7) If the Board extends the prison term, the prisoner shall be given:
- (a) The final order including, [A] a written statement of the category of misconduct, if applicable, 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 pursuant to [under] Division 80.

Department of Corrections Report of Misconduct
255-50-011

- [(2)](1) The Director of the Department of Corrections or designee may recommend an extension of a prisoner's parole release date as a disciplinary sanction.
- [(3)](2) A recommendation to extend a prison term shall be made according to the following guidelines:
- (a) the prisoner must be given an opportunity for a Department of Corrections disciplinary hearing, and have been found to have violated a rule governing conduct; and
 - (b) in no instance shall an extension of a prison term be recommended unless all other disciplinary options have been specifically considered and deemed to be, individually and in combination, inadequate for the seriousness of the misconduct.
- [(4)](3) The following factors shall be considered in determining whether an extension is appropriate:
- (a) effectiveness of the sanction as a disciplinary measure, both to the prisoner and to the general prison 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 institutional conduct.

[(5)](4) A prison term shall not be extended on a recommendation from the institution unless the misconduct can be classified within one (1) of the following four (4) categories:

- (a) hazard to human life or health;
- (b) hazard to security;
- (c) hazard to property; or
- (d) third in a series of rule violations within a three month period, while assigned to any Department of Corrections program.

Postponement When Informed of Reasonable Grounds
255-50-012

[(10)](1) The Board may [extend a parole release date on its own motion,] rescind the parole release date when the Board is informed of reasonable grounds to believe that a prisoner has violated a law or has engaged in serious misconduct. A fact finding hearing shall be held by a Department of Corrections hearings officer to determine if the law violation or misconduct occurred. However, if the prisoner has received an additional sentence to the Department of Corrections custody, no hearing is required.

Postponement for Refusing to Participate in a Psychiatric or Psychological Evaluation
255-50-013

- (1) [Notwithstanding rules 255-50-005 and 255-50-010, t] The Board may [administratively] postpone a parole release date until a specified future date [rescind a parole release date for serious misconduct,] when a prisoner has refused to participate in psychiatric or psychological evaluation, which was ordered by the Board pursuant to ORS [144.125(3)] 144.223, prior to the prisoner's release on parole.
- (2) When a parole release date is rescinded under this section, the Board shall conduct a hearing to postpone the prisoner's release date.
- (3) The Board may postpone the parole release date up to one day before the prisoner's goodtime date.

[Rescission of Parole:] Unauthorized Absence; [Law Violation]
255-50-015
(amended 11/22/88)

- [(1)] The Board may administratively rescind a parole release date when the Board is informed of reasonable grounds to believe a person has violated a law or otherwise engaged in serious misconduct. A fact-finding hearing shall be held by a Hearings Officer to determine if the law violation or serious misconduct occurred. However, if the prisoner has received an additional sentence, no hearing is required.]
- [(2)](1) The parole release date of a prisoner who is on unauthorized absence from a correctional facility shall be administratively rescinded by a majority of the Board. A hearing may be scheduled when the prisoner is available or the Board may administratively reset the parole release date by adding the inoperative time to the prison term.
- [(3)](2) Inoperative time shall be added to the prison term in the following manner:
- (a) If the unauthorized absence occurred prior to the parole release date and the prisoner returned to custody of the Department of Corrections after the parole release date:
- (A) Count the first day of unauthorized absence and every day up to the parole release date.
- (B) Add the total number of days determined in (A) of this subsection to the date of [availability for] return to custody of the Department of Corrections following a hold in another in-state or out-of-state jurisdiction.
- (b) If the unauthorized absence occurred prior to the parole release date and the prisoner returned to custody of the Department of Corrections prior to the parole release date:
- (A) Count the first day of unauthorized absence and every day up to the date of [availability for] return to the Department of Corrections following a hold in another in-state or out-of-state jurisdiction.
- (B) Add the total number of days determined in (A) of this subsection to the previous parole release date.
- (c) [For purposes of calculations pursuant to subsection (3) of this section i] If the initial parole release date was deferred to a specific future date that specific future date [is the parole release date] shall be used for purposes of calculations pursuant to section (2) of this rule.

[Postponement Procedure: Unauthorized Absence; Law Violation
255-50-016

The procedure for a postponement hearing shall be in accordance with the provisions of rule 255-50-010. (2).]

Waiver
255-50-017
(deleted)

Hearing After Rescission of Parole
255-50-018
(deleted)

Basis for Rescission
255-50-020
(deleted)

Misconduct Board Review Packet
255-50-025

The Misconduct Board Review Packet shall contain:

- (1) institution face sheet;
- (2) all Board Action Forms since the prison term hearing;
- (3) psychological evaluations [(last 6 months)];
- (4) disciplinary report from the institution;
- (5) correspondence;
- (6) field parole analysis report; [and]
- (7) court orders [.];
- (8) PSI, PSR, PAR or document of similar content;
- (9) DOC hearings officer's findings and recommendations.

DIVISION 65

RESTITUTION, COMPENSATORY FINES, AND SUPERVISION FEES

When Restitution is Ordered Upon [Parole] Release: Establishing a Payment Schedule; Limitations
255-65-005

- (1) When a person has been sentenced pursuant to ORS 137.106 to pay restitution [, or when restitution is recommended by the court,] 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 restitution as a condition of parole or post-prison supervision. Restitution must be for a specific amount to a specific party and must be noted as restitution in the court order.
 - (2) When a person has been sentenced pursuant to ORS 137.101 to pay a compensatory fine for a crime committed after Nov. 1, 1981, and any portion of that payment is deferred until after release from imprisonment, the Board shall establish a compensatory fine as a condition of parole or post-prison supervision. The compensatory fine must be for a specific amount and must be noted as a compensatory fine in the court order.
 - (3) When a person has been sentenced pursuant to ORS 161.665 to pay attorney fees and any portion of that payment is deferred until after release from imprisonment, the Board may establish payment of attorney fees as a condition of parole or post-prison supervision. The attorney fees must be for a specific amount and must be noted as attorney fees in the court order.
- [(3)](4) In establishing and supervising a schedule for the resumption of payments, the Board shall consider:
- (a) the prisoner's financial resources, including salary, savings, and liquid assets not including place of residence, or those tools or vehicles essential to personal livelihood;
 - (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 in installment or other conditions to be set by the Board; and
 - (d) the rehabilitative affect of the payment and the method of payment.

- (4) Normal payments shall range up to twenty (20) percent of a person's take-home salary without voluntary payroll deductions, unless significant savings or liquid assets not including place of residence or those tools or vehicle essential to personal livelihood permit larger amounts.
- (5) The Board shall provide to the sentencing court a copy of the schedule of payments and any modifications.

Sentencing Including Restitution as Mitigation
255-65-010
(deleted)

Supervision of Payments: Conditions [of Parole]; Default [by Parolee]; Effect on Discharge
255-65-015

- [(1) The payment of restitution shall be included as a special condition of parole.]
- [(2)](1) Payments of restitution, compensatory fines, or attorney fees shall be made to the clerk of the court of the county of sentencing.
- [(3)](2) The method and manner of payment shall be established by the individual's [parole] supervising officer and approved by the Board.
- [(4)](3) When [a parolee] an offender defaults on any scheduled payment, the supervising [parole] officer shall notify the Board. The default may be grounds for revocation of parole or post-prison supervision unless the [parolee] offender shows:
- (a) the default was not due to an intentional refusal to make the payment; or
 - (b) the default occurred despite a good faith effort to make the payment.
- [(5)](4) If total payment of restitution or compensatory fines has not been made by the completion of the designated minimum period of supervision, the [parolee] offender shall be continued on parole until completion of payment or the expiration of his/her sentence, whichever occurs [is] first.
- (5) If total payment of attorney fees has not been made by the completion of the designated minimum period of supervision, the offender may be continued on parole until completion of payment or the expiration of his/her sentence, whichever occurs first.

Establishment of Supervision Fees: Criteria; Disbursement of Fees
255-65-020

- (1) When a person is placed on parole or post-prison supervision, subject to supervision by either the Department of Corrections 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 the costs of supervising parole.
- (2) The fee may range between ten dollars (\$10) and twenty dollars (\$20) a month, unless a greater fee is recommended by the Department of Corrections and approved by the Board using the same criteria set forth in rule 255-65-005(3). In no case shall the fee be less than ten dollars (\$10) per month.
- (3) The fee established pursuant to subsection (1) of this rule shall be a condition of parole or post-prison supervision and intentional and willful failure to pay the [such] fee shall be grounds for revocation of parole or post-prison supervision or, in the case of parole, extension of the supervision period.
- (4) In cases of financial hardship or when otherwise advisable in the interest of the released person's rehabilitation, the community program director or the Director of the Department of Corrections, whichever is appropriate, may waive the payment of the fee in whole or in part.
- (5) Fees collected shall be transferred to the Department of Corrections or retained by the county as provided by statute.

DIVISION 70

CONDITIONS OF PAROLE AND POST-PRISON SUPERVISION

Conditions of Parole and Post-Prison Supervision
255-70-001

- (1) Conditions of parole may be imposed by the Board pursuant to OAR 255-70-015.
- (2) Conditions of post-prison supervision may be approved by the Board pursuant to OAR 253-11-001.
- (3) Conditions of parole and post-prison supervision are not limited to those shown in Exhibit J.

Offender to Return to County Where Resided at Time of Crime
255-70-003

- (1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the first six months in the county where the offender resided on the date of the last arrest for a crime resulting in imprisonment.
- (2) (a) The county of residency may be established by obtaining the last address of record at the time of the offense from:
 - (A) An Oregon driver's license, regardless of its validity;
 - (B) The Department of Revenue;
 - (C) The Department of State Police, Bureau of Criminal Identification; or
 - (D) The Department of Human Resources.
- (b) If the county of residency cannot be established, the offender shall be considered to have resided in the county where the crime was committed.
- (3) Upon motion of the Board, an inmate, a victim or a district attorney, the Board may waive the residency requirement after making a finding that one of the following conditions has been met:
 - (a) the inmate provides proof of a job with no set ending date in a county other than the established county of residence;
 - (b) the inmate poses a significant danger to the victim;
 - (c) the victim or victim's family poses a significant danger to the inmate residing in the county of residence.

- (d) the inmate has a spouse or biological or adoptive family residing in other than the county of residence who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole or post-prison supervision period;
- (e) the inmate is required as a condition of parole or post-prison supervision to participate in a treatment program which is not available in or located in the county of residence;
- (f) the inmate desires to be released to another state or there is a detainer from another state;
- (g) other good cause.

Parolee Placement in Community Corrections Centers: Standards; Limitations
255-70-005
 (deleted)

Guidelines on General Condition Relating to "Best Interest" Return
255-70-010
 (deleted)

Establishing the Conditions of Parole or Post-Prison Supervision
255-70-015

- (1) The Board may order an exit interview prior to the prisoner's [parole] release date to review the prisoner's case and set [parole] conditions.
- (2) If the Board decides to waive an exit interview, it shall specify the condition(s) of parole to be added to the parole order at the prison term hearing.
- (3) If the Board decides to waive an exit interview, it shall specify, in an order given to the offender upon release from incarceration, the condition(s) of post-prison supervision. The decision may be made by administrative file pass.
- [(3)](4) Once the conditions [of parole] have been established, the conditions may be altered according to the following procedures:
 - (a) by administrative file pass, if the alteration is before the prisoner's release on parole or post-prison supervision; and
 - (b) at a cite to show cause hearing, if the alteration is after [parole] release.

[(4)](5) A cite to show cause hearing under subsection (1) of this section shall be conducted pursuant to the rules governing parole revocation hearings in Division 75.

[(5)](6) When a parole officer or supervisory authority would like the Board to add conditions to the [parole] order, before the prisoner is released on parole or post-prison supervision, the request must be submitted to the Board at least two weeks prior to the release date.

(7) The conditions of parole or post-prison supervision may be appealed pursuant to the procedures of Division 80.

- (3) Notwithstanding subsection (2) of this rule, when the new commitment is consecutive to a sanction for a violation, the full Board may treat the violation and the new commitment as if they were concurrent. If treated as concurrent, the commencement date for the new commitment shall be the sentencing date for the new crime plus adjustment for credit for time served.
- (4) If the parolee/offender is returned with a parole or post-prison supervision violation and a new sentence which is consecutive to the sentence for which the parolee/offender was on parole, the commencement date for the new conviction shall be the date parole was revoked, if so stated on the court order.

Guidelines for Rerelease

255-75-079 (4/19/89, temporary; 11/1/89)

- (1) Parolees/Offenders whose parole or post-prison supervision term has been revoked for technical violation(s) may serve further incarceration of up to 90 days for each offense, not to exceed a total of 180 days.
- (2) Parolees/Offenders whose parole or post-prison supervision term has been revoked for conduct constituting a crime may serve further incarceration of up to 180 days unless mitigation is found.
- (3) Parolees/Offenders sentenced to life imprisonment for murder or aggravated murder may serve further incarceration to the sentence expiration date.
- (4) Parolees/Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.
- (5) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest for the violation which resulted in the revocation of parole or post-prison supervision.
- (6) Department of Corrections special programs, including the Parole Violators Project, are not subject to the provisions of this rule.

Continuance on Parole or Supervision

255-75-080 (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88; 10/16/89)

If the Board finds that a parolee/offender has committed a violation of conditions which is sufficiently serious to require a revocation hearing and the time the parolee/offender has spent in custody pending final action on the revocation hearing is an adequate punishment for the violation, the Board may continue parole or post-prison supervision.

Authority of Revocation Panel to Set New Parole Release Date for Parole Violators

255-75-082 (11/4/81 - 5/2/82, temporary; 11/19/84, suspended; 2/28/85, repealed)

Parole Violators with No New Commitment; Action Required

255-75-085 (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary;
5/19/88; 4/19/89, suspended; 10/16/89, repealed)

Guidelines for Reparole

255-75-090 (2/1/79; 11/19/84, temporary; 2/28/85; 3/14/88, temporary;
5/19/88; 4/19/89, temporary; 11/1/89, repealed)

[Parole violators shall be given a sanction within the following guidelines:

- (1) violations not involving a finding of new criminal activity, shall result in an additional term of six to eight months unless the Board finds aggravation or denies parole; and
- (2) violations involving a finding of new criminal activity shall result in an additional term of eight to twelve months unless the Board finds aggravation, mitigation, or denies parole.
- (3) In establishing a sanction, the commencement date shall be the date of arrest for the parole violation which resulted in the revocation of parole.]

Variation From Guidelines for Aggravation/Mitigation Permitted

255-75-095 (11/19/84, temporary; 2/28/85; 5/19/88; 7/1/88;
4/19/89, suspended; 10/16/89, repealed)

Denial of Rerelease Consideration

255-75-096 (11/19/84, temporary; 2/28/85; 3/14/88, temporary; 5/19/88;
4/19/89, temporary; 10/16/89)

- (1) Upon a finding of aggravation pursuant to Exhibit E or Exhibit H, the Board may deny rerelease on parole and require the parole violator to serve to the statutory good time date or, in the case of aggravated murder, for life. This action requires the affirmative vote of at least four voting members.
- (2) Denial of rerelease on parole requires a future disposition hearing.
- (3) In cases where setting a parole violator within the guidelines set forth in rule 255-75-079 would require the parole violator to serve to the end of the sentence, four votes are not required.

Time for Future Disposition Hearing

255-75-097 (4/19/89, temporary; 10/16/89)

When a future disposition hearing is held pursuant to 255-75-072(4)(c), 255-75-079(3) or 255-75-096, the following timelines will apply:

- (1) If the parolee/offender has a new conviction, the future disposition hearing may be scheduled at the same time as the new prison term hearing.

DIVISION 80

ADMINISTRATIVE APPEAL

Procedure for Requesting a Review

255-80-005

- (1) A prisoner may request an administrative review by sending Exhibit 0 to the Board concisely explaining how his/her case fits the criteria for review defined in rule 255-80-010.
- (2) Requests for administrative review must be made within forty-five (45) days after the Board's final action on the reviewed issue.
- (3) A waiver of the 45 day deadline will be granted only if relevant new information is submitted which was particularly difficult to obtain.
- (4) An administrative review may be initiated by the [a] Board [member] or its designee without regard to the 45 day deadline.
- (5) If the Board or its designee determines that the request is consistent with the criteria as defined in rule 255-80-010, and meets the deadline requirements, the matter will be resolved by the procedures outlined in OAR 255-80-012.
- (6) When the appeal is denied, the [chairperson] Board or its designee shall inform the prisoner in writing of the specific reasons for denial and the prior decision remains in effect.

Criteria for Granting a Review

244-80-010

The criteria for granting a review 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 hearing which, through no fault of the prisoner, was not considered; or
- (3) Pertinent information was not available at the time of the hearing, e.g., information concerning convictions from other jurisdictions; or
- (4) The action of the Board is inconsistent with its rules or policies or is contrary to law; or

- (5) The matters raised on review may have an effect on the original decision.
- (6) There is a change in the prisoner's sentence; or
- (7) There is a change in the Board's rules or the statutes which would substantively affect the prisoner, e.g., change his/her prison term, parole status, or parole conditions.

Administrative Review Procedure
255-80-012

- (1) If the Board or its designee determines that the request for review is consistent with the criteria in OAR 255-80-010, the case may be opened for review.
- (2) The review may be conducted by the following methods:
 - (a) administrative file pass, with the number of concurring votes required by OAR 255-30-015; or
 - (b) other administrative action by the Board or its designee, i.e., to correct errors in the history risk score, crime category, credit for time served, inoperative time or adjusted commitment dates; or
 - (c) administrative hearing, in cases where review would cause an adverse result for the prisoner.
- (3) If the inmate waives the right to adequate notice and receipt of the Board Review Packet, the administrative review hearing shall be conducted.
- (4) The prisoner shall be notified in writing of the Board decision and findings.

Administrative Review Hearing Packet
255-80-015

The Administrative Review Hearing Packet shall contain:

- (1) institution face sheet;
- (2) Board Action Form granting administrative review;
- (3) all information attached to the Board Action Form granting review;
- (4) administrative review request;
- (5) all Board Action Forms since the prison term hearing;
- (6) psychological evaluations (last 6 months);
- (7) correspondence;
- (8) field parole analysis report or comparable report;
- (9) court orders; and
- (10) Inmates' Rights and Board of Parole and Post-Prison Supervision Procedures

DIVISION 90

PAROLE SUPERVISION AND DISCHARGE
FOR INMATES WITH CRIMES PRIOR TO DEC. 4, 1986

Definitions

255-90-001

(deleted)

Establishing the Period of Parole Supervision; Effect of
Restitution Obligation; Effect of Ballot Measure 10.

255-90-002

- (1) The Board shall establish a period of active supervised parole as shown in Exhibit I. The Board may order an extended supervision period if it finds that such an extension is appropriate.
- (2) Notwithstanding subsection (1) of this rule, active supervision [, as shown in the Exhibit I,] shall extend until the maximum expiration of the prison sentence if restitution or compensatory fines remain[s] unpaid.
- (3) Discharge for inmates who committed crimes on or after December 4, 1986 shall be governed by Division 92 of the Board's rules.

Period of Time to Serve on Supervised Parole

255-90-003

- (1) The guidelines set forth in Exhibit I shall govern the period of supervised parole. The period of supervision may be set by administrative file pass or at any hearing, personal review, or postponement action and shall be written on the Order of Parole.
- (2) Before discharge, the Board must find that the parolee's final release is not incompatible with the parolee's welfare and that of society.
- (3) Final release may be found to be compatible with the welfare of society when:
 - (a) the court vacates or alters a sentence so that it is discharged;
 - (b) the sentence expires;
 - (c) the Board loses the authority to revoke parole; or
 - (e) the parolee dies.

- [(3)](4) 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.

Procedure: Approving or Denying 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 be effective on the date the chair or chair's designee signs the certificate of discharge.

Extension of Period of Supervision; Procedure: Approving or Denying Discharge; Further Proceedings
255-90-010

- (1) Prior to the expiration of the parolee's period of supervision the supervising parole officer shall send to the Board a closing summary. This summary shall include:
 - (a) an evaluation of the parolee's performance;
 - (b) the status of the parolee's restitution obligation, if any;
 - (c) the parolee's employment status; and
 - (d) the parolee's residence;
 - (e) any fines or fees;
 - (f) treatment programs; and
 - (g) any new criminal activity.
- (2) The summary shall recommend one of two courses:
 - (a) that the parolee be discharged and a certificate of discharge be issued; or
 - (b) that the discharge not be granted, with supporting reasons for this action in the recommendation;
- (3) When discharge is not granted, a parole revocation hearing shall be conducted to determine if parole should be revoked or if the parole period should be extended.
- (4) The Board shall notify the parolee in writing of the extension of the parole supervision period setting forth the reasons for the extension. The date of extension shall be from the date of the Board's review.
- (5) When discharge is granted, the Board shall notify the parolee in writing that the parolee has been discharged.
- (6) Notwithstanding subsections (1) to (5) of this rule, the supervising parole officer may submit a written recommendation to the Board for early discharge at any time after six months of supervised parole, providing that fees and restitution are paid in full.

Discharge
255-90-015

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.

DIVISION 92

PAROLE SUPERVISION UNDER BM10

Application of Division 92
255-92-005

Division 92 applies to parole supervision for all prisoners who committed crimes on or after December 4, 1986 and prior to November 1, 1989. (See Ballot Measure 10, passed November 4, 1986 and HB2250, 1989.)

Definitions
255-92-010
(deleted)

Duration of Parole
255-92-015

- (1) Parole shall extend the entire term of a prisoner's sentence.
- (2) Notwithstanding subsection (1) of this section, active supervision on parole may be discontinued after three years, if the Board finds that:
 - (a) the parolee does not constitute a threat to the parolee or society;
 - (b) the parolee's behavior has been exemplary; and
 - (c) any restitution or compensatory fine owed has been paid.
- (3) When active parole supervision is discontinued, the parolee shall be placed on inactive parole. However, this subsection shall not prohibit the Board from reinstating active parole supervision.

Period of Active Supervision; Exceptions
255-92-020

- (1) The minimum period of active supervision on parole shall be the length of the prisoner's sentence or three years, whichever is shorter.
- (2) Notwithstanding subsection (1) of this section, a parolee will only be removed from active supervision if the Board finds that the parolee has satisfied the provisions of OAR 255-92-015 (a), (b) and (c) or (d).

- (3) During parole violation proceedings, the period of active supervision is suspended and the Board shall retain jurisdiction over the parolee until the proceedings are resolved.
- (4) The Board may reinstate a parolee on active supervision under the provisions of OAR 255-92-040.

Parole Summary; Active Supervision Review
255-92-025

- (1) Within fifteen (15) days after the parolee has completed a period of active supervision established by the Board, the supervising officer shall send to the Board a parole summary. The parole summary shall contain:
 - (a) an evaluation of the parolee's behavior;
 - (b) an update on the status of the parolee's restitution, compensatory fine, and attorney fee obligations, if any; and
 - (c) a recommendation that the parolee be removed from active supervision; or
 - (d) a recommendation that the parolee be continued on active supervision.
- (2) If the supervising officer recommends that active supervision be continued, supporting reasons for this recommendation shall be included in the parole summary.
- (3) As soon as the parole summary is received by the Board, any three (3) Board members will conduct an active supervision review by administrative file pass to examine the parolee's record on active supervision.

Continued Active Supervision; Procedure
255-92-030

When continued active supervision is recommended by the supervising officer, the Board shall determine at the active supervision review if a continuance is appropriate. If the Board decides that continuing active supervision is appropriate, the Board shall:

- (1) use the guidelines set forth in Exhibit 1 to establish the length of the parolee's next period of active supervision; and

- (2) notify the parolee and the parole officer of its decision, the length of the parolee's next period of active supervision, and the reasons for continuing active supervision.

Removal From Active Supervision; Procedure
255-92-035

- (1) When the Board decides to remove a parolee from active supervision, the Board shall:
 - (a) delete any special conditions which the parolee has been required to follow; and
 - (b) issue a new parole order certifying inactive status.
- (2) A parolee shall be considered to be on inactive parole as of the date the parole order certifying inactive status is signed by the Board.

Bases for Reinstating Active Supervision; Procedure
255-92-040

- (1) Active supervision may be reinstated for the following reasons:
 - (a) failure to abide by the general conditions of parole; or
 - (b) inactive parole is no longer in the best interests of the parolee or society.
- (2) When the Board receives information indicating that reinstatement on active parole supervision may be warranted pursuant to subsection (1) of this section, the Board shall review the parolee's conduct by administrative file pass to decide whether or not to cite the parolee to a show cause hearing.
- (3) After the show cause hearing, the Board shall notify the parolee of its decision. If the Board decides to reinstate active parole supervision, the Board shall also notify the parolee of the length of the parolee's next period of active supervision, and the reasons for reinstating active supervision.
- (4) Show cause hearings under this section shall be conducted under the same procedures as parole revocation hearings in Division 75.

- (5) If a parolee is on inactive parole and parole is revoked following a parole revocation hearing, in addition to any other sanctions imposed by the Board, when the parolee is released from custody the parolee will be reinstated on active supervision. The new period of active supervision will be set at [the prisoner's future disposition hearing] the time the future disposition decision is made.
- (6) If a parolee is on active parole and parole is revoked following a parole revocation hearing, in addition to any other sanctions imposed by the Board, when the parolee is released from custody the parolee will be reinstated on active supervision. The new period of active supervision will be set at [the prisoner's future disposition hearing] the time the future disposition decision is made.
- (7) The new period of active supervision under this section shall be determined pursuant to the guidelines set forth in Exhibit L.

EXHIBIT A

CRIME SEVERITY RATINGS

<u>ORS</u>	<u>CRIME</u>	<u>FELONY CLASS</u>	<u>RATING</u>
163.535	Abandonment of Child	C	2
166.085	Abuse of Corpse	C	3
475.993	Act By Registrant	C	1
163.095	Aggravated Murder	U	7,8
164.057	Aggravated Theft I	B	4
164.325	Arson I	A	6,5
164.315	Arson II	C	2
163.185	Assault I	A	6,5
163.175	Assault II	B	4
163.165	Assault III	C	3,2
161.405	Attempt - <u>Receives the crime severity rating one number below the rating for the completed crime, for example, Attempted Arson I would be a 5 if the completed crime could have been classified in subcategory I of Arson I as a 6. [The highest crime severity rating for the felony one level below the crime attempted.(e.g., Attempted Burglary I would receive the highest rating for a Class B Felony.)]</u>		
163.515	Bigamy	C	1
162.015	Bribe Giving	B	3
162.025	Bribe Receiving	B	3
162.275	Bribe Receiving by a Witness	C	2
162.265	Bribing a Witness	C	2
164.225	Burglary I	A	5,4,3
164.215	Burglary II	C	3,2,1
166.220	Carrying Weapon With Intent to Use	C	2
163.275	Coercion	C	4,3
167.017	Compelling Prostitution	B	4
164.377(2)(3)	Computer Crime/ <u>Proprietary Info</u>	C	2,1
161.450	Conspiracy - Classified at same level as conspired crime, except murder or treason which are reduced to a felony. (e.g., Conspiracy to Commit Burglary I is an A Felony.)		
803.080	Counterfeit Vehicle Title	C	1
475.992(3)	[Unlawful]Creation or Delivery a Counterfeit Substance	A,B,C	5,4,3,1
163.005	Criminal Homicide	A	2
164.365	Criminal Mischief I	C	1
163.205	Criminal Mistreatment I	C	2
163.555	Criminal Nonsupport	C	1
165.022	Criminal Possession Forged Instrument I	C	1
165.032	Criminal Possession Forgery Device	C	1
164.140	Criminal Possession Rented/Leased Property	C	2,1

163.145	Criminally Negligent Homicide	C	4,3
163.257	Custodial Interference I	B	3
163.245	Custodial Interference II	C	1
163.673	Dealing in Depictions of Child's Sexual Conduct	B	4
475.995(1)	Delivery of Controlled Substance to Minor	A	4
475.995(2)	Delivery of Controlled Substance to Minor	B	3
475.995(5)	Delivery of Marijuana to Minor	A	4
<u>475.999</u>	<u>Delivery of Controlled Substance to Student or Minor within 1000 feet of School</u>	<u>A</u>	<u>4</u>
475.992(2)	Delivery of Marijuana for Payment	B	4,3,1
167.365	Dogfighting	C	1
311.175;	Driving While		
811.182	Suspended or Revoked	C	1
260.402; 260.555; 260.575; 260.615;			
260.645; 260.665(2); 260.655(3);	Election Law		
260.665(2)(d)-(f); 260.715	Offenses	C	1
164.885	Endangering Aircraft	C	2
162.165	Escape I	B	5
162.155	Escape II	C	2,1
162.205	Failure to Appear I	C	2
811.705	Failure to Perform Duties of Driver	C	3,2
822.605	False Swearing Relating to Regulation Vehicle Related Business	C	1
166.270	[Excon]Felon in Possession of Firearm	C	2
<u>506.991</u>	<u>Fishing Violation</u>	<u>C</u>	<u>1</u>
532.140; 532.610;	Forest Products		
532.620; 532.990(2)	Offenses	J	1
303.230	Forge/Alter Vehicle Title Regis.	C	1
165.013	Forgery I	C	3,2,1
59.055; 59.115; 59.127;			
59.135; 59.145; 59.165;	Fraud		
59.730; 59.740; 59.750;	Involving Securities	B	4,3
59.760; 59.770; 59.780;			
59.790; 59.800;			
165.055(3b)	Fraudulent Use of Credit Card	C	1
811.185	Habitual Traffic Offender (OMVCO)	C	1
<u>166.420</u>	<u>Handgun/ Failure to Keep Register</u>	<u>C</u>	<u>2</u>
162.325	Hindering Prosecution	C	1
163.525	Incest	C	[1]3
166.165	Intimidation I	C	2
163.235	Kidnapping I	A	6
163.225	Kidnapping II	B	4
163.118	Manslaughter I	A	6
163.125	Manslaughter II	B	5,4,3
166.410	[Illegal]Manufacture, Importation, Sale, Gift, Loan or Possession of Firearms	B	4
471.440	[Illegal] Manufacture of Mash; Operating Distillery Without a License	C	1
475.992(1);	Manufacture or Delivery of Controlled		
475.993(2a)	Substance	A,B,C	5,4,3,1
<u>165.384</u>	<u>Manufacture of Destructive Device</u>	<u>C</u>	<u>3</u>

163.115	Murder	U	7,8
165.065(3b)	Negotiating a Bad Check	C	2,1
166.450	Obliteration of ID Marks (Firearm)	C	1
815.410	Odometer Tampering		
815.430	or False Report	C	1
166.660	[Unlawful] Paramilitary Activity	C	1
163.680	Paying for Viewing Child's Sexual Conduct	C	1
162.065	Perjury	C	2
496.992	Poaching	C	2
475.992(4)	Possession of a Controlled Substance	B,C	3,2,1
<u>166.382</u>	<u>Possession of a Destructive Device</u>	<u>C</u>	<u>3</u>
165.070	Possession of a Fraudulent Communications Device	C	2,1
167.137	Possession of Gambling Records	C	1
<u>166.272</u>	<u>Possession of Machine Gun, Short-Barreled Rifle or Shotgun or Silencer</u>	<u>B</u>	<u>3</u>
819.300	Possession of a Stolen Vehicle	C	1
166.275	Possession of Weapon By Inmate of Penal Institution	A	5
167.127	Promoting Gambling I	C	1
167.012	Promoting Prostitution	C	2
166.720	Racketeering	A	5,4
163.375	Rape I	A	6,5
163.365	Rape II	B	4,3
163.355	Rape III	C	2
166.015	Riot	C	2
164.415	Robbery I	A	6,5
164.405	Robbery II	B	4
164.395	Robbery III	C	2
167.062(4)	Sadomasochistic Abuse or Sexual Conduct in Live Show	C	1
163.425	Sexual Abuse I	C	3
163.411	Sexual Penetration Foreign Obj. I	A	6,5
163.403	Sexual Penetration Foreign Obj. II	B	4
<u>166.429</u>	<u>Shipping, Transporting, Receiving, Selling Furnishing Firearm in Furtherance of a Felony</u>	<u>B</u>	<u>4</u>
163.405	Sodomy I	A	6,5
163.395	Sodomy II	B	4
163.385	Sodomy III	C	2
161.435	Solicitation - Classified one level below crime solicited.		
165.090	Sports Bribe Receiving	C	2
165.085	Sports Bribery	C	2
162.185	Supplying Contraband	C	4,3,2,1
167.212	Tampering With Drug Records	C	1
162.285	Tampering With a Witness	C	2
164.085	Theft by Deception	C	2,1
164.075	Theft By Extortion	B	4,3
164.095	Theft By Receiving	C	2
164.055	Theft I	C	2,1
164.125(4)(c)	Theft of Services	C	2,1
<u>164.125(4)(d)</u>	<u>Theft of Services \$10,000+</u>	<u>B</u>	<u>4</u>
164.065	Theft, Lost/Mislaid Property	C	1

819.310	Trafficking in Stolen Vehicles	C	3
163.677	Transporting Child Pornography	B	4
166.005	Treason	U	7
<u>164.872(2)</u>	<u>Tree Spiking, Inconvenience,</u>		
	<u>Annoyance or Alarm</u>	C	2
<u>164.872(3)</u>	<u>Tree Spiking, Serious Injury</u>	B	4
164.135	Unauthorized Use of Vehicle	C	2,1
163.670	Using a Child in a Display of Sexually Explicit Conduct	A	6,5
247.121(2); 247.125;	Voter Registration		
247.340(4); 247.420(2)	Offenses	C	1
411.630; 411.640;			
411.675; 411.690;	Welfare/		
411.840	Food Stamp Fraud	C	2,1
<u>127.585</u>	<u>Withdrawal of Life-Sustaining Procedures</u>		
	<u>by Altering or Forging a Power of</u>		
	<u>Attorney or by Concealing or</u>	A	3
	<u>Destroying a Revocation</u>		

EXHIBIT A
PART II

Amendments Permanently Filed 11/1/89
Effective Dates as Noted.

Aggravated Murder
163.095

Effective 7/1/88

SUBCATEGORY 1 - RATING 8:

Stranger to stranger; cruelty to victim; prior conviction of murder or manslaughter; evidence of significant planning or preparation.

SUBCATEGORY 2 - RATING 7:

All other cases of aggravated murder.

Arson I
164.325

Unchanged since 1985

SUBCATEGORY 1 - RATING 6:

Knew or should have known premises were occupied at time of act or injury.

SUBCATEGORY 2 - RATING 5:

All other cases of Arson I.

Assault I
163.185

Unchanged since 1985

SUBCATEGORY 1 - RATING 6:

Cases of Assault I in which there is intentional cause of serious physical injury to another by means of a deadly or dangerous weapon.

SUBCATEGORY 2 - RATING 5:

Cases of Assault I in which the victim(s) provoke the crime to a substantial degree or other evidence that misconduct by the victim(s) contributed substantially to the criminal episode.

Assault III
163.165

Effective 4/4/88

SUBCATEGORY 1 - RATING 3:

Assault III/Vehicular where defendant has at least 2 prior DUII convictions within a 5 year period.

SUBCATEGORY 2 - RATING 2:

All other cases of Assault III.

Burglary I
164.225

Effective 7/20/88

SUBCATEGORY 1 - RATING 5:

Entry into a dwelling, where defendant causes or attempts to cause physical injury to any person; is armed with a deadly weapon; uses or threatens to use a dangerous weapon; or death occurs.

SUBCATEGORY 2 - RATING 4:

Entry into a dwelling in which goods taken had a value of \$5,000 or more.

SUBCATEGORY 3 - RATING 3:

Entry into a dwelling in which goods taken had a value of less than \$5,000.

Burglary II
164.215

Unchanged since 1985

SUBCATEGORY 1 - RATING 3:

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

SUBCATEGORY 2 - RATING 2:

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

SUBCATEGORY 3 - RATING 1:

Theft of less than \$1,000.

Coercion
163.275

Unchanged since 1985

SUBCATEGORY 1 - RATING 4:

Compelling another to act through threat of serious physical harm or property damage; blackmail.

SUBCATEGORY 2 - RATING 3:

All others.

Computer Crime
164.377(2)(3)

Added 7/1/88; Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Criminal Possession Rented/Leased
Property
164.140

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Criminally Negligent Homicide
163.145

Effective 4/4/88

SUBCATEGORY 1 - RATING 4:

Vehicular Homicide where defendant with criminal negligence causes the death of another person.

SUBCATEGORY 2 - RATING 3:

Cases where the victim's misconduct contributed to the criminal episode.

Delivery of Controlled Substance
475.992(1);475.995;475.993(2)(a)

Effective 7/14/88

SUBCATEGORY 1 - RATING 5:

Operating or participating in the operation of a location in which crack cocaine or heroin is sold. 475.993(2)(a). The delivery of heroin as part of a distribution or sales network. See Exhibit A-III. 475.992(1)(a)-(b).

SUBCATEGORY 2 - RATING 4:

Delivery of an illegal drug (including, but not limited to methamphetamines) (Schedule I, II or III) other than marijuana where there is evidence that the delivery is part of a drug selling or distribution network or scheme; see Exhibit A-III. 475.992(1)(a)-(c).

Knowingly owning or providing a location for the sale or distribution of illegal drugs other than marijuana. 475.993(2)(a) (Schedule I).

Delivery of any quantity of illegal drug in and on, or within one thousand feet of, the real property comprising a public or private elementary and/or middle school. 475.992(1)(a)-(c); 475.992(2); 475.995. (Schedule I, II or III.)

Delivery or assisting in the delivery of illegal drugs in which a minor is involved. 475.995(1) & (5) (includes marijuana, but not Schedule III.)

SUBCATEGORY 3 - RATING 3:

Delivery or assisting in the delivery of illegal drugs for compensation or profit in circumstances other than those listed above. 475.992(1)-(c); 475.992(2)(a); 475.995. (Schedule I, II or III.)

SUBCATEGORY 4 - RATING 1:

Delivery of a small amount of any illegal drug not for profit or compensation. All other cases of delivery of illegal drugs not noted above.

Escape II
162.155

Effective 12/06/88

SUBCATEGORY 1 - RATING 2:

Use or threat to use physical force escaping from custody; or, having been convicted or found guilty of a felony, escapes from custody imposed as a result thereof; or escapes from a correctional facility or, while otherwise under the jurisdiction of the Psychiatric Security Review Board, departs from state without authorization of Board.

SUBCATEGORY 2 - RATING 1:

Escapes while on a pass, terminal leave or work release from a county correctional facility; all other cases.

Failure to Perform Duties of a Driver
Where There is Injury or Death
811.705

Effective 7/1/88

SUBCATEGORY 1 - RATING 3:

If death results.

SUBCATEGORY 2 - RATING 2:

Injury and all other cases.

Forgery I
165.013

Effective 7/1/88

SUBCATEGORY 1 - RATING 3:

Loss, potential loss, or receiving of over \$5,000.

SUBCATEGORY 2 - RATING 2:

Loss, potential loss, or receiving of \$1,000 to \$5,000.

SUBCATEGORY 3 - RATING 1:

Loss, potential loss, or receiving of under \$1,000.

Fraud Involving Securities

Effective 7/20/88

59.055; 59.115; 59.127; 59.135; 59.145; 59.165;

59.730; 59.740; 59.750; 59.760; 59.770; 59.780; 59.790; 59.800

SUBCATEGORY 1 - RATING 4:

Loss, potential loss, or receiving of \$10,000 or more

SUBCATEGORY 2 - RATING 3:

All other cases of fraud involving securities.

Manslaughter II

Effective 4/4/88

163.125

SUBCATEGORY 1 - RATING 5:

Cases where death of a victim, usually a child, results from prolonged abuse; failure to provide for victim's welfare resulting in death; medical treatment withheld to conceal physical signs of abuse.

SUBCATEGORY 2 - RATING 4:

Causes another to commit suicide or aids, cases where death of victim involves use of a weapon or follows an assault; cases where death is by negligent use of vehicle and defendant has at least 2 prior DUII convictions within 5 years.

SUBCATEGORY 3 - RATING 3:

Cases where death is by negligent use of a vehicle; all other cases.

Manufacture of Controlled Substance
475.992(1); 475.993(2)(a)

Effective 7/14/88

SUBCATEGORY 1 - RATING 5:

Operating or assisting in the operation of a laboratory for the production of methamphetamines. Cultivating or assisting in the manufacture of marijuana for distribution or sale as part of a distribution network or scheme; see Exhibit A-III. Cultivation or assisting in the cultivation of more than 100 marijuana plants.

SUBCATEGORY 2 - RATING 4:

Manufacturing or assisting in the manufacture of illegal drugs other than methamphetamines or marijuana, when there is evidence that the manufacture is part of a drug selling or distribution network or scheme; see Exhibit A-III. (Schedule I, II or III.) Knowingly owning or providing a location for the manufacture of illegal drugs other than marijuana for sale or distribution. 475.993(2)(a) (Schedule I).

SUBCATEGORY 3 - RATING 3:

Manufacture or assisting in the manufacture of illegal drugs for distribution. Manufacture of marijuana in the amount of 25 or more plants and/or in circumstances other than those listed in Subcategory 1. See Exhibit A-III. (Schedule I, II or III.)

SUBCATEGORY 4 - RATING 1:

Manufacture of illegal drugs for the offender's own use. All other cases of manufacturing of illegal drugs. (Schedule I, II or III.)

Murder
163.115

Unchanged since 1985

Breakdown is the same as for Aggravated Murder
All other cases of murder.

Negotiating a Bad Check
165.065(3b)

Added 7/1/88; Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Possession of Controlled Substance
475.992(4)

Amended 11/1/89

SUBCATEGORY 1 - RATING 3:

Possession of [a large amount of] illegal drugs other than marijuana with intent to deliver. (Schedule I, II or III.) See Exhibit A-III. Possession of illegal drugs which constitute the precursors or byproducts of the manufacturing process (as defined by ORS 475.940).

SUBCATEGORY 2 - RATING 2:

Possession of illegal drugs other than cocaine/crack, methamphetamines, and heroin (which are included in Subcategory 1) with intent to deliver. (Schedule I, II & III.)

SUBCATEGORY 3 - RATING 1:

Possession of illegal drugs in circumstances other than those listed above (e.g. for personal use). (Schedule I, II or III.)

Possession of a Fraudulent
Communications Device
165.070

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Racketeering
166.720

Unchanged since 1985

SUBCATEGORY 1 - RATING 5:

The principle party involved in violation of the Racketeering statute. Involvement is that of planning, directing or participating in the scheme or schemes resulting in direct profit or gain.

SUBCATEGORY 2 - RATING 4:

The subordinate party involved in violation of the Racketeering statute. Involvement is limited to acting as an agent or employee of the principle. There is no involvement in planning, directing or participating in the scheme or schemes in violation of this statute.

Rape I
163.375

Amended Nov. 1, 1989

SUBCATEGORY 1 - RATING 6:

Stranger to stranger; breaking and entering; threat to use or use of weapon; actual or threat of serious bodily or emotional harm; intercourse with female or male under 12. Cases in which the female is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

SUBCATEGORY 2 - RATING 5:

All other cases.

Rape II
163.365

Unchanged since 1985

SUBCATEGORY 1 - RATING 4:

Cases in which [the female is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; or] the female is under 14 years of age.

SUBCATEGORY 2 - RATING 3:

All other cases.

Robbery I
164.415

Effective 7/20/88

SUBCATEGORY 1 - RATING 6:

Cases of robbery in which the defendant is armed with a deadly or dangerous weapon; discharges a firearm; uses a dangerous weapon; makes explicit or immediate threats by word or gesture; causes death of or physical injury to the victim.

SUBCATEGORY 2 - RATING OF 5:

All other cases of Robbery I.

Sexual Penetration with Foreign Object I
163.411

Amended Nov. 1, 1989

SUBCATEGORY 1 - RATING 6:

Sexual Penetration with Foreign Object I is broken down in the same manner as Rape I.

SUBCATEGORY 2 - RATING 5:

All other cases.

Sodomy I
163.405

Amended Nov. 1, 1989

SUBCATEGORY 1 - RATING 6:

Sodomy I is broken down in the same manner as Rape I.

SUBCATEGORY 2 - RATING 5:

All other cases.

Supplying Contraband
162.185

Effective 12/06/88

SUBCATEGORY 1 - RATING 4:

While confined in a correctinal facility, juvenile facility or state hospital makes, obtains or possesses any firearm; knowingly introduces any firearm into a correctional facility, juvenile facility, or state hospital.

SUBCATEGORY 2 - RATING 3:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses dangerous weapon; knowingly introduces any dangerous weapon into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 3 - RATING 2:

While confined in a correctional facility, juvenile facility or state hospital makes, obtains or possesses any Schedule I, II, or III controlled substance except marijuana; knowingly introduces any Schedule I, II or III controlled substance into a correctional facility, juvenile facility or state hospital.

SUBCATEGORY 4 - RATING 1:

All other cases.

Theft by Deception
164.085

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Theft by Extortion
164.075

Unchanged since 1985

SUBCATEGORY 1 - RATING 4:

Threat of serious bodily harm or death.

SUBCATEGORY 2 - RATING 3:

All others.

Theft I
164.005

Amended 4/4/88 & 8/5/88; Effective 8/5/88

SUBCATEGORY 1 - RATING 2:

Theft or receiving of \$1,000 or more.
Theft of a motor vehicle for personal transportation.
Theft of a livestock animal.
Theft of a firearm or explosive.
Theft during riot or catastrophe.

SUBCATEGORY 2 - RATING 1:

Thefts under \$1,000.

Theft of Services
164.125(4)(c)

Theft I amended 8/5/88

Breakdown is the same as for Theft I.

Unauthorized Use of Vehicle
164.135

Unchanged since 1985

SUBCATEGORY 1 - RATING 2:

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

SUBCATEGORY 2 - RATING 1:

All others.

Unlawful Creation or Delivery
of Counterfeit Substance
475.992(3)

Effective 7/14/88

Breakdown is the same as for Manufacture or Delivery of Controlled Substance.

Using a Child in a Display of
Sexually Explicit Conduct
163.670

Effective 4/4/88

SUBCATEGORY 1 - RATING 6:

Child 12 years of age or under.

SUBCATEGORY 2 - RATING 5:

All other cases.

Welfare/Food Stamp Fraud
411.630; 411.640; 411.675;
411.690; 411.840

Added 4/4/88; Theft I amended 8/5/88

Breakdown is the same as for Theft I.

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

- (A) No prior felony convictions as an adult or juvenile 3
One prior felony convictions: 2
Two or three prior felony convictions: 1
Four or more prior felony convictions: 0 _____
- (B) No prior felony or misdemeanor incarcerations, (i.e.,
executed sentences or 90 days or more), as an adult
or juvenile: 2
One or two prior incarcerations: 1
Three or more prior incarcerations: 0 _____
- (C) Verified period of 3 years felony conviction free
in the community prior to the present commitment: 1
Otherwise: 0 _____
- (D) Age at commencement of behavior leading to this
incarceration DOB: _____
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 under 26 and at least one point received in A,
B, or C: 1
21 to under 26 and no points received in A, B, or C: 0
Under 21: 0 _____
- (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 _____
- (F) Has no admitted or documented substance abuse problem
within a 3 year period in the community immediately
preceding the commission of the crime of conviction: 1
Otherwise: 0 _____

TOTAL HISTORY/RISK ASSESSMENT SCORE: _____

TOTAL RANGE: _____ ADJUSTED COMMITMENT DATE: _____

TIME SEVERITY: _____ INSTITUTION NUMBER: _____

NAME: _____ SID: _____

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.

(A) No prior felony convictions as an adult or juvenile:	3
One prior felony conviction:	2
Two or three prior felony conviction:	1
Four or more prior felony conviction:	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. Count convictions in a foreign country for criminal behavior that would be classed as a felony in Oregon.
2. Juvenile Convictions. Count adjudications transpiring prior to the 16th birthday if incarceration results. Count adjudications for a juvenile who has passed his 16th birthday for offense behaviors that would have been felonies if committed by an adult. Formal probation and wardship are considered to constitute a conviction providing the foregoing criteria are met. Do not count any juvenile charge which results in informal probation.
3. Effective Age. Count as a conviction, a finding by a court that a juvenile who has passed his 16th birthday, who while either on probation or parole for a crime classified as a felony, committed a new felony, even though the probation/parole was continued.
4. Military Convictions. Count prior convictions for behavior which would constitute a felony if committed in Oregon.
5. Convictions Pardoned. Count felony 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. Do not count offenses which have resulted in a finding of guilty except for insanity.

6. Convictions Reversed or Vacated on Constitutional Grounds. Do not count felony 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 felony convictions if the documents clearly show 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 weighing 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, the conviction would be more susceptible to challenge that it was uncounseled.
8. Diversion. Do not count convictions 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 Misdemeanors Count as a conviction, offenses which were previously felonies but are now only misdemeanors if the offenses occurred at a time when they were sanctioned as felonies. Count convictions classed as felonies which are sanctioned as misdemeanors.
10. Present Conviction. Do not count the present offense or offenses as prior convictions.
11. Old Prior Record. Do not count prior felony convictions or commitments under Item A or B, if the offender has maintained a felony conviction free record of ten years in the community immediately prior to the current offense behavior [(including time on probation or parole)]. The ten (10) 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. If the prisoner was on parole or probation in the community and did not commit any felonies, that is considered conviction free time in the community. Notwithstanding the above, count any homicide or conviction categorized as a 6 even if it is over ten (10) 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 (10) years, may be considered as a mitigating factor.

12. Intervening Probation. When any new felony conviction occurs while on felony probation, and the new conviction is the basis for the current commitment, the original conviction leading to the probation shall constitute a prior conviction. When the current commitment is the result of a probation revocation for non-criminal behavior, the original conviction leading to the probation shall not constitute a prior conviction, however, all felony convictions incurred since the inception of the original probation shall constitute countable prior convictions. Notwithstanding 10 above, it does not matter that the probation also results in the current incarceration.
13. Merged Convictions. Judicially merged convictions at the time of sentence will be counted as one conviction. However, the offense that was merged may be considered as aggravation.
14. Documentation. Document the foregoing through official criminal justice system instruments (e.g., court orders, presentence investigation, police and parole/probation officer reports, computerized criminal histories, and other criminal justice systems records). Admissions shall also constitute adequate documentation.

(B) No prior felony or misdemeanor related 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 weight 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 ninety (90) days or more which were executed following conviction for a felony or misdemeanor offense prior to the present commitment. An offender need not serve 90 days or more for a sentence to be executed; and 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. If an additional prison sentence is imposed for behavior occurring prior to the present incarceration, do not count the original commitment as a prior incarceration. An incarceration is considered to be unbroken if there is no new criminal activity while in custody or there is no voluntary absence from custody.

3. Current Commitment Counted. Count the current felony commitment as a prior incarceration if a felony conviction is received for a new crime while incarcerated and 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 felony related commitment if a sentence of more than ninety (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. Hospital Commitments. Do not count commitments of ninety (90) days or more if the same are imposed only for psychological, psychiatric, or medical observation.
7. Technical Parole Violation. Do not count parole violation commitments if the recommitment is based on a technical violation(s).
8. Old Record. Do not count prior felony commitments over ten (10) years old if the current commitment follows ten (10) years conviction free in the community (see #11 under Item A).

(C) Verified period of 3 years <u>felony</u> 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 felony conviction free for at least three (3) years prior to the date of arrest for the offender's current offense.
2. Score 0 if there is a felony conviction within the three (3) years prior to the present commitment or if the offender was confined or on escape status at the time of the current commitment.
3. Convictions counted. For this purpose, count a conviction only such offenses which would count as a felony conviction under Oregon law under Item A.

(D) Age at commencement of behavior leading to this incarceration:	DOB _____	
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 under 26 and at least one point received in A, B, or C		1
21 to under 26 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 under 26 and at least one point was received under Items A, B, or C.
 4. Score 0 if the offender was 21 to under 26 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.
-

(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 involved parole, escape or custody violation:	0

1. Probation Violation. Count as a probation violation if the offender was on felony 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 the time and place specified by a court, 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, conviction or sentencing. Count escape as a trust violation even if it was not adjudicated. Escape means the unlawful or unauthorized departure of a person from custody or a correctional facility. Escape includes the unauthorized departure or absence from this state or failure to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board. Escape does not include failure to comply with provisions of a conditional release in ORS 135.245.
6. Custody Violation. Count as a custody violation if the present crime or crimes were committed while in custody (e.g., county jail, prison, work release center, probation center, forest camp, terminal leave, temporary leave, social pass).

(F) Has no admitted or documented substance abuse problem within a three year period in the community immediately preceding the commission of the crime of conviction. 1

Otherwise: 0

1. Documentation. Substance 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 tracks.

Substance Abuse: Use of Schedule 1, 2, and 3 drugs and alcohol in quantities and under circumstances that lead to impairment of functioning, or health, or that specifically results in harm to other people and/or loss of property.

EXHIBIT E-1 AGGRAVATING FACTORS

[_____ A. Production or use of any weapon during the criminal episode.]

[_____ B. Threat or violence toward witness or victim.]

_____ A. Threat or violence toward witness or victim by producing or using any weapon; or representing by word or conduct threats of death or physical injury. (11/1/89)

_____ B. Crime committed as a result of prejudice regarding the status of the victim (e.g., race, religion, gender, sexual orientation) (11/1/89)

_____ C. Knew or had reason to know the victims were particularly vulnerable i.e., aged, handicapped, very young. (Pursuant to ORS 144.787, in cases of physical or sexual assault, a victim's particular vulnerability to injury shall constitute an aggravating factor [, whether or not it is an element of the crime].) (Explanation added 7/1/88 and amended 11/1/89)

_____ D. Ability to make restitution or reparation and failed to do so. (1985 to present)

_____ E. Violation of position of trust or recognized professional ethics. (7/1/88 to present)

_____ F. Degree of property loss, personal injury or threatened personal injury substantially greater than characteristic for the crime. (1985 to present)

_____ G. There is a single conviction for a crime involving multiple victims or incidents. (1985 to present)

_____ H. Concurrently imposed [convictions] sentences not arising out of same criminal episode. (Amended 11/1/89)

- _____ I. Verified instances of repetitive assaultive conduct only when criminal episode(s) involved assaultive behavior. (7/1/88 to present)
-
- _____ J. More than 3 trust violations in last 5 years as relates to Item E of the Matrix Computation. (7/1/88 to present)
-
- _____ K. Persistent involvement in similar criminal offenses. (7/1/88 to present)
-
- _____ L. Repetition of behavior pattern which contributes to criminal conduct (e.g., return to drug or alcohol abuse). (7/1/88 to present)
-
- _____ M. Criminal history more extensive or serious than reflected by History/Risk Score. (7/1/88 to present)
-
- _____ N. Pursuant to a Guilty or No Contest plea, other crimes were dismissed or not prosecuted. (1985 to present)
-
- _____ O. Consecutive sentences pursuant to Section 4. Chapter 634, Oregon Laws 1987. (7/1/88 to present)
-
- [_____ P. Persistent criminal misconduct while under supervision.]
-
- _____ P. Crime committed as a part of gang related activity. (11/1/89)
-
- _____ Q. Other. _____

Inmate: _____
 Inst. _____

EXHIBIT E-2 - MITIGATING FACTORS

- _____ A. Evidence that misconduct by victim contributed to the criminal episode. (7/1/88 to present)
-
- _____ B. Sustained effort to make restitution or reparation. (7/1/88 to present)
-
- _____ C. Degree of property loss, personal injury or threatened personal injury substantially less than characteristic for the crime. (1985 to present)
-
- _____ D. Evidence of withdrawal, or lack of sustained criminal intent. (7/1/88 to present)
-
- _____ E. Evidence of reduced responsibility or lack of mental capacity (e.g., mental retardation and/or severe mental/emotional disorder which is insufficient to constitute a defense but is indicative of reduced culpability.) (7/1/88 to present)
-
- _____ F. Successful period of community supervision, at least 18 months immediately preceding commission of crime. (7/1/88 to present)
-
- _____ G. Successful completion of treatment program and abstinence from substance abuse for [3] 1 year[s] during the 3 years immediately preceding commission of crime. (amended 11/1/89)
-
- _____ H. Criminal history less extensive or serious than reflected by History/Risk Score. (7/1/88 to present)
-
- _____ I. Probation violation is technical in nature and not indicative of ongoing criminal pattern. (7/1/88 to present)
-
- _____ J. The crimes were part of a "crime spree" and that the spree is not indicative of a persistent criminal orientation. (7/1/88 to present)
-
- _____ K. Special effort on the part of the perpetrator to minimize the harm or risk. (1985-6/30/88, 11/1/89<)
-

___ [K.] L. Other. _____
(11/1/89)

Inmate: _____

Inst: _____

EXHIBIT F

OUTLINE FOR POST SENTENCE REPORT

SECTION I: (Minimum information required)

1. Identifying Data
- 2a. Criminal History/Risk Assessment for Board of Parole Matrix System
- 2b. Criminal History Classification for Sentencing Guidelines System
- 3a. Matrix Application
- 3b. Sentencing Guidelines Grid Block Classification
4. Conviction Chronology and Arrest Record
5. Present Crime Synopsis
6. Aggravating and Mitigating Factors
7. Health, Physical and Mental/Substance Abuse
8. Brief Social Profile

SECTION II:

Confidential data exempt from disclosure under ORS
192.500(2)(d)

SECTION III:

Attachments, including transcripts, if forwarded by the
sentencing judge

