



Oregon

Tina Kotek, Governor

Board of Parole and Post-Prison Supervision

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2022 Report on Rulemaking [\(Online\)](#)

TO: Legislative Assembly

February 1, 2023

FROM: Board of Parole and Post-Prison Supervision (Board)
Dylan Arthur, Executive Director

RE: 183.403 Agency report to Legislative Assembly regarding rules.

House Bill 4106 (2016) directs state agencies to report annually on their rulemaking actions during the previous year. In 2022 the Board processed 3 temporary rulemaking amendments. Table 1 below gives details on what was accomplished and the reasoning behind proceeding with the temporary rule process. The Board also processed 5 permanent rulemaking actions that amended a rule or corrected a statutory reference and are referenced in Table 2.

Table 1: Temporary Rulemaking in 2022

Date	FILED 04/13/2022
Description	Amendment to Exhibit J General and Special Parole and Post-Prison Supervision Conditions
Action taken	Referenced section on detainers from another jurisdiction, 255-060-0014, was repealed 01/14/2004. The cite was mistakenly left in. The reference should have removed the subsection referred and replaced with "detainer". This amendment makes that correction but does not change the meaning of the rule. Additionally, minor grammatical changes and updates to the historical "prisoner" and "inmate" to AIC (adult in custody).
Rule numbers	AMEND: 255-070-0001 RULE TITLE: Conditions Not Limited by Exhibit J RULE SUMMARY: No changes to the rule. Exhibit J to this rule is amended.
Need Statement	SB1510 was passed by the legislature directing the courts to amend the general conditions of supervision and became effective March 23, 2022. Once this Exhibit J is amended, the Board will begin to make decisions under this new statute. Note that no changes are made to the administrative rule but to the Exhibit J which is referred to in the rule.
Justification	SB1510 (2022) was passed by the legislature directing the courts to amend the general conditions of supervision. The intent behind the bill is that all conditions in Oregon, both for probation and post-prison supervision be amended. The Board has always mirrored the conditions the court uses and on the advice of counsel, is making that amendment effective immediately. In addition, the state technology that is used to supervise individuals makes this necessary because the general conditions need to be the same for probation and post-prison supervision. The Board consulted with the Department of Corrections and Community Corrections to amend the general conditions. These conditions are lettered, instead of numbered, to match the statute and to distinguish the change.
Date	FILED 11/08/2022 (A filing in 2023 will be made to make rule change permanent.)
Description	Correct reference to deleted section
Action taken	Referenced section on detainers from another jurisdiction, 255-060-0014, was repealed 01/14/2004. The cite was mistakenly left in. The reference should have removed the subsection referred and replaced with "detainer". This amendment makes that correction but does not change the meaning of the rule. Additionally, minor grammatical changes and updates to the historical "prisoner" and "inmate" to AIC (adult in custody).
Rule numbers	AMEND: 255-060-0008 RULE TITLE: Release Plans
Need Statement	Amended reference to deleted subsection on detainers and replaced with "detainer". This subsection referenced section 255-060-0014, "detainers from another jurisdiction", which was repealed on 01/14/2004. The cite was mistakenly left in. The reference should have removed the section referred and replaced with the language "Except when an AIC has a detainer from another jurisdiction". This change makes that correction and does not change the meaning of the rule but merely corrects the reference. Minor grammatical corrections made.
Justification	The rule as it now reads is unclear due to a mistake in rulemaking. The rule references a section that was deleted and makes it difficult to understand due to the fact that finding the deleted section may be difficult for user. This rule is referenced by the public, adults in custody, parole officers, community corrections, the Department of Corrections and the Board. Once discovered, the Board is immediately amending rule as to not continue to cause confusion.
Date	FILED 11/29/2022 (A filing in 2023 will be made to make rule change permanent.)

Description	Amended rule to remove aggravated murders from the list of individuals ineligible for personal reviews.
Action taken	Remove aggravated murders from the list of individuals ineligible for personal reviews.
Rule numbers	AMEND: 255-040-0005 RULE TITLE: Scheduling of Personal Reviews
Need Statement	The Court of Appeals, in JACOB BARRETT vs. BOARD OF PAROLE AND POST PRISON SUPERVISION (A177845, 11/23/2022), found that OAR 255-040-0005(5) is invalid because the statute for prison term reductions applies to aggravated murders who are eligible for parole. The court found, "Reading the text of ORS 144.122 in context, we conclude that aggravated murder prisoners whose sentence has been converted to life imprisonment with possibility of parole or release following a successful murder review hearing and whose initial parole release dates have been set under ORS 144.120 are entitled to personal reviews. Hence, OAR 255-040-0005(5) exceeds the rulemaking authority granted in ORS 144.122 and the rule is invalid."
Justification	The Oregon Court of Appeals, invalidated OAR 255-040-0005(5), as written, in JACOB BARRETT, v. BOARD OF PAROLE AND POST-PRISON SUPERVISION, A177845 (2022). Due to the Court's ruling, a rulemaking action must proceed in order for the Board of Parole to continue its work under this rule.

Table 2: Permanent Rule Amendments in 2022

Description of Rulemaking	Action taken	Rule number
In 2019 the Legislature passed Senate Bill 1008 Chapter 634, 2019 Laws and created ORS 144.397. "ORS 144.397 Creates a release eligibility for juvenile offenders after 15 years of imprisonment; board hearing; rules. (1)(a) A person convicted of an offense or offenses committed when the person was under 18 years of age, who is serving a sentence of imprisonment for the offense or offenses, is eligible for release on parole or post-prison supervision as provided in this section after the person has served 15 years of imprisonment. Under ORS 144.397, the board may adopt rules to carry out the provisions of this statute."	Filed 01/24/2022	255-033-0010, 255-033-0020, 255-033-0030, 255-033-0040, 255-033-0050, 255-033-0060 RELEASE HEARINGS FOR ADULTS IN CUSTODY WHEN OFFENSE COMMITTED AS JUVENILE
Definitions updated and language modernized. Definitions added. HB 2036 (2021) was enacted because the legislature recognized a need for early medical discharge since, in some cases, supervision can affect a person's ability to receive appropriate medical care. This does not include persons in need of medical treatment related to temporary medical care. Under HB 2036, Chapter 203, (2021 Laws), the Legislative Assembly provided that the Board of Parole and Post-Prison Supervision may discharge a person from parole or post-prison supervision prior to the end of the supervision term if certain factors related to a medical condition are met, require admission to a care facility, and are compatible with the best interests of the person and the community. Some care or housing facilities will not accept persons who are under supervision. This amendment carries out the rules for this bill.	Filed 08/16/2022	255-005-0005 DEFINITIONS 255-094-0030 EARLY MEDICAL DISCHARGE FROM PAROLE AND POST-PRISON SUPERVISION
Referenced section on detainees from another jurisdiction, 255-060-0014, was repealed 01/14/2004. The cite was mistakenly left in. The reference should have removed the subsection referred and replaced with "detainer". This change makes that correction and does not change the meaning of the rule but merely corrects the reference.	Statutory Minor Correction Filed 11/03/2022 Rejected as SMC and refiled as Temporary Rule.	255-060-0008 RELEASE PLANS
When this rule was last amended in 1992, an error was made in reference to OAR subsection 255-050-0105. This subsection has never existed. The reference transposed the second number "0" with the third number, "1". The reference should read: OAR 255-050-0015. This change does not alter the scope, application or meaning of the rule.	Statutory Minor Correction Filed 11/28/2022	255-025-0030 EFFECT OF INOPERATIVE TIME ON PRISON TERMS
Update sex offender notification assessment rules and add coding rules exhibit. Adding subsection on policy and authority to explain guiding principles of rule division. Adding Exhibit Static-99R, the coding manual for the use of the Static-99R Risk Assessment. removing reference to website which is not under the control of the Board. Adding Static-99R risk assessment scores to show their correlation with notification level.	Filed 08/16/2022	255-085-0005, 255-085-0020, 255-085-0050, 255-085-0061 SEX OFFENDER NOTIFICATION LEVELS