OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

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CHAPTER 255
BOARD OF PAROLE AND POST-PRISON SUPERVISION

FILING CAPTION: Release hearings rules for AICs when offense was committed as a juvenile

EFFECTIVE DATE: 01/24/2022

AGENCY APPROVED DATE: 01/24/2022

CONTACT: Perry Waddell
503-871-5362
Perry.R.Waddell@state.or.us

1321 Tandem Ave NE
Salem,OR 97310

Filed By:
Perry Waddell
Rules Coordinator

RULES:
255-033-0010, 255-033-0020, 255-033-0030, 255-033-0040, 255-033-0050, 255-033-0060

ADOPT: 255-033-0010

RULE TITLE: Purpose & Authority

NOTICE FILED DATE: 11/29/2021

RULE SUMMARY: 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. [2019 c.634 §25; 2019 c.635 §3d]"

RULE TEXT:
(1) ORS 144.397 provides that an Adult in Custody (AIC) who was under 18 years of age at time of committing an offense is eligible for release on parole or post-prison supervision after serving 15 years of imprisonment. ORS 144.397 further provides for a hearing before the State Board of Parole and Post-Prison Supervision that must provide a meaningful opportunity to be released on parole or post-prison supervision, and which would authorize the release of such person on parole or post-prison supervision if certain findings are made.
(2) The Board is authorized to adopt rules to carry out the provisions of ORS 144.397. These rules describe the processes that the Board will follow when it determines eligibility, conducts hearings, and notifies persons of the results.
(3) These rules apply only to sentences imposed on or after January 1, 2020, as provided by Oregon Laws 2019, chapter 634, section 32. In addition, as provided by Oregon Laws 2019, chapter 685, section 4 (2), these rules do not apply to persons who were originally sentenced before January 1, 2020, and who are subsequently resentenced on or after January 1, 2020, as the result of an appellate decision or a post-conviction relief proceeding or for any other reason.

STATUTORY/OTHER AUTHORITY: ORS 144.050, 144.085, 144.397

STATUTES/OTHER IMPLEMENTED: 144.397

ADOPT: 255-033-0020

RULE TITLE: Determination of Eligibility for Hearing

NOTICE FILED DATE: 11/29/2021

RULE SUMMARY: This rule explains the procedure for how the Board will determine eligibility and schedule a hearing under ORS 144.397.

RULE TEXT:

The Board shall conduct a hearing to consider release on parole or post-prison supervision for a person who was convicted of an offense or offenses committed when the person was under 18 years of age and is serving a sentence of imprisonment for the offense or offenses, after that person has served 15 years of imprisonment for the offense.

(1) “Served 15 years of imprisonment” means that 15 years have passed since the person began serving the sentence, including pretrial incarceration but not including any reduction in sentence under ORS 421.121 or any other statute.

(2) An AIC shall submit a petition to the Board of Parole to request a hearing. The person may submit the petition up to one year before eligibility. The Board shall schedule the hearing within a reasonable period of time upon receipt of the petition, and after the person has served 15 years of imprisonment. For scheduling purposes, the Board may add time to allow for the person to be examined by a psychiatrist or psychologist as described in ORS 144.397.

(3) The Board shall factor in any resentencing or additional sentence received while in custody of a Department of Corrections facility.

STATUTORY/OTHER AUTHORITY: ORS 144.223, 144.226, 144.397

STATUTES/OTHER IMPLEMENTED: 144.397

ADOPT: 255-033-0030

RULE TITLE: Hearing Considerations

NOTICE FILED DATE: 11/29/2021

RULE SUMMARY: This rule shows the factors the Board will consider when making a determination for release at a hearing under this division.

RULE TEXT:

(1) The hearing shall provide the person a meaningful opportunity to be released on parole or post-prison supervision.

(2) The Board may require the person, before holding a hearing described in this Division, to be examined by a psychiatrist or psychologist with expertise in adolescent development. Within 60 days of the evaluation, the examining psychiatrist or psychologist shall file a written report of the findings and conclusions of the examination with the Board. A certified copy of the report shall be included in a Board Review Packet. This packet need not include all documents in the person in custody's file but shall contain information relevant to the purpose of the hearing and shall be provided to the person and the person's attorney.

(3) During a hearing under this section, the Board shall consider and give substantial weight to the fact that a person under 18 years of age is incapable of the same reasoning and impulse control as an adult and the diminished culpability of minors as compared to that of adults. The Board shall also consider the following circumstances, if relevant to the specific person and offense:

(a) the age and immaturity of the person at the time of the offense;

(b) whether and to what extent an adult was involved in the offense;

(c) the person's family and community circumstances at the time of the offense, including any history of abuse, trauma, and involvement in the juvenile dependency system;

(d) the person's subsequent emotional growth and increased maturity during the person's imprisonment;

(e) the person's participation in rehabilitative and educational programs while in custody if such programs have been made available to the person and use of self-study for self-improvement;

(f) a mental health diagnosis; and

(g) any other mitigating factors or circumstances presented by the person.

(4) Under no circumstances may the Board consider the age of the person as an aggravating factor.

(5) The board, when making a determination under ORS 144.397(7) as to whether the person, based on the consideration of the age and immaturity of the person at the time of the offense, and the person's behavior thereafter, has demonstrated maturity and rehabilitation, may consider, among other things:

(a) the person's involvement in correctional treatment, medical care, educational, vocational, or other training in the institution which will substantially enhance the person's capacity to lead a law-abiding life when released;

(b) the person's institutional employment history;

(c) the person's institutional disciplinary conduct;

(d) the adequacy of the person's release plan including community support from family, friends, treatment providers, and others in the community; type of residence, neighborhood, or community in which the person plans to live;

(e) the person's ability to demonstrate remorse and understanding of the impact the person's crime had on the victims and the community;

(f) the person's attitude and evidence of behavioral change;

(g) the extent the person takes personal responsibility for their actions;

(h) any psychiatrist or psychologist's assessment of the person's current risk of re-offending, risk of harm, and suitability for community supervision;

(i) the person understands long-term consequences;

(j) the person can delay impulses and identify alternative actions;

(k) the degree of premeditation or deviancy involved in the commission of the crime and the ability to understand, address, and mitigate those underlying risk factors;

(l) the person, if paroled, would not be a threat to the safety of the victim, the victim's family, or the community and would comply with release conditions; and
(m) any other relevant factors.

STATUTORY/OTHER AUTHORITY: ORS 144.397

STATUTES/OTHER IMPLEMENTED: ORS 144.397

ADOPT: 255-033-0040

RULE TITLE: Hearing Protocols

NOTICE FILED DATE: 11/29/2021

RULE SUMMARY: Rules on how hearings are conducted.

RULE TEXT:

(1) Manner of Hearing

(a) The proceedings shall be governed by the hearings procedures outlined in Oregon Administrative Rule 255, Division 30; 255-030-0013, 255-030-0021, 255-030-0023, 255-030-0025, 255-030-0026, 255-030-0027, 255-030-0032, 255-030-0040, and 255-030-0046.

(b) Nothing in this OAR is to be construed as limiting a right a victim would have at this hearing under the United States and Oregon Constitutions, any Oregon statute, including ORS 144.750, or any Oregon administrative rule.

(c) The Board shall provide notice of the hearing to:

(A) The district attorney of the county in which the person was convicted; and

(B) The victim of any offense for which the person is serving a sentence if the victim requests to be notified and furnishes the board with a current address.

(d) At the hearing, the AIC has:

(A) the burden of proving by a preponderance of the evidence that the person has demonstrated maturity and rehabilitation based on consideration of the age and immaturity of the person at the time of the offense, and the person's behavior thereafter; and

(B) the right to counsel, including counsel appointed at board expense, at a hearing.

(e) The testimony of each witness shall not exceed 10 minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the Board's decision.

STATUTORY/OTHER AUTHORITY: ORS 144.397

STATUTES/OTHER IMPLEMENTED: ORS 144.397

Oregon
Governor Kate Brown

Board of Parole and Post-Prison Supervision
1321 Tandem Ave. NE
Salem, OR 97301
(503) 945-0902
http://egov.oregon.gov/BOPPPS

Exhibit NOR-4JC

NOTICE OF RIGHTS FOR RELEASE HEARING FOR PERSON WHOSE OFFENSE WAS COMMITTED AS JUVENILE

Adult in Custody: _____ SID Number: _____

Hearing Date & Time: _____ Hearing Location: _____

ORS 144.397 provides that an Adult in Custody (AIC) who was under 18 years of age at time of committing an offense is eligible for a hearing after serving 15 years of imprisonment. The hearing shall provide a meaningful opportunity to be released on parole or post-prison supervision if certain findings are made.

Preparing for the hearing:

1. Read all information thoroughly before the hearing.
2. Bring your hearing packet and all necessary documents to the hearing.
3. If you need an interpreter or other assistance, contact your institutional counselor immediately.
4. Any information you wish to have the Board consider at your hearing should be provided in writing and received by the Board at least one week prior to the hearing and should clearly state "FOR HEARING."
5. If you paid restitution, bring your receipts to the hearing.
6. Copies of Board Administrative Rules are available in the institution's legal library.

If an attorney is going to represent you at your hearing, please notify them that the hearing date should be verified at least one day prior to the scheduled date by calling the Board at 503-945-0902. Please instruct your attorney or any visitors that they must also contact the Board in advance to receive information about attending or participating in the hearing.

Please read the attached *Notice of Rights and Procedures* carefully.

BOARD OF PAROLE AND POST-PRISON SUPERVISION
NOTICE OF RIGHTS AND PROCEDURES FOR
RELEASE HEARINGS FOR PERSONS WHOSE OFFENSE WAS COMMITTED AS JUVENILE
OREGON ADMINISTRATIVE RULE (OAR) 255-033

This is an informal summary of your rights at the hearing; please obtain and refer to the statutes and administrative rules that govern the Board's hearings for more information.

Laws that Apply

1) Oregon Revised Statute (ORS) 144.397 provides that an Adult in Custody (AIC) who was under 18 years of age at time of committing an offense is eligible for release on parole or post-prison supervision after serving 15 years of imprisonment. ORS 144.397 further provides for a hearing before the State Board of Parole and Post-Prison Supervision that must provide a meaningful opportunity to be released on parole or post-prison supervision, and which would authorize the release of such person on parole or post-prison supervision if certain findings are made. The Board rules governing these hearings are found in OAR 255-033, *Release Hearings for Persons Whose Offense was Committed as Juvenile.*

2) The issue to be considered at the hearing is whether the Board finds that, based on the consideration of the age and immaturity of the person at the time of the offense and the person's behavior thereafter, if the person has demonstrated maturity and rehabilitation, the Board shall release the person.

3) The hearing will be conducted in the manner prescribed by 255-033-0040 Hearing Protocols.

4) OAR 255-033-0030 specifies that during a hearing, the Board shall consider and give substantial weight to the fact that a person under 18 years of age is incapable of the same reasoning and impulse control as an adult and the diminished culpability of minors as compared to that of adults. The Board shall also consider the following circumstances, if relevant to the specific person and offense:
   (a) the age and immaturity of the person at the time of the offense;
   (b) whether and to what extent an adult was involved in the offense;
   (c) the person's family and community circumstances at the time of the offense, including any history of abuse, trauma, and involvement in the juvenile dependency system;
   (d) the person's subsequent emotional growth and increased maturity during the person's imprisonment;
   (e) the person's participation in rehabilitative and educational programs while in custody if such programs have been made available to the person and use of self-study for self-improvement;
   (f) a mental health diagnosis; and
   (g) any other mitigating factors or circumstances presented by the person.

5) Other factors the Board may consider in determining maturity and rehabilitation include:
   (a) the person's involvement in correctional treatment, medical care, educational, vocational, or other training in the institution which will substantially enhance the person's capacity to lead a law-abiding life when released;
   (b) the person's institutional employment history;
   (c) the person's institutional disciplinary conduct;
   (d) the adequacy of the person's release plan including community support from family, friends, treatment providers, and others in the community; type of residence, neighborhood, or community in which the person plans to live;
   (e) the person's ability to demonstrate remorse and understanding of the impact the person's crime had on the victims and the community;
   (f) the person's attitude and evidence of behavioral change;
   (g) the extent the person takes personal responsibility for their actions;

(h) any psychiatrist or psychologist's assessment of the person's current risk of re-offending, risk of harm, and suitability for community supervision;
(i) the person understands long-term consequences;
(j) the person can delay impulses and identify alternative actions;
(k) the degree of premeditation or deviancy involved in the commission of the crime and the ability to understand, address, and mitigate those underlying risk factors; and
(l) any other relevant factors.

Right to an Attorney

You may hire an attorney to represent you. It is your responsibility to notify the attorney of the date of your hearing. If a person is without sufficient funds to employ an attorney for a hearing the Board shall appoint legal counsel and pay for an attorney. You may represent yourself at the hearing.

Who May Attend the Hearing

At the chairperson's discretion, the Board or its designated representative may conduct any hearing in person, by teleconference call, videoconference call, live stream, or other electronic medium as long as it ensures the AIC, the Board, and other participants the opportunity to hear and be heard.

The hearing is public, and persons who wish to observe or support you may attend in person (if in-person hearing), by telephone or by video conference, subject to Board of Parole and Department of Corrections rules found in OAR 255-028. Instruct your support persons and attorney to contact the Board at least two weeks in advance to arrange to attend the hearing.

Also attending the hearing, pursuant to statute and rule, may be victims of your crimes and their supporters, and a representative of the District Attorney's (DA) office from the county where you were sentenced. The identified victims and the DA representative have the right to make statements at the hearing. You will have an opportunity to respond.

Because Board hearings are public, representatives of the press may attend. You will not receive notice if press representatives intend to be present at a hearing.

Information Considered at the Hearing

All material relevant and pertinent to issues before the Board will be made a part of the record. Exhibits not available prior to the hearing will be made available to you or your attorney at the hearing. Any material considered but not made part of the public record shall be separated and a statement to that effect shall be placed in the record. The Board shall follow the criteria for denial or disclosure of records set out in OAR 255-030.

Discovery is not permitted. Requests that the Board research and obtain information you want considered cannot be honored. It is your responsibility to provide that information.

You must make your own arrangements for calling and presenting witnesses. Witnesses may participate via phone or teleconference. Instruct your attorney, witnesses, or any other visitors that they must contact the Board in advance to receive information about attending or participating in the hearing. Testimony of each witness will ordinarily be limited to 10 minutes.

In general, information that you want the Board to consider should be provided in writing at least one week prior to the hearing and you should write clearly on it: "FOR HEARING." The Board, at its discretion, may accept limited amounts of information during the hearing. Please be aware that information you submitted for previous hearings **will not automatically be considered by the Board for this hearing. You must resubmit any such information.** You and your representative may make oral statements to the Board.

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 at least 14 days prior to your hearing, you may either waive the notice period or have your hearing rescheduled.

Hearing Procedure

The Board's task at any hearing is to gather information to make the best possible decision with the available information while assuring a fair and full hearing to all persons entitled to participate. A Board hearing is less formal than a court appearance. Generally, it is short, so be prepared to speak concisely.

You should bring your copy of the parole packet to your hearing. You may want to call the Board's attention to one or more documents, or the Board may refer to various documents and may want to discuss them with you. The Board will have reviewed the documents in your Board Review Packet, which will usually include the Presentence Report or a report of similar content, as well as any additional information provided by the police, counsel, the victim, or the district attorney, any Department of Corrections reports, and any recent psychological or psychiatric evaluations, as well as materials you have submitted.

Please remember that under statute you have the responsibility (the "burden") of proving, by a preponderance of the evidence that you have demonstrated maturity and rehabilitation based on consideration of your age and immaturity at the time of the offense, and your behavior thereafter. **Be prepared to present your evidence.** The Board may also ask you questions about the crimes you committed, about your programming, prison adjustment or parole performance, efforts to deal with the factors that led to your criminal behavior, your release planning, etc. If you have prepared a written statement, the Board prefers that you submit the statement for review and not plan to read aloud from it during the hearing. However, you can bring any notes that you want to remind yourself of what you want to tell the Board.

Relevant evidence of a type of commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. Hearsay evidence is not automatically excluded, but the fact that it is hearsay will affect how much reliance the Board will place on it in reaching a decision.

If you object to the admissibility of evidence you must state your objection at the time the evidence is offered.

You should be aware that irrelevant, immaterial, or unduly repetitious evidence will be excluded, and you should plan your witness list and your own testimony with that in mind.

(If you successfully appeal your conviction or sentence in a court of law, any comments made to the Board during the hearing can be used upon retrial or resentencing.)

Continuances & Cancellation

There are no continuances granted at the end of a hearing. You should be prepared to finish what you want to say or submit it in writing at the time of the hearing. However, if you can show that the record should remain open for additional evidence, or upon the Board's own motion, the presiding Board member may, at their sole discretion, continue the hearing for a period of time not to exceed 60 days, to obtain additional information required to assist the Board in its decision.

If you ask for cancellation of a hearing, it must be for good cause, in writing, and with 7 days' advance notice. If the Board finds the cancellation request does not fulfill these requirements, an AIC shall not be eligible to request another hearing for 90 days from the date of the scheduled hearing.

The Board's Decision

At the end of the hearing the Board will close the testimony and adjourn the hearing. It will then deliberate and in most cases will issue its final order in writing. The Board may also issue its decision orally on the record at the hearing. Please be aware that because of the Board's careful consideration of your case, you may not receive an immediate decision.

If the Board finds that, based on the consideration of the age and immaturity of the person at the time of the offense and the person's behavior thereafter, the person has demonstrated maturity and rehabilitation proven by a preponderance of the evidence, the Board shall release the person as follows: (a) For a person sentenced under ORS 163.105, 163.115 or 163.155, the Board shall set a release date that is not more than 60 days from the date of the hearing and, notwithstanding section 28, chapter 790, Oregon Laws 1989, the person shall be released on parole in accordance with ORS 144.125, 144.260 and 144.270. (b) A person sentenced to a term of imprisonment under a provision of law other than ORS 163.105, 163.115 or 163.155 shall be released on post-prison supervision in accordance with ORS 144.096 and 144.098 within 60 days of the date of the hearing.

If the Board determines that the person has not demonstrated maturity and rehabilitation under OAR 255-033-0030, the Board may deny release and postpone a subsequent hearing to a date that is at least two years but no more than 10 years from the date of the hearing.

Exceptions to Order

After the hearing, you will be sent a final order reflecting the Board's decisions in your case. This final order will be captioned "Board Action Form." If you disagree with the final order, you may seek reconsideration of the order by means of an Administrative Review. See *Administrative Reviews and Appeals* below and Division 80 of the Board's rules. If you disagree with the administrative review response, you may appeal to the Oregon Court of Appeals pursuant to ORS 144.335. There will not be an opportunity after the Board issues its final order for re-arguments or objections.

Record

An audio recording will be made of the entire hearing to preserve the testimony and other evidence for future reference. The hearing record will not be transcribed by the Board unless requested by the Department of Justice to prepare a response for judicial appeal. AICs may purchase a copy of the audio recording of the hearing. The Board only retains hearing recordings for four years from the date of the hearing. After four years, the record is destroyed.

Administrative Reviews and Appeals

You must exhaust your administrative review remedies before you may appeal to the Court of Appeals (see ORS 144.335 and OAR 255-80-0001). You may request administrative review from the Board if you have evidence that:

1. The Board action is not supported by evidence in the record;
2. Pertinent information was available at the time of the hearing which through no fault of yours, was not considered;
3. Pertinent information was not available at the time of the hearing, e.g., information concerning convictions from other jurisdictions;
4. The Board acted inconsistently with its rules, policies, and procedures and the inconsistency is not explained;
5. The Board acted in violation of a constitutional or statutory provision; or
6. The Board acted outside the range of discretion delegated to the agency by law.

In order to request a review, please use the form *Administrative Review Request Form* (Exhibit O). The form is available at the AIC law library and the Board's website: https://www.oregon.gov/boppps/Documents/Exhibits/ExhibitO.pdf. If you cannot get this form, please type or print your request in ink on white paper. The request for review must be received by the Board within 45 days after the date the Board Action Form is mailed (see OAR 255-080-0005). Do not use this form to make inquiries or to request corrections of obvious clerical errors.

After you receive the Board response to your request, if you still believe that the Board erred, and you can show that the order "adversely affects or aggrieves" you, you may then request judicial review from the Oregon Court of Appeals (see ORS 144.335). You must file a Petition for Review with the Oregon Court of Appeals within 60 days after the final administrative review response is mailed (see OAR 255-080-0001 to 0015).

Pay attention to the time requirements for your administrative review request and your petition for review so that they will not be too late to be considered.

ADOPT: 255-033-0050

RULE TITLE: Final Determinations

NOTICE FILED DATE: 11/29/2021

RULE SUMMARY: Criteria for making a final decision or scheduling a subsequent hearing.

RULE TEXT:

(1) The Board will make a final determination by reviewing the documents relied upon for the hearing, any relevant testimony at the hearing, and all timely submitted relevant materials.

(2) The Chairperson of the Board, or designee, shall make assignments of Board Members to the panels. The Chairperson of the Board may participate on any panel. Each panel shall have the authority to hear and determine all questions before it. The vote of a majority of the panel is required to make a finding that the person has demonstrated maturity and rehabilitation. If the panel fails to arrive at a majority decision, another Board Member shall vote on the matter administratively.

(3) If the Board finds that, based on the consideration of the age and immaturity of the person at the time of the offense and the person's behavior thereafter, the person has demonstrated maturity and rehabilitation, the Board shall release the person as follows:

(a) For a person sentenced under ORS 163.105, 163.115 or 163.155, the Board shall set a release date that is not more than 60 days from the date of the hearing and, notwithstanding section 28, chapter 790, Oregon Laws 1989, the person shall be released on parole in accordance with ORS 144.125, 144.260 and 144.270.

(b) A person sentenced to a term of imprisonment under a provision of law other than ORS 163.105, 163.115 or 163.155 shall be released on post-prison supervision in accordance with ORS 144.096 and 144.098 within 60 days of the date of the hearing.

(4) If the Board determines that the person has not demonstrated maturity and rehabilitation under OAR 255-033-0030, the Board may deny release and postpone a subsequent hearing to a date that is at least two years but no more than 10 years from the date of the hearing.

(5) The Board shall consider the factors listed in Division 62 when setting a subsequent hearing date.

STATUTORY/OTHER AUTHORITY: ORS 144.096, 144.098, 144.125, 144.260, 144.270, 144.397

STATUTES/OTHER IMPLEMENTED: 144.397

ADOPT: 255-033-0060

RULE TITLE: Notices Following Hearing

NOTICE FILED DATE: 11/29/2021

RULE SUMMARY: This rule shows who will receive notice of decision after hearing.

RULE TEXT:

Following a Board decision under this section, the Board shall send written notice of the Board's order to the AIC, district attorney of the committing jurisdiction, and Board registered victims.

STATUTORY/OTHER AUTHORITY: ORS 144.397

STATUTES/OTHER IMPLEMENTED: ORS 144.397