



PERMANENT ADMINISTRATIVE ORDER

DOC 1-2021

CHAPTER 291
DEPARTMENT OF CORRECTIONS

FILED

01/05/2021 10:27 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Leave Revocation Hearings

EFFECTIVE DATE: 01/05/2021

AGENCY APPROVED DATE: 12/29/2020

CONTACT: Michelle Mooney 2575 Center St
503-945-9017 Salem, OR 97301
michelle.c.mooney@doc.state.or.us

Filed By:
Michelle Mooney
Rules Coordinator

RULES:

291-062-0100, 291-062-0110, 291-062-0120, 291-062-0130, 291-062-0140, 291-062-0150, 291-062-0160, 291-062-0165, 291-062-0170, 291-063-0100, 291-063-0110, 291-063-0120, 291-063-0130, 291-063-0140, 291-063-0150, 291-063-0160, 291-066-0100, 291-066-0110, 291-066-0120, 291-066-0130, 291-066-0140, 291-066-0150, 291-066-0160, 291-066-0170, 291-066-0180, 291-066-0190, 291-066-0200, 291-066-0210, 291-066-0220, 291-066-0230, 291-066-0240, 291-066-0250, 291-066-0260, 291-066-0270

AMEND: 291-062-0100

REPEAL: Temporary 291-062-0100 from DOC 13-2020

RULE TITLE: Authority, Purpose and Policy

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with recent legislative changes to statutory language.

RULE TEXT:

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 421.500 to 421.512, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to establish special alternative incarceration programs and establish department policy and procedures for the program's operation and management in accordance with ORS 421.500 to 421.512.

(3) Policy: Within the inherent limitations of resources, and the need to maintain facility security, internal order, and discipline, and the health and safety of staff, adults in custody, and the public, it is the policy of the Department of Corrections to discharge its statutory responsibilities to establish alternative incarceration programs by creating and operating programs that promote rehabilitation during incarceration and reduce the risk of continuing criminal conduct when the adult in custody is returned to the community.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075

AMEND: 291-062-0110

REPEAL: Temporary 291-062-0110 from DOC 13-2020

RULE TITLE: Definitions

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with recent legislative changes to statutory language.

RULE TEXT:

(1) Adult in Custody (AIC): Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status. For the purposes of these rules, AIC includes individuals who are in DOC's legal custody but are temporarily outside of DOC's physical custody for reasons that include, but are not limited to, court proceeding, medical appointments, work assignments, programs, or interstate compact. AIC also includes individuals who have been released onto STTL, Non-prison leave, or emergency leave.

(2) Alternative Incarceration Program (AIP): A highly structured corrections program that includes intensive interventions, rigorous personal responsibility and accountability, and service to the community.

(3) Custody Cycle: The time period during which an offender begins incarceration with the Department of Corrections and is under the supervision of community corrections until discharge from all Department of Corrections and community corrections incarceration and supervision.

(4) Other Charges: Any criminal or civil accusatory instrument that alleges wrongdoing and for which a person may be imprisoned or incarcerated.

(5) Nonprison Leave: A period of leave not to exceed 90 days preceding an established release date granted to AICs successfully completing the institution phase of an AIP. Nonprison leave is designed to provide AICs with transitional opportunities that promote successful reintegration into the community and is granted in accordance with ORS 137.750, 137.751, 421.508, and 421.510, and the department's rules on Alternative Incarceration Programs (OAR 291-062).

(6) Revocation Hearing: A hearing to determine whether there is probable cause to believe the adult in custody has violated one or more conditions of nonprison leave, whether there are reasons or circumstances that warrant the adult in custody be returned to the Department of Corrections, or both.

(7) Term of Incarceration: The period of commitment to the legal and physical custody of the department imposed by a sentencing court in a judgment. For purposes of these administrative rules, "term of incarceration" includes pre-sentence incarceration credit granted to an AIC by the department under ORS 137.370, as well as any time an AIC spends on short-term transitional leave under ORS 421.168 or nonprison leave under ORS 421.510.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

AMEND: 291-062-0120

REPEAL: Temporary 291-062-0120 from DOC 13-2020

RULE TITLE: General

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

- (1) The Department of Corrections has established and operates alternative incarceration programs.
- (a) Alternative incarceration programs may encompass intensive cognitive programming, intensive addictions treatment, or a combination of the two.
- (b) Each alternative incarceration program is a minimum of 270 days in duration and includes two components: a structured institution program and a period of structured nonprison leave.
- (c) Each alternative incarceration program requires its participants to engage in a minimum of 14 hours per day of highly structured routine, seven days per week for the duration of the program.
- (2) AICs are required to participate in and successfully complete transition classes offered as a condition of program graduation. The number and frequency of these classes will be determined by each facility.
- (3) The department in its discretion may grant nonprison leave to AICs who successfully complete the institution phase of an alternative incarceration program if:
- (a) The AIC's sentencing judgment authorizes a release to post-prison supervision in accordance with ORS 421.508, 137.750, and 137.751; and
- (b) The AIC has identified viable self-support options in the community; or
- (c) The supervising community corrections agency has approved a temporary subsidy, such as treatment transition funds, that will assist the AIC with successful community transition.
- (d) All expenses not otherwise approved by the supervising community corrections agency must be covered by the AIC.
- (4) For those whose crimes were committed prior to January 1, 2009, transitional leave for alternative incarceration programs was authorized under ORS 421.128. For the purposes of these rules, the operational aspects, processes, and any subsequent violation sanctions are the same as and subject to rules referencing nonprison leave.

STATUTORY/OTHER AUTHORITY: 423.030, and 423.075, 423.020, ORS 179.040, 421.500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, and 423.075

AMEND: 291-062-0130

REPEAL: Temporary 291-062-0130 from DOC 13-2020

RULE TITLE: Adult in Custody Eligibility

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

(1) The department will identify AICs who are eligible to participate in alternative incarceration programs. To be eligible to participate in the program, an AIC must:

(a) Be sentenced to the legal and physical custody of the department and be subject to a term of post-prison supervision upon satisfaction of a term of physical confinement in a Department of Corrections facility;

(b) Be at least 18 years of age at the time of entry into the program, or may be under 18 years of age and have been convicted of a crime upon remand from juvenile court; and

(c) Be assigned Level 1 or Level 2 in accordance with the department's rules on Classification (AIC) (OAR 291-104) and have no more than 36 months to serve at the time of program entry.

(2) An AIC is not eligible to participate in alternative incarceration programs during service of a sentence for conviction of a crime described in:

(a) ORS 163.095 (Aggravated Murder),

(b) ORS 163.115 (Murder),

(c) ORS 163.118 (Manslaughter I),

(d) ORS 163.235 (Kidnapping I),

(e) ORS 163.355 (Rape III),

(f) ORS 163.365 (Rape II),

(g) ORS 163.375 (Rape I),

(h) ORS 163.385 (Sodomy III),

(i) ORS 163.395 (Sodomy II),

(j) ORS 163.405 (Sodomy I),

(k) ORS 163.408 (Unlawful Sexual Penetration II),

(l) ORS 163.411 (Unlawful Sexual Penetration I),

(m) ORS 163.415 (Sexual Abuse III),

(n) ORS 163.425 (Sexual Abuse II),

(o) ORS 163.427 (Sexual Abuse I),

(p) ORS 163.435 (Contributing to the Delinquency of a Minor),

(q) ORS 163.525 (Incest),

(r) ORS 164.325 (Arson I), or

(s) ORS 164.415 (Robbery I).

(3) An AIC who is serving a sentence, including a sentence imposed under ORS 137.712, for a crime listed in ORS 137.700, 137.707, 163.095, or 163A.005(5) committed on or after January 1, 2009, is not eligible to participate in alternative incarceration programs.

(4) An AIC is not eligible to participate in alternative incarceration programs if the AIC is serving a sentence under the provisions of ORS 137.635.

(5) An AIC is not eligible to participate in alternative incarceration programs if the AIC is serving a sentence under ORS 161.610 until the AIC completes the minimum incarceration term imposed by the court less earned time under ORS 421.121.

(6) An AIC is not eligible to participate in alternative incarceration programs if the AIC:

(a) Has an adult conviction for felony escape that was committed within three years prior to the time of program entry, or has a conviction for unauthorized departure from the legal and physical custody of the Department of Corrections or

its authorized agents that was committed within three years prior to the time of program entry.

(b) Is serving non-sentencing guidelines prison terms (sentences with crime dates prior to November 1, 1989), or has unresolved criminal prosecutions, consecutive county jail terms, or any other circumstances that would conflict with the AIC's release from prison upon satisfactory completion of an alternative incarceration program.

(c) Has a current detainer.

(A) AICs who are serving a sentence for a crime committed prior to January 1, 2009, and who have detainers lodged with the department after they have been selected and assigned to one of the programs, and the detainer is discovered after the AIC has completed approximately one-half of the program, may be permitted to continue their participation in the program at the discretion of the functional unit manager or designee based on program performance to date.

(B) AICs who are serving a sentence for a crime committed on or after January 1, 2009, and who have a current detainer from any jurisdiction that will not expire prior to the AIC's calculated date of release to post-prison supervision are not eligible for and shall not be permitted to continue participation in an alternative incarceration program.

(d) Is currently assigned to special security housing for reasons of protective custody, and the AIC's assignment to the program is otherwise determined by department officials to pose a threat to the safe, secure, and orderly operation and management of the program, including the safety of department staff or any AICs.

(e) Has less than ten months to serve from the first day of program entry. AICs that have between nine and ten months to serve may participate in alternative incarceration programs with the functional unit manager's or designee's approval.

(f) Is serving a parole or post-prison supervision violation sanction pursuant to ORS 144.108(3)(b).

(7) For sentences imposed for crimes committed prior to January 1, 2009, an AIC is not eligible to participate in alternative incarceration programs if the AIC is serving a sentence under the provision of ORS 137.700 or ORS 137.707 until completion of the mandatory minimum incarceration term. For sentences imposed for crimes committed on or after December 5, 1996, the AIC is eligible after completion of the mandatory minimum incarceration term only upon order of the sentencing court as ordered in a judgment pursuant to ORS 137.750.

(8) For sentences imposed for crimes committed prior to January 1, 2009, an AIC is eligible to participate in alternative incarceration programs if the AIC, on or after April 1, 1995, commits and is convicted of:

(a) Assault II as defined in ORS 163.175(1)(b) (Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon);

(b) Kidnapping II (ORS 163.225); or

(c) Robbery II (ORS 164.405) unless the sentencing court notwithstanding ORS 137.700 and 137.707 has imposed a lesser sentence pursuant to ORS 137.712 and (for crimes committed on or after December 5, 1996, and prior to January 1, 2009) only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(9) For sentences imposed for crimes committed prior to January 1, 2009, an AIC is not eligible to participate in alternative incarceration programs if the AIC on or after October 23, 1999, commits and is convicted of Manslaughter II as defined in ORS 163.125, unless the sentencing court notwithstanding ORS 137.700 and 137.707 has imposed a lesser sentence pursuant to ORS 137.712 and only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(10) An AIC is not eligible to participate in alternative incarceration programs if the AIC is serving a sentence under the provisions of ORS 161.725 or ORS 161.737 (dangerous offenders) for a crime committed on or after November 1, 1989. An AIC shall not be allowed to participate in alternative incarceration programs even after completion of the required minimum incarceration term (determinate sentence) even if the Board of Parole and Post-Prison Supervision finds that the person is no longer dangerous or finds that the person remains dangerous but can be adequately controlled with supervision and mental health treatment and sets a post-prison supervision release date.

(11) If otherwise eligible under Oregon law, any person sentenced for a crime committed on or after December 5, 1996, and prior to January 1, 2009, may be considered for alternative incarceration programs only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(12) If otherwise eligible under Oregon law, an AIC sentenced for a crime committed on or after January 1, 2009, may

be considered for nonprison leave and release to post-prison supervision only upon order of the sentencing court as directed in a judgment pursuant to ORS 421.508(4).

(13) An AIC is not eligible for an alternative incarceration program during the current admission if he or she previously participated in another alternative incarceration program in the same custody cycle.

(14) An AIC is not eligible for an alternative incarceration program who:

(a) Scores a six or higher on the Static 99-R and Definitions risk assessment tool (Attachments A and B);

(b) Has a predatory sex offender designation; or

(c) Is classified as a Tier III sex offender pursuant to OAR 255-085-0020.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

AMEND: 291-062-0140

REPEAL: Temporary 291-062-0140 from DOC 13-2020

RULE TITLE: Adult in Custody Selection

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

(1) The department in its discretion may accept an eligible AIC into an alternative incarceration program based on its determination that the AIC's participation in such a program is consistent with the safety of the community, the welfare of the AIC, the program objectives and the rules of the department.

(2) An AIC will not be accepted into an alternative incarceration program unless the AIC submits a written request to participate.

(a) The request must contain a statement signed by the applicant providing that the AIC:

(A) Is physically and mentally able to withstand the rigors of the program; and

(B) Has reviewed the alternative incarceration program descriptions provided by the department and agree to comply with each of the requirements.

(b) An otherwise-eligible AIC with a physical or mental disability will be evaluated individually by the department to determine whether the AIC may successfully participate in the fundamental components of an alternative incarceration program.

(c) The department shall make the final determination regarding an AIC's physical or mental ability to withstand the rigors of the program.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

AMEND: 291-062-0150

REPEAL: Temporary 291-062-0150 from DOC 13-2020

RULE TITLE: Removal or Suspension From an Alternative Incarceration Program

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with recent legislative changes to statutory language.

RULE TEXT:

(1) The functional unit manager or designee may remove or suspend an AIC from any portion of an alternative incarceration program and may reassign the AIC to another Department of Corrections facility to serve the balance of the AIC's court-imposed incarceration term, for administrative or disciplinary reasons. The decision to remove or suspend an AIC from the program will be made in consultation with a committee appointed by the functional unit manager or designee that is responsible to review the performance of AICs participating in an alternative incarceration program.

(2) Administrative Removal or Suspension:

(a) The functional unit manager or designee may immediately remove or suspend an AIC from the program and reassign the AIC to another Department of Corrections facility without a hearing, for administrative reasons.

(b) An AIC who is not available to participate substantially in the program (e.g., physical and mental illness, court appearance(s), disciplinary segregation, etc.) for up to 30 days following placement will be suspended from participation and will be evaluated by the committee to determine whether the AIC will be removed from the program or accepted back into the program at the program level deemed appropriate by the functional unit manager or designee.

(c) Any change in status that would cause an AIC to be ineligible to continue participating in the program as described in OAR 291-062-0130 (e.g., discovery of a detainer), may result in a suspension.

(A) If suspended, the AIC will have 30 days to resolve eligibility status with the department. If the AIC's eligibility status remains unresolved, the AIC will be removed from the program.

(B) An extension may be made by the functional unit manager or designee on a case-by-case basis.

(d) If other charges will result in immediate incarceration upon release to nonprison leave, the AIC will have 30 days to resolve eligibility status with the department. If the AIC's eligibility status remains unresolved, the AIC will be removed from the program. An extension may be made by the functional unit manager or designee on a case-by-case basis.

(e) AICs are expected to participate in all aspects of their program assignment at a level consistent with the length of time they have been assigned to the program.

(A) The functional unit manager or designee may suspend an AIC from the program for 30 days or more when, in consultation with the program performance review committee, the functional unit manager or designee determines that the AIC is not making adequate program progress. During the suspension, the AIC will be given an opportunity to come into compliance with established program standards.

(B) If the AIC comes into compliance, the AIC will be placed at a program level deemed appropriate by the functional unit manager or designee. The AIC may be removed from the program for failure to meet program expectations. If the AIC is assigned to an intensive alternative incarceration addictions program, the AIC may have the length of the program extended beyond 270 days.

(f) If the department suspends or removes an AIC from the program for administrative reasons while the AIC is on nonprison leave status the AIC may request a hearing regarding the department's decision to rescind approval for administrative reasons. If the AIC requests a hearing, the department will provide a hearing using applicable rules in the Department's rules for Leave Revocation Hearings (OAR 291-066) for evidence and making preliminary findings of fact, to the extent that those rules are not inconsistent with these rules (OAR 291-062). After the hearings officer has provided a final report described in OAR 291-066-0310, the department will make a final determination as to whether to revoke leave as provided in these rules (OAR 291-062).

(3) Disciplinary Removal or Suspension:

(a) An AIC who, after a hearing in accordance with procedures provided in the department's rules on Prohibited

Conduct and Processing Disciplinary Actions (OAR 291-105), is found to have committed a major disciplinary rule violation, may be removed from the program and transferred to another Department of Corrections facility at the discretion of the functional unit manager or designee.

(b) An AIC who, after a hearing in accordance with procedures provided in the department's rules on Leave Revocation Hearings (OAR 291-066), is found to have violated a condition of nonprison leave, and is returned to a Department of Corrections institution pursuant to OAR 291-062-0165 or OAR 291-066, may be removed from the program and transferred to another Department of Corrections facility at the discretion of the functional unit manager or designee.

(4) Voluntary Removal: An AIC may elect to be removed from an alternative incarceration program; however, to do so the AIC must sign a document requesting removal from the program to the functional unit manager or designee. Voluntary removal from the program constitutes a program failure.

(5) An AIC who fails an alternative incarceration program will be ineligible to participate in any other non-AIP intensive treatment program during the same admission cycle (this does not include dual diagnosis programs).

(6) Administrative Review of Removal for Program Failure:

(a) When the functional unit manager or designee removes an AIC from the AIC's program assignment for a program failure, the AIC will be notified in writing of the reason for the removal decision and given the opportunity for administrative review of the decision.

(b) To obtain an administrative review of the removal decision, an AIC must send a request for administrative review in writing to the Assistant Director of Health Services or designee, together with any supporting documentation. The Assistant Director of Health Services or designee must receive the request within 15 business days of the date of the notice of the administrative removal.

(c) The review should be completed within 15 business days after receiving an AIC's review request. The Assistant Director of Health Services or designee's decision on an administrative review shall be final.

STATUTORY/OTHER AUTHORITY: ORS 423.075, ORS 179.040, 421.500 to 421.512, 423.020, 423.030

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

AMEND: 291-062-0160

REPEAL: Temporary 291-062-0160 from DOC 13-2020

RULE TITLE: Alternative Incarceration Program Prison Management

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

(1) To the extent that other Department of Corrections rules may conflict with provisions in these rules (OAR 291-062-0100 to 291-062-0160), such rules are inapplicable to alternative incarceration programs and are modified as provided below to reflect the purposes of alternative incarceration programs and the relatively short period of confinement.

(2) Modified Rules:

(a) Hygiene, Grooming and Sanitation (AIC) (OAR 291-123) and Personal Property (AIC) (OAR 291-117): The functional unit managers in the facilities where alternative incarceration programs are provided may establish separate and distinct standards for personal grooming and hygiene as a means to support program goals. Commissary operations and purchases, food services and educational requirements for participants may be modified by those facilities where alternative incarceration programs are offered as a means of supporting program goals. Each facility may develop internal processes for staff and AICs outlining the applicable requirements or restrictions specific to these programs.

(b) Performance Recognition and Award System (PRAS) (OAR 291-077): AICs assigned to an alternative incarceration program will receive a standard number of points for their PRAS award as determined by the department for work and program participation. AICs are eligible for special recognition awards pursuant to the department's rules on Performance Recognition and Award System.

(c) Mail (AIC) (OAR 291-131): AICs participating in an alternative incarceration program may not be allowed to correspond with AICs housed in general population at the facility where the program is operating.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

AMEND: 291-062-0165

REPEAL: Temporary 291-062-0165 from DOC 13-2020

RULE TITLE: Nonprison Leave Violations

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

(1) For alternative incarceration program participants who violate their conditions of nonprison leave, administrative sanctions or interventions, including revocation of nonprison leave, may be imposed in accordance with the department's rules on Structured, Intermediate Sanctions (OAR 291-058) and the department's rules on Leave Revocation Hearings (OAR 291-066).

(2) Revocation of Nonprison Leave

(a) If, pursuant to OAR 291-058-0047, an officer believes that an adult on leave has violated a condition of nonprison leave and recommends revocation of nonprison leave under OAR 291-058-0047(5) after consultation and agreement of the institution functional unit manager or designee, the adult on leave shall be subject to immediate return to a Department of Corrections facility and subject to a hearing as provided in the department's rule on Leave Revocation Hearings (OAR 291-066). An AIC found in violation of a nonprison leave condition, may be subject to revocation and immediate return to a Department of Corrections institution following the procedures provided in the department's rules on Leave Revocation Hearings (OAR 291-066.) Upon return to a Department of Corrections institution the AIC also may be subject to other sanctions in accordance with the Department of Corrections rules on Prohibited Conduct and Processing Disciplinary Actions (OAR 291-105).

(A) If the adult on leave's whereabouts are unknown, it shall be the responsibility of the supervising officer to immediately submit a warrant request in writing to the institution functional unit manager or designee. A warrant will be issued in accordance with the Department of Corrections policy. Upon apprehension, it shall be the responsibility of the supervising officer to report the alleged violation and recommended sanction in writing to the institution functional unit manager or designee.

(B) If the adult on leave's whereabouts are known and the violation is believed to support a revocation of the nonprison leave, it shall be the responsibility of the supervising officer to report the alleged violation in writing to the institution functional unit manager or designee within five working days of the alleged violation.

(b) When revocation of nonprison leave is approved, the releasing authority shall ensure that a misconduct report is submitted in accordance with the department's rules on Prohibited Conduct and Processing Disciplinary Actions (OAR 291-105).

(c) When the adult on leave is returned to a Department of Corrections facility and a misconduct report is submitted, a hearing shall be conducted in accordance with the Department of Corrections rules on Prohibited Conduct and Processing Disciplinary Actions (OAR 291-105).

(3) An alternative incarceration program participant whose nonprison leave is revoked for violating a condition of nonprison leave disciplinary reasons AIC will be considered a program failure and non-compliant with institution conduct for the length of the AIC's nonprison leave. The AIC's earned time credits shall be computed as outlined in the department's rules on Prison Term Modification (OAR 291-097).

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.500, 423.020, 423.030, 423.075, 421.512, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.500, 423.020, 423.030, 423.075, 421.512, 423.020, 423.030, 423.075

AMEND: 291-062-0170

REPEAL: Temporary 291-062-0170 from DOC 13-2020

RULE TITLE: Release onto Post-Prison Supervision

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

(1) For AICs serving a sentence for a crime committed prior to January 1, 2009, upon successfully conforming to directed activities while on nonprison leave, the AIC shall be released to post-prison supervision.

(2) For AICs serving a sentence for a crime committed on or after January 1, 2009, the AIC shall be released to post-prison supervision only if all of the following requirements are met:

(a) The sentencing court has ordered in a judgment that the department may consider the AIC for release to post-prison supervision;

(b) The AIC has served at least one year of the term of incarceration imposed by the sentencing court;

(c) The AIC's release would not reduce the term of incarceration imposed by the court the AIC would otherwise be required to serve by more than 20 percent, minus any earned time credits; and

(d) The AIC has successfully conformed to directed activities while participating in the nonprison leave component of the program.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

AMEND: 291-063-0100

REPEAL: Temporary 291-063-0100 from DOC 12-2020

RULE TITLE: Short-Term Transitional Leave - Authority, Purpose, and Policy

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 421.168, 423.020, 423.030, and 423.075

(2) Purpose: To provide uniform procedures, standards, and guidelines for granting or denying short-term transitional leave, to establish supervision standards for such leaves, to provide procedures for sanctioning violations of short-term transitional leave conditions, including revocation of short-term transitional leave.

(3) Policy:

(a) It is the policy of the Department of Corrections to authorize short-term transitional leave from correctional facilities for eligible adults in custody (AICs) when circumstances indicate leave would be in accordance with generally accepted correctional and rehabilitation practices and enough time exists to prepare an appropriate transitional leave release plan as determined by the releasing authority.

(b) These rules do not apply to AICs who are:

(A) Releasing from a DOC facility with no subsequent post-prison supervision; or

(B) Housed in an Oregon Youth Authority facility.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.168, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.168, 423.020, 423.030, 423.075

AMEND: 291-063-0110

REPEAL: Temporary 291-063-0110 from DOC 12-2020

RULE TITLE: Definitions for OAR 291-063-0100 to 291-063-0160

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

(1) Adult in Custody (AIC): Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status. For the purposes of these rules, AIC includes individuals who are in DOC's legal custody but are temporarily outside of DOC's physical custody for reasons that include, but are not limited to, court proceeding, medical appointments, work assignments, programs, or interstate compact. AIC also includes individuals who have been released onto STTL, Non-prison leave, or emergency leave.

(2) Business Day: Monday through Friday, excluding weekends and holidays.

(3) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(4) Employee: Any person employed full-time, part-time or under temporary appointment by the Department of Corrections.

(5) Hearings Officer: A person designated by the Department of Corrections to conduct short-term transitional leave and nonprison leave revocation hearings.

(6) Immediate Family Member: Spouse, domestic partner, parent, sibling, child, aunt, uncle, niece, nephew, grandchildren, and grandparents including foster, in-law, and step-relationships. Immediate family also includes the caregiver of the AIC's minor child.

(7) Nonprison Leave: A period of leave not to exceed 90 days preceding an established release date granted to AICs successfully completing the institution phase of an Alternative Incarceration Program (AIP).

(8) Predatory Sex Offender: A special designation made by the supervisory authority in accordance with former ORS 181.507 or 181.585.

(9) Releasing Authority: The Assistant Director of the Community Corrections Division or designee.

(10) Revocation Hearing: A hearing to determine whether there is probable cause to believe the AIC has violated one or more conditions of short-term transitional or nonprison leave, whether there are substantial reasons or circumstances that warrant the AIC on leave be returned to the Department of Corrections, or both.

(11) Sexually Violent Dangerous Offender: A special designation made by the court under ORS 137.765 and the Board of Parole and Post-Prison Supervision or local supervisory authority under ORS 144.635.

(12) Short-Term Transitional Leave: A period of leave not to exceed 120 days preceding an established release date designed to provide AICs with transitional opportunities that promote successful reintegration into the community. Short-term transitional leave is granted in accordance with ORS 421.168.

(13) Term of Incarceration: The period of commitment to the legal and physical custody of the department imposed by a sentencing court in a judgement. For purposes of these administrative rules, "term of incarceration" includes pre-sentence incarceration credit granted to an AIC by the department under ORS 137.370, as well as any time an AIC spends on short-term transitional leave under ORS 421.168 or nonprison leave under ORS 421.510.

(14) Level III Sex Offender: A special designation made by the Board of Parole and Post-Prison Supervision in accordance with OAR 255-085-0010 to 255-085-0050.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.168, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.168, 423.020, 423.030, 423.075

AMEND: 291-063-0120

REPEAL: Temporary 291-063-0120 from DOC 12-2020

RULE TITLE: Procedures

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

(1) Sentencing Restrictions on Eligibility:

(a) Persons incarcerated for parole revocation sanctions shall not be eligible for short-term transitional leave.

(b) Persons incarcerated for post-prison supervision revocation sanctions shall not be eligible for short-term transitional leave pursuant to ORS 144.108(3)(b).

(c) Any person serving a sentence for a crime committed prior to November 1, 1989 (matrix offense), shall not be eligible for short-term transitional leave.

(d) Any person serving a sentence under the provisions of ORS 161.610 (using a firearm during the commission of a felony) shall not be eligible for short-term transitional leave until the person has served the minimum incarceration term imposed by the court less earned time under ORS 421.121.

(e) Any person serving a sentence under the provisions of ORS 161.725 to 161.737 (dangerous offenders) shall not be eligible for short-term transitional leave even if the Board of Parole and Post-Prison Supervision finds that the condition that made the person dangerous is absent or in remission and sets a post-prison supervision release date.

(f) Any person serving a sentence under the provisions of ORS 137.635, 137.700, and 137.707 shall not be eligible for short-term transitional leave regardless of the date the crime was committed.

(g) Any person sentenced on or after January 1, 2018 and serving a sentence under the provisions of ORS 137.690, 164.061, 475.907, 475.925, 475.930, or 813.011 shall not be eligible for short-term transitional leave.

(h) With the exception of sentences covered in subsection (i) of this section, a person shall not be eligible to participate in short-term transitional leave during service of a sentence for conviction of a crime listed below:

(A) ORS 163.095 (Aggravated, Attempted Aggravated, or Conspiracy to Commit Aggravated Murder),

(B) ORS 163.115 (Murder, Attempted Murder, or Conspiracy to Commit Murder),

(C) ORS 163.118 (Manslaughter I),

(D) ORS 163.125 (Manslaughter II)

(E) ORS 163.175 (Assault II)

(F) ORS 163.185 (Assault I),

(G) ORS 163.149 (Aggravated Vehicular Homicide),

(H) ORS 163.225 (Kidnapping II)

(I) ORS 163.235 (Kidnapping I),

(J) ORS 163.365 (Rape II),

(K) ORS 163.375 (Rape I),

(L) ORS 163.395 (Sodomy II),

(M) ORS 163.405 (Sodomy I),

(N) ORS 163.408 (Unlawful Sexual Penetration II),

(O) ORS 163.411 (Unlawful Sexual Penetration I),

(P) ORS 163.427 (Sexual Abuse I),

(Q) ORS 163.670 (Use of a Child in Display of Sexually Explicit Conduct),

(R) ORS 164.325 (Arson I),

(S) ORS 164.405 (Robbery II)

(T) ORS 164.415 (Robbery I),

(U) ORS 167.017 (Compelling Prostitution) Or

(V) ORS 813.010(5) or ORS 813.011 (Felony Driving Under the Influence of Intoxicants) if the sentence was imposed on

or after January 1, 2018.

(i) A person is eligible for short-term transitional leave during service of a sentence for conviction of the following crimes after conditions are met as outlined in ORS 137.712:

(A) Any person serving a sentence under the provisions of ORS 137.712 for Robbery II, Kidnapping II, or Assault II committed:

(i) On or after April 1, 1995 and prior to December 5, 1996 is eligible for short-term transitional leave.

(ii) On or after December 5, 1996 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(B) Any person serving a sentence under the provisions of ORS 137.712 for Manslaughter II committed on or after October 23, 1999 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(C) Any person serving a sentence under the provisions of ORS 137.712 for Rape II, Sodomy II, Unlawful Sexual Penetration II, or Sex Abuse 1 committed on or after January 1, 2002 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(D) If otherwise eligible under Oregon law, any person serving a sentence for a crime committed on or after December 5, 1996, shall be eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(2) Additional Eligibility Requirements: An AIC who meets the sentencing eligibility requirements as referenced in section (1) above may be approved for short-term transitional leave if the AIC meets the following criteria:

(a) Has been incarcerated for at least six months, including applicable county jail time credits, before being eligible for short-term transitional leave.

(b) Is classified as minimum (Level 1 or Level 2) custody in accordance with the Department of Corrections rules on Classification (AIC) (OAR 291-104);

(c) Shall reside within the State of Oregon through the full term of short-term transitional leave;

(d) Does not have a current detainer or other charges that would result in incarceration upon release to short-term transitional leave;

(e) Has not been found guilty of any Level 1 or 2 major violations of prohibited conduct within 15 months of the AIC's projected release date;

(f) Has not received a Failure of Corrections Plan (FOCP) within 15 months of the AIC's projected release date;

(g) Has not already failed nonprison or short-term transitional leave during the current term of incarceration or the term immediately preceding the current term of incarceration;

(h) Has not received a program failure from a work release or reentry program during the current term of incarceration;

(i) Has not been designated as a Sexually Violent Dangerous Offender, Predatory Sexual Offender, or classified as a Tier III sex offender;

(j) Is currently in suitable physical and mental condition; and

(k) Has not committed a new crime during the current term of incarceration. This does not include any time served at a local county facility for the current sentence(s).

(3) An AIC shall not be eligible if the releasing authority has determined that the AIC presents a significant safety, security, or compliance risk to the community.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.168, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 423.030, 423.075, ORS 179.040, 421.168, 423.020

AMEND: 291-063-0130

REPEAL: Temporary 291-063-0130 from DOC 12-2020

RULE TITLE: Duration of Short-Term Transitional Leave

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

(1) An AIC who is sentenced on or after January 1, 2018, may be eligible for a period of short-term transitional leave of up to 120 days.

(2) An AIC who is sentenced on or after August 1, 2013, and prior to January 1, 2018, may be eligible for a period of short-term transitional leave of up to 90 days.

(3) An AIC who is sentenced prior to August 1, 2013, may be eligible for a period of short-term transitional leave of up to 30 days.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.168, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.168, 423.020, 423.030, 423.075

AMEND: 291-063-0140

REPEAL: Temporary 291-063-0140 from DOC 12-2020

RULE TITLE: Approval of Short-Term Transitional Leave

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

- (1) Short-term transitional leave may be granted for an AIC releasing from any Department of Corrections facility or county facility with proper approval of the releasing authority.
- (2) Transitional Leave Release Plan:
 - (a) Designated employees shall initiate the short-term transitional leave process by identifying eligible AICs.
 - (b) Designated employees, in conjunction with the county of supervision, shall assist eligible AICs in preparing a transitional leave release plan.
 - (c) The county of supervision shall investigate and respond to a transitional leave release plan within 45 days of receipt of the plan.
 - (d) The county of supervision must support the AIC's release to short-term transitional leave.
- (3) Approval:
 - (a) The releasing authority or designee may grant a short-term transitional leave to allow an AIC to participate in an approved release plan.
 - (b) Under the provisions of ORS 144.260, notification must be sent to the district attorney 30 days before the AIC's unescorted release from actual physical custody. If the sentencing judge or victim requests, they will be notified in the same manner.
 - (c) No short-term transitional leave will be granted to allow the AIC to reside with a Department of Corrections employee, contractor, or volunteer, unless the AIC is an immediate family member of the employee, contractor, or volunteer.
 - (d) If the transition plan is not approved, the AIC may obtain an administrative review of that decision by submitting a request in writing to the Assistant Director of Community Corrections Division. All administrative review decisions are final.
- (4) All expenses while on short-term transitional leave shall be borne by the AIC unless otherwise specifically authorized. AICs placed on short-term transitional leave are responsible for their own medical care.
- (5) The Department may rescind approval for short-term transitional leave at any time, for administrative reasons. If the department rescinds approval while the AIC is on short-term transitional leave status, the AIC may request a hearing regarding the department's decision to rescind approval for administrative reasons.
 - (a) If the AIC requests a hearing, the department will provide a hearing using applicable Department rules for Leave Revocation Hearings (OAR 291-066) for evidence and making preliminary findings of fact, to the extent that those rules are not inconsistent with these rules (OAR 291-063). After the hearings officer has provided a final report described in OAR 291-066-0310, the department will make a final determination as to whether to revoke leave as provided in these rules (OAR 291-063).
 - (b) The hearing may be conducted prior to the physical return of the AIC to DOC custody if feasible however is not required. If the AIC is returned to the physical custody of DOC prior to the hearing, the hearing will be conducted once the AIC is housed in a DOC facility.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.168, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.168, 423.020, 423.030, 423.075

AMEND: 291-063-0150

REPEAL: Temporary 291-063-0150 from DOC 12-2020

RULE TITLE: Conditions of Supervision for Short-Term Transitional Leave

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

- (1) If short-term transitional leave is approved, the releasing authority or designee will impose the conditions that are necessary to enhance community safety as referenced in ORS 144.102. Short-term transitional leave conditions will replicate as much as possible post-prison supervision conditions. Short-term transitional leave conditions may hold an AIC to a higher standard than post-prison supervision.
- (2) The following general conditions of supervision will be ordered for all AIC's who have been approved for short-term transitional leave:
- (a) Pay supervision fees, fines, restitution or other fees as ordered.
 - (b) Not use or possess controlled substances except pursuant to a medical prescription.
 - (c) Submit to testing for controlled substance or alcohol use if the offender has a history of substance abuse or if there is reasonable suspicion that the offender has illegally used controlled substances.
 - (d) Participate in a substance abuse evaluation, treatment, or aftercare as directed by the supervising officer and follow the recommendations of the evaluator if there are reasonable grounds to believe there is a history of substance abuse.
 - (e) Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency. Offender automatically waives extradition if offender absconds supervision out of state.
 - (f) If physically able, find and maintain gainful full-time employment, approved schooling, or a full-time combination of both.
 - (g) Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency.
 - (h) Permit the supervising officer to visit the offender or the offender's residence or work site, and to conduct a walk-through of the common areas and of the rooms in the residence occupied by or under the control of the offender. Report as required and abide by the direction of the supervising officer.
 - (i) Consent to the search of person, vehicle or premises upon the request of a representative of the supervising officer if the supervising officer has reasonable grounds to believe that evidence of a violation will be found and submit to fingerprinting or photographing, or both, when requested by the Department of Corrections or a county community corrections agency for supervision purposes.
 - (j) Obey all laws, municipal, county, state and federal.
 - (k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections or a county community corrections agency.
 - (l) Not possess weapons, firearms, or dangerous animals.
 - (m) Report as required
 - (n) Submit to a risk and needs assessment as directed by the supervising officer and follow all reasonable recommendations resulting from the assessment.
 - (o) Be under the supervision of the Department of Corrections and its representatives or other supervisory authority and abide by their direction and counsel.
- (3) In addition to the general conditions, special conditions of supervision may be ordered that are reasonably related to the crime of conviction or the needs of the AIC.

STATUTORY/OTHER AUTHORITY: ORS 421.168, ORS 179.040, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.168, 423.020, 423.030, 423.075

AMEND: 291-063-0160

REPEAL: Temporary 291-063-0160 from DOC 12-2020

RULE TITLE: Violations of Short-Term Transitional Leave

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Aligns rules with legislative changes to statutory language.

RULE TEXT:

(1) Sanctions may be imposed at the local level in accordance with OAR 291-058-0046 if:

- (a) The supervising officer determines that the violation can appropriately be addressed; and
- (b) The AIC admits the violation and accepts the sanction.

(2) Revocation of Transitional Leave

(a) If, pursuant to OAR 291-058-0046, a supervising officer believes an AIC has violated a condition of short-term transitional leave and the violation is believed to support revocation of short-term transitional leave, the supervising officer must report the alleged violation(s) in writing to the releasing authority within five business days of the alleged violation(s).

(A) If the AIC's whereabouts are unknown, the supervising officer must immediately submit a warrant request in writing to the releasing authority. A warrant will be issued.

(B) Upon apprehension of the AIC, the supervising officer must report the alleged violation and recommended sanction in writing to the releasing authority within five business days.

(b) If the releasing authority believes that revocation of short-term transitional leave is an appropriate response to the alleged violation(s) of the conditions of leave, the releasing authority will notify the hearings officer to conduct a revocation hearing in accordance to OAR 291-066.

(c) An AIC who has their short-term transitional leave status revoked may be subject to a disciplinary hearing conducted in accordance with the department's rules on Prohibited Conduct and Processing Disciplinary Actions (OAR 291-105) upon return to DOC custody.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.168, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.168, 423.020, 423.030, 423.075

ADOPT: 291-066-0100

REPEAL: Temporary 291-066-0100 from DOC 11-2020

RULE TITLE: Authority, Purpose and Policy

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections (DOC) in accordance with ORS 179.040, 421.168, 421.500 to 421.512, 423.020, 423.030, and 423.075

(2) Purpose: To provide uniform procedures for revoking short-term transitional leave authorized under ORS 421.168 or nonprison leave authorized under ORS 421.510.

(3) Policy: It is the policy of the Department of Corrections that short-term transitional leave and nonprison leave may be revoked based upon a finding that the terms of leave have been violated, there are substantial reasons or circumstances that warrant the adult in custody be returned to the Department of Corrections, or both, and it has been deemed necessary that the revocation of leave is in the best interest of public safety.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.068, 423.030, 423.075, 423.020

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.068, 423.030, 423.075, 423.020

ADOPT: 291-066-0110

REPEAL: Temporary 291-066-0110 from DOC 11-2020

RULE TITLE: Definitions

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

- (1) Adult in custody (AIC): Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status. For the purposes of these rules, AIC includes individuals who are in DOC's legal custody but are temporarily outside of DOC's physical custody for reasons that include, but are not limited to, court proceeding, medical appointments, work assignments, programs, or interstate compact. AIC also includes individuals who have been released onto STTL, Non-prison leave, or emergency leave.
- (2) Business Day: Monday through Friday, excluding weekends and holidays.
- (3) Calendar Day: Every consecutive day on the calendar, including holidays and weekends.
- (4) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.
- (5) Hearings Officer: A person designated by the Department of Corrections to conduct short-term transitional leave and nonprison leave revocation hearings.
- (6) Nonprison Leave: A period of leave not to exceed 90 days preceding an established release date granted to AICs successfully completing the institution phase of an Alternative Incarceration Program (AIP). Nonprison leave is designed to provide AICs with transitional opportunities that promote successful reintegration into the community and is granted in accordance with ORS 137.751, 421.508, and 421.510, and the department's rules on Alternative Incarceration Programs (OAR 291-062).
- (7) Releasing Authority: The Assistant Director of the Community Corrections Division, the Functional Unit Manager, or their designee(s).
- (8) Revocation Hearing: A hearing to determine whether there is probable cause to believe the AIC has violated one or more conditions of short-term transitional or nonprison leave, whether there are substantial reasons or circumstances that warrant the AIC be returned to the Department of Corrections, or both.
- (9) Short-Term Transitional Leave: A period of leave not to exceed 120 days preceding an established release date designed to provide AICs with transitional opportunities that promote successful reintegration into the community. Short-term transitional leave is granted in accordance with ORS 421.168.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

ADOPT: 291-066-0120

REPEAL: Temporary 291-066-0120 from DOC 11-2020

RULE TITLE: Revocation Hearing Requirement

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

(1) When the releasing authority has determined that an AIC has violated a condition of short-term transitional leave or non-prison leave, and that revocation of leave is an appropriate response under the Department's rules for Structured, Intermediate Sanctions (OAR 291-058), the Hearings Officer shall conduct a revocation hearing.

(2) If an AIC consents to revocation of leave, a revocation hearing is not required. A revocation of short-term transitional or non-prison leave involving a return to prison may include a future disciplinary hearing as provided in the department's rules on Prohibited Conduct and Processing Disciplinary Actions (OAR 291-105).

STATUTORY/OTHER AUTHORITY: ORS 197.040, 423.020, 423.030, 423.021, 423.075, 421.168, 421.504

STATUTES/OTHER IMPLEMENTED: ORS 197.040, 423.020, 423.030, 423.021, 423.075, 421.168, 421.504

ADOPT: 291-066-0130

REPEAL: Temporary 291-066-0130 from DOC 11-2020

RULE TITLE: Method of hearings

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

- (1) The Department of Corrections Hearings Unit or its designated representative shall conduct the revocation hearing.
- (2) The Hearings Officer may conduct hearings by teleconference, video conference, or in person.
- (3) The revocation hearing shall be conducted prior to the physical return of the AIC to DOC custody when feasible but is not required. If the revocation hearing is not conducted prior to the physical return of the AIC to DOC custody, the revocation hearing will be conducted once the AIC is housed in a DOC facility.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.168, 421.500 to 421.512, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.168, 421.500 to 421.512, 423.020, 423.030, 423.075

ADOPT: 291-066-0140

REPEAL: Temporary 291-066-0140 from DOC 11-2020

RULE TITLE: Rights at Hearings

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

- (1) The AIC shall be provided written notice of the revocation hearing at least three (3) business days prior to the hearing.
- (2) The hearing notice shall include:
 - (a) A Notice of Rights/Decisions about Rights;
 - (b) A written statement of alleged violations;
 - (c) Any documents or evidence which form the basis of the alleged violations; and
 - (d) The date and location of the hearing.
- (3) The AIC may elect to waive the three-business day notification period prior to or at the revocation hearing.
- (4) If the AIC elects to waive the three- business day notification period, the Hearings Officer shall obtain a written waiver or a recording of the AIC's verbal statement waiving the three-business day notification period.
- (5) The Hearings Officer shall ascertain whether the AIC understands the allegations and their rights and whether the AIC can read, hear, and understand the language of the proceedings. The Hearings Officer shall postpone the revocation hearing if needed assistance is not readily available.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075, 421.500 to 421.512, 421.168

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075, 421.500 to 421.512, 421.168

ADOPT: 291-066-0150

REPEAL: Temporary 291-066-0150 from DOC 11-2020

RULE TITLE: Waiver of Revocation Hearing

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

- (1) In all cases, the AIC may waive their right to a revocation hearing by checking the appropriate box and signing the Notice of Rights/Decisions about Rights form.
- (2) A refusal to participate in the hearings process, including a refusal to check the appropriate box and sign the Notice of Rights/Decisions about Rights form, will constitute a waiver of the right to a revocation hearing for purposes of this rule.
- (3) When the Notice of Rights/Decisions about Rights form is presented to the AIC, the supervising officer or designee shall record or document in writing any statement(s) made by the AIC at the time of the waiver.
- (4) If the AIC has waived their right to a revocation hearing and no hearing is held, the supervising officer or designee shall submit the following items to the Hearings Officer for further processing:
 - (a) Notice of Rights/Decision about Rights form;
 - (b) Any written statements by the AIC or a summary of the AIC's oral statements;
 - (c) A Hearing Summary, including a history of local interventions and sanctions ordered and a recommendation regarding disposition;
 - (d) Any supporting information, including the supervising officer's report and other documentary evidence submitted.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.0420, 423.030, 423.075, 421.168, 421.500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.0420, 423.030, 423.075, 421.168, 421.500 to 421.512

ADOPT: 291-066-0160

REPEAL: Temporary 291-066-0160 from DOC 11-2020

RULE TITLE: Rejection of Waiver

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

If the Releasing Authority or designee is not satisfied that the AIC knowingly and intelligently waived his or her right to a revocation hearing or revocation hearing rights, or if additional information is needed before making its decision, it may order a new hearing, to be conducted by the Hearings Officer.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

ADOPT: 291-066-0170

REPEAL: Temporary 291-066-0170 from DOC 11-2020

RULE TITLE: Revocation Hearings Process

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

- (1) A violation of a condition of leave that warrants a revocation of leave may only be found upon proof by a preponderance of the evidence.
- (2) Unless the Hearings Officer finds good cause on the record, the supervising officer shall present information and evidence at the revocation hearing and arrange for the presence of witnesses for the state. The supervising officer shall make dispositional recommendations.
- (3) The Hearings Officer shall make a recording of the revocation hearing.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075, 421.500 to 421.512, 421.168

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075, 421.500 to 421.512, 421.168

ADOPT: 291-066-0180

REPEAL: Temporary 291-066-0180 from DOC 11-2020

RULE TITLE: Representation/Ability to Pay Attorney Fees

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

- (1) In a revocation hearing, the Hearings Officer may authorize the appointment of an attorney to assist an AIC in their defense if the Department determines that it is legally required to do so.
- (2) In determining whether to appoint an attorney, the Hearings Officer shall consider whether the AIC appears to be capable to speak effectively.
- (3) If the Hearings Officer determines that the AIC is indigent and unable to pay for an attorney, the Hearings Officer may appoint an attorney at the Department's expense. If the Hearings Officer approves payment for an attorney at the Department's expense, the payment shall not exceed \$100 per hour or \$500 per case. The attorney shall send the Hearings Officer a billing within 90 calendar days of the revocation hearing.
- (4) When the Hearings Officer denies an AIC's request for an attorney appointed at the Department's expense, the reason(s) for the denial shall be made part of the record.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.030, 423.040, 423.075, 421.168, 421.500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.030, 423.040, 423.075, 421.168, 421.500 to 421.512

ADOPT: 291-066-0190

REPEAL: Temporary 291-066-0190 from DOC 11-2020

RULE TITLE: Witnesses

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

(1) The AIC may present witnesses who have relevant information and may submit relevant documentary evidence at the hearing.

(2) The AIC shall make their own arrangements for calling and presenting witnesses.

(3) Witness statements may be taken in person, by telephone, or by written report or statement.

(4) The AIC has the right to confront the persons or witnesses who have presented information against the AIC.

(5) The Hearings Officer may deny confrontation of witnesses by the AIC if that confrontation would subject the witness to the risk of harm.

(6) The Hearings Officer may limit, or exclude entirely, a witness' oral or written statement(s) if the Hearings Officer determines that they are cumulative or irrelevant.

(7) The Hearings Officer may exclude a witness from the hearing upon finding that the witness' statement(s) would not assist the Hearings Officer in the resolution of the allegation(s), or that the witness' participation or appearance at the hearing would be contraindicated. The reason(s) for the exclusion shall be made part of the record.

(8) If the Hearings Officer denies confrontation of witnesses, the Hearings Officer shall state the reason(s) for the decision and conduct an independent examination of the witness on the record.

(9) The Hearings Officer may not receive a hearsay statement from an unavailable witness for the purpose of establishing that the AIC violated a condition of transitional leave without first applying a balancing test. For purposes of this rule, a hearsay statement is defined as a statement, other than one made by the declarant while testifying at the revocation hearing, offered to prove the truth of the matter asserted. Relevant factors in the balancing process include, but are not limited to:

(a) the importance of the evidence to the ultimate determination;

(b) the offender's opportunity to refute the evidence;

(c) the difficulty and expense of obtaining witnesses; and

(d) the nature and reliability of the evidence.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421-500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421-500 to 421.512

ADOPT: 291-066-0200

REPEAL: Temporary 291-066-0200 from DOC 11-2020

RULE TITLE: Evidence

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

- (1) The Hearings Officer may receive the following as evidence at a 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 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 AIC has been acquitted at trial;
 - (h) Any evidence determined to be material, relevant, and reliable, regardless of its nature.
- (2) The AIC shall make their 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, or others.
- (5) The Hearings Officer shall make confidential evidence received a sealed part of the record without disclosing the identity of the witness.
- (6) When a witness is unavailable, the Hearings Officer may receive statements in the form of documentary evidence. The Hearings Officer shall determine the reliability and relevance of the absent witness's statement.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

ADOPT: 291-066-0210

REPEAL: Temporary 291-066-0210 from DOC 11-2020

RULE TITLE: Postponement

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

(1) The Hearings Officer may postpone a revocation hearing 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 AIC on leave or other persons;

(c) Gathering of additional evidence; or

(d) Avoiding interference with an ongoing police investigation or pending prosecution.

(3) The Hearings Officer may make a finding of a violation and defer disposition for a reasonable time if such delay is reasonably necessary for the AIC or Hearings Officer to obtain information relevant to disposition decision.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

ADOPT: 291-066-0220

REPEAL: Temporary 291-066-0220 from DOC 11-2020

RULE TITLE: Hearings Officer Findings

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

(1) At the conclusion of a revocation hearing, the Hearings Officer shall decide whether:

(a) The evidence submitted did not support the allegations of the specified condition(s) of leave violated; or,
(b) The evidence submitted does support the specified allegation(s) that one or more conditions of leave had been violated.

(c) If the Hearings Officer determines that the evidence submitted does not support the allegations of the specified condition(s) of leave violated, the supervising officer may submit a new violation report.

(2) Within ten business days following the conclusion of the hearing, the Hearings Officer shall complete a report containing the Hearings Officer's findings. The completed report shall be delivered to the AIC and to the Releasing Authority or designee for review.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

ADOPT: 291-066-0230

REPEAL: Temporary 291-066-0230 from DOC 11-2020

RULE TITLE: Reopening Revocation Hearings

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

(1) After the completion of a revocation hearing, the Hearings Officer may reopen a hearing if substantial new information is discovered which was not known or could not be anticipated at the time of the hearing and which would significantly affect the outcome of the hearing.

(2) The Hearings Officer shall send the AIC notice of the decision to reopen the revocation hearing and the new information to be considered. The reopened hearing shall conform to the procedures of these rules.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

ADOPT: 291-066-0240

REPEAL: Temporary 291-066-0240 from DOC 11-2020

RULE TITLE: Revocation Hearings Record

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

(1) The revocation hearings record shall include:

- (a) A Hearings Report Summary;
 - (b) A written statement of alleged violations;
 - (c) Supporting materials, including documentary evidence admitted;
 - (d) A signed Notice of Rights/Decisions about Rights;
 - (e) The short-term transitional or nonprison leave conditions;
 - (f) A notice of time and place of hearing;
 - (g) An audio recording of the advisement of rights and the hearing;
 - (h) The supervising officer's report, including recommended dispositions;
 - (i) The history of supervision, local sanctions and modifications; and
 - (j) If any, the written waiver of the AIC's right to three business days' notice of the hearing.
- (2) The Hearings Officer shall retain the recording used in subsection (1)(g) of this rule in accordance with established retention schedules.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

ADOPT: 291-066-0250

REPEAL: Temporary 291-066-0250 from DOC 11-2020

RULE TITLE: Administrative Review of the Hearings Officer's Findings

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

(1) The AIC may request an administrative review of the Hearings Officer's findings by submitting a request in writing to the Releasing Authority or designee within ten calendar days of the completion date on the Hearings Officer's report.

(2) Upon receipt of the petition for administrative review, the Releasing Authority or designee shall review the case to determine:

(a) Was there substantial compliance with the rule (OAR 291-066);

(b) Was the finding based upon a preponderance of evidence.

(3) If the Releasing Authority or designee determines there was substantial compliance with the rule (OAR 291-066) and the finding was based on a preponderance of evidence, the AIC will be issued a written response supporting such a determination within ten business days of receipt of the request.

(4) If the Releasing Authority or designee determines there was not substantial compliance with the rule (OAR 291-066) or the finding was not based on a preponderance of the evidence, they may direct the hearing to be reopened or vacate all or part of the final order in the case.

(5) Documentation submitted to the Releasing Authority or designee shall not be returned to the AIC.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075, 421.500 to 421.512, 421.168

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075, 421.500 to 421.512, 421.168

ADOPT: 291-066-0260

REPEAL: Temporary 291-066-0260 from DOC 11-2020

RULE TITLE: Releasing Authority Final Order

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

- (1) When a case comes before the Releasing Authority for decision, the Releasing Authority shall consider the Hearings Officer's findings, the revocation hearings packet, mitigating factors, and administrative review of the Hearings Officer's findings if applicable.
- (2) The Releasing Authority may adopt or modify the Hearings Officer's findings. The releasing authority may also request that the hearing be reopened to consider additional evidence.
- (3) If the Hearings Officer finds that the alleged violation(s) of short-term leave or nonprison leave are not supported by a preponderance of the evidence and dismisses the case, then the Releasing Authority may request that the hearing be reopened to consider additional evidence.
- (4) Within seven business days of receipt of the Hearings Officer's findings, the Releasing Authority shall enter a decision and issue a final order.
- (5) If the Releasing Authority fails to act on the Hearings Officer's findings within seven business days following its receipt, the Hearings Officer's findings shall become final.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.030, 423.020, 423.075, 421.168, 421.500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.030, 423.020, 423.075, 421.168, 421.500 to 421.512

ADOPT: 291-066-0270

REPEAL: Temporary 291-066-0270 from DOC 11-2020

RULE TITLE: Continuance on Short-Term Transitional or Nonprison Leave

NOTICE FILED DATE: 08/25/2020

RULE SUMMARY: Adopts new rules to establish procedures for leave revocation hearings.

RULE TEXT:

(1) The Releasing Authority may continue an AIC on short-term transitional or nonprison leave and order modification of sanction time to be served.

(2) The Releasing Authority may continue an AIC on short-term transitional or nonprison leave and order administrative sanctions.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 423.020, 423.030, 423.075, 421.168, 421.500 to 421.512