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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PAR 2-2025

CHAPTER 255

BOARD OF PAROLE AND POST-PRISON SUPERVISION

FILED

01/22/2025 9:21 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Amending sex offender risk assessment methodology to incorporate desistance from crime

EFFECTIVE DATE: 01/22/2025 THROUGH 07/19/2025

AGENCY APPROVED DATE: 01/22/2025

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Rules Coordinator

NEED FOR THE RULE(S):

The Oregon Court of Appeals in *Thomsen v Board of Parole* (2025) ruled that when the Board conducts risk assessments of sex offenders, it must consider the registrants time of desistance from crime as part of the assessment. Currently, the Board assesses a registrant as they would be at the time of release or sentencing, which does not consider desistance time. This court ruling causes the Board to have to immediately adopt a temporary rule incorporating this decision.

JUSTIFICATION OF TEMPORARY FILING:

An Oregon Court of Appeals ruling directs the Board to use desistance when performing risk assessments on sex offenders. This overrules current methodology and must be adopted immediately.

Failure to adopt this as a temporary rule would hide the process that the Board is using due to the court ruling. Individuals who are being assessed would not have current knowledge of how assessments are conducted.

Temporary action will provide transparency to the process the Board has adopted.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

The decision in:

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STEPHEN M. THOMSEN. Petitioner, v. BOARD OF PAROLE AND POST-PRISON SUPERVISION, Respondent.

A180442 Effective Date: January 18, 2025

RULES:

255-085-0005, 255-085-0020, 255-085-0021

AMEND: 255-085-0005

RULE SUMMARY: Oregon Court of Appeals ruled that the Board shall consider desistance in assessing the risk of sex

offenders to recidivate. Removed Subsection (1) because current language on desistance is no longer valid.

CHANGES TO RULE:

255-085-0005

Policy and Authority

~~(1) A classifying agency at initial classification and reassessment will assess the registrant's risk as it was at the time of their release from their index offense. A classifying agency will not consider desistance when using the Static-99R instrument to assess an individual. If the Static-99R coding manual, Exhibit STATIC-99R, and Board rules conflict, Board rules prevail. ¶~~

(2) The Board is statutorily required to adopt rules to carry out the provisions of section 163A.105. These rules describe the processes that classifying agencies will follow when they perform risk assessments and classify sex offenders into notification levels.

Statutory/Other Authority: ORS 163A.100, 163A.105

Statutes/Other Implemented: ORS 163A.100, 163A.105

RULE SUMMARY: Oregon Court of Appeals ruled that the Board shall consider desistance in assessing the risk of sex offenders to recidivate. Amended Subsections (2), (3), (4), and (5) and removed Subsection (6) because that language on desistance is no longer valid.

CHANGES TO RULE:

255-085-0020

Sex Offender Risk Assessment Methodology ¶¶

(1) Classifying agencies shall place each registrant into one of the following levels:¶¶

(a) Notification Level 1: A registrant who presents the lowest risk of reoffending and requires a limited range of notification;¶¶

(b) Notification Level 2: A registrant who presents a moderate risk of reoffending and requires a moderate range of notification; or¶¶

(c) Notification Level 3: A registrant who presents the highest risk of reoffending and requires the widest range of notification.¶¶

(2) For classification and community notification for adult male registrants, classifying agencies shall use the Static-99R actuarial instrument with the coding manual, Exhibit STATIC-99R, ~~to conduct a sex offender risk assessment, except as to where it conflicts with OAR 255-085-0020(6)~~unless otherwise provided by law.

Classifying agencies may score registrants using information from previous Static-99 or Static-99R assessments. Classifying agencies shall score and place each registrant into a notification level:¶¶

(a) Notification Level 1: Static-99R score of -3 to 3;¶¶

(b) Notification Level 2: Static-99R score of 4 to 5; or¶¶

(c) Notification Level 3: Static-99R score of 6 or higher.¶¶

(3) For classification ~~of~~and communication notification of all other registrants, classifying agencies shall assess registrants using the Level of Services/Case Management Inventory (LS/CMI) as supplemented by an independent sexual offense-specific evaluation report, unless otherwise provided by law. This assessment shall be performed by an independent evaluator who is a licensed provider or Sex Offender Treatment Board-certified provider qualified to conduct sexual offense risk assessments. The independent evaluator will provide the classifying agency with a written report and will provide information regarding the registrant's risk for sexual re-offense as low, moderate, or high. Classifying agencies shall place the registrant into a notification level according to risk, giving due consideration to the evaluator's assessment.¶¶

(4) Level 1 Classification for Certain Registrants:¶¶

(a) Classifying agencies may classify a registrant into Level 1, without using the methodologies listed in OAR 255-085-0020 (2), ~~(3)~~ or ~~(6)~~(3), if the registrant meets all the following criteria:¶¶

(A) The registrant has been required to register in Oregon as a sex offender for 10 years or longer;¶¶

(B) At least 10 years have passed since the registrant was released from custody for the registrant's conviction requiring sex offender registration or, if the registrant was never placed in custody for the conviction requiring sex offender registration, 10 years after the date the registrant was convicted of the crime requiring sex offender registration;¶¶

(C) The registrant does not have a conviction for a person felony or Class A person misdemeanor as defined by the rules of the Oregon Criminal Justice Commission, subsequent to the registrant's initial conviction that required sex offender registration;¶¶

(D) The registrant does not have, other than the conviction that required sex offender registration, any other arrest, charge, or conviction for a crime that would require registration as a sex offender; and¶¶

(E) The registrant does not have repeated (2 or more) criminal convictions for any offense resulting from separate criminal episodes in the ~~five~~5 years preceding the classification.¶¶

(b) Classifying agencies may classify a female registrant into Level 1, without using the methodologies listed in OAR 255-085-0020 (2) or (3) or (4)(a), unless evidence-based risk factors exist to indicate that the female registrant is at a higher risk to reoffend sexually, and a higher level of notification may be appropriate. Evidence-based risk factors for sexually reoffending for a female registrant may include:¶¶

(A) The registrant has an arrest, charge, or conviction for a child abuse offense;¶¶

(B) The registrant has an arrest, charge, or conviction for promoting prostitution or compelling prostitution;¶¶

(C) The registrant has a conviction for a person felony or Class A person misdemeanor as defined by the rules of the Oregon Criminal Justice Commission, subsequent to the registrant's initial conviction that required sex offender registration;¶¶

(D) The registrant has an arrest, charge, or conviction for a crime that would require registration as a sex offender

in addition to the registrant's conviction that required sex offender registration; or¶

(E) The registrant has repeated (2 or more) criminal convictions for any offense resulting from separate criminal episodes in the five years preceding the classification.¶

(c) The methodology described in OAR 255-085-0020(4)(a) or (4)(b) shall not be used for assessments conducted for relief from registration or reclassification of level hearings described in ORS 163A.125. Assessments conducted for relief from registration or reclassification of level hearings shall be conducted using the methodology listed in OAR 255-085-0020 (2), (3), ~~(5)~~ or ~~(6)~~.¶

(d) Classifying agencies have the discretion to use the methodology in OAR 255-085-0020 (2) or (3) even if a registrant meets the criteria in OAR 255-085-0020(4)(a) or (4)(b).¶

(5) For classification of registrants petitioning under ORS 163A.125(2), the Board shall use the methodologies under OAR 255-085-0020 (2) or OAR 255-085-0020 (3), ~~except as to where it conflicts with OAR 255-085-0020(6).~~¶

~~(6) Classifying agencies shall place registrants into Notification Level 3 if an assessment under OAR 255-085-0020(2) as it was at the time of release from the index sexual offense would place them in the highest risk category, or Notification Level 2 if an assessment under OAR 255-085-0020(2) as it was at the time of release from the index sexual offense would place them in the moderate risk category, without considering as part of the risk assessment the reduction of risk due to time offense-free in the community.~~

Statutory/Other Authority: ORS 163A.100, ~~ORS 163A.105, ORS 163A.110, ORS 163A.115, ORS 163A.125~~

Statutes/Other Implemented: ORS 163A.100, ~~ORS 163A.105, ORS 163A.110, ORS 163A.115, ORS 163A.125,~~

Section 7, Chapter 708, Oregon Laws 2013, as amended by Section 27, Chapter 820, Oregon Laws (2015), SB 767 (2017), HB 2320 (2015), HB 2045 (2019)

ADOPT: 255-085-0021

RULE SUMMARY: The Board performs risk assessments on certain individuals who are on the sex offender registry in Oregon. These assessments determine the individual's risk to recidivate, and they are used to assign a notification level of 1, 2 or 3 depending on that risk. The Oregon Court of Appeals in "Thomsen v Board of Parole, (2025)" ruled that the Board shall use the time period of desistance by a registrant when conducting a risk assessment. This is a new subsection of Division 85 that defines terms that are used in desistance and to incorporate 2 exhibits for use in deciding how to apply desistance to the assessments, Exhibits SODC and SOFC. Exhibit SODC is the Static-99R Desistance Chart to Reflect Oregon SONL Levels per ORS 163A.105. Exhibit SOFC is a guidelines chart for Application of Desistance for Initial SONL Classification.

CHANGES TO RULE:

255-085-0021

Use of Desistance Methodology in Risk Assessments

(1) Definitions¶¶

(a) "Conviction" for purposes of desistance, means sentenced by any court to a term of incarceration or probation for a felony or misdemeanor offense.¶¶

(b) "Desistance" means the time in the community after release on the index offense, in which the offender has not committed and been convicted of another sex crime.¶¶

(c) "Desistance Chart" means the chart in Exhibit-SODC.¶¶

(d) "In the community" means not in the custody of a law enforcement or correctional agency and not on probation.¶¶

(e) "Release" means the date of discharge from incarceration, or in the event the offender is subject to a sanction or disposition other than incarceration, the date of sentencing or other disposition of the individual's conviction.¶¶

(2) Desistance Methodology¶¶

For risk assessments that require the use of Exhibit STATIC-99R, classifying agencies shall also use the Desistance Chart set forth in Exhibit-SODC, and the desistance guidelines set forth in Exhibit-SOFC.

Statutory/Other Authority: ORS 163A.100, 163A.105, 163A.110, 163A.115, 163A.125, 163A.105

Statutes/Other Implemented: ORS 163A.100, 163A.105, 163A.110, 163A.115, 163A.125, 163A.105, Section 7, Chapter 708, Oregon Laws 2013, as amended by Section 27, Chapter 820, Oregon Laws (2015), SB 767 (2017), HB 2320 (2015) & HB 2045 (2019), HB 2320 (2015), HB 2045 (2019)

RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.



State of Oregon – Board of Parole & Post-Prison Supervision

Exhibit-SODC



Static-99R Desistance Chart to Reflect Oregon SONL Levels per ORS 163A.105

Years Sexual Offence Free in the Community

STATIC-99R Scores		0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
	-3	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
	-2	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
	-1	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
	0	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
	1	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
	2	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
	3	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
	4	II	II	II	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
	5	II	II	II	II	II	II	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
	6	III	III	III	II	II	II	II	II	I	I	I	I	I	I	I	I	I	I	I	I	I	I
	7	III	III	III	III	III	III	II	II	II	II	II	I	I	I	I	I	I	I	I	I	I	I
	8	III	III	III	III	III	III	III	III	II	II	II	II	II	I	I	I	I	I	I	I	I	I
	9	III	III	III	III	III	III	III	III	III	III	II	II	II	II	II	I	I	I	I	I	I	I
	10	III	III	III	III	III	III	III	III	III	III	III	III	III	II	II	II	II	II	I	I	I	I



Application of Desistance for Initial SONL Classification

Oregon Board of Parole Administrative Rule Division 255-085, Exhibit-SOFC



Guidelines for using this chart:

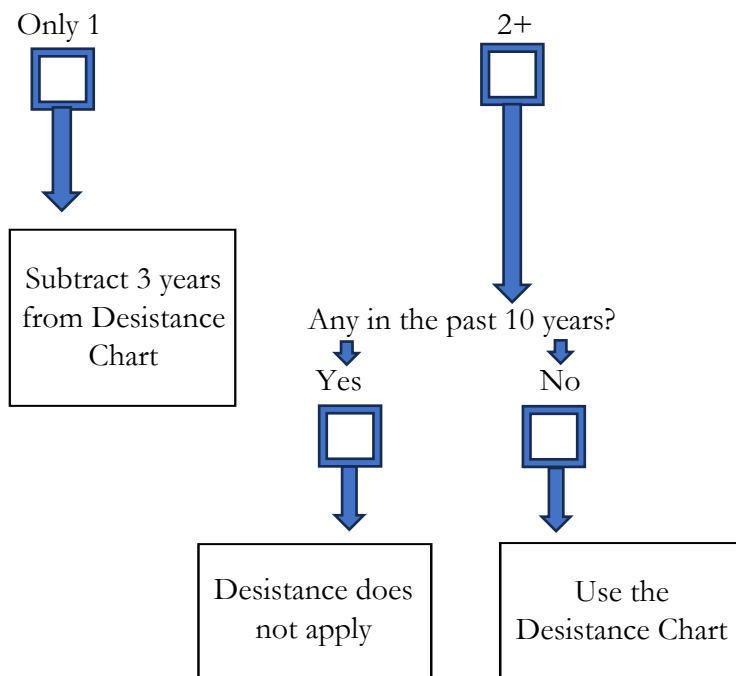
- If the individual has no convictions since their release to the community for the index sexual offense, use the Static-99R Desistance Chart (Exhibit-SODC) to identify their current level of risk.

The below processes apply to individuals who have criminal activity since initial release for the index sexual offense.

- If the individual has one or more convictions for non-violent or non-person crimes, use Side A of chart.
- If the individual has one or more convictions for violent or person crimes, use Side B of chart.
- If the individual has any combination of violent and non-violent convictions, use Side B of chart.
- When using Side A or Side B of the charts below, apply subtractions as required from the axis labeled "Years Sexual Offence Free in the Community" in Exhibit SODC.

Side A

Any Other Conviction



Side B

Any Conviction for Violent or Person Crime

