RULES
OF
THE TENNESSEE BOARD OF PAROLE

CHAPTER 1100-01-01
CONDUCT OF PAROLE PROCEEDINGS

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1100-01-01-.01 SHORT TITLE.

(1) These rules shall be known and may be cited as the "Rules and Regulations of the Tennessee Board of Parole."

***Authority**: T.C.A. § 40-28-104.* ***Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

1100-01-01-.02 STATEMENTS OF INTENT.

(1) It was the intent of the General Assembly in creating the Tennessee Board of Parole that it be autonomous and in all respects functionally and administratively separate from any other state agency.

(2) Responsive to requirements of Tennessee law, the Board recognizes that parole is a privilege and not a right, and that no inmate may be released on parole merely as a reward for good conduct or efficient performance of duties assigned in prison.

(3) Although eligibility for parole is set by statute, whether an inmate is actually released on parole is discretionary with the Board.

(4) To avoid even the appearance of impropriety, all decisions of the Board regarding policy, procedures, and rules shall be determined by a majority vote of the members of the Board. Votes taken shall be public.

***Authority**: T.C.A. §§ 40-28-101, 40-28-103 through 40-28-105, 40-28-115, 40-28-116, 40-28-117, 40-28-118, 40-35-303, 40-35-501, and 40-35-503.* ***Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

1100-01-01-.03 DEFINITIONS.

As used in these rules, unless the context otherwise requires:

(1) "Board" means the Tennessee Board of Parole or a member thereof.

(Rule 1100-01-01-.03, continued)

(2) "Chair" means the Board member appointed by the Governor for a two (2) year term to direct the operations of the Board and to fulfill the functions established by law for such position.

(3) "Executive Director" means the person appointed by the Board to serve as chief administrative officer of the agency.

(4) "Director" means the Director of Probation and Parole employed by the Tennessee Department of Correction (TDOC) to perform the duties established by law for such position.

(5) "District Director" means a TDOC employee responsible for management of one of several districts within the Department.

(6) "Hearing Officer" means an employee appointed by the Chair to conduct parole hearings.

(7) "Probation and Parole Officer" means a TDOC employee who supervises and investigates the conduct, behavior, and progress of offenders assigned to such person.

(8) "Declaration of Delinquency" means a declaration made by the Director of Probation and Parole or designee which prevents an offender's sentence from continuing to expire when such offender is alleged to be in violation of the conditions of his or her parole.

(9) "Detainer" means a warrant or hold placed against an inmate by another jurisdiction (called the "detaining authority") notifying the holding facility of the intention to take custody of the individual when he or she is released.

(10) "Executive Clemency" means broadly, an act of leniency or an instance of mercy, which may be exercised by the Governor in all criminal cases after conviction, except in cases of impeachment. Included within the Governor's clemency powers are:

(a) "Commutation" means a discretionary act of the Governor, which reduces a prisoner's sentence from a greater to a lesser degree with the extent of such reduction being totally within the discretion of the Governor.

(b) "Conditional Pardon" means a pardon granted upon such conditions and with such restrictions and limitations as the Governor deems proper.

(c) "Exoneration" means the discretionary act of the Governor of abolishing a conviction and restoring all rights of a person based upon innocence in the case at issue under T.C.A. § 40-27-109.

(d) "Pardon" means a discretionary act of the Governor which forgives the defendant or extinguishes his crime thereby granting such defendant full relief from all or any portion of his or her sentence remaining at the time of pardon.

(e) "Reprieve" or "Respite" means a discretionary act of the Governor which withholds a sentence for an interval of time or a sentence of death for a stated specific period of time, thus having the effect of suspending the execution of the sentence for the duration of the reprieve or respite.

(11) "Inmate" means a felony offender who is in the custody of the Tennessee Department of Correction, a jail or workhouse, or is serving a Tennessee sentence in another jurisdiction.

(12) "Mandatory Parole" means a parole, which the Board is required to grant to certain inmates who have never been paroled or granted parole of any type prior to the expiration of their

(Rule 1100-01-01-.03, continued)

sentence. All sex offenders must meet the requirements of T.C.A. § 40-28-116 before being released on mandatory parole.

(13) "Offender" means an inmate who has been placed on parole.

(14) "Parole" means the release of an inmate to the community by the Board prior to the expiration of his or her term, subject to conditions imposed by the Board and subject to TDOC supervision; or where a court or other authority has issued a warrant against the offender, and the Board, in its discretion, releases him or her to answer the warrant of such court or authority.

(15) "Parole Hearing" means the process by which a decision is made to grant, deny, revoke, or rescind parole. Such hearing may or may not be in person. This determination is made subject to the classification of offense for which the inmate stands convicted.

(16) "Pre-parole Rescission" means the procedure by which the Board may terminate an inmate's grant of parole, before the inmate is actually released on parole, due to conduct, violations or omissions committed by such inmate prior to his or her release, or pertinent information that was not available at the time of the hearing.

(17) "Parole Revocation" means the formal procedure by which the Board may terminate or revoke an offender's release on parole for conduct or omissions which violate the conditions of such offender's parole after his or her release.

(18) "Post-parole Rescission Hearing" means the procedure by which the Board may terminate an offender's grant of parole, after such offender is actually released on parole, due to conduct, violations or omissions committed by such offender, significant information fraudulently given or withheld by the offender or on behalf of the offender, or other information the Board was unaware of at the time of the parole grant.

(19) "Preliminary Hearing" means the initial hearing conducted by a Hearings Officer, to determine whether probable cause exists to believe an offender has violated the conditions of his or her parole in an important respect.

***Authority**: T.C.A. §§ 40-27-101, 40-27-102, 40-27-104, 40-27-109, 40-28-102 through 40-28-105, 40-28-108, 40-28-111, 40-28-117, 40-28-121, and 40-28-122.* ***Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

1100-01-01-.04 ADMINISTRATION OF THE BOARD OF PAROLE.

(1) Board Structure.

(a) Composition of the Board shall be as provided by law. The appointment of members of the Board, the selection of its Chair, and the quorum requirements shall be those specified by law. (T.C.A. Title 40, Chapter 28).

(b) These regulations are promulgated under the authority of T.C.A. §§ 40-28-101 et seq. and in accordance with the Uniform Administrative Procedures Act. (T.C.A. Title 4, Chapter 5).

(c) The Board shall keep or cause to be kept appropriate records of all of its official actions. Such records shall be made accessible to the public and interested parties in accordance with law and these rules and regulations.

(Rule 1100-01-01-.04, continued)

(2) Administrative Structure.

(a) The administrative structure of the Tennessee Board of Parole is as follows:

1. The Executive Director of the Board is the chief administrative officer of the Board, who shall be appointed by the Board.

2. There shall be other divisions of the Board as established by the Executive Director and the Board. These divisions shall be represented on the organizational chart maintained and updated by the Executive Director.

***Authority**: T.C.A. §§ 40-28-101, 40-28-103 through 40-28-108, and 40-28-119. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

1100-01-01-.05 GENERAL BOARD POLICY.

(1) Board Administrative Meetings.

(a) Administrative meetings of the Board are open to the public and to the news media.

(b) Although administrative meetings and hearings are open to the public, the Board reserves the right to make such internal adjustments, rules, and regulations as are necessary to insure that the proceedings remain orderly at all times.

(c) Notices of the Board's administrative meetings will be provided in accordance with the Open Meetings Act.

(2) Information Concerning the Board.

(a) The Board shall maintain and will disseminate written information concerning its organization, functions, policies, procedures, rules, regulations, parole criteria, and/or supervision guidelines to any party requesting such information.

(3) Public Records Requests.

(a) Personnel of the Tennessee Board of Parole shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of these rules shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the Tennessee Board of Parole shall be protected as provided by current law. Information generated or held by the Board of Parole that is deemed confidential pursuant to Statute and/or Board of Parole Rules and Policies shall not be released to the public.

(b) Public record requests shall be made to the Public Records Request Coordinator ("PRRC") in order to ensure public record requests are routed to the Records Custodian and fulfilled in a timely manner.

(c) Requests for inspection only are not required to be made in writing. Requests for copies shall be made in writing via email or mail.

(Rule 1100-01-01-.05, continued)

(d) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or alternate acceptable form of identification is required as a condition to inspect or receive copies of public records, unless the requestor is a former offender requesting his/her official record or a victim of a crime requesting the record of the offender who committed the crime against him or her.

(e) The PRRC shall cause a record to be kept of all public record requests, and the date the request was received by the agency. The PRRC shall acknowledge receipt of the request within seven (7) business days and determine the appropriate action(s) to take.

(f) The PRRC shall forward appropriate requests for public records to the Records Custodian(s) for the requested records.

1. The Records Custodian shall make the requested public records available to the PRRC in accordance with T.C.A. § 10-7-503 and agency policy as practicable. If additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records, or for other similar reasons, the Records Custodian shall promptly communicate this to the PRRC who shall notify the records requestor within seven (7) business days of receipt of the request.

2. If a record contains confidential information or information that is not open to public inspection, the Records Custodian shall prepare a redacted copy prior to providing the record to the PRRC. If questions arise concerning redaction, the Records Custodian shall coordinate with the General Counsel and other appropriate parties regarding review and redaction of records.

(g) Fees and charges for copies of public records shall be charged in accordance with Tennessee Board of Parole policies. Cost for copies shall be $.15 per page. Cost for a CD of a parole hearing shall be $10.00. No charges will be assessed for copies and duplicates unless the total fee for the request exceeds $5.00. Costs for labor shall be assessed where time to prepare records exceeds one (1) hour.

***Authority**: T.C.A. §§ 10-7-101, et seq.; 10-7-503; 40-28-104; 40-28-105; 40-28-119; and 40-28-502.* ***Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

1100-01-01-.06 PAROLE HEARINGS.

(1) The Board will conduct hearings concerning matters of parole release and parole violations. The times, locations, and dockets of such hearings will be announced to the appropriate institutional and parole staff, the inmates or offenders, Judges, Sheriffs, and District Attorneys General of the county in which the person was convicted, and any other interested parties who have requested to be notified.

(2) At least thirty (30) days prior to a scheduled parole hearing and three (3) days prior to a parole revocation hearing, the Board shall send notice of the date and place of the hearing to the following individuals:

(a) The trial Judge for the Court in which the conviction occurred, or the trial Judge's successor;

(b) The District Attorney General in the county in which the crime was prosecuted;

(Rule 1100-01-01-.06, continued)

(c) The Sheriff of the county in which the crime was committed; and

(d) The victim or the victim's representative, who has requested notification of the date and place of the scheduled hearing and/or notice of the Board's final decision. However, at any time, the victim or victim's representative may withdraw the request for notice by sending the Board a written statement that the request for notice is withdrawn.

(3) A victim of a crime or a victim's representative may submit a victim impact statement.

(4) No later than thirty (30) days after a parole hearing decision has been finalized, the Board shall send notice of its decision to those required to receive notice under subsection (2), together with notice that any victim whom the Board failed to notify as required in subsection (2) has the opportunity to have a written impact statement considered by the Board.

(5) Subject to applicable provisions of law, it is the sole duty of the Board to determine which inmates serving a sentence in state prisons, county workhouses, and/or jails may be released on parole, when they may be released, and under what conditions.

(6) In granting parole, the Board may impose any conditions and limitations that the Board deems necessary, including consent by the offender to submit to search by TDOC staff or law enforcement. Pre-release conditions may only be mandated in accordance with treatment recommendations of the Department of Correction based on a validated risk and needs assessment.

***Authority**: T.C.A. §§ 40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-118, 40-28-119, 40-35-501, 40-28-503, and 40-28-505. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019. Amendments filed July 21, 2022; effective October 19, 2022.*

1100-01-01-.07 BOARD CRITERIA FOR GRANTING OR DENYING PAROLE.

(1) Before granting or denying parole, the Board may apply the following factors to each eligible inmate to assist in determining whether such inmate will live and remain at liberty without violating the law or the conditions of his or her parole:

(a) The nature of the crime and its severity;

(b) The inmate's previous criminal record, if any;

(c) The inmate's institutional record;

(d) The views of the appropriate trial Judge and the District Attorney General, who prosecuted the case;

(e) The inmate's circumstances if returned to the community;

(f) Any mitigating or aggravating circumstances surrounding the offense;

(g) The views of the community, victims of the crime or their family, institutional staff, probation and parole officers, or other interested parties;

(h) The inmate's training, including vocational and educational achievements;

(Rule 1100-01-01-.07, continued)

(i) The inmate's employment history, his or her occupational skills, including any military experience, and the stability of his or her past employment;

(j) The inmate's past use of narcotics, or past habitual and excessive use of alcohol;

(k) The inmate's behavior and attitude during any previous experience on probation or parole and the recentness of such experience;

(l) A validated risk and needs assessment to adequately assess the risk an inmate poses to society and his or her potential for parole success; and

(m) Any other factors required by law to be considered or the Board determines to be relevant.

(2) In applying the above factors to a particular inmate, the Board may consider the following sources of information:

(a) Reports prepared by institutional staff relative to the inmate's social history and institutional record, including any recommendations the institutional staff may wish to make;

(b) All relevant Department of Correction or other prison, jail, or workhouse reports;

(c) Observations concerning the suitability of releasing the inmate on parole from court officials, law enforcement officials, and other interested community members;

(d) Reports or recommendations resulting from any physical, psychological, or psychiatric examination or evaluation of the inmate;

(e) Any relevant information submitted by the inmate, his or her attorney, representatives on his or her behalf, or other interested parties;

(f) The parole plan, which the inmate has submitted; and

(g) Any other relevant information concerning the inmate.

(3) The Board shall consider written or video impact statements or other information submitted by the victim or the victim's family.

(4) After applying the various factors for consideration to the individual inmate, the Board shall deny the inmate's release on parole if it determines that:

(a) There is a substantial indication that the inmate will not conform to the conditions of his or her parole;

(b) Release from custody at this time would depreciate the seriousness of the crime of which the person stands convicted or promote disrespect for the law;

(c) Release at this time would have a substantially adverse effect on institutional discipline; or

(d) The person's continued correctional treatment, medical care, or vocational or other training in the institution, will substantially enhance the person's capacity to lead a law-abiding life when given release at a later time.

(Rule 1100-01-01-.07, continued)

(5) The Board may revise or modify its parole criteria and factors for consideration, as it deems appropriate.

(6) No offender may be declined parole release solely pursuant to 1100-01-01-.07(4)(b) unless serving a sentence for First degree murder or an attempt to commit, solicitation of, or facilitation of first degree murder; Second degree murder or an attempt to commit or facilitation of second degree murder; Voluntary manslaughter; Aggravated vehicular homicide; Vehicular homicide; Especially aggravated kidnapping or an attempt to commit or facilitation of especially aggravated kidnapping; Trafficking for a commercial sex act; A human trafficking offense; Advertising commercial sexual abuse of a minor; Especially aggravated robbery or an attempt to commit or facilitation of especially aggravated robbery; Aggravated rape of a child or an attempt to commit or facilitation of aggravated rape of a child; Aggravated rape or an attempt to commit or facilitation of aggravated rape; Rape of a child or an attempt to commit or facilitation of rape of a child; Rape; Aggravated sexual battery; Especially aggravated burglary; Aggravated child abuse; Aggravated sexual exploitation of a minor; Especially aggravated sexual exploitation of a minor; Aggravated vehicular assault; Aggravated abuse of an elderly or vulnerable adult, or Vehicular assault.

***Authority**: T.C.A. §§ 40-28-104, 40-28-105, 40-28-106, 40-28-108, 40-28-114, 40-28-116, 40-28-118, 40-28-504, and 40-35-503. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019. Amendments filed July 21, 2022; effective October 19, 2022.*

1100-01-01-.08 THE PAROLE HEARING PROCESS.

(1) Parole Eligibility.

(a) Although the decision to release an inmate on parole is discretionary with the Board, parole eligibility is, by law, based upon the completion of a statutorily specified portion of a sentence, less any applicable credits.

(b) The Department of Correction shall notify the Board of an inmate's parole eligibility date.

(c) The Board's staff shall then compile and distribute dockets or lists of the cases to be heard by the Board.

(d) Subject to later alteration, the Board's schedule of dates and locations of hearings shall be available to those requesting it prior to the hearing.

(e) Inmates classified as close custody at the time they would otherwise be eligible for parole, shall not be certified by the Department of Correction, as eligible for a parole grant hearing, other than an initial grant hearing if, at the time the Department of Correction would otherwise have certified the inmate as eligible, the inmate is classified as close custody.

(f) This de-certification of inmates classified as close custody shall continue for the duration of the classification and for a period of one (1) year thereafter.

(g) Inmates classified as maximum custody at the time they would otherwise be eligible for parole, shall not be certified by the Department of Correction as eligible for a parole grant hearing, other than an initial grant hearing if, at the time the Department of Correction would otherwise have certified the inmate as eligible, the inmate is classified as maximum custody.

(Rule 1100-01-01-.08, continued)

(h) This de-certification of inmates classified as maximum custody shall continue for the duration of the classification and for a period of two (2) years thereafter.

(i) Pursuant to T.C.A. 40-35-503, it is presumed that offenders who are convicted of a Class D or Class E felony or are currently serving a sentence for a felony that is not classified as a violent offense under § 40-35-120(b), are low risk to reoffend or best supervised in the community based on their current risk and needs assessment, have successfully completed the institutional programming recommended by TDOC, have not received a Class A or Class B disciplinary in the previous twelve (12) months, and are not convicted of a sex offense, sexual offense or violent sexual offense as defined by statute, are to be released upon reaching their release eligibility date unless good cause is found on the record for denying release. Good cause shall be based upon application of the Board Criteria for Granting or Denying Parole and the Parole Release Decision Making Guidelines to facts or circumstances contained in an offender's file.

(2) The Parole Hearing Process.

(a) The Board is empowered to employ Hearing Officers to review inmates for any matter concerning a parole. The Hearing Officer's recommendations are advisory only and the Board shall accept, modify, or reject any recommendation made by a Hearing Officer.

(b) If the Board determines that it does not have necessary reports or sufficient information, upon which to base an objective decision in a particular case, it may continue such hearing to a later date. The Board may also continue a hearing to await the disposition of untried indictments, disciplinary proceedings, or to investigate the status of an outstanding detainer. Such continued hearings will subsequently be processed as scheduled, unless new commitments or the loss of good and honor time credits, alters the inmate's parole eligibility dates.

(c) Any eligible inmate may request that his or her scheduled parole grant hearing be deferred until a later specific month or year by signing a waiver to that effect, witnessed by correction or probation and parole personnel. The Board or a designated Hearing Officer may accept or reject the waiver and agree to defer the case or proceed to conduct the hearing. An inmate is to sign a waiver asking that his or her parole hearing be continued until a later date.

(3) Findings and Notice of Decision.

(a) The Board shall notify the inmate, in written form, of its final decision and reasons for the decision. Upon receipt of notice of the decision, the inmate shall sign and date a copy of the decision notification. Upon declining to grant parole in any case, the Board must state in writing the reason for declining parole and how the inmate can improve the inmate's chance of being released on parole in the future.

(b) As soon as practicable after the Board's action, it shall cause to be forwarded to the appropriate standing committee of the General Assembly, a written list of the names of all inmates released on parole.

(4) Appellate Procedure.

(a) An inmate whose parole has been revoked, rescinded, or denied may request an appellate review by the Board. Requests for an appellate review must be received by the Board within forty-five (45) days from the date the inmate signed the decision notification indicating that he or she has received notice of the decision.

(Rule 1100-01-01-.08, continued)

(b) If the request for an appeal is not received within forty-five (45) days from the date the inmate signed the decision notification, it will be denied.

(c) The request will be screened by Board Members, or their designee, to decide if it will be forwarded to the Board Members for their review.

(d) Reviews by the Board will be conducted for the following reasons:

1. If there is significant new evidence that was not available at the time of the hearing;

2. If there are allegations of misconduct by the hearing official that are substantiated by the record; or

3. If there were significant procedural errors by the hearing official.

(e) All requests that will be sent to the Board Members for review must be based on one or more of the above stated reasons.

(f) Requests based on the availability of new evidence or information must be accompanied by adequate documentation. Requests based on allegations of misconduct or significant procedural errors must clearly indicate the specific misconduct or procedural error(s).

(g) If a case is set for review, it will be conducted from the record of the first hearing and the appearance of the inmate will not be necessary. An appearance appeal hearing may be conducted if there were significant errors on the part of the hearing official or if misconduct on the part of the hearing official occurred in the initial hearing, and another hearing is necessary in order to correct the misconduct or significant errors from the first hearing.

(h) If the appeal reviewer believes that a review by the Board is warranted, the file shall be forwarded to Board Members not voting on the original case and not a party to the original decision. If there are not sufficient non-voting members to finalize the appeal, the appeal document shall be circulated randomly to Board Members until a final decision is reached.

(i) A decision to hold an appeal hearing requires three concurring votes of the Board Members. The Board may also vote to grant the appeal without holding a new hearing if the significant new information is sufficient. This decision also requires the concurrence of three (3) Board Members.

(5) Parole Revocation/Rescission Review Pursuant to T.C.A. § 40-28-122(g).

(a) This type of hearing may be requested by an offender if that offender's parole has been revoked or rescinded by the Board of Parole based solely upon the filing of new criminal charges, and those charges are later:

1. Dismissed or retired on the merits;

2. A no true bill is returned by a grand jury;

3. A verdict of not guilty is returned by a Judge or jury; or

4. The offender was arrested and released without being charged.

(Rule 1100-01-01-.08, continued)

(b) A written or emailed notice of the foregoing must be submitted to the Executive Director of the Board by:

1. The District Attorney General (or designee thereof) from the judicial district in which the charges were brought;

2. The Judge in the court where the charges were brought;

3. An Assistant Commissioner from the Department of Correction;

4. The offender's attorney, provided that the notification is also signed by one of the first three officials listed herein; or

5. The offender, provided that the notification is also signed by one of the first three officials listed herein.

(c) This written or emailed notice must include documentation of the alleged event and will be verified within ten (10) business days.

(d) If verified and the offender is eligible pursuant to statute, the Board or the Board's designee will conduct a hearing on the record to determine if the criteria have been met, as outlined in T.C.A. § 40-28-122(g), after which the Board may vote, based on the entirety of the record, to release and reinstate parole in accordance with applicable law. This hearing shall be scheduled for the next available docket, and shall be conducted no later than thirty-five (35) days from verification of eligibility.

(e) If released and reinstated, the Board shall notify TDOC so that any sentence credits that may have been lost while the offender was incarcerated shall also be reinstated.

***Authority**: T.C.A. §§ 40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-119, 40-28-122, 40-35-501, 40-35-503, and 40-36-102. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019. Amendments filed December 23, 2019; effective March 22, 2020. Amendments filed July 21, 2022; effective October 19, 2022.*

1100-01-01-.09 RELEASE ON PAROLE DATE.

(1) Grant of Parole.

(a) A grant of parole shall not be deemed to be effective until a certificate of parole has been delivered to the inmate, by a Board designee, and the inmate has voluntarily signed the certificate.

(b) If the Board Members have voted to establish a release date, release on that date shall be conditioned upon the continued good conduct of the inmate while remaining incarcerated prior to the effective date, and the approval of a satisfactory release plan.

(c) If the Board has specified in their decision, that the inmate is to complete a program as a pre-parole condition prior to their effective date, in accordance with the recommendation of the Department of Correction based on a validated risk and needs assessment, the inmate must complete the program prior to that effective date. If the inmate has not completed the program prior to the effective date, a rescission hearing may be scheduled.

(Rule 1100-01-01-.09, continued)

(d) Upon receipt of significant new information, the Board may, on its own motion, reconsider any parole grant case prior to the release of the inmate and may reopen and advance or delay a parole date.

***Authority**: T.C.A. §§ 40-28-104 and 40-28-116. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019. Amendments filed July 21, 2022; effective October 19, 2022.*

1100-01-01-.10 PSYCHOLOGICAL EVALUATIONS.

(1) The Board may order a psychological evaluation of any inmate, where they believe it appropriate.

(2) Psychological evaluations for sex offenders must meet the standards cited in T.C.A. § 40-28-116 or the standard that was in effect at the time such inmate committed the sex offense for which they are currently serving their sentence. Such certification is required before any inmate convicted of a sex crime is released on parole.

(3) Such evaluations are not required prior to a sex offender's parole hearing but only prior to a sex offender's release on parole.

(4) Prisoners who have been convicted of a sex offense shall not be released on mandatory parole unless they have been evaluated and meet the statutory requirement described in T.C.A. § 40-28-116.

***Authority**: T.C.A. §§ 40-28-104, 40-28-106, 40-28-116, 40-28-117, and 40-35-503. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

1100-01-01-.11 DETAINERS.

(1) A Detainer is a warrant or hold placed against an inmate by another jurisdiction (called the "detaining authority") notifying the holding facility of the intention to take custody of the individual when he or she is released.

(2) The presence of a detainer shall not, in and of itself, constitute a valid reason for the denial of parole.

(3) Parole to Detainers.

(a) As used in this rule, unless the context otherwise requires, 'parole to a detainer' means the release of the inmate to the physical custody of the authority who has lodged the detainer.

(b) Where the detainer is not lifted, the Board may grant parole to such detainer within their discretion.

(c) The Board will cooperate in establishing and maintaining arrangements for concurrent supervision with other jurisdictions, where such arrangements are feasible and where release on parole appears, to the Board, to be justified.

(Rule 1100-01-01-.11, continued)

(d) If the Board has granted parole to "detainer only" and the jurisdiction placing the detainer lifts it or fails to take custody of the inmate, a rescission hearing will be scheduled.

***Authority**: T.C.A. §§ 40-28-104 and 40-28-401. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

1100-01-01-.12 RESCISSION OF PAROLE.

(1) Pre-parole Rescission.

(a) If an inmate has been granted parole or is currently serving a short term revocation pursuant to 1100-01-01-.14(6)(m) and has subsequently been charged with institutional misconduct, escape, or has been served with a warrant or received a new felony sentence or had the certification of parole eligibility withdrawn by the Department of Correction or has other changes in circumstances sufficient to become a matter of record, the Board shall be promptly notified and advised of such new circumstances.

(b) No inmate about whom notification has been made pursuant to subparagraph (a) of this subsection shall be released on parole until such time as the institution has been properly informed that no change has been made in the Board's order to parole.

(c) Upon receiving notification as required by subparagraph (a) of this subsection, the Board may schedule a parole rescission hearing or notify the institution that the grant of parole remains.

(2) The Pre-parole Rescission Procedure.

(a) The rescission hearing may be scheduled, if possible, for the next docket of parole hearings at the institution where the inmate is being held.

(b) The inmate shall be given adequate notice of the reason(s) such rescission hearing is being conducted. Such notice shall be given at least three (3) days prior to the scheduled date of the rescission hearing. The reason(s) for the rescission hearing shall be stated in the notice, with the exception of information that is considered confidential by the Board.

(c) A rescission hearing may be held in order to determine if the inmate's misconduct or other change in circumstances is sufficient to warrant rescission of such inmate's parole grant or short term revocation.

(d) The inmate may appear at his or her rescission hearing and may present documentary evidence and witnesses in his or her behalf at the rescission hearing.

(e) The inmate's presence is not necessary at the rescission hearing if:

1. The institutional misconduct has been established by the institution's disciplinary committee by a finding that the inmate has violated the rules of his or her confinement; or

2. If the misconduct has resulted in a conviction in a court of law.

(Rule 1100-01-01-.12, continued)

(f) The Board may delay the parole grant or revocation for up to one hundred and twenty (120) days if, in its opinion, it has insufficient information before it to reach an informed and fair decision at the rescission hearing. Awaiting the disposition of institution discipline committees, new charges or indictments, or investigating new detainers shall also be sufficient grounds to continue a rescission hearing under this subparagraph.

(g) If the result of the process is that the inmate's grant of parole or short term revocation is rescinded, he or she shall be given written notice evidencing the reasons for the rescission.

(h) A grant of parole or short term revocation shall not be rescinded except upon the concurrence of two (2) Board Members.

(3) Post-parole Grant Rescission Procedure.

(a) If, after a parole has become effective and the inmate is released on parole, evidence comes to the attention of the Board that significant information was fraudulently given or withheld by the inmate, or on behalf of the inmate, or that the inmate violated the law while on any furlough or other release program prior to being released on parole and such information was not known by the Board, or that the parolee has been arrested, indicted or convicted for an offense that was committed prior to parole, or that the parolee has an unexpired prison term of which the Board was unaware at the time of the hearing, or that a calculation of the parolee's sentence structure would render him or her ineligible for parole, the Director may issue a warrant for the retaking of such parolee.

(b) A grant of parole shall not be rescinded except upon the concurrence of two (2) Board Members.

(c) Upon the execution of the warrant, the offender shall be notified of the reasons for the post-parole grant rescission hearing. The provisions of rule 1100-01-01-.14 with regard to notice and hearings procedures shall be followed.

(d) At such rescission hearing, the Board may declare that the grant of parole is void and the inmate shall thereupon resume his or her sentence in custody, or the Board may declare that grant of parole void, but decide to re-parole on both the old and new cases if eligibility has been certified by the Department of Correction, or the Board may decide to leave the subject on parole.

(4) Appeal Procedure.

(a) An inmate whose parole or short term revocation has been rescinded may request an appellate review by the Board. Such review shall be in accordance with the procedure outlined in rule 1100-01-01-.08(4).

***Authority**: T.C.A. §§ 40-28-104 and 40-28-105. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019. Amendments filed July 21, 2022; effective October 19, 2022.*

1100-01-01-.13 DISCHARGE OF PAROLE.

(1) When the Board is satisfied that a parolee has complied with the conditions of his or her parole in a satisfactory manner, the Board shall cause to be issued to such parolee a certificate of final discharge. Final discharge from parole will be granted only after a parolee

(Rule 1100-01-01-13, continued)

has reached the expiration date of his or her sentence(s). This is in no way to be construed as permitting a discharge from parole for parolees with a life sentence.

***Authority**: T.C.A. §§ 40-28-104 and 40-28-125. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

1100-01-01-.14 REVOCATION OF PAROLE.

(1) Parole Revocation.

(a) If a Probation/Parole Officer having charge of an offender, has reasonable cause to believe that the offender has violated one or more of the conditions of parole in an important respect, such officer shall present such evidence to the Director or designee.

(b) This report shall be in written form, and shall contain a listing of the violations alleged and the facts and circumstances surrounding each violation.

(c) Upon receipt of a Probation/Parole Officer's report alleging violation of parole, the Director or designee, may issue a warrant for the retaking of the offender and his or her return to a correctional institution in the State of Tennessee, if the Director or designee determines parole has been violated in an important respect.

(d) Any officer authorized to serve criminal process, or any peace officer to whom such warrant is delivered, shall execute the warrant by taking the offender into custody.

(e) In those cases where the offender is confined in another state pending new criminal charges, or is serving a sentence in another state, the warrant may be placed there as a detainer. If it becomes apparent that the Board cannot obtain physical custody of the offender detained in another state, the Director or designee shall withdraw the warrant and issue a letter of notification. The letter of notification shall consist of a letter sent to the custodian of the offender being held in another jurisdiction and shall inform such custodian that the named individual is an alleged parole violator in the State of Tennessee.

(f) Such notification shall request that the out-of-state custodian inform the Tennessee Director or designee of the release of the named offender at least ninety (90) days prior to such release from the out-of-state or foreign jurisdiction.

(g) Upon receipt of notification by the custodian that an offender will be released, the Director or designee shall reissue the warrant so that the offender may be returned to Tennessee by execution of such warrant unless parole has expired.

(h) When an offender is returned to the custody of Tennessee authorities from his or her confinement by an out-of-state custodian, such offender shall be afforded prompt parole revocation proceedings.

(i) Nothing in this rule shall be construed to prevent the Director or designee from issuing a letter of notification to the custodian of the offender in the first instance in lieu of placing a warrant as a detainer.

(2) Preliminary Hearing.

(Rule 1100-01-01-.14, continued)

(a) Upon execution of a warrant by the Director, the offender shall be given adequate notice of the preliminary hearing or revocation hearing. If a revocation hearing is held within fourteen (14) days after the service of the warrant, a preliminary hearing is not required.

(b) The notice shall state the time and place of the hearing and shall inform the offender that at the hearing he or she will be given the opportunity to present witnesses and documentary evidence in his or her behalf, shall be allowed to cross-examine any adverse witnesses in attendance, and that he or she has a limited right to request legal representation.

(c) Unless waived in writing or a revocation hearing is held within fourteen (14) days of service of the warrant, the offender shall be afforded a preliminary hearing.

(d) The preliminary hearing shall be conducted as scheduled unless the offender voluntarily waives such hearing in writing. For such a waiver to be effective, it must contain the following:

1. A clear statement that the offender is entitled to a preliminary parole revocation hearing; and

2. A clear statement that the offender has the right to present documentary evidence, as well as individual testimony which may give relevant information to the Hearing Officer, and a limited right to request legal representation.

(e) If the offender expresses his or her desire to waive such hearing, a Probation/Parole Officer shall explain the contents of the waiver to the offender and shall not accept such waiver unless he or she is reasonably certain that the offender fully understands the contents and consequences of such a waiver and that the offender knowingly and voluntarily still desires to waive his or her preliminary hearing.

(f) A request to appoint an attorney for an offender may be forwarded to the General Counsel of the Board of Parole under two circumstances:

1. If a preliminary hearing is held and the Hearing Officer is of the belief that the inmate is incapable of speaking effectively for himself or herself, the Hearing Officer shall continue the hearing and notify the General Counsel for the Board that an attorney appointment is recommended. Upon receiving this recommendation, an attorney may or may not be appointed.

2. The offender may request that he or she be appointed counsel to represent him or her. If the offender has made such a request, the Hearing Officer shall determine whether the request shall be forwarded to the General Counsel under the criteria the General Counsel considers in (g)1.–3.

(g) The General Counsel may appoint attorneys in accordance with applicable case law or in the following situations:

1. The offender has made a timely and colorable claim that he has not committed the alleged violation of the conditions upon which he is at liberty; or

2. Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; or

(Rule 1100-01-01-.14, continued)

3. The offender is incapable of speaking effectively for himself or herself.

(h) In every case in which a request for counsel at a preliminary hearing is denied, the grounds for such refusal shall be stated succinctly, in writing, by the Hearing Officer.

(i) In every case in which a request for counsel at a preliminary hearing is not made, the Hearing Officer or a Parole Officer shall have the offender sign a statement that he or she has been fully informed of his or her ability to request that he or she be appointed counsel to represent him or her and that he or she has decided not to seek appointed representation.

(j) Nothing in this rule shall be construed to prevent the waiver of the right to a preliminary hearing and the decision not to request counsel at the preliminary hearing from appearing on the same document.

(k) At the preliminary hearing, the offender shall have the right to:

1. Appear at the hearing and speak in his or her own behalf;

2. Produce documents, letters, and individuals relevant to the violation(s) alleged;

3. Confront and cross-examine persons who have given adverse information upon which his or her parole revocation is to be based, unless the Hearing Officer finds good cause exists to disallow such cross-examination and confrontation; and

4. Be represented by retained counsel or an attorney appointed under the conditions noted above.

(l) The Hearing Officer shall conduct the hearing informally, including the presentation of the documents or evidence in support of parole violation and the offender's responses to such evidence. Based on the information presented at the hearing, such Officer shall determine whether probable cause exists to believe that the offender violated the conditions of his or her parole in an important respect.

(m) If the Hearing Officer determines it is necessary or the offender requests that any witnesses be subpoenaed, such Officer shall employ the following procedure:

1. If the witnesses are requested by the offender, such offender or his or her attorney shall submit a written statement to the Probation and Parole Officer, as well in advance of the scheduled hearing as possible, of the names of the persons requested as well as a brief statement of why their testimony is relevant. The statement requesting witnesses shall be forwarded to the Board of Parole which shall review the request(s) and issue subpoenas for necessary witnesses.

2. If the witnesses are requested by the state, the person representing the state shall comply with the same procedure set out in subpart (1) above, but the request shall be sent directly to the Board of Parole.

3. Failure to comply with this procedure by the parties shall be sufficient grounds for denial of a subpoena request. If the offender is not represented by an attorney the subpoenas may be served by a Probation/Parole Officer or sent by certified mail.

(n) At the preliminary hearing, the Hearing Officer shall select one of the following alternative decisions:

(Rule 1100-01-01-.14, continued)

1. No probable cause found, and the offender shall be returned to supervision and the violation warrant withdrawn; or

2. Probable cause found and the offender shall remain in custody under the violation warrant to await a final parole revocation hearing before the Board.

(3) Declaration of Delinquency.

(a) A declaration of delinquency may be issued by the Director of Probation and Parole in revocation proceedings to suspend such credit toward the service of the offender's sentence. Such declaration shall be made by the Director or designee in any case when a parole violation warrant is issued, and the parolee is not in custody.

(b) Except when an offender is declared to be in a delinquent status, the time he or she is on parole is credited toward the service of his or her sentence unless it is taken by the Board after a revocation of parole.

(c) If delinquency is declared, the offender stops earning credit for the service of his or her sentence from the date of declaration, until the parole violation warrant is served and the offender is housed in a correctional facility in Tennessee. Offenders taken into custody in another state will remain in delinquent status from the declaration of delinquency until they are returned to a Tennessee correctional facility or until delinquency is removed by the Board.

(d) During the revocation process, the Board may consider an alleged violation and determine either that parole should not be revoked or that mitigating or compelling circumstances exist for the violation. The Board may then “take” or “grant” the delinquent time. Taking delinquent time requires that the offender lose credit toward service of sentence. The Board may take all of the delinquent time or some lesser amount of time, which is set by the Board. Granting the delinquent time restores all of the offender's credit toward service of sentence as though delinquency had never been declared.

(4) Notice of Final Parole Revocation Hearing.

(a) Prior to the revocation hearing, the offender shall be notified in writing of the following:

1. The date, time, and location of the hearing;

2. That the offender has the right to appear in person and present such evidence as he or she desires;

3. That he or she has the right to confront and cross-examine any adverse witnesses, unless good cause can be shown for refusing confrontation and cross-examination, such as a significant potential for harm if identities are revealed; and

4. That the offender has a limited right to request that counsel be appointed to represent him or her at the final revocation hearing.

(5) Continuance of Final Revocation Hearing.

(a) Following a finding of probable cause at the preliminary hearing, the Board shall schedule a final revocation hearing as promptly as possible to consider the alleged violation(s) of parole.

(Rule 1100-01-01-.14, continued)

(b) On its own motion, the Board may continue the final revocation hearing in order to secure more or necessary evidence or witnesses at the hearing, or to secure counsel to represent the offender.

(6) Final Revocation Hearing.

(a) At the final revocation hearing, the offender shall have the right to appear and be heard in person and to present witnesses and documentary evidence.

(b) The offender shall have the right to confront and cross-examine adverse witnesses, unless the Board specifically finds good cause for not allowing such confrontation and cross-examination.

(c) A request to appoint an attorney to an offender may be forwarded to the General Counsel of the Board of Parole under two circumstances:

1. If at a final revocation hearing, the Hearing Officer is of the belief that the inmate is incapable of speaking effectively for himself or herself, the Hearing Officer shall continue the hearing and notify the General Counsel for the Board, that an attorney appointment is recommended. Upon receiving this recommendation, an attorney may or may not be appointed.

2. The offender may request that he or she be appointed counsel to represent him or her. If the offender has made such a request, the Hearing Officer shall determine whether the request shall be forwarded to the General Counsel under the criteria the General Counsel considers in (d)1.–3.

(d) The General Counsel may appoint attorneys in accordance with applicable case law or in the following situations:

1. The offender has made a timely and colorable claim that he has not committed the alleged violation of the conditions upon which he is at liberty; or

2. Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; or

3. The offender is incapable of speaking effectively for himself or herself.

(e) In every case in which a request for counsel at a final revocation hearing is refused, the grounds for such refusal shall be stated succinctly in the record, in writing.

(f) In every case in which a request for counsel at a final revocation hearing is not made, the Board shall have the offender sign a statement that he or she has been fully informed of his or her ability to request that he or she be appointed counsel to represent him or her and that he or she has decided not to seek appointed representation.

(g) At the final revocation hearing, the Board will initially determine whether the alleged violation of parole is supported by a preponderance of the evidence. In all cases, the burden shall be on the State to establish that a violation occurred.

(Rule 1100-01-01-.14, continued)

(h) If the Board determines that a parole violation occurred, or if the offender admits to a violation, the Board shall next consider whether such grant of parole should be revoked for the violation.

(i) In all cases, including those situations in which the offender has been convicted of a new offense, the Board shall consider any mitigating factors advanced by the offender, which suggest that the violation of parole does not warrant revocation.

(j) All parole revocation hearings shall be conducted in a manner as informal as is consistent with due process and the technical rules of evidence shall not apply to such hearings.

(k) All evidence upon which the finding of a parole violation may be based, shall be disclosed to the offender at the revocation hearing unless it has been declared confidential by the Board.

(l) Nothing in this subsection shall be construed to prevent the Board from disclosing documentary evidence by reading or summarizing the appropriate document for the offender.

(m) If the Board sustains a violation involving a new felony, class A misdemeanor, absconding, or zero tolerance violation and decides to revoke parole, the offender shall be returned to confinement to serve the remaining portion of his or her sentence or such part as the Board directs. If the Board sustains a violation involving only a technical violation of the rules of parole, the Board may revoke parole for fifteen (15) days for a first revocation, thirty (30) days for a second revocation, ninety (90) days for a third revocation, or the remainder of the sentence, for a fourth or subsequent revocation. The time an inmate spent on parole shall not be considered as service of the sentence unless the Board determines to grant all or part of such “street time” to the inmate.

(n) The Board shall set a review date and record it on a Board Action Sheet.

(o) If the Board finds that the offender did not commit the alleged violation or, if he or she did, finds that mitigating factors dictate revocation is not appropriate, the offender shall be allowed to resume his or her parole status subject to the conditions approved by the Board.

(7) Felony Committed While on Parole.

(a) If a person is convicted in this state of a felony committed while on parole from a prison, workhouse, or jail in this state, he or she shall serve the remainder of his or her sentence under which parole was granted, or such part of that sentence as the Board may determine before he or she commences serving the sentence fixed for the crime committed while on parole.

(b) If a person on parole from a prison, workhouse, or jail in this state is convicted of a crime under the law of another state or county which, if committed in this state, would be a felony, the Director of Probation and Parole in this state, shall seek to return such offender to this state through the terms of the interstate compact. If such offender is returned, the Board shall require that he or she serve the portion remaining of his or her maximum term of sentence or such part of that term as the Board may determine.

(c) The Board, at its discretion, may recommend to the Commissioner of Correction, the removal of all or any part thereof, of the good and honor time and incentive time such inmate accrued on the sentence under which he or she was paroled. The final decision

(Rule 1100-01-01-.14, continued)

relative to whether any or all of such time credits will be removed shall be made by the Commissioner of Correction.

***Authority**: T.C.A. §§ 40-28-104, 40-28-105, 40-28-106, 40-28-118, 40-28-121 through 40-28-123, and 40-35-504. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019. Amendments filed July 21, 2022; effective October 19, 2022.*

1100-01-01-.15 CONFIDENTIALITY OF PAROLE AND CLEMENCY RECORDS; CONFIDENTIALITY OF EMPLOYEE PERSONNEL RECORDS.

(1) Confidential Information.

(a) The following information may be contained in the Board's file and is considered confidential by the Board and will not be released unless listed as an exception under rule 1100-01-01-.15(3):

1. Psychological evaluations provided, however, that such may be released to mental health officials who are treating the offender if a release of information form signed by the offender is presented with the request.

2. Offense Report.

3. Medical Records.

4. Contents of probation and parole staff chronological records, contact notes.

5. Probation/Parole Officers' statements accompanying violation reports.

6. Written clemency recommendations to the Governor.

7. Statements in opposition of an offender by victims, families of victims, victims' representatives, families of inmates, private citizens, and public officials who request confidentiality.

8. Victim impact statements.

9. Internal Affairs investigative reports.

10 Any reports or information generated by other agencies.

11. Other information, the release of which the Board specifically finds would be a serious safety risk to the public, staff, parolee or inmate.

(2) Information Available for Release.

(a) The following information may be released:

1. Hearing and decision-making policy and procedures;

2. Whether an inmate is being considered for parole or clemency;

3. Whether parole or clemency has been granted or denied;

4. Effective date for parole;

(Rule 1100-01-01-.15, continued)

5. Statements in support of a parole;

6. Clemency applications and supporting documentation;

7. Date, time, and location of hearings;

8. Parole certificates and determinate release certificates;

9. Reasons for the Board decisions listed on the Board Action Sheet;

10. Residential and employment records of offenders.

(b) Requests for information from field supervision files shall be directed to the District Director or his or her designee. The District Director or his or her designee will review the records and release information available under rule 1100-01-01-.15(2)(a).

(3) Upon official request, law enforcement, child support officials, or other governmental entities shall be provided information as necessary to assist in their investigations, in their official capacity. Upon verification of the identity of the requesting official the following information may be released:

(a) Offender's aliases;

(b) Offender's M.O. (modus operandi or mode of operation);

(c) Offender's address;

(d) Offender's place of employment;

(e) Offender's photographs and fingerprints;

(f) Offender's social security number;

(g) Offender's telephone number;

(h) Offense reports;

(i) Whether a warrant has been issued and whether an offender has been arrested on a warrant;

(j) Violation reports;

(k) Information on assets of persons currently or previously on parole who owe court fines.

(4) The Board shall not release employee personal information such as social security numbers, home addresses, or telephone numbers.

***Authority**: T.C.A. §§ 40-28-104, 40-28-106, 40-28-119, and 40-28-504. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

1100-01-01-.16 DUTIES AND PROCEDURES OF BOARD IN EXECUTIVE CLEMENCY MATTERS.

(1) The Board shall, upon the request of the Governor, consider and make non-binding recommendations concerning all requests for commutations or pardons. Such recommendations shall be made according to the following procedures:

(a) Beginning Steps of Clemency Procedure.

1. Upon receipt of a request from an offender or his or her attorney for executive clemency consideration, the Board shall respond by sending to the individual making the request an executive clemency application with a cover letter explaining the application procedure.

(i) If the Board receives a request for clemency on behalf of an individual by a third party who is not the individual's attorney, the Board shall respond and advise the third party that the person for whom clemency is requested must apply directly to the Board unless that person lacks the competency to apply in his or her own behalf.

(ii) Where a request for clemency is referred to the Board from the Governor's office, the Department of Correction, or any other agency, such request shall be handled in the same manner as if the request had been initially addressed to the Board.

(b) Pardon Requests.

1. An application for a pardon must be accompanied by information and evidence sufficient to enable the Board to determine whether the applicant is entitled to consideration for a pardon under the Governor's guidelines. If no such information is included in the application or furnished to the Board, the applicant will be advised that the application cannot be processed further until such information is received.

2. The Board shall review the application and supporting information and determine whether the applicant should be scheduled for a hearing. The Board's files shall reflect the action of the Board in scheduling the case for a hearing. If the applicant is determined not to be eligible for consideration, he or she shall be advised of this and of the reasons he or she is not eligible for consideration.

(c) Commutation Requests.

1. The Board shall review the application and any supporting information and determine whether the applicant falls within the Governor's guidelines and the Board's screening factors, and whether the applicant should be scheduled for a hearing. The Board's files shall reflect the action of the Board in scheduling the case for hearing.

2. If the applicant does not fall within the Governor's criteria, the applicant shall be advised as to why he or she is not eligible for consideration and will not be scheduled for a hearing. He or she shall be advised of the date on which he or she will be eligible and may reapply for consideration, provided that none of the Board's screening factors are amended by the Governor to prevent such consideration.

(d) General Procedure for Clemency Requests and Hearings.

(Rule 1100-01-01-.16, continued)

1. All requests for executive clemency shall be responded to in a timely manner. After the application is received, the applicant and his or her attorney shall be advised as to whether the case is to be scheduled for a hearing and the date, time, and place of any hearing. All hearings shall be held promptly following the notice to the applicant and his or her attorney, unless it is continued at the Board's discretion, upon the request of the applicant or his or her attorney, or pending receipt by the Board of essential information. The notice shall advise the applicant that he or she is entitled to appear at the hearing and to present witnesses and other evidence on his or her behalf. Such notice shall also include a description of the type of evidence considered by the Board.

2. At the same time that notice is sent to an applicant and his or her attorney, the appropriate Judge and District Attorney General shall be notified that the case has been set for hearing and given the date, time, and place. The notice to the Judge and District Attorney shall indicate that the Board solicits and welcomes their views and recommendations concerning clemency for the applicant.

3. The Board's staff may compile any or all of the following information for the Board's consideration at the hearing:

   (i) A reclassification or parole summary completed by the institutional staff, if the applicant is an inmate;

   (ii) Information about the facts and circumstances surrounding the offense and conviction. Such information shall be obtained through investigations conducted by a Probation/Parole Officer or other individual designated by the Board;

   (iii) A psychiatric or psychological evaluation if the applicant is an individual convicted of a sexual offense or sex related crime;

   (iv) Information about medical, mental and/or family problems or needs obtained through investigation by a Probation/Parole Officer or other individual designated by the Board, if appropriate; and

   (v) The application, original request, supporting evidence, and any correspondence in the Board's file concerning the application.

4. If the applicant is requesting a pardon, the following additional information shall be obtained:

   (i) Information obtained for FBI and local records checks;

   (ii) Information regarding recent social history and reputation in the community; and

   (iii) Information verifying reasons for pardon request.

5. Although the Board's staff obtains the above information so that clemency hearings not be completely ex parte in nature, the burden remains on the applicant to establish that he or she is entitled to clemency.

6. At a clemency hearing the Board shall consider, but is not limited to, the following factors:

   (i) The nature of the crime and its severity;

(Rule 1100-01-01-.16, continued)

(ii) The applicant's institutional record;

(iii) The applicant's previous criminal record, if any;

(iv) The views of the appropriate trial Judge and the District Attorney General who prosecuted the case;

(v) The sentences, ages, and comparative degree of guilt of co-defendants or others involved in the applicant's offense;

(vi) The applicant's circumstances if returned to the community;

(vii) Any mitigating circumstances surrounding the offense;

(viii) The views of the community, victims of the crime or their families, institutional staff, Probation/Parole Officers, or other interested parties; and

(ix) Medical and psychiatric evaluations when applicable.

7. The Board will inform the applicant and his or her attorney, if present, of its recommendation at the end of the hearing or, in its discretion, will take the case under advisement. In either event, the Board shall advise the applicant that its recommendation to the Governor is non-binding and that the Governor will review any recommendation by the Board.

8. The Chair shall designate one member of the Board to write a report to the Governor concerning the case. The report shall include:

(i) A brief statement of the reasons for the recommendation;

(ii) The complete file;

(iii) The views of the various Board Members, if the recommendation is not unanimous; and

(iv) The specifics of the recommendation, whether it is a positive or negative one, and if a positive recommendation is made, any terms and conditions recommended by the Board.

9. If the Governor has granted a pardon to an applicant who did not previously receive a positive recommendation from the Board, the Board shall conduct an administrative vote at the next scheduled Board Meeting, solely for the purpose of allowing the applicant to seek expungement pursuant to T.C.A. § 40-32-101. The Board shall consider the applicant's case along with the Governor's statements and clemency action. The Board will inform the applicant and his or her attorney prior to the Board meeting that the vote shall occur, and a decision letter shall be sent to the applicant and his or her attorney.

(e) Emergency Medical Clemency Requests. In a small percentage of cases, it is necessary and appropriate that the Board consider requests by individuals recommended for clemency by the Department of Correction's medical staff. At times, these individuals may lack competency to apply on their own behalf and the request may be made by the medical staff. These requests are made in unusual or emergency medical situations and may require immediate action by the Board. In such cases, a

(Rule 1100-01-01-.16, continued)

complete medical report and a detailed statement of the emergency situation will accompany the Board's report to the Governor.

(f) As soon as practicable after the Board's clemency recommendation, it shall forward or cause to be forwarded to the appropriate standing committees of the General Assembly, designated by the Speaker of the Senate and the Speaker of the House of Representatives, a written list of the names of all persons receiving both favorable and unfavorable recommendations.

(g) The list required by subsection (f) shall also be furnished to the appropriate Attorney General in whose district any such person was convicted.

(h) Supervision of Commutees.

1. When the Governor of the State of Tennessee commutes an offender's sentence and makes community supervision a condition of such commutation, TDOC shall assign the commutee a Probation/Parole Officer in the same manner as if the offender had been released on parole.

2. If the Probation/Parole Officer supervising such commutee has reasonable cause to believe such person has violated the conditions of his or her commutation, the Officer shall detail the circumstances of the alleged violation in the form of an affidavit and transmit such affidavit to the Director of Probation and Parole. In no event shall the Probation/Parole Officer arrest, detain, or cause the arrest or detention of a commutee unless done on the basis of a warrant from the Governor.

3. The Director shall review and shall immediately transmit, in appropriate cases, affidavits received pursuant to this subsection, to the office of the Governor.

4. At the request of the Governor, the Board shall conduct a commutation revocation hearing to determine if a commutee has violated the conditions of his or her commutation. The Board will conduct such hearings in the same manner and use the same procedures as parole revocation hearings are conducted pursuant to rule 1100-01-01-.14.

5. At the conclusion of the hearing the Board shall transmit the record of such hearing, together with the Board's non-binding findings and recommendations concerning the alleged commutation violation, to the Governor.

Authority: *T.C.A. §§ 40-27-101, 40-27-102, 40-27-104, 40-28-104, 40-28-106, 40-28-107, 40-28-114, 40-28-126, and 40-32-101.* ***Administrative History:*** *Original rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019. Amendments filed December 23, 2019; effective March 22, 2020.*