

# STATE BOARD OF PARDONS AND PAROLES



## NOTICE OF INTENT TO CONSIDER AMENDING AN AGENCY RULE

### Synopsis

Rule 475-3-.05 regarding Parole Consideration, specifically paragraphs (1), (10)(a), (11)(a), (12)(a), (15)(a), (17)(a), and (18) are in need of revision to assign crime severity levels to certain crimes and make grammatical and syntactical changes. The current Rule assigns some attempted serious violent felonies a Crime Severity Level of VIII and some attempted serious violent felonies a Crime Severity Level of VII; the proposed revision assigns all of them a Crime Severity Level of VIII. The proposed revision also assigns murder in the second degree and first and second degree home invasion a Crime Severity Level of VIII. The current Rule assigns a probation revocation based on a Level VIII offense a Crime Severity Level of VI; the proposed revision changes the term "probation revocation" to "violations of probation," adds violations of parole, and clarifies that these violations are based on an arrest or commission of a Level VIII offense with no conviction. The proposed revision also assigns conspiracy to commit identity fraud, computer theft, computer trespass, computer invasion of privacy, and computer forgery a Crime Severity Level of III; violation of the Georgia Securities Act a Crime Severity Level of I; and provides that attempted Level II through Level VII offenses will be assigned the Crime Severity Level one level below that of the consummated offense.

Therefore, in accordance with the Board's grant of authority pursuant to the Georgia Constitution, and in accordance with O.C.G.A. §§ 42-9-1, 42-9-40, 42-9-45, and 50-13-4, notice is hereby given to the public of the Board's intent to amend paragraphs (1), (10)(a), (11)(a), (12)(a), (15)(a), (17)(a), and (18) of Rule 475-3-.05 pertaining to Parole Consideration.

### Proposal

Note: Lined through text is proposed to be deleted; underlined text is proposed to be added.

Pursuant to the provision(s) of the Administrative Procedures Act, notice is hereby given to all interested persons that the State Board of Pardons and Paroles proposes to amend paragraphs (1), (10)(a), (11)(a), (12)(a), (15)(a), (17)(a), and (18) of Rule 475-3-.05 pertaining to Parole Consideration, as follows:

#### **475-3-.05 Parole Consideration**

(1) Consideration is automatic for all offenders serving sentences imposed by a court of this State and who are in the custody of the Department of Corrections, except that no parole consideration shall ever be given to offenders serving sentences for which parole is not authorized by law. Generally, no application is required. However, persons ordered to serve

consecutive county misdemeanor confinement sentences exceeding 12 months and persons sentenced pursuant to subsection (c), (d), (e), and/or (l) of O.C.G.A. § 16-13-30 and who are recidivists pursuant to O.C.G.A. § 17-10-7(c) who have met eligibility requirements for consideration as established in subsection (b)(3) and/or (b)(4) of O.C.G.A. § 42-9-45 must request consideration. The request may be in any written form and must contain the name under which the offender was convicted, where the offender is incarcerated, the offense(s), the date and court of conviction, and the length of sentence(s). The request should be submitted as close to the time of eligibility as possible to allow enough time for necessary investigations.

(10)(a) Offenders considered for parole using the Parole Decision Guidelines System who have been convicted of the following crimes shall be assigned a Crime Severity Level of VIII: attempted murder, murder in the second degree, voluntary manslaughter, involuntary manslaughter, statutory rape, attempted rape, homicide by vehicle while under the influence of alcohol/drugs or as a habitual traffic violator, feticide by vehicle, aggravated battery, aggravated battery on a police officer, aggravated assault, aggravated assault on a police officer, ~~attempted rape~~ attempted aggravated child molestation, child molestation, attempted armed robbery, robbery, attempted kidnapping, attempted aggravated sexual battery, attempted aggravated sodomy, ~~involuntary manslaughter~~, hijacking a motor vehicle, bus hijacking, ~~criminal attempt to murder~~, ~~aggravated assault~~, enticing a child for an indecent purpose, cruelty to children, ~~child molestation~~, ~~feticide by vehicle~~, incest, ~~bus hijacking~~, robbery, aggravated stalking, aggravated battery, burglary of an occupied dwelling, first and second degree home invasion, trafficking in sexual/labor servitude of a victim under age 18 (coerced or deceived), trafficking in sexual/labor servitude of a victim developmentally disabled victim (any age), VGCSA - Cocaine or Methamphetamine -400 or more grams, VGCSA - Marijuana - 10,000 or more pounds, or VGCSA - Opiates- 28 or more grams.

(11)(a) Offenders considered for parole using the Parole Decision Guidelines System who are incarcerated for the following offenses shall be assigned a Crime Severity Level of VII: ~~attempted aggravated child molestation~~, ~~attempted armed robbery~~, ~~attempted kidnapping~~, ~~attempted aggravated sexual battery~~, ~~attempted aggravated sodomy~~, pimping or pandering a child under the age of 16, RICO, probation revocation based on a Serious Violent Felony, or trafficking in sexual/labor servitude (victim of any age and no coercion/deception).

(12)(a) Offenders considered for parole using the Parole Decision Guidelines System who are incarcerated for the following offenses shall be assigned a Crime Severity Level of VI: VGCSA - Cocaine or Methamphetamine - 200 to 399 grams, VGCSA - Marijuana - 2,000 to 9,999 pounds, or VGCSA - Opiates - 0 to 27 grams, violations of probation or parole based on an arrest or commission of a Level VIII offense with no conviction, ~~probation revocation based on a Level VIII offense~~, burglary of an unoccupied or vacant dwelling, pimping or pandering a child age 16 or 17, or homicide by vehicle (not DUI/habitual violator).

(15)(a) Offenders considered for parole using the Parole Decision Guidelines System who are incarcerated for the following offenses shall be assigned a Crime Severity Level of III: burglary - non-dwelling - two to five counts - \$2,001 to \$5,000, credit card fraud- more than 10 counts or \$1,000, criminal damage - life in danger or over \$2,000, destroying or injuring police dog or horse, forgery I - over 10 counts or \$1,000, possession of a firearm by a convicted felon,

manufacturing Methamphetamine - 1st offense, obstruction of officer, possession/theft of material to manufacture illegal drugs - 2nd offense, terroristic threat, theft - \$25,000 or more, theft of vehicle - for profit or 2nd and 3rd counts not for profit or 3rd offense, or VGCSA - 2<sup>nd</sup> sale or 3<sup>rd</sup> or greater possession, conspiracy to commit identity fraud, computer theft, computer trespass, computer invasion of privacy, computer forgery.

(17) (a) Offenders considered for parole using the Parole Decision Guidelines System who are incarcerated for the following offenses shall be assigned a Crime Severity Level of I: bad checks - under \$2,000, burglary - non-dwelling, less than \$300 - one count, credit card theft, criminal interference with government property, escape - no weapon, aiding escape - no weapon, forgery II - 10 or fewer counts or less than \$1,000, habitual violator, possession/passing forged prescriptions - 1st offense, possession of tools to commit a crime, theft -\$4,999 or less, theft of vehicle - not for profit - one count - 1<sup>st</sup> offense, or VGCSA - possession - 1<sup>st</sup> offense, violation of the Georgia Securities Act.

(18) Offenders considered for parole using the Parole Decision Guidelines System who are incarcerated for an offense or offenses not otherwise specified in this rule will be assigned the Crime Severity Level of the specified offense most similar to their most serious offense. Attempted Level II through Level VII offenses will be assigned the Crime Severity Level one level below that of the consummated offense.

The State Board of Pardons and Paroles will receive views presented by interested parties and otherwise consider this amendment of its Agency Rules at its next monthly open meeting on Tuesday, June 8, 2021, in the Board's Hearing Room, 5<sup>th</sup> floor, 2 Martin Luther King, Jr. Dr., Atlanta, Georgia. Written comments regarding this matter should be forwarded to the Board's Legal Office at 2 M.L.K. Jr. Dr., Atlanta, Georgia 30334. If you have any questions, you should call the Board's Legal Office at 404.651.6671.

**Citation of Applicable Authority:** Ga.Const.1983 Art. 4, § 2, ¶ 2; O.C.G.A. § 42-9-1; O.C.G.A. § 42-9-40; O.C.G.A. § 42-9-45.

This 4th day of May, 2021.

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La'Quandra L. Smith, Esq.  
Executive Secretary to the Board