

## **RETROACTIVE ISSUE ALREADY ADDRESSED**

**FISCAL IMPACT - LESS THAN 90% POLICY BECAUSE SOME OFFENDERS WILL RECEIVE SOMETHING LESS THAN 90% RECOMMENDATION WHEN FORMERLY THEY ALL WOULD HAVE RECEIVED 90% RECOMMENDATION - DRUG CASES NOT A SIGNIFICANT NUMBER - MOST DRUG OFFENDERS AT THIS LEVEL DO FEDERAL TIME**

**STATE SECRET ISSUE - MUCH OF THE INFORMATION IN FILE COMES DIRECTLY FROM NOW OPEN DISTRICT ATTORNEY FILE, THE OFFENDER'S FAMILY OR THE OFFENDER HIMSELF - THE INFORMATION THAT IS NOT AVAILABLE TO THE OFFENDER IS THE SUBJECTIVE COMMENTS OF VICTIMS, LAW ENFORCEMENT OFFICIALS, MEMBERS OF THE COMMUNITY, PRISON OFFICIALS AND THE BOARD'S STAFF. OFFENDERS MAY NOT AGREE WITH THE SUBJECTIVE OPINIONS EXPRESSED, BUT THAT DOES NOT MAKE THESE OPINIONS FALSE.**

**OCTOBER 4 - INITIALLY ADOPTED RULE CREATING NEW LEVEL 8 CRIME SEVERITY LEVEL- ASSIGNED FORMERLY "90% POLICY" OFFENSES & MOST SERIOUS DRUG OFFENSES TO LEVEL EIGHT**

**OFFENDERS RATED AS POOR PAROLE RISK USING EMPIRICALLY DERIVED PAROLE SUCCESS FACTORS WILL RECEIVE PAROLE GUIDELINES RECOMMENDATION OF 90% AVERAGE PAROLE RISK OFFENDERS - 75%; EXCELLENT PAROLE RISK OFFENDERS - 65%**

**HISTORICALLY, 35% INMATES SCORE "POOR" - 40% SCORE "AVERAGE" - 25% SCORE EXCELLENT:**

**EXPECT THAT 75% OFFENDERS GOVERNED BY THIS RULE WILL RECEIVE GUIDELINES RECOMMENDATIONS OF 75% OR 90% OF PRISON SENTENCE**

**THIS RULE WILL STAND UP TO LEGAL CHALLENGES THAT THE BLANKET 90% POLICY MIGHT NOT HAVE, BECAUSE IT COMPLIES WITH THE STATUTORY REQUIREMENT PAROLE GUIDELINES RATE THE CRIMES, BUT MUST ALSO RATE THE OFFENDERS**

**RULE WILL NOT APPLY TO ANY OFFENDER WHO COMMITTED HIS OR HER OFFENSE PRIOR TO THE ADOPTION OF THIS RULE**

**CURRENT OFFENDERS WILL CONTINUE TO RECEIVE PAROLE GUIDELINES RECOMMENDATIONS BASED UPON THE CURRENT SEVEN CRIME LEVEL GRID - NO RETROACTIVE APPLICATION OF RULE**

**RULE HAS BEEN REVIEWED BY THE LAW DEPARTMENT**

**APPROPRIATE LEGISLATIVE OFFICIALS HAVE BEEN NOTIFIED**

**WRITTEN COMMENT HAS BEEN RECEIVED AND REVIEWED**

**NOW TIME FOR ORAL COMMENT ON RULE**

**STATUTORY REQUIREMENTS SATISFIED TO ADOPT THE RULE -**

**BOARD MAY NOW VOTE TO ADOPT RULE, DEFEAT RULE OR TO POSTPONE A FINALLY VOTE UNTIL THE NEXT BOARD MEETING WHICH IS SCHEDULED FOR DECEMBER 5.**

**MATTER OF EFFECTIVE DATE OF RULE - CAN'T BE RETROACTIVE - RECOMMEND MAKING EFFECTIVE DATE FOR OFFENSES COMMITTED ON OR AFTER JAN. 1, 2006**

*BRIGHT LINE*

**RULE FORM**

Rule Number (s) 475-3-05

\_\_\_\_\_

\_\_\_\_\_

Notice to Legislative Counsel Oct. 4, 2005

Board Meeting & Rule Proposal Posted 27 Sep 05

Fulton Daily Notification 28 Sep 05

Initial Proposal at Board Meeting 4 Oct 05

Rule (final) Adoption at Board Meeting \_\_\_\_\_

Adopted Rule filed with Secretary of State 4 Oct 05

Letter from Secretary of State 7 Oct 05

Effective date of New Rule (20 days from SOS file date) \_\_\_\_\_

*Rule Posted website & Central office*

# STATE BOARD OF PARDONS AND PAROLES



Milton E. "Buddy" Nix, Jr.  
Chairman

2 Martin Luther King, Jr., Drive, S.E.  
Balcony Level, East Tower  
Atlanta, Georgia 30334-4909  
(404) 656-5651  
[www.pap.state.ga.us](http://www.pap.state.ga.us)

Dr. Betty Ann Cook  
Vice-Chairman  
Garfield Hammonds, Jr.  
Member  
Dr. Eugene P. Walker  
Member  
J. Michael Light  
Member

May 30, 2003

Coral G. White  
Deputy Director  
Administrative Procedure Division  
Office of the Secretary of State  
Suite 816, Twin Towers West  
Atlanta, GA 30334

Re: Letter of Transmittal  
Board of Pardons and Paroles  
Rule 475-2-.01(2)

Dear Ms. White:

In accordance with the provisions of the Georgia Administrative Procedures Act and Secretary of State Rule 590-2-1-.04, please see the electronically submitted rule amendment referenced above, along with the Certification Page. Also faxed to you pursuant to the rule are an original rule, Certification Page and letter of transmittal.

Should questions arise concerning the amendment, please contact me at 404-651-6671.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol A. Callaway", is written over a horizontal line.

Carol A. Callaway  
Legal Advisor and Secretary to the Board

## COMMITTEE MEMBERS:

Speaker of the House  
 President of the Senate  
 Secretary of the Senate  
 Clerk of the House  
 President Pro Tempore  
 Speaker Pro Tempore  
 Senate Majority Leader  
 House Majority Leader  
 Senate Minority Leader  
 House Minority Leader



## LEGISLATIVE SERVICES COMMITTEE

## OFFICE OF LEGISLATIVE COUNSEL

316 STATE CAPITOL

ATLANTA, GA 30334

(404) 656-5000

October 7, 2005

## COMMITTEE MEMBERS:

Chairperson, Senate Appropriations  
 Committee  
 Chairperson, Senate Banking and Financial  
 Institutions Committee  
 Chairperson, Senate Judiciary Committee  
 Chairperson, House Appropriations  
 Committee  
 Chairperson, House Judiciary Committee  
 Chairperson, House Ways and Means  
 Committee

Received

OCT 13 2005

Legal Services

Honorable Johnny Grant  
 Senator, District 25  
 321-A Coverdell Office Building  
 BY HAND

Honorable Terry Barnard  
 Representative, District 166  
 401-C State Capitol  
 BY HAND

Dear Senator Grant and Representative Barnard:

Pursuant to the provisions of the "Georgia Administrative Procedure Act" (Chapter 13 of Title 50 of the Official Code of Georgia Annotated), I am enclosing a notice of proposed rules of the State Board of Pardons and Paroles for your review as the chairpersons of the appropriate committees of reference. Upon request, I will send a copy of the notice with the proposed rules to any committee member.

Sincerely yours,

Sewell R. Brumby  
 Legislative Counsel

SRB/dc

Attachments

cc: Honorable Mark Taylor  
 Honorable Glenn Richardson  
 Senate Research Office  
 House Research Office  
 Mr. Milton E. "Buddy" Nix, Jr.  
 Mr. Tracy D. Masters



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Dr. Eugene P. Walker  
Member  
L. Gale Buckner  
Member

Milton E. "Buddy" Nix, Jr.  
Chairman

October 4, 2005

Sewell Brumby  
Legislative Counsel  
316 State Capitol  
Atlanta, Ga. 30334

Re: Proposed Amendment to an Agency Rule

Dear Mr. Brumby:

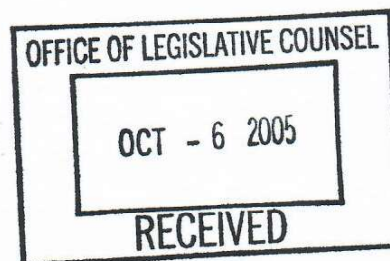
Attached you will find three copies of a proposed amendment to Board Rule 475-3-.05. The amendment was proposed at an open meeting of the Parole Board on this date and will be considered at the next Board meeting on November 18, 2005. Said proposed amendment has been reviewed by Senior Assistant Attorney General Chris Brasher. If you have any questions, please call me at 404.651.6671.

Sincerely,

A handwritten signature in black ink that reads "Tracy D. Masters".

Tracy D. Masters  
Director of Legal Services

Attachment



Equal Opportunity Employer  
Recipient of the Council of State Governments' Innovations Award  
American Probation and Parole Association's President's Award Winner  
Accredited by the Commission on Accreditation for Corrections/American Correctional Association

STATE BOARD OF PARDONS AND PAROLES



NOTICE OF INTENT TO CONSIDER AMENDING AN AGENCY RULE

Synopsis

The Board finds that its 90% policy for certain high level offenses is subject to legal challenge that requires the Board to cease using it. However, the Board believes that offenders convicted of the offenses formerly governed by the 90% policy should serve long prison terms. The Board also believes that the most serious drug offenders should receive similar treatment. Therefore, in accordance with the Board's grant of authority pursuant to O.C.G.A. § 42-9-45 and 42-9-40, notice is hereby given to the public of the Board's intent to amend its rules pertaining to parole consideration as it relates to the Parole Decision Guidelines.

Proposal

Note: Underlined text is proposed to be added.

Pursuant to the provision of the Administrative Procedures Act, notice is hereby given to all interested persons that the State Board of Pardons and Paroles proposes to amend its Agency Rule 475-3-.05, relating to Parole Consideration, by inserting a new paragraph seven at the end of said rule to read as follows:

PAROLE BOARD RULE 475-3-.05 Parole Consideration. Amended.

(7)(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: voluntary manslaughter, statutory rape, homicide by vehicle while under the influence of alcohol/drugs or as a habitual traffic violator, aggravated battery on a police officer, aggravated assault on a police officer, attempted rape, involuntary manslaughter, hijacking a motor vehicle, criminal attempt to murder, aggravated assault (with injury or weapon), 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 residence, VGCSA - Cocaine or Methamphetamine – 400 or more grams, VGCSA - Marijuana - 10,000 or more pounds, or VGCSA - Opiates – 28 or more grams.

(b) Crime Severity Level VIII offenders with a Parole Success Score of 0 to 8 shall receive a Parole Guidelines recommendation of 90% of the prison sentence.

(c) Crime Severity Level VIII offenders with a Parole Success Score of 9 to 13 shall receive a Parole Guidelines recommendation of 75% of the prison sentence.

(d) Crime Severity Level VIII offenders with a Parole Success Score of 14 to 20 shall receive a Parole Guidelines recommendation of 65% of the prison sentence.

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 scheduled for 2:00 p.m. on Friday, November 18, 2005, 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. § 42-9-20; O.C.G.A. § 42-9-40; O.C.G.A. § 42-9-42; and O.C.G.A. § 42-9-45.

This 4th day of October 2005.

*Tracy D. Masters*  
Tracy D. Masters  
Secretary to the Board

## COMMITTEE MEMBERS:

Speaker of the House  
 President of the Senate  
 Secretary of the Senate  
 Clerk of the House  
 President Pro Tempore  
 Speaker Pro Tempore  
 Senate Majority Leader  
 House Majority Leader  
 Senate Minority Leader  
 House Minority Leader



## LEGISLATIVE SERVICES COMMITTEE

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October 7, 2005

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 Legislative Counsel

SRB/dc

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L. Gale Buckner  
Member

Milton E. "Buddy" Nix, Jr.  
Chairman

October 4, 2005

Sewell Brumby  
Legislative Counsel  
316 State Capitol  
Atlanta, Ga. 30334

Re: Proposed Amendment to an Agency Rule

Dear Mr. Brumby:

Attached you will find three copies of a proposed amendment to Board Rule 475-3-.05. The amendment was proposed at an open meeting of the Parole Board on this date and will be considered at the next Board meeting on November 18, 2005. Said proposed amendment has been reviewed by Senior Assistant Attorney General Chris Brasher. If you have any questions, please call me at 404.651.6671.

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This 4th day of October 2005.

*Tracy D. Masters*

Tracy D. Masters

Secretary to the Board



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October 4, 2005

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Member  
L. Gale Buckner  
Member

Milton E. "Buddy" Nix, Jr.  
Chairman

September 27, 2005

## MEMORANDUM

To: Board Members

From: Director of Legal Services 

Re: Rule to Replace 90% Policy

Attached is the synopsis of the rule that will be presented at the Board Meeting on October 4. I will read the rule into the record and then ask the Board to vote to consider adopting the rule at its next meeting on November 18, 2005. The "record" for the rule will remain open for written comment until the November meeting.

I will forward the rule to the Legislative Counsel, who will forward copies to the Speaker of the House and the Lieutenant Governor. These officials will assign the proposed rule to the chairmen of the appropriate committees. Assuming the standing committees do not file an objection to the rule, it will be brought before the Board at the November 18 meeting.

At that time an opportunity will be given for the general public to make comment. After public comment has been received at the November 18 meeting, the Board will be free to vote to adopt the rule.

I am prepared to discuss this matter or answer questions at any time.

Attachment

cc:  Director of Parole  
Director of Clemency  
Director of Public Information

# STATE BOARD OF PARDONS AND PAROLES



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