

**CERTIFICATION OF ADMINISTRATIVE RULES  
FILED WITH THE LEGISLATIVE SERVICES AGENCY  
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on the 21<sup>st</sup> day of January, 2020, and filed with the agency secretary on the 21<sup>st</sup> day of January, 2020.

AGENCY NAME: Alabama Bureau of Pardons and Paroles

Amendment  New  Repeal (Mark appropriate space)

Rule No. Chapter 640-X-3  
(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

Rule Title: Scheduling Parole Consideration

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted with written or oral comments

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XXXVIII,  
ISSUE NO. 2, AAM, DATED November 29, 2019.

Statutory Rulemaking Authority: Code of Ala. 1975 §§ 15-22-21, 37, 41-22-3

(Date Filed)  
(For LRS Use Only)

  
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Certifying Officer or his or her  
Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.

REC'D & FILED

JAN 21 2020

LEGISLATIVE SVC AGENCY

**ALABAMA BUREAU OF PARDONS AND PAROLES  
ADMINISTRATIVE CODE**

**CHAPTER 640-X-3  
SCHEDULING PAROLE CONSIDERATION**

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**640-X-3-.01**      **Intake Procedure.** As soon as practical after an inmate is convicted and sentenced to prison, Bureau staff shall prepare a file for the inmate. This file will remain current and shall be updated as to the inmate's progress in the prison system to include any investigative reports produced by the Bureau along with other documents pertinent to parole consideration. Records pertaining to an inmate's parole revocation and Parole Court process shall be included in the same file as applicable. Per statute, the contents of Bureau files and associated records shall be privileged, with the exception of any Board orders and action sheets, which are public records.

**Authors:** Meridith H. Barnes, Laura B. Mest, Greg Locklier.

**Statutory Authority:** Code of Ala. 1975, §§ 15-22-21, 25, 26.1, 28, 36, 37.

**History:** Filed September 29, 1982; **Repealed and New Rule:** Filed April 9, 2002; effective May 14, 2002; **Repealed and New Rule:** Filed January 21, 2020; **Effective:** March 16, 2020.

**640-X-3-.02**      **Scheduling Initial Parole Consideration Hearings.**

The Bureau shall schedule initial parole consideration hearings as required by statute and may only deviate from the statutory framework for initial parole consideration established by Alabama Code Section 15-22-28(e) as provided by Rule 640-X-3-.04 or as otherwise provided by law.

**Authors:** Meridith H. Barnes, Laura B. Mest, Greg Locklier.

**Statutory Authority:** Code of Ala. 1975, §§ 15-22-21, 28, 37.

**History:** **New Rule:** Filed January 21, 2020; **Effective:** March 16, 2020.

**640-X-3-.03**            **Scheduling Future Parole Consideration.** For cases in which the Board votes to deny parole, the Board may, at its discretion, determine a date for the case to be brought back up for future parole consideration. For inmates serving sentences of 20 years or less for convictions of nonviolent offenses and who are denied parole, the Board's future parole consideration date shall be set no more than two (2) years from denial. Otherwise, the Board's maximum set off for future parole consideration dates following a vote of the Board to deny parole shall not exceed five (5) years from denial.

**Authors:** Meridith H. Barnes, Laura B. Mest, Greg Locklier.

**Statutory Authority:** Code of Ala. 1975, §§ 15-22-21, 28, 37.

**History: New Rule:** Filed January 21, 2020; **Effective:** March 16, 2020.

**640-X-3-.04**            **Deviation from Initial Parole Consideration Hearing Dates.**

(1) The Bureau may deviate from Alabama Code Section 15-22-28(e) initial parole consideration hearing dates only in the following circumstances:

(a) If an inmate qualifies for the agency's Alabama Code Section 15-22-24(e) Select Review Program ("SRP"), a screening process using established criteria by which inmates who are deemed to be those parole candidates whose release would most protect public safety are scheduled on the next available parole consideration docket. Established criteria for which inmates may be deemed by the Bureau to qualify for SRP include all of the following requirements as applicable:

1. Inmate must not be serving a split sentence and must otherwise be parole eligible on all cases for which he/she is serving.
2. Inmate must not have received any violent disciplinarys within six (6) months prior to being reviewed for SRP.
3. Inmate must not be a violent offender as defined by Alabama Code Section 12-25-32(14).
4. Inmate must not be serving on a violent offense as defined by Alabama Code Section 12-25-32(15).
5. Inmate must be assessed as low or medium risk of potential violence using an actuarial risk assessment tool validated for purposes of measuring risk of re-offense for incarcerated individuals.

6. Inmate must have served the required amount of mandatory time on a drug trafficking case.

7. Inmate must not have any current or previous sex offense conviction as defined by the Alabama Sex Offender Registration and Community Notification Act, specifically Alabama Code Section 15-20A-5, as amended.

8. Inmate must not have any current or previous child abuse conviction.

9. Inmate must have served at least one (1) year on sentences of up to fifteen (15) years.

10. Inmate must have served at least two (2) years on sentences over fifteen (15) years and up to twenty (20) years.

11. Inmate must have served at least five (5) years on sentences over twenty (20) years.

12. Inmate must not have any known pending felony case (with the exception of a pending felony case with no disposition for three (3) or more years from the date of arrest on the pending case).

13. For inmates subject to mandatory release under Alabama Code Section 15-22-26.2 and within one year or less of the inmate's mandatory release, the inmate must also meet all other applicable SRP criteria listed above.

(b) If an inmate shows, by clear and convincing evidence, that he or she is more likely than not to be granted parole and that he or she would have been considered for parole on an earlier date under generally applicable rules or policies in effect on or before January 1, 2019. To show that he or she is more likely than not to be granted parole, an inmate must meet the following requirements and submit an application (Form ABPP-1) to the Bureau demonstrating his or her eligibility with all required supporting documentation:

1. Inmate must have served a minimum of five (5) years of his or her sentence.

2. Inmate must have completed any available evidence-based risk reducing programming offered by the Department of Corrections following the Department's administration of an actuarial risk assessment tool validated for purposes of measuring risk and identifying programming and other needs for incarcerated individuals.

3. Inmate must provide an official positive report from the Department of Corrections.

4. Inmate must provide letters of support from at least one of the following:

- (i) the office that prosecuted the inmate's case;
- (ii) victim or victim's representative;
- (iii) the Alabama Attorney General's Office;
- (iv) the sentencing judge or successor; or
- (v) a law enforcement official from the county of conviction, excluding Bureau probation and parole officers, correctional officers of the Department of Corrections, and retired law enforcement officers.

5. Inmate must have no violent disciplinaries during his or her present incarceration.

6. Inmate must have no disciplinaries of any kind for a minimum of three (3) years preceding his or her application for an earlier parole consideration date.

7. Inmate must be assessed as low or medium risk of potential re-offense using an actuarial risk assessment tool validated for purposes of measuring risk of re-offense for incarcerated individuals in the parole context.

(c) If an inmate qualifies for an earlier parole consideration date under subsection (b), the inmate shall be referred to the agency's Review Committee. The Review Committee shall consist of no fewer than three (3) members of Bureau Executive Staff as designated by the Director. At least one of the committee members must have five (5) years' experience in the administration of parole within Alabama's criminal justice system. By unanimous decision, the Review Committee may recommend an earlier parole consideration date, not to exceed three (3) years from the current consideration date for an inmate who sufficiently demonstrates eligibility. The Review Committee shall enter its written recommendation into the inmate's file, which entry shall indicate the agreed upon earlier parole consideration date, if any, and the names of the Review Committee members favoring or declining to favor the earlier parole consideration date.

(d) Unless an inmate has previously been denied parole or has been revoked from parole, the inmate or his or her representative may request Review Committee consideration in writing once per calendar year by submitting an application (Form ABPP-1) and all required supporting documentation demonstrating the inmate's eligibility as required by Rule 640-X-3-.04(1)(b). If an inmate has previously been denied parole or has been revoked from parole, Review Committee consideration may only be requested eighteen (18) months after the denial or revocation. Denied/revoked inmates shall be subject to the same requirements provided in Rule 640-X-3-.04(1)(b).

(2) Any recommendation to provide an inmate with an earlier parole consideration date shall be subject to legal compliance review by a Deputy Attorney General or Assistant Attorney General assigned to the Bureau in advance of the Bureau's scheduling the earlier parole consideration date and notifying the inmate. Any earlier parole consideration date found to be recommended without compliance with these rules shall be cancelled.

(3) Written notice of any proposed earlier parole consideration date scheduled pursuant to Rules 640-X-3-.04(1)(a) or (1)(b) by the Bureau shall be provided to the Governor and the Attorney General at least thirty (30) days in advance. The Governor and the Attorney General shall have fourteen (14) days from the receipt of notice to object. Any parole granted by the Board pursuant to Rules 640-X-3-.04(1)(a) or (1)(b) despite a timely objection filed by the Governor or the Attorney General shall be reversed as provided by law.

(4) Nothing in these rules shall provide any inmate with a right to an earlier date for parole consideration than the framework established by Alabama Code Section 15-22-28(e).

**Authors:** Meridith H. Barnes, Laura B. Mest, Greg Locklier.

**Statutory Authority:** Code of Ala. 1975, §§ 15-22-21, 24, 28, 37.

**History: New Rule:** Filed January 21, 2020; **Effective:** March 16, 2020.

**640-X-3-.05            Medical Parole Consideration.**

(1) On a regular basis and at least every six (6) months, geriatric, permanently incapacitated, and terminally ill inmates, as defined by Act 2017-355 ("the Medical Parole Act"), will be docketed for medical parole consideration on the next available parole consideration docket if:

(a) The inmate is eligible for parole;

(b) The inmate is not convicted of a capital offense or a sex offense; and

(c) The Department of Corrections, by and through its medical or mental health care provider, certifies the inmate qualifies as geriatric, permanently incapacitated, or terminally ill, as defined by the Medical Parole Act.

(2) These rules will serve as a standing request by the Bureau to the Department of Corrections to provide a “medical parole list” of parole eligible inmates who qualify as geriatric, permanently incapacitated, or terminally ill, as defined by the Medical Parole Act, and who are not convicted of a capital or sex offense. This list is requested from the Department at a minimum of every six months hereto forward, although the Department may refer any case that meets the above criteria at any time. Inmates on the Department’s list or otherwise referred by the Department for medical parole consideration will be classified by the Department’s medical or mental health care provider as geriatric, permanently incapacitated, or terminally ill, as applicable; such will serve as the Department’s certification required by Rule 640-X-3-.05(1)(c) of these rules.

(3) On an annual basis and pursuant to the Medical Parole Act, the Department of Corrections shall also identify all inmates who:

(a) During the previous 12 months, have spent more than 30 days in an infirmary;

(b) During the previous 12 months, received costly and frequent outside medical treatment; or

(c) Are currently suffering from a life-threatening illness whose death is determined to be imminent within 12 months.

From this group of inmates, the Department will determine, by and through, its medical or mental health care provider, whether each inmate qualifies as geriatric, permanently incapacitated, or terminally ill, as defined by the Medical Parole Act. The Department will then provide an “annual medical parole list” by January 1 of each year hereto forward to the Bureau containing the inmates so determined and classified but excluding inmates who are not parole-eligible and/or are convicted of a capital or sex offense. Inmates on this list will be placed on the next available parole docket for medical parole consideration by the Board.

(4) The Bureau may request supporting documentation, including medical/mental health records from the Department of Corrections as deemed necessary in considering an inmate for medical parole.

(5) No inmate shall be deemed to have a right to medical parole.

(6) Medical parole shall be in addition to any other release for which the inmate may be eligible.

(7) Notification of cases docketed for parole consideration pursuant to the Medical Parole Act will specify the action to be considered by the Board is a medical parole.

**Authors:** Meridith H. Barnes, Laura B. Mest, Greg Locklier.

**Statutory Authority:** Code of Ala. 1975, §§ 15-22-21, 24, 28, 37, 42, 43.

**History: New Rule:** Filed January 21, 2020; **Effective:** March 16, 2020.

**640-X-3-.06            Scheduling Parole Consideration After Revocation.**

(1) Following parole revocation for a new offense, the Bureau will schedule the inmate's next parole consideration date based on the set-off date established by the Board at revocation if the revoked case remains the longest running or controlling case. If the new offense is the longest running or controlling case, then the Board will schedule the inmate's next parole consideration date based on the new offense and in compliance with Rule 640-X-3-.02.

(2) For parole revocation resulting from a technical violation, the Bureau will schedule the inmate's next parole consideration date based on the set-off date established by the Board at revocation. In the event the Board does not establish a future parole consideration date at revocation, the inmate's next parole consideration date shall be the applicable maximum set off pursuant to Rule 640-X-3-.03.

**Authors:** Meridith H. Barnes, Laura B. Mest, Greg Locklier.

**Statutory Authority:** Code of Ala. 1975, §§ 15-22-21, 24, 28, 37.

**History: New Rule:** Filed January 21, 2020; **Effective:** March 16, 2020.