

OREGON SENTENCING GUIDELINES IMPLEMENTATION MANUAL



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NOTICE TO READER: This document should be considered as a secondary source for citations to administrative rules or statutory provisions. Generally, statutory citations to acts by the 1989 Legislative Assembly have been provided as session law. When possible a preliminary codification number has been provided. This citation to Oregon Revised Statutes is tentative and may be changed prior to final codification.

INTRODUCTION

The 1989 Oregon Legislative Assembly adopted House Bill 2250 to implement felony sentencing guidelines in the State of Oregon. Chapter 790, Oregon Laws 1989. The passage of House Bill 2250 represents the legislature's expressed approval the sentencing guidelines as adopted by administrative rules of the State Sentencing Guidelines Board (Guidelines Board). This significant change in Oregon's criminal justice system became law on July 24, 1989, upon Governor Neil Goldschmidt's signature.

The guidelines were initially developed by the Oregon Criminal Justice Council as required by the 1987 Legislative Assembly. Chapter 619, Oregon Laws 1989. These proposed guidelines were presented to the State Sentencing Guidelines Board, chaired by the Attorney General, for review, revision and ultimate adoption as administrative rules. A detailed description of the guidelines development process is included in Chapter I.

The guidelines establish presumptive sentences for felonies committed on or after November 1, 1989. This implementation manual describes how the guidelines are to be applied in the usual case. It also describes how the sentencing judge may depart if he or she finds "substantial and compelling reasons" to impose a sentence other than the presumptive sentence.

This implementation manual was designed to serve as a training tool and as a reference manual. It describes for criminal justice professionals the proper application of the guidelines. Each chapter of the manual focuses on a substantive topic and includes a discussion of relevant administrative rules and related statutory provisions. The State Sentencing Guidelines Board's official commentary appears after each rule as the Guidelines Board's statement of intent with respect to the proper application of the rule.

The Oregon Criminal Justice Council has been directed to monitor implementation of the guidelines. While the Council's primary responsibility will be to report on the impact of guidelines implementation on state and local correctional resources, it is also interested in the impact the guidelines have on the state's criminal justice professionals. If you have any questions or comments on this implementation manual or any aspect of the new guidelines system, please contact the Oregon Criminal Justice Council at the address or phone number provided on the cover sheet of this manual.

CHAPTER I

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I. STATEMENT OF PURPOSES AND PRINCIPLES

A. BACKGROUND INFORMATION: PROMULGATION PROCESS

The 1987 Oregon Legislative Assembly directed the Oregon Criminal Justice Council to develop a set of felony sentencing guidelines. Chapter 619, Oregon Laws 1987. The legislation included a specific set of parameters within which the guidelines were to be constructed. Id. Section 2. In particular, the legislation indicated that the primary functions of sentencing are: "to punish each criminal offender appropriately and insure the security of the public in person and property." Id.

Once developed, these guidelines were to be delivered to the State Sentencing Guidelines Board prior to November 1, 1988.¹ The Sentencing Board was directed to review the proposed guidelines, make any necessary revision and adopt a set of guidelines by administrative rule with a September 1, 1989 effective date. Id. Section 4. These rules were also to be presented on or before January 1, 1989 to the 1989 Legislative Assembly for its review. If the legislature did not act to the contrary the guidelines would become effective on September 1, 1989.

The guidelines were developed and adopted as required by the 1987 legislation. The Guidelines Board, however, requested and received additional rulemaking authority to make certain minor amendments to the adopted guidelines. Chapter 151, Oregon Laws 1989. Consequently, the proposed guidelines were amended on May 18, 1989. These revised guidelines were then presented to the legislature which affirmatively approved the guidelines with a postponed effective date of November 1, 1989.²

The approval legislation also expanded the Guidelines Board's rulemaking authority. In particular, the Guidelines Board was directed to adopt several very specific revisions and additions to the guidelines.³ Consequently, the final set of guidelines were adopted on September 18, 1989 and become effective on November 1, 1989.

¹ The State Sentencing Guidelines Board is composed of the executive branch representatives included as members of the Oregon Criminal Justice Council. Section 3, Chapter 619, 1987 Oregon Laws.

² The Legislative Assembly "approves the sentencing guidelines as developed by the State Sentencing Guidelines Board under Chapter 619, Oregon Laws 1987, and chapter 151, Oregon Laws 1989 (Enrolled Senate Bill 632)." Section 87, Chapter 790, Oregon Laws 1989.

³ Sections 96, 98 and 101, Chapter 790, 1989 Oregon Laws.

The current set of felony guidelines described in this manual will remain effective indefinitely. The Guidelines Board is directed to meet quarterly to review the effect of guidelines on state and local correctional resources. If the Guidelines Board determines that prison populations will "exceed or underutilize" the state's effective prison capacity, it must make such changes to the guidelines as may be necessary to keep projected prison populations consistent with prison capacity. Section 89, Chapter 790, Oregon Laws 1989. These changes will become effective immediately with legislative approval. Other changes to the guidelines may be adopted but they will be subject to biennial legislative review and approval before becoming effective.⁴

B. STATEMENT OF PURPOSES AND PRINCIPLES

As noted above, the legislative assembly established very specific criteria for the development and adoption of felony sentencing guidelines. In recognition of this legislative directive, the State Sentencing Guidelines Board adopted a Statement of Purposes and Principles.

This statement was adopted as an administrative rule and it represents the Guidelines Board's understanding of the legislature's intent with respect to the form and substance of the felony sentencing guidelines. This rule and the Guidelines Board's commentary should be consulted whenever the objectives or underlying principles of the guidelines are at issue with respect to the proper application of the guidelines.

OAR 253-02-001 STATEMENT OF PURPOSES AND PRINCIPLES. (1) The primary objectives of sentencing are to punish each offender appropriately, and to insure the security of the people in person and property, within the limits of correctional resources provided by the Legislative Assembly, local governments and the people.

(2) Sentencing guidelines are intended to forward the objectives described in section (1) by defining presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons; and presumptive punishments for post-prison or probation supervision violations, again subject to deviation.

⁴ The Oregon Criminal Justice Council and the State Sentencing Guidelines Board have been directed to develop misdemeanor guidelines prior to the 1991 Oregon Legislative Assembly. Section 91a, Chapter 790, 1989 Oregon Laws. The process and criteria for the development of misdemeanor guidelines are comparable to those applicable to felony guidelines. The misdemeanor guidelines must also be affirmatively approved by the legislative assembly before they become effective.

(3) The basic principles which underlie these guidelines are:

(a) The response of the corrections system to crime, and to violation of post-prison and probation supervision, must reflect the resources available for that response. A corrections system that overruns its resources is a system that cannot deliver its threatened punishment or its rehabilitative impact. This undermines the system's credibility with the public and the offender, and vitiates the objectives of prevention of recidivism and reformation of the offender. A corrections system that overruns its resources can produce costly litigation and the threat of loss of system control to the federal judiciary. A corrections system that overruns its resources can increase the risk to life and property within the system and to the public.

(b) Oregon's current sentencing system combines indeterminate sentences with a parole matrix. Although many citizens believe the indeterminate sentence sets the length of imprisonment, that sentence only sets an offender's maximum period of incarceration and the matrix controls actual length of stay. The frequent disparity between the indeterminate sentence length and time served under the matrix confuses and angers the public and damages the corrections system's credibility with the public. Sentences of imprisonment should represent the time an offender will actually serve, subject only to any reduction authorized by law.

(c) Under sentencing guidelines the response to many crimes will be state imprisonment. Other crimes will be punished by local penalties and restrictions imposed as part of probation. All offenders released from prison will be under post-prison supervision for a period of time. The ability of the corrections system to enforce swiftly and sternly the conditions of both probation and post-prison supervision, including by imprisonment, is crucial. Use of state institutions as the initial punishment for crime must, therefore, leave enough institutional capacity to permit imprisonment, when appropriate, for violation of probation and post-prison supervision conditions.

(d) Subject to the discretion of the sentencing judge to deviate and impose a different sentence in recognition of aggravating and mitigating circumstances, the appropriate punishment for a felony conviction should depend on the seriousness of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) Subject to the sentencing judge's discretion to deviate in recognition of aggravating and mitigating circumstances, the corrections system should seek to respond in a consistent way to like crimes combined with like criminal histories; and in a consistent way to like violations of probation and post-prison supervision conditions.

Commentary

The purposes of sentencing in Oregon and the principles that guide sentencing practices to achieve those purposes are legislative issues. This rule states the State Sentencing Guidelines Board's understanding of those purposes and principles as provided in the guidelines enabling legislation, Chapter 619, Oregon Laws 1987 (1987 legislation).

Section (1) The 1987 legislation identified two primary sentencing purposes to direct the development of guidelines: "the primary function of sentencing in this state is to punish each criminal offender appropriately and insure the security of the public in person and property" Section 2(2), 1987 legislation. The 1987 legislation also emphasizes the need to operate the state's corrections system within the limits of its resources, making explicit findings that: "the decision to imprison offenders and decisions as to the period of such imprisonment must be made on a systematic basis that will maintain institutional populations within a level for which the Legislative Assembly and the people of the state are prepared to provide . . ." Preamble. The 1987 legislation also provides that "effective capacity of state and local corrections facilities" is a relevant factor for appropriate sentencing standards, Section 2(3), and that the Oregon Criminal Justice Council (Council) should include such capacity considerations when developing guidelines. Section 2(1).

Section (2) states the role of sentencing guidelines to define presumptive punishments subject to judicial authority to depart for substantial and compelling reasons. The enabling legislation directs the creation of guidelines which provide for "a sentence within the range of sanctions provided by law for the crime or crimes involved." Section 2(1), 1987 legislation. The 1987 legislation also provides that the court "may impose a sentence outside the presumptive sentence or sentence range . . . if it finds, considering the purposes of this 1987 Act, there are substantial and compelling reasons justifying a deviation from the presumptive sentence." Section 6.

Section (3) states the basic principles underlying the guidelines as expressly set forth in the 1987 legislation or as inferred from that legislation.

Paragraph (a) states in more detail the policy noted earlier: the guidelines must conform corrections practices to available resources. This principle is not a legislative judgment that guidelines are a substitute for new resources. The 1987 legislation directed the Council to recommend additional correctional resources to the Sixty-fifth Legislative Assembly if it finds that state and local correctional resources "inappropriately limit the guidelines" with respect to the sentencing purposes defined by the 1987 legislation. Section 7(2).

Paragraph (b) recognizes the need for a sentencing system which provides truth-in-sentencing. Under the guidelines system, the sentence imposed will not be shortened by parole. The only term reductions permitted under the guidelines system will be those expressly provided by statute.

Paragraph (c) states a second major principle underlying sentencing guidelines: the maintenance of enough state institutional capacity to enforce conditions of post-prison and probation supervision with prison sanctions when appropriate. This principle is inferred from (1) the 1987 legislation's directive to include "the revocation of probation and subsequent incarceration" within the scope of sentencing guidelines, Section 2(1); and (2) the obvious need to establish effective controls over the many offenders who are supervised in the community.

Paragraph (d) states the principle that presumptive punishments should be based on the seriousness of the crime of conviction and the offender's criminal history. This principle recognizes that the legislature selected, from the many relevant factors cited in the 1987 legislation, "just deserts" and "public safety" as the primary purposes of sentencing for Oregon's criminal justice system. Section 2(a), 1987 legislation.

Paragraph (e) states another express principle of the 1987 legislation: the guidelines should reduce disparity in the corrections system's response to crime and supervision violations. The legislature stated its concern that "within the present system it is impossible to insure that the sentencing decisions of judges result in reasonably uniform and proportional use of state and local correctional resources". Preamble, 1987 legislation. A detailed analysis of the current disparity in Oregon sentencing is provided by the Oregon Criminal Justice Council in its recent report: CRIME AND PUNISHMENT IN OREGON COURTS: 1986 Felony Sentencing Practices (Oregon Criminal Justice Council, 1988).

C. EFFECTIVE DATE OF FELONY SENTENCING GUIDELINES

The original enabling legislation set September 1, 1989 as the effective date of the guidelines. Section 4, Chapter 619, Oregon Laws 1987. That legislation also provided that the guidelines would only apply to offenders sentenced for crimes committed on or after that date. Id. Section 5. The September 1st effective date, however, was postponed by the 1989 Oregon Legislative Assembly. Section 90, Chapter 790, Oregon Laws 1989. A new effective date for the guidelines was set at November 1, 1989. Consequently, the guidelines will only apply to offenders who have been convicted of a felony committed on or after November 1, 1989.

This effective date is also reflected in amendments made to ORS 137.010 Duty of Court to Ascertain and Impose Punishment. Section 6, Chapter 790, Oregon Laws 1989. Subsection (1) of this

statute requires the application of the guidelines to offenders sentenced for crimes committed on or after November 1, 1989. If the actual date of the offense cannot be established as having occurred on or after the effective date of the guidelines, the guidelines will not apply. Subsection (2).

The legislature was also clear in its intent that the guidelines should not apply retroactively to offenders who are sentenced under the current indeterminate sentencing system. Section 83, Chapter 790, Oregon Laws 1989 expressly provides that the guidelines "shall apply only to offenders sentenced for felonies committed on or after November 1, 1989."

1. Effective Date of Sentencing Guidelines

The rules of the State Sentencing Guidelines Board, as adopted pursuant to Chapter 619, Oregon Laws 1987, and Chapter 151, Oregon Laws 1989 (Enrolled Senate Bill 632), become effective on November 1, 1989. Section 90, Chapter 790, Oregon Laws 1989.

2. Scope of Application

Statutory Provision-Section 83, Chapter 790, Oregon Laws 1989:

Except as otherwise provided by law, the sentencing guidelines adopted by the State Sentencing Guidelines Board shall apply only to offenders sentenced for felonies committed on or after November 1, 1989.

a. Application of Guidelines Based on Date of Crime

Statutory Provision-ORS 137.010 (1) (as amended by Section 6, Chapter 790, Oregon Laws 1989):

(1) The statutes that define offenses impose a duty upon the court having jurisdiction to pass sentence in accordance with this section or, for felonies committed on or after November 1, 1989, in accordance with rules of the State Sentencing Guidelines Board otherwise specifically provided by law.

b. Date of Crime Unknown

Statutory Provision-ORS 137.010 (2) (as amended by Section 6, Chapter 790, Oregon Laws 1989):

(2) If it cannot be determined whether the felony was committed on or after November 1, 1989, the defendant shall be sentenced as if the felony had been committed prior to November 1, 1989.