

CHAPTER X

PRISON CREDIT AND LEAVE PROGRAMS

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X. PRISON CREDIT AND LEAVE PROGRAMS

A. PRISON TERMS: PRE-GUIDELINES SENTENCES

The 1989 Legislative Assembly made several significant statutory changes with respect to the execution of prison term sentences. While offenders sentenced for crimes committed prior to November 1, 1989 will continue to be eligible for good-time credits as provided by (ORS 421.120),¹⁶ other early release programs have been severely limited or completely eliminated.

As of November 1, 1989, the maximum amount of temporary leave that may be granted pursuant to ORS 421.165 has been reduced from 180 days to 90 days. Section 57, Chapter 790, Oregon Laws 1989. Furthermore, the program will be entirely eliminate as of November 1, 1990. Section 58, Chapter 790, Oregon Laws 1989. Consequently, no offender, whether they are sentenced under the guidelines system or the pre-guidelines sentencing system, will receive an early release from prison under the temporary leave program as of November 1, 1990.

Similarly, the Department of Corrections will no longer be allowed to grant temporary leaves as part of a work release program pursuant to ORS 144.420. Section 69, Chapter 790, Oregon Laws 1989. The recent amendment to ORS 144.420 does not restrict the Department's authority to operate a work release facility from which offenders are released for part of a day to participate in work program. It does, however, eliminate as of November 1, 1990, the Department's authority to grant temporary leaves as part of the work program. Section 71, Chapter 790, Oregon Laws 1989.

1. Good-Time Program Restrictions

Statutory Provision-ORS 421.120 (as amended by Section 56, Chapter 790, Oregon Laws 1989):

(1) Each inmate confined in execution of the judgment of sentence upon any conviction in the Department of Corrections institution, for any term other than life, and whose record of conduct shows that the inmate faithfully has observed the rules of the institution, shall be entitled to a deduction from the term of

¹⁶ This "good-time" program has been limited to offenders sentenced to prison for offenses committed prior to November 1, 1989. ORS 421.120 (as amended by Section 56, Chapter 790, Oregon Law 1989). For offenders sentenced under the guidelines system (for crimes committed on or after November 1, 1989) the "good-time" program has been replaced with an earned-credit program. Sections 60 and 61, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 421.121).

sentence to be computed as follows:

(a) From the term of a sentence of not less than six months nor more than one year, one day shall be deducted for every six days of such sentence actually served in the Department of Corrections institution.

(b) From the term of a sentence of more than one year, one day shall be deducted for every two days of such sentence actually served in the Department of Corrections institution.

(c) From the term of any sentence, one day shall be deducted for every 15 days of work actually performed in prison industry, or in meritorious work in connection with prison maintenance and operation, or of enrollment in an educational activity as certified by the educational director of the institution during the first year of prison employment or educational activity, and one day shall be deducted for every seven days of such work actually performed or educational activity certified after the first year to and including the fifth year of prison employment or educational activity certified, and one day for every six days of such work actually performed or educational activity certified after the fifth year of prison employment.

(d) From the term of any sentence, one day shall be deducted for every 10 days of work actually performed in agriculture during the first year of prison employment, and one day for every six days of such work actually performed thereafter.

(e) From the term of any sentence one day shall be deducted for every six days' work performed at work camp during the first year of prison employment, and one day for every four days thereafter. Once the four-day rate is achieved it may be applied to subsequent work or education release programs while the inmate is serving the same term.

(f) The deductions allowed in paragraphs (c), (d) and (e) of this subsection shall be in addition to those allowed in paragraphs (a) and (b) of this subsection.

(g) In this subsection, "prison employment" includes actual work in prison industry, meritorious work in connection with prison maintenance and operation, actual work in agriculture and actual work at work camp.

(h) The Department of Corrections shall develop pursuant to the rulemaking provisions of ORS 183.310 to 183.550 a uniform procedure for granting, retracting and restoring deductions allowed in paragraphs (a) to (g) of this subsection.

(2) When a paroled inmate violates any condition of parole, no deduction from the term of sentence, as provided in subsection (1) of this section, shall be made for service by such inmate in the Department of Corrections institution prior to acceptance and release on parole, except when authorized by the State Board of

Parole and Post-Prison Supervision upon recommendation of the superintendent thereof.

(3) The provisions of this section shall apply only to offenders sentenced for felonies committed prior to November 1, 1989.

2. Restrictions on the Temporary Leave Program.

Statutory Provision-ORS 421.165¹⁷ (as amended by Section 57, Chapter 790, Oregon Laws 1989):

(1) As used in this section, "temporary leave" means a leave of absence from a Department of Corrections institution.

(2) Temporary leave may be granted to allow an inmate to visit a specifically designated place or places:

(a) For a period not to exceed 30 days for the purpose of visiting the family of the inmate or a seriously ill relative, attending the funeral of a relative, obtaining medical services not otherwise available, contacting prospective employers, or for any other reason consistent with approved rehabilitation and corrections practices.

(b) For a period of not to exceed 90 days preceding an established parole release or discharge date.

(3) The Department of Corrections shall adopt rules to permit an inmate confined in a Department of Corrections institution to be granted temporary leave from the institution.

(4) Upon determining that circumstances are suitable for an inmate to be granted temporary leave, the superintendent of the Department of Corrections institution in which the inmate is confined may grant leave to the inmate and fix the duration and conditions of the leave.

(5) The provisions of this section shall apply only to persons sentenced to prison for crimes committed prior to November 1, 1989.

Statutory Provision-Section 57a, Chapter 790, Oregon Laws 1989:

The amendments to ORS 421.165 by section 57 of this Act become operative on November 1, 1989.

¹⁷ The reader should note that ORS 421.165 has also been amended by Section 1, Chapter 1024, Oregon Laws 1989. This amendment requires that offenders released to "temporary release" of more than thirty days be return to their home county. This change in the statute may alter the subsection citations provided in this manual.

3. Elimination of the Temporary Leave Program

Statutory Provision-Section 58, Chapter 790, Oregon Laws 1989:
ORS 421.165 is repealed on November 1, 1990.

4. Restriction on Work-Release Programs

Statutory Provision-ORS 144.420 (as amended by Section 69, Chapter 790, Oregon Laws 1989):

(1) The Department of Corrections shall establish and administer a work release program in which a misdemeanant or felon may participate, and if confined, be authorized to leave assigned quarters for the purpose of:

(a) Working in this state at gainful private employment that has been approved by the department.

(b) Obtaining in this state additional education, including but not limited to vocational, technical and general education.

(2) The Department of Corrections is responsible for the quartering and supervision of persons enrolled in the work release program. The Department of Corrections may house for rehabilitative purposes, in a work release facility, a parolee under the jurisdiction of the State Board of Parole and Post-Prison Supervision, with the written consent of the parolee and the approval of the Board, in accordance with procedures established by the department and the Board.

B. PRISON TERMS: GUIDELINES SENTENCES

1. Good-Time Credit Program

One of the primary objectives of the guidelines system is to establish truth-in-sentencing whereby the offender serves the actual sentence imposed. Recognizing the importance of this objective, the legislature directed the State Sentencing Guidelines to amend its purposes and principles statement for guidelines (OAR 253-02-001) to add a truth-in-sentencing statement.¹⁸ This interest in truth-in-sentencing led to the re-

¹⁸ Section 96, Chapter 790, Oregon Laws 1989 directs the State Sentencing Guidelines Board to amend OAR 253-02-001 to add the following statement:

(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

evaluation of the state's system for the execution of prison terms.

As noted above, this re-evaluation led to the phase-out of the state's temporary leave programs. It has also led to a new good-time credit program. The new system will be applicable to offenders sentenced under the guidelines system. It was designed to provide the minimum amount of credit necessary to serve as an adequate incentive for proper institutional behavior.

The 1989 Legislative Assembly created a new good-time program to provide a maximum 20 percent prison-term reduction for appropriate institutional behavior. Section 60, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 421.121). This new system will apply to all offenders sentenced under the guidelines except offenders subject to the provisions of Ballot Measure 4, General Election 1988. Ballot Measure 4 requires that certain repeat felony offenders served the sentence imposed without application of any form of good-time credit or other manner of prison term reduction.

Under the new system, all offenders will be eligible to earn credits immediately upon prison incarceration. Earned credits, however, may not be used to shorten an offender's prison term to less than six months. Section 60(3), Chapter 790, Oregon Laws 1989. This restriction applies to all offenders ordered to serve a prison term including offenders ordered to serve a prison term for a probation or post-prison supervision violation.¹⁹

The legislation creating this new good-time program directs the Department of Corrections to adopt administrative rules for its implementation. Section 61, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 421.121). The Department is directed to indicate how the credits are to be earned, retracted or restored. Consequently, the system will not only include a forfeiture provision whereby earned credits may be lost for violations of institutional rules. It should also include a mechanism whereby those lost credits may be restored for some appropriate act by the offender.

Statutory Provision-Section 60, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 421.121):

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.

¹⁹ The rules of the State Sentencing Guidelines Board expressly provide that an offender ordered to serve a prison term for a post-prison supervision violation is not eligible for earned credits or transitional leave. OAR 252-11-004(4).

(1) Except as provided in Chapter 1, Oregon Laws 1989 (Ballot Measure 4, 1988), each inmate sentenced to the custody of the department for felonies committed on or after November 1, 1989, shall be eligible for a reduction in the term of incarceration for appropriate institutional behavior, as defined by rule of the Department of Corrections.

(2) The maximum amount of time credits earned for appropriate institutional behavior shall not exceed 20 percent of the total term of incarceration in a Department of Corrections institution.

(3) The time credits shall not be used to shorten the term of actual prison confinement to less than six months.

Statutory Provision-Section 61, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 421.121):

The department shall adopt rules pursuant to the rulemaking provisions of ORS 183.310 to 183.550 to establish a process for granting, retracting and restoring the time credits earned by the offender as allowed in section 60 of this 1989 Act.

OAR 253-11-004 POST-PRISON SUPERVISION SANCTIONS. (4) An offender ordered to serve a term of prison incarceration as a sanction for a post-prison supervision violation is not eligible for earned-credit time or transitional leave.

Commentary

Section (4) provides that a term of imprisonment imposed for post-prison supervision violations may not be reduced by earned-credit time or transitional leave.

2. Emergency Leave Program

The Department of Corrections has also been authorized to establish an emergency leave program. Section 62, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 421.166). The program will permit the Department to provide inmates short-term leaves (no more than 10 days) under specified hardship circumstances. Under the program, an inmate may be allowed to attend a funeral or to visit a terminally-ill family member or seriously ill child.

Statutory Provision-Section 62, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 421.166):

The director shall establish by rule an emergency leave program. An inmate may be granted emergency leave not to exceed 10 days in length for the following purposes:

- (1) To visit a terminally ill member of the inmate's family if the member lives within the state.
- (2) To visit a gravely ill or injured child of the inmate if the child lives within the state.
- (3) To attend the funeral of a member of the inmate's immediate family if the funeral is in the state.

3. Transitional Leave

While the temporary leave program has been abolished as of November 1, 1989, the Department of Corrections has been given the authority to develop a very limited short-term transitional leave program. Section 63, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 421.168). Such a program will allow the release of an offender thirty days prior to his or her discharge date. This short-term leave should only be permitted pursuant to an appropriate transition plan. This transition plan should be integrated with the offender's release plan. It should be designed to provide the offender with specific employment, educational or other transitional opportunities which would not otherwise be available to the offender. Since this program is contrary to the truth-in-sentencing objectives of the guidelines system (OAR 253-02-001(3)(b)), it should only be granted when necessary to promote the offender's successful reintegration into the community.

As with the new good-time program, this transitional leave program does not apply to offenders sentenced pursuant to Ballot Measure 4 (General Election 1988). Furthermore, it cannot be used to shorten a prison term to less than six months. This limitation also applies to offenders ordered to serve a prison term for a post-prison supervision or probation violation. See, OAR 253-11-004.

Statutory Provision-Section 63, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 421.168):

- (1) The director shall establish by rule a short-term transitional leave program. The program shall provide inmates with an opportunity to secure appropriate transitional support when necessary for successful reintegration into the community prior to the inmate's discharge to post-prison supervision.
- (2) An inmate may submit a transition plan to the department. The plan shall indicate that the inmate has secured an employment, educational or other transitional opportunity in the community to which the offender will be released and that a leave of up to 30 days is an essential part of the offender's successful reintegration into the community.
- (3) Upon verification of the inmate's transition plan, the

department may grant a transitional leave no more than 30 days prior to the inmate's discharge date.

(4) No inmate shall be eligible for transitional leave before having served six months of prison incarceration.

(5) The department shall establish by rule a set of release conditions for offenders released on transitional leave status. An offender on transitional leave status shall be subject to immediate return to prison for any violation of the conditions of release.

(6) The provisions of this section do not apply to inmates whose sentences were imposed under Chapter 1, Oregon Laws 1989 (Ballot Measure 4, 1988).

OAR 253-11-004 POST-PRISON SUPERVISION SANCTIONS. (4) An offender ordered to serve a term of prison incarceration as a sanction for a post-prison supervision violation is not eligible for earned-credit time or transitional leave.

Commentary

Section (4) provides that a term of imprisonment imposed for post-prison supervision violations may not be reduced by earned-credit time or transitional leave.