

CHAPTER XI

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XI. PRISON RELEASE AND POST-PRISON SUPERVISION

A. BOARD TITLE, COMPOSITION AND MANAGEMENT

After the implementation of sentencing guidelines, the state will have two offender populations; offenders sentenced under the pre-guidelines sentencing system and those sentenced pursuant to the guidelines. The former group of offenders will remain eligible for parole when sentenced to prison. The latter group of offenders, however, will not be eligible for parole. Under the new guidelines system, these offenders will receive a term of post-prison supervision as part of the prison sentence imposed by the sentencing judge.

Consequently, for some period of time following the implementation of the guidelines, the Board of Parole and Post-Prison Supervision will serve two primary functions. For offender sentenced under the pre-guidelines sentencing system, the Board will remain responsible for setting parole dates and the other related tasks associated with the parole system. For offenders sentenced under the guidelines system, the Board will be responsible for setting the conditions of post-prison supervision and imposing supervision violation sanctions. The Board's name has been changed to the Board of Parole and Post-Prison Supervision to represent the dual nature of its new responsibilities. Sections 22 and 23, Chapter 790, Oregon Laws 1989.

While the Board's functions are significantly altered, its responsibilities within the state's criminal justice system remain crucial to the system's effective operation. This section, therefore, will describe the Board's new responsibilities and its relationship with the Department of Corrections with respect to the community supervision of offenders.

B. BOARD RELEASE AUTHORITY

1. Authority to Release Cases Prior to Nov. 1, 1989

The Board of Parole and Post-Prison Supervision retains its traditional parole function for offenders sentenced to prison for felonies committed prior to November 1, 1989. This parole function will apply to all such offenders even though the indeterminate sentence was imposed after that date.

Statutory Provision-ORS 144.050 (as amended by Section 25, Chapter 790, Oregon Laws 1989):

Subject to applicable laws, the State Board of Parole and Post-Prison Supervision may authorize any inmate, who is committed to the legal and physical custody of the Department of

Corrections for an offense committed prior to November 1, 1989, to go upon parole subject to being arrested and detained under written order of the Board or as provided in ORS 144.350. The state Board may establish rules applicable to parole.

Statutory Provision-Section 28, Chapter 790, Oregon Laws 1989:

The provisions of ORS 144.110, 144.120, 144.122, 144.125, 144.130, 144.135, 144.185, 144.223, 144.245, 144.270 and 144.305 apply only to offenders convicted of a crime committed prior to November 1, 1989, and to offenders convicted of aggravated murder regardless of the date of the crime.

2. Terminally Ill

The legislature has also authorized the Board of Parole and Post-Prison Supervision to develop a program to release terminally ill inmates. When established, this program will apply to all offenders.

Statutory Provision-Section 27a, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.126):

The State Board of Parole and Post-Prison Supervision may advance the release date of a prisoner suffering from a terminal illness who was sentenced in accordance with rules of the State Sentencing Guidelines Board.

3. Adopt Rules

The Board of Parole and Post-Prison Supervision possesses significant rulemaking authority. It retains all of its current rulemaking authority and it has also received additional authority to adopt rules related to post-prison supervision.

Statutory Provision-ORS 144.140 (as amended by Section 27b, Chapter 790, Oregon Laws 1989):

(1) The State Board of Parole and Post-Prison Supervision may adopt rules to carry out its responsibilities under the sentencing guidelines system.

(2) The Board shall comply with the rulemaking provisions of ORS 183.310 to 183.550 in the adoption, amendment or repeal of rules pursuant to ORS 144.125, 144.130, 144.395 and 144.780 to 144.790 or this section.

C. OFFENDER RELEASE PROCEDURES

1. Preparation and Adoption of Offender Release Plans

A release plan must be developed for every inmate sentenced to prison under the guidelines system.²⁰ Such a release plan will be developed by the Department of Corrections and approved by the Board of Parole and Post-Prison Supervision. Sections 32, 32a and 32b, Chapter 790, Oregon Laws 1989 (anticipated codification citations ORS 144.096, ORS 144.102 and ORS 144.098, respectively) and OAR 253-11-001.²¹ This release plan shall contain the conditions of post-prison supervision and should be structured to promote the offender's re-integration into the community.

a. Release Plan Development

The Department of Corrections is directed to present a release plan for Board approval at least 60 days prior to the offender's release. Section 32, Chapter 790, Oregon Laws 1989 and OAR 253-11-001. The proposed release plan must include the following information:

- a. a description of support services and programs;
- b. the recommended conditions of supervision;
- c. the proposed level of supervision;
- d. any other public-safety conditions;
- e. restitution payment schedule; and
- f. conditions necessary for offender rehabilitation.

The release plan requirements described in Section 32 of Chapter 790, Oregon Laws 1989, are also included in rules of State Sentencing Guidelines Board as OAR 253-11-001. A minor discrepancy, however, exists between the statutory provision and the administrative rule. The rule does not require a restitution payment schedule as part of the release plan. This discrepancy

²⁰ The requirement for a release plan applies to any offender released from prison after having served a term of incarceration pursuant to a prison sentence or as a probation revocation sanction. When an offender is released from prison after having served a prison-term sanction for a post-prison supervision violation, the Board should consider whether the offender's original release plan should be modified prior to his or her return to the community.

²¹ Many of the requirements related to the development and final adoption of the release plan have been established by statute and administrative rule. Section 32 and 32b, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.096 and ORS 144.098) and OAR 253-11-001. If any discrepancy exists between the related administrative rules and the statutes, the discrepancy should be resolved in favor of the statutory provision.

should be resolved with due deference to the statutory provision and each release plan should include a restitution payment schedule, if so required.

Statutory Provision-Section 32, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.096):

- (1) The Department of Corrections shall prepare a proposed release plan for each prisoner prior to the prisoner's release from prison. The proposed release plan shall be submitted to the State Board of Parole and Post-Prison Supervision not less than 60 days prior to the prisoner's release and shall include:
 - (a) A description of support services and program opportunities available to the prisoner;
 - (b) The recommended conditions of post-prison supervision;
 - (c) The level of supervision that shall be consistent with the prisoner's risk assessment classification;
 - (d) Any other conditions and requirements as may be necessary to promote public safety;
 - (e) For all inmates whose sentence to make restitution under ORS 137.106 has been suspended for the term of imprisonment, a restitution payment schedule; and
 - (f) Any conditions necessary to assist the reformation of the offender.
- (2) If the proposed release plan is not approved by the Board, the Board shall return the plan to the department with its recommended modifications. The department shall submit a revised plan to the Board not less than 10 days prior to the prisoner's release.
- (3) If the revised plan is not acceptable to the Board, the Board shall determine the provisions of the final plan prior to the prisoner's release.

b. Board Review of the Release Plan

When the Board reviews the release plan it may interview the offender and may consider any of the following information: any available physical, psychiatric or psychological examinations of the offender; any available offender evaluations including the presentence investigation report; the offender's prison conduct file; and any other information relevant to the prisoner's reintegration into the community. Section 32b, Chapter 790, Oregon Laws 1989.

The Board may also be required to consider information submitted by the victim. The victim may request notification of the Board's impending consideration of the offender's release plan. If such a request is received, the Board shall provide the victim an opportunity to submit information concerning the offender and the crime. The victim's comments must be considered by the Board when adopting the release plan. Section 32b(2), Chapter 790,

Oregon Laws 1989.

After the Board considers the necessary information, it may approve the plan or return it to the Department with recommended changes. Section 32(2), Chapter 790, Oregon Laws 1989. If the Board rejects the proposed release plan, the Department must submit a revised plan to the Board within 10 days prior to the offender's release. If the revised plan is acceptable, the Board will approve it. If it remains objectionable, the Board will draft its own plan prior to the release of the offender.

When the Board adopts the offender's release plan, a copy of the conditions of supervision included in the release plan shall be given to the offender. Section 32a, Chapter 790, Oregon Laws 1989. The conditions which may be imposed are comparable to the conditions which may be imposed as part of parole.

Statutory Provision-Section 32b, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.098):

(1) When the State Board of Parole and Post-Prison Supervision reviews a prisoner's release plan as required by section 32 of this 1989 Act, it may interview the prisoner and may review the following information:

- (a) Reports of any physical, psychiatric or psychological examinations of the prisoner;
- (b) The presentence investigation report specified by ORS 144.790 or, if no such report has been prepared, a report of similar content prepared by institutional staff;
- (c) The record of the prisoner's conduct during confinement; and
- (d) Any other information relevant to the prisoner's reintegration into the community that may be submitted by the prisoner, the prisoner's attorney, the victim of the crime, the Department of Corrections or any other person.

(2) The Board must attempt to notify the victim before the review of the release plan by sending written notice to the victim if the victim requests to be notified and furnishes the Board with a current address. The notice must inform the victim that the victim may submit information concerning the prisoner and the crime to the Board for the Board's consideration.

(3) The department shall provide to the Board any psychiatric or psychological reports held by the department regarding the prisoner. However, if the psychiatrist or psychologist who prepared the report or any treating psychiatrist or psychologist determines that disclosure to the prisoner of the contents of the report would be detrimental to the prisoner's mental or emotional health, the psychiatrist or psychologist may indorse upon the report a recommendation that it not be disclosed to the prisoner. The department may withhold from the Board any report so indorsed.

2. Conditions of Post-Prison Supervision

a. Conditions of Supervision

Both statutory provisions and administrative rules define the type of conditions that may be imposed as part of post-prison supervision. These provisions do not significantly alter the type of supervisory conditions that may be imposed by the Board of Parole and Post-Prison Supervision.

OAR 253-11-001 CONDITIONS OF POST-PRISON SUPERVISION. (1) The Department shall prepare a proposed release plan for each offender prior to the offender's release from prison.

(2) The proposed release plan shall be submitted to the Board not less than sixty (60) days prior to the offender's release and shall include:

(a) A description of support services and program opportunities available to the offender;

(b) The recommended conditions of supervision;

(c) The level of supervision which shall be consistent with the offender's risk assessment classification;

(d) Any conditions necessary to assist the reformation of the offender; and

(e) Any other conditions and requirements as may be necessary to promote public safety.

(3) If the proposed release plan is not approved by the Board, the Board shall return the plan to the Department with its recommended modifications. The Department shall submit a revised plan to the Board not less than ten days prior to the offender's release.

(4) If the revised plan is not acceptable to the Board, the Board shall determine the provisions of the final plan prior to the offender's release.

Commentary

This rule defines the respective responsibilities of the Department of Corrections and Board of Parole and Post-Prison Supervision to prepare and administer a release plan for each imprisoned offender released to post-prison supervision.

Section (1) requires the Department to prepare a proposed release plan before the offender's release from prison.

Section (2) directs the Department to submit the plan to the Board at least 60 days before the offender's release and specifies the required contents of the plan.

Section (3) requires the Board to return any rejected release plan to the Department with recommended modifications. The Department must then submit a revised plan in response to the Board's recommended modifications at least 10 days before the offender's release.

Section (4) directs the Board to adopt its own final release plan for the offender if the Department's revised plan is unacceptable.

Statutory Provision-Section 32a, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.102):

(1) The State Board of Parole and Post-Prison Supervision shall specify in writing the conditions of post-prison supervision imposed under section 32 of this 1989 Act. A copy of the conditions shall be given to the person upon release from prison.

(2) The Board shall determine, and may at any time modify, the conditions of post-prison supervision which may include, among other conditions, that the person shall:

(a) Comply with the conditions of post-prison supervision as specified by the Board.

(b) Be under the supervision of the Department of Corrections and its representatives and abide by their direction and counsel.

(c) Answer all reasonable inquiries of the Board or the department's supervisory authority.

(d) Report to the parole officer as directed by the Board or the department's supervisory authority.

(e) Not own, possess or be in control of any weapon.

(f) Respect and obey all municipal, county, state and federal laws.

(g) Understand that the Board may, at its discretion, punish violations of post-prison supervision.

(3) The Board may establish such special conditions as it shall determine are necessary because of the individual circumstances of the person under post-prison supervision.

(4) The Board may require the person to pay, as a condition of post-prison supervision, any compensatory fines, restitution or attorney fees imposed by the sentencing court.

(5) A person's failure to apply for or accept employment at any workplace where there is a labor dispute in progress may not constitute a violation of the conditions of post-prison supervision. As used in this subsection, "labor dispute" has the meaning given that term in ORS 662.010.

b. Revised Conditions of Supervision

When the Department of Corrections or its designated representative determines that the conditions of post-prison

supervision should be revised, an appropriate recommendation may be made to the Board of Parole and Post-Prison Supervision. Section 34, Chapter 790, Oregon Laws 1989 and OAR 253-11-003. Adjustments to the conditions of supervision may increase or decrease the restrictions associated with the supervisory term. The supervisory authority should recommend additional conditions of supervision only when necessary to ensure the offender's appropriate behavior in the community.

Any recommendation submitted by the supervisory authority to the Board should include a brief description of the reasons for the proposed change in supervisory conditions.

3. Notification of Offender Release

As is now required for parole, the Board must give notification to certain officials when an offender is to be released to post-prison supervision. ORS 144.260. When an offender is to be released, the Board must notify the Department of Corrections, the sentencing judge, the district attorney and sheriff or arresting agency. Similarly, if the Department of Corrections releases the offender, the Department must notify the sentencing judge and the district attorney at least 30 days prior to the offender's release. Both the Board and the Department must also notify the victim if so requested.

D. ADMINISTRATION OF POST-PRISON SUPERVISION

The Department of Corrections or a corrections agency designated by the Department shall supervise all offenders released to the community on post-prison supervision. Section 33, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.104 (1)), OAR 253-05-003 and OAR 253-11-002. The initial level of supervision shall be "consistent with the prisoner's risk assessment classification" as recommended by the Department as part of the offender's release plan. Section 32(1)(c), Chapter 790, Oregon Laws 1989 and OAR 253-11-001(2)(c).

Offenders released to post-prison supervision should be supervised in a fashion comparable to that supervision used for parolees. As indicated above, the supervisory authority shall be "the Department of Corrections or a corrections agency designated by the Department." Section 33, Chapter 790, Oregon Laws 1989, OAR 253-05-003 and OAR 253-11-002. Consequently, the supervisory agent shall be an employee the Department or an appropriate community corrections office.

Any offender sentenced to serve a term of post-prison supervision shall be responsible for any supervisory fees required pursuant to ORS 423.570. This supervisory fee is required for any offender under community supervision. If imposed, the fee shall be a monthly obligation to offset the costs of supervision. The fee shall be set by the Department of Corrections at a minimum of

\$25 per month. The procedures for the collection of this fee should be consistent with system now used with respect to parolees.

OAR 253-05-003 SUPERVISORY RESPONSIBILITY. When a term of post-prison supervision is imposed as part of a sentence, the offender shall serve the term of supervision in the community under the supervision of the Department of Corrections or a corrections agency designated by the Department.

Commentary

This rule eliminates any uncertainty about supervisory responsibilities under the new program of post-prison supervision. It assigns that responsibility to the corrections officers or Community Corrections staff who now supervise parolees in the community.

OAR 253-11-002 RESPONSIBILITY FOR POST-PRISON SUPERVISION. Upon release from prison, the offender shall be supervised by the Department or the corrections agency designated by the Department.

Commentary

This rule confirms that the responsibility for post-prison supervision of an offender rests with the Department or its designee. This administration of such supervision should be comparable to the system now used to supervise parolees.

Statutory Provision-Section 33, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.104 (1)):

Upon release from prison, the person shall be supervised by the Department of Corrections or the corrections agency designated by the department.

E. LEVEL OF SUPERVISION

The level of supervision may be initially set as part of the offender's release plan. The amount of supervision provided for the offender, however, may and should be adjusted to correspond to the offender's behavior in the community. This flexibility is granted to the Department of Corrections or supervisory designee. Consequently, the level of supervision may be increased or decreased during the supervisory period as may be necessary to control the offender's behavior.

OAR 253-11-003 LEVEL OF POST-PRISON SUPERVISION. During the term of post-prison supervision, the Department or its designee

may adjust the level of supervision and recommend to the Board revisions to the conditions of supervision appropriate to the offender's conduct in the community.

Commentary

This rule provides that the level of post-prison supervision will be set by the Department. The Department will be free to adjust the level of supervision to correspond to the offender's conduct in the community. The Department is also authorized to recommend that the Board change the offender's supervisory conditions. If local sanctions are inappropriate, the Department may also recommend that supervision status be revoked and a prison-term sanction imposed.

F. POST-PRISON SUPERVISION FEES

The supervisory fees associated with post-prison supervision will be consistent with the fees applicable to other types of supervision. The 1989 Legislative Assembly amended ORS 423.570 to ensure that all offenders under "probation, parole, post-prison supervision or other form of release" are subject to the same supervisory fee requirements.

Statutory Provision-ORS 423.570 (as amended by Section 67, Chapter 790, Oregon Laws 1989 and Section 1, Chapter 497, Oregon Laws 1989):

(1) A person placed by an authority on probation, parole, post-prison supervision or other form of release, subject to supervision by either the Department of Corrections or, directly or indirectly, by a community corrections program established under ORS 423.500 to 423.560, shall be required to pay a monthly fee to offset costs of supervising the probation, parole, post-prison supervision or other supervised release.

(2) A person placed by an authority on probation, parole, post-prison supervision or other form of release, subject to supervision other than by either the Department of Corrections or a community corrections program established under ORS 423.500 to 423.560, may be required by the releasing authority to pay a monthly fee to offset costs of supervising the probation, parole, post-prison supervision or other supervised release.

(3) When a fee is required under subsection (1) of this section, the fee shall be determined and fixed by the releasing authority but shall be at least \$25, and if the releasing authority fails to establish the amount of a released person's required fee, the fee shall be \$25.

(4) Fees are payable one month following the commencement of probation, parole, post-prison supervision or other supervised release and at one-month intervals thereafter. Fees shall be

collected as follows:

(a) If the released person is supervised under county authority, other than by the Department of Corrections, the county shall collect or provide by contract for the collection of the fee from the released person and shall retain the fee to be used by the county for funding of its community corrections program or, if it has no community corrections program, then for general governmental purposes.

(b) If the released person is supervised by the Department of Corrections, the department shall collect or provide by contract for the collection of the fee from the released person and shall retain the fee. Moneys received by the Department of Corrections are continuously appropriated to the Department of Corrections for use in financing department field services.

(5) Except in the case of a probation granted by a court before that date, the fee requirements imposed by this section apply beginning July 1, 1981, to all persons under supervised probation, parole, post-prison supervision or other form of supervised release pursuant to subsection (1) of this section, including persons on such supervised release in this state under any interstate agreement. Timely payment of the fee is hereby made a condition of such probation, parole, post-prison supervision or other supervised release. In the case of a probation granted by a court prior to July 1, 1981, the court may amend its order granting probation to provide for payment of the fee.

(6) In cases of financial hardship or when otherwise advisable in the interest of the released person's rehabilitation:

(a) The community corrections program director or the Director of the Department of Corrections, whichever is appropriate, or the designee thereof, may waive or reduce the amount of the fee.

(b) The sentencing court may waive payment of the fee or reduce the amount of the fee for any person whom the court has placed on probation. If any of the fee requirement is reduced by the court, only the court may restore the requirement.

G. ADJUSTMENTS TO LEVEL OF SUPERVISION

The Department may make adjustments in the amount of supervision received by each offender in the community. Section 34, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.104 (2)) and OAR 253-11-003. While the initial level of supervision is set in the release plan, the Department should adjust the amount of supervision to be consistent with the offender's conduct in the community.

The degree of supervision should be increased if the offender's behavior indicates the need for added supervision. Additional supervision is recommended if needed to encourage the offender's compliance with the supervisory conditions or to provide added public safety. Conversely, the level of supervision should be reduced if the offender complies with the conditions of probation

and demonstrates an ability to function in the community without further participation in criminal activity.

Statutory Provision-Section 34, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.104 (2)):

During the period of post-prison supervision, the supervisory authority may adjust the level of supervision and recommend to the State Board of Parole and Post-Prison Supervision revisions to the conditions of supervision appropriate to the released person's conduct in the community.

H. VIOLATION OF POST-PRISON SUPERVISION

The supervisory authority is directed to use a continuum of local sanctions to punish the offender in the community for supervision violations. Section 35, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.106) and OAR 253-11-004(1). If the supervisory authority²² determines that local sanctions are insufficient punishment of the violation, the agent may request the Board of Parole and Post-Prison Supervision to impose a prison term sanction. Section 36, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.108).

The supervisory authority may request that an offender on post-prison supervision be returned to prison if local sanctions are inadequate or if the supervisory violation is new criminal activity. Subsection (1), Section 36, Chapter 790, Oregon Laws 1989 and OAR 253-11-004(2). This request shall be made to the Board of Parole and Post-Prison Supervision which shall hold a revocation hearing using the same process now used for parole revocations. Section 36, Subsection (2), Chapter 790, Oregon Laws 1989 and OAR 253-11-004(3).

If the Board revokes the offender's community supervision status, it may impose a prison term as provided by the rules of the State Sentencing Guidelines Board.²³ Section 36, Subsection (2), Chapter 790, Oregon Laws 1989. The Guidelines Board has set the maximum sanction for a technical violations at ninety 90 days and 180 days for violations involving criminal conduct. Generally, no more than a total of 180 days prison incarceration may be

²² In this context, the term "supervisory authority" means the Department of Corrections or the appropriate Community Corrections office with supervisory responsibility over the offender. Cf. OAR 253-03-001(19).

²³ Section 18b, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.346) directs the State Board of Parole and Post-Prison Supervision to adopt rules for parole revocation sanctions consistent with the sanction limitations for post-prison supervision revocations in OAR 253-11-004(3).

imposed during the full post-prison supervision term. OAR 253-11-004(3). The Department's Parole Violators Project is an exception to this rules. When the Department develops a special program for offenders on parole or post-prison supervision, the Board it will retain the authority to sanction such offenders beyond the sanction provisions established by State Sentencing Guidelines Board. Section 36, Chapter 790, Oregon Laws 1989.

Any offender returned to prison from post-prison supervision shall receive credit for incarceration time served pending revocation but shall not be eligible for any earned credit time, temporary leave or transitional leave. Section 36, Chapter 790, Oregon Laws 1989 and OAR 253-11-004.

1. Sanctions

OAR 253-11-004 POST-PRISON SUPERVISION SANCTIONS. (1) The Department or its designee shall use a continuum of administrative sanctions for violation of the conditions of post-prison supervision. The sanction continuum shall include: adjustments to the level of supervision, modification of or addition to the conditions of community supervision as approved by the Board, and any other appropriate available local sanction.

(2) If the Department or its designee finds that local sanctions are insufficient punishment for any violation of the conditions of post-prison supervision, it may request the Board to return the offender to a state correctional facility.

(3) If requested to return an offender to a state correctional facility, the Board shall hold a hearing to determine whether prison incarceration is appropriate and may impose an appropriate term of incarceration up to ninety (90) days for a technical violation and up to one hundred and eighty (180) days for conduct constituting a crime. Except as provided in OAR 253-05-004(2), during the full term of post-prison supervision, an offender may not be required to serve more than one hundred and eighty (180) days of incarceration for violations of the conditions of supervision.

(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.

(5) An offender ordered to serve a term of prison incarceration as a sanction for a post-prison supervision violation shall receive credit for time served in a state or local correctional facility on the supervisory violation prior to the Board's imposition of a prison term sanction.

Commentary

Section (1). This section accords the Department or its designee the authority to impose administrative sanctions for the

violation of post-prison supervision conditions. It also provides that such sanctions should represent a continuum by which the severity of the sanction increases with the seriousness of the violation or the number of violations committed by the offender. This rule does not preclude the Department from operating state in-custody programs for post-prison supervision violators. If available, such programs can be included in local sanction continuum as a sanction option available to the state.

The phrase "any other appropriate available local sanction" in this section does not include confinement in a local jail. Local incarceration of an offender on post-prison supervision should only be permitted when public safety considerations require the detention of the offender pending a revocation hearing pursuant to section (3) of this rule. This rule limits use of local correctional facilities to sanction offenders under post-prison supervision beyond what is now permitted for parolees.

Section (2) allows the Department or its designee to request the Board of Parole and Post-Prison Supervision to return the offender to a state correctional facility. This request to revoke the offender's community supervision status should only be made after the Department or its designee determines that local sanctions are insufficient to punish the offender's supervision violations.

Section (3) directs the Board, upon receipt of a revocation request, to determine after a hearing whether prison incarceration is the most appropriate sanction for the supervision violation. This section sets the maximum term of incarceration that may be imposed for any single violation: up to 90 days for a technical violation and 180 days for conduct constituting a crime.

This section also limits the total amount of incarceration that may be imposed for supervision violations at 180 days for the full term of post-prison supervision subject to the exception provided by OAR 253-05-004(2) for offenders sentenced for a Aggravated Murder (ORS 163.105) or Murder (ORS 163.115). This limitation on prison incarceration for post-prison supervision violations is necessary to provide the prison capacity needed to ensure that all offenders will serve their complete prison sentences and that probationers are adequately punished for probation violations in a manner consistent with these rules.

An incarceration sanction may not extend beyond the term of post-prison supervision as imposed by the sentencing judge. Thus, for example, if an offender violates supervision conditions with two months left to serve on post-prison supervision, the maximum incarceration sanction for the violation would be the remainder of the supervision term (two months). This result is required because the state's capacity to punish the offender in this context is limited by the sentence imposed by the sentencing judge.

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.

Section (5) provides that a term of imprisonment imposed for a supervision violation shall be reduced by the amount of time an offender serves in a state or local correctional facility pending the Board's revocation decision.

Statutory Provision-Section 35, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.106):

Except as otherwise provided by rules of the Department of Corrections concerning parole and post-prison supervision violators, the supervisory authority shall use a continuum of administrative sanctions for violations of the conditions of post-prison supervision. The sanction continuum shall include adjustments to the level of supervision, modification of or additions to the conditions of supervision, as approved by the State Board of Parole and Post-Prison Supervision, and any other appropriate available local sanctions.

Statutory Provision-Section 36, Chapter 790, Oregon Laws 1989 (anticipated codification citation ORS 144.108):

(1) If the violation of post-prison supervision is new criminal activity or if the supervisory authority finds that local sanctions are insufficient punishment for a violation of the conditions of post-prison supervision, the supervisory authority may request the State Board of Parole and Post-Prison Supervision to return the released person to a state correctional facility.

(2) If so requested, the Board or its designated representative shall hold a hearing to determine whether imprisonment is appropriate. Except as otherwise provided by rules of the Department of Corrections concerning parole and post-prison supervision violators, the Board may impose a term of imprisonment up to the maximum provided by rules of the State Sentencing Guidelines Board. In conducting a hearing pursuant to this subsection, the Board or its designated representative shall follow the procedures and the offender shall have all the rights described in ORS 144.343 and 144.347 relating to revocation of parole.

(3) A person who is ordered to serve a term of imprisonment as a sanction for a post-prison supervision violation is not eligible for:

- (a) Earned credit time as defined in section 60 of this 1989 Act;
 - (b) Transitional leave as defined in section 63 of this 1989 Act;
- or
- (c) Temporary leave as defined in ORS 421.165.

(4) A person who is ordered to serve a term of imprisonment as a

sanction for a post-prison supervision violation shall receive credit for time served in a state or local correctional facility on the post-prison supervision violation prior to the Board's imposition of a term of imprisonment.

2. Procedures

The procedures by which the Board of Parole and Post-Prison Supervision considers the revocation of post-prison supervision status are essentially identical to the procedures used for parole revocations. The following statutory provisions should be consulted for a more detailed description of the revocation process:

Statutory Provision: ORS 144.040 (as amended by Section 24, Chapter 790, Oregon Laws 1989); ORS 144.317 (as amended by Section 40, Chapter 790, Oregon Laws 1989); ORS 144.335 (as amended by Section 41, Chapter 790, Oregon Laws 1989); ORS 144.340 (as amended by Section 42, Chapter 790, Oregon Laws 1989); ORS 144.343 (as amended by Section 42a, Chapter 790, Oregon Laws 1989); ORS 144.349 (as amended by Section 43, Chapter 790, Oregon Laws 1989); ORS 144.350 (as amended by Section 44, Chapter 790, Oregon Laws 1989); ORS 144.374 (as amended by Section 45, Chapter 790, Oregon Laws 1989); ORS 144.376 (as amended by Section 46, Chapter 790, Oregon Laws 1989) and ORS 144.380 (as amended by Section 47, Chapter 790, Oregon Laws 1989).

3. Appellate Review of Board Actions

The 1989 Legislative Assembly placed an added restriction on an offender's right to appeal an action of the Board of Parole and Post-Prison Supervision. An offender may only appeal an adverse decision by the Board after the offender has exhausted his or her administrative review options under the Board's own rules. This requirement for the "exhaustion of administrative review" applies to all offenders whether on parole or post-prison supervision.

Statutory Provision-ORS 144.335 (as amended by Section 41, Chapter 790, Oregon Laws 1989):

(1) When a person over whom the Board exercises its jurisdiction is adversely affected or aggrieved by a final order of the Board related to the granting, revoking or discharging of parole or the revoking of post-prison supervision and after exhaustion of administrative review as provided by Board rule, such person is entitled to judicial review of the final order.

(2) The final order and the proceedings underlying the order are subject to review by the Court of Appeals upon petition to that court filed within 60 days of the final order for which review is sought. The Board shall submit to the court the record of the proceeding, or, if the inmate agrees, a shortened record. A copy

of the record transmitted shall be delivered to the inmate by the Board.

(3) The court may affirm, reverse or remand the order on the same basis as provided in ORS 183.482 (8). The filing of the petition shall not stay the Board's order, but the Board may do so, or the court may order a stay upon application on such terms as it deems proper.

(4) In the case of disputed allegations of irregularities in procedure before the Board not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact upon them.

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