



Oregon Board of Parole & POST-PRISON SUPERVISION

Board Business Meeting Minutes Friday March 25, 2011

Call to Order and Note of Attendance: The meeting was called to order at 9:01 a.m., and note of attendance made: Aaron Felton, Jeremiah Stromberg, Candace Wheeler, Darcey Baker (via phone), Michelle Mooney, and guests Andy Simrin, and Christina Torres. Excused from the meeting DOC Director Max Williams, and DOC Community Corrections Chief Mark Cadotte.

Chairperson Comments – None

DOC Update – None

Executive Director's Update

- **Scheduling Note:** Next week for coverage notice Aaron will be out of the office for the first half of the week, and Jeremiah will be out at the end of the week.

Old Business:

- None

New Business:

- **Discussion of Supreme Court Decisions in *Fleming/Janowski*, *Wilson/Severy* cases:** In February of 2011, the Oregon Supreme Court issued final judgments in four cases that will have far-reaching impacts on prisoners who were convicted of aggravated murder and are serving life with 30 year minimum sentences. At the time the prisoners in these cases committed their crimes, the law required that they be sentenced to a minimum of 30 years in prison. However, the law also required that they have the opportunity to be found “capable of rehabilitation within a reasonable period of time,” at a hearing before the Board after 20 years. The issue before the Supreme Court was whether the Board’s finding that an inmate was “capable of rehabilitation,” essentially “overrode” the 30 year minimum. It has been the Board’s position, historically, that it does not have the authority to override the minimum sentence and that the intent of the trial courts as well as the legislature was that the prisoner should serve the minimum 30 year term before being considered for a parole even if they have been found capable of rehabilitation after 20 years. The court, however, determined that the Board does have the authority to override the minimum sentence. In fact, the court

concluded that upon finding a prisoner capable of rehabilitation, the Board was simultaneously overriding the minimum sentence and declaring him a candidate for release prior to the expiration of his minimum sentence. It cannot be emphasized strongly enough that such a result has never been the intent or the practice of the Board. To implement its decision, the court ordered the Board to utilize the parole matrix rules in effect at the time the prisoner committed his crime in order to set the prisoner's release date. Therefore, the Board will be required to hold a prison term hearing for each inmate who falls within the scope of the court's decision. A prison term hearing is not a release hearing. The Board has working on this since the decisions were made and looking at who will be effected and how the Board will handle the court's decision. The Board has never delayed anything purposefully and wanted to ensure the public and the inmates that they are moving forward as fast as they can while being consistent with public safety and their responsibility to the public and the inmates.

Future Board Meetings:

April 25, 2011

May 23, 2011

June 27, 2011

Meeting adjourned at 9:29 a.m.

Active / Inactive Supervision Guide

To review the complete rules please see OAR 255 Division 94

When an offender is released from prison and the supervision order is issued, the Board will set the active supervision review date (ASR/SSR/TPD).

Each month DOC research will send out a list to community corrections offices advising them of all offenders whose active supervision review date is within 60 days. Upon receipt of this list, the counties are expected to review each offender and then make a decision to extend the offenders supervision, or move the offender to inactive. The Board should be provided a request to extend active supervision or a copy of the letter placing the offender on inactive supervision.

Extending Supervision

In order to extend an offenders supervision the parole officer must provide evidence that the offender has not substantially fulfilled the supervision conditions or has failed to complete payment of restitution. It is important to note that continuance on active and/or reactivation are, by statute, at the discretion of the Board, and also of the LSA. The statute (ORS 144.085(3) and (4)) states that "the supervisory authority may" request "the board to extend the active supervision period or to return the offender to active supervision status * * *." The board may extend, etc., "if it finds the offender has not substantially fulfilled the supervision conditions or has failed to complete payment of restitution." The request to extend supervision must provide the request date, offender's name, offenders SID, crime(s), offender's employment status, offender's address, area(s) of non-compliance with adequate substantiation showing how the offender has not substantially fulfilled the supervision condition(s), and a legible signature of the parole officer.

The request to extend supervision must provide adequate substantiation and must document violations or non-compliant behavior that has occurred in the 6 months prior to the active supervision review date. Requests that document violations/behaviors that occurred more than 6 months prior to the review date must have compelling substantiation to show a lack of substantial progress or compliance since the violations occurred.

Monetary Non-Compliance: Requests documenting non-compliance due to monetary fees must state which type of fee has not been paid. The Board will extend supervision for non-payment/outstanding balance of compensatory fines or restitution. The Board **will not** extend supervision for non-payment/outstanding balances on supervision fees, court fees, or extradition fees.

Deported Offenders: Offenders who have been deported do not need to be extended. The issue is not that they "haven't done any of the conditions of supervision," but rather that there is no evidence that the individual has violated any conditions. Therefore, based on the statutory language, "* * *" when an offender has served the active period of parole or post-prison supervision established under subsection (1)(a) or (b) of this section, the supervisory authority shall place the offender on inactive supervision status." (ORS 144.095(2), emphasis added.) Parole Officers overseeing deported caseloads can leave these offenders at IMMI.

The exceptions require an action on the part of the LSA and the Board. Offenders who end up not being deported are required to report. If they fail to report then they are in violation of supervision and action can be taken. A request to move to inactive supervision is not required on these offenders.

Compact Offenders: Offenders being supervised via Interstate Compact are not eligible to be placed on unsupervised status. The PO must submit a request for extension stating the offender is a compact offender.

Treatment: This includes all types of treatment programs. Must substantiate how the offender has not fulfilled the treatment requirements, i.e. still attending treatment, has not completed treatment, has failed treatment, has failed to attend treatment, has not completed aftercare, etc.

Probation or other open cases: The Board will not extend on the sole basis that the offender has active probation cases.

Employment: Must substantiate what about this category makes the offender substantially non-compliant. Merely being unemployed is not adequate. Must substantiate how the offender has failed to perform job search, or failed to apply for jobs etc.

Drug Courts/Other Probation Conditions: An offender who is participating in a drug court program or court ordered community service is not enough to substantiate that an offender must remain on active supervision.

Substance Abuse/Alcohol Use: Continued use, or recent use of prohibited substances is acceptable to keep an offender on active supervision.

Warrants/Abscond Status: An active warrant is substantiation enough to request an extension of active supervision. However, stating the offender has absconded when there has been no request for a warrant would require more information as to the lack of compliance.

New Criminal Activity: Must substantiate or describe the actual behavior. An arrest is not enough substantiation to show substantial non-compliance with supervision.

Inactive Supervision

The supervising officer is the best judge to determine if an offender has complied with supervision conditions and should move to inactive supervision. One of the few reasons that the board would not approve an offender moving to inactive supervision would be outstanding restitution fines. Once the supervising officer decides to move the offender to inactive supervision, a copy of the letter that they submit to the offender should be sent to the Board. the lack of compliance.