Chapter 144

1991 EDITION

Parole; Work Release; Executive Clemency; Standards for Prison Terms and Parole; Presentence Reports

ADMINISTRATION

144.005 State Board of Parole and Post-Prison Supervision; term; compensation

144.015 Confirmation by Senate

144.025 Chairperson; quorum

144.035 Board hearings; panels; exception

144.040 Power of board to determine parole and post-prison supervision violations

144.050 Power of board to grant parole

144.054 When board decision must be reviewed by full board

144.060 Acceptance of funds, grants or donations; contracts with Federal Government and others

144.075 Payment of expenses of returning violators of parole or post-prison supervision, conditional pardon or commutation

144.079 Determination of total term of certain consecutive sentences of imprisonment; summing of sentences; exceptions

POST-PRISON SUPERVISION

144.096 Release plan; contents

144.098 Review of release plan

144.102 Conditions of post-prison supervision

144.103 Term of post-prison supervision for person convicted of certain sexual offenses

144.104 Supervisory authority; revising conditions

144.106 Violation of post-prison supervision conditions; sanctions

144.108 Recommitment to prison for certain violations; procedure; effect of recommitment

PAROLE PROCESS

144.110 Restriction on parole of persons sentenced to minimum terms

144.120 Initial parole hearing; initial release date determination; delay of initial determination; notification of victim

144.122 Advancing initial release date; requirements; rules

144.123 Who may accompany person to parole hearing; rule of State Board of Parole and Post-Prison Supervision and Department of Corrections

144.125 Review of parole plan, psychological reports and conduct prior to release; release postponement; criteria for parole plan; Department of Corrections assistance

144.126 Advancing release date of prisoner with severe medical condition including terminal illness

144.130 Prisoner to have access to written materials considered at hearings or interviews; access procedures

144.135 Bases of parole decisions to be in writing

144.140 Rulemaking procedure

144.185 Records and information available to board

144.223 Examination by psychiatrist or psychologist of parole candidate; report; copies to affected persons

144.226 Examination by psychiatrist or psychologist of person sentenced as a dangerous offender; report

144.228 Periodic parole consideration hearings for dangerous offenders; setting of parole date; information to be considered

144.232 Release of dangerous offender to post-prison supervision; eligibility; hearing

144.245 Date of release on parole; effect of release order

144.260 Notice of prospective release on parole or post-prison supervision of inmate

144.270 Conditions of parole; copy to parolee

144.275 Parole of inmates sentenced to make financial restitution; schedule of payments

144.305 Length of parole

TERMINATION OF PAROLE

144.310 Final discharge of parolee; period of active supervision

144.315 Evidence admissible before board; rules

144.317 Appointment of attorneys; payment

144.331 Suspension of parole or post-prison supervision; custody of violator; revocation hearing before suspension

144.334 Use of citations for parole or post-prison supervision violators; conditions; appearance

144.335 Appeal from order of board to Court of Appeals; effect of filing appeal; appointment of master

144.337 Public Defender to represent petitioner

144.340 Power to retake and return violators of parole and post-prison supervision

144.343 Hearing required on revocation; procedure

144.345 Revocation of parole; effect of conviction for crime

144.346 Parole revocation sanctions; rules

144.347 Compelling witnesses; subpoena power; fees

144.349 When ORS 144.343 does not apply

144.350 Order for arrest and detention of violator of parole, post-prison supervision, probation, conditional pardon or other conditional release; investigation by department

144.360 Effect of order for arrest and detention of violator

144.370 Suspension of parole or post-prison supervision following order for arrest and detention; hearing

144.374 Deputization of persons in other states to act in returning Oregon parole and post-prison supervision violators

144.376 Contracts for sharing expense with other states of cooperative returns of parole and post-prison supervision violators

144.380 After suspension of parole, post-prison supervision or revocation of conditional pardon or probation, violator is fugitive from justice

144.395 Rerelease of persons whose parole has been revoked

SEIZURE OF PROPERTY BY PAROLE AND PROBATION OFFICERS

144.404 Department of Corrections authority to receive, hold and dispose of property

144.405 Duty of officer upon seizure; disposition of property if no claim to rightful possession is established

144.406 Petition for return of things seized

144.407 Grounds for valid claim to rightful possession

144.408 Hearing on petition

144.409 Granting petition for return of things seized; judicial review

WORK RELEASE PROGRAM

144.410 Definitions for ORS 144.410 to 144.525

144.420 Department of Corrections to administer work release program; purposes of release; housing of parolee

144.430 Duties of department in administering program

144.440 Recommendation by sentencing court

144.450 Approval or rejection of recommendations; rules; exemptions from Administrative Procedures Act

144.460 Contracts for quartering of enrollees

144.470 Disposition of enrollee's earnings under program

144.480 Protections and benefits for enrollees

144.490 Status of enrollees

144.500 Effect of violation or unexcused absence by enrollee

144.515 Release terminates enrollment; continued employment to be sought

144.522 Revolving fund

144.525 Custody of enrollee earnings deducted or otherwise retained by department

UNIFORM ACT FOR OUT-OF-STATE SUPERVISION

144.610 Out-of-state supervision of parolees; contract with other states

144.613 Notice when parole or probation violated; hearing; report to sending state; taking person into custody

144.615 Hearing procedure

144.617 Hearing on violation in another state; effect of record in such hearing

144.620 Short title

144.622 "Parole" and "parolee" defined for Uniform Act for Out-of-State Supervision

EXECUTIVE CLEMENCY

144.640 Granting reprieves, commutations and pardons generally; remission of penalties and forfeitures

144.650 Notice of intention to apply for pardon, commutation or remission; proof of service

144.660 Communication to legislature by Governor

144.670 Filing of papers by Governor

MISCELLANEOUS PROVISIONS

144.710 Cooperation of public officials with State Board of Parole and Post-Prison Supervision and Department of Corrections

144.720 Judge's power to suspend execution of sentence or grant probation prior to commitment

ADVISORY COMMISSION ON PRISON TERMS AND PAROLE STANDARDS

144.775 Commission members; terms; compensation; rules on duration of prison terms

144.780 Rules on duration of imprisonment; objectives; considerations in prescribing rules

144.783 Duration of term of imprisonment when prisoner is sentenced to consecutive terms

144.785 Rules on duration of prison terms when aggravating or mitigating circumstances exist; limitation on terms; dangerous offenders

144.787 Rules on age or physical disability of victim constituting aggravating circumstance

PRESENTENCE REPORTS

144.790 Presentence report in felony conviction cases; sentencing recommendations; form

144.800 When presentence report required upon commitment to Department of Corrections

CROSS REFERENCES

Civil and political rights, effect of parole and probation, 137.230, 137.260

Counsel, appointment for indigent at probation revocation hearing, 135.050

Criminal offenses, classification, 161.505 to 161.585

Designation of officer to approve disbursements, 293.330

Diversion programs for drug-dependent persons, 475.405 to 475.535

Juvenile court:

Jurisdiction over child beyond control of person having custody, 419.476

Probation for ward, 419.507

Juvenile in training school, parole, 420.045

Open meeting law not applicable to State Board of Parole and Post-Prison Supervision, 192.690

Prison sentences, maximum, 161.605

Regional correctional facilities, 169.610 to 169.677

Sex offenders, when discharged, paroled, released or placed on probation, information in Law Enforcement Data System, 181.517 to 181.519

Suspension of sentence, granting of probation by trial court, 137.010

"Victim" defined, 131.007

144.040

Supervision of persons found to be sexually dangerous, 426.510 to 426.670

Western Interstate Corrections Compact, duties of board, 421.292

144.050

Aggravated murder, minimum sentence without possibility of parole, 163.095, 163.105

Power of committing magistrate to establish rules under which prisoner in county jail may be paroled, 137.520

144.060

Approval of requests or budgets submitted to Federal Government, 291.260

144.075

Expenses of sheriff in returning parole violator, 206.315

144.223

Observation and treatment of dangerous offenders, 421.155

144.226

Observation and treatment of persons sentenced for sex crimes, 421.155

144.374

Returning juvenile escapees, parolees and runaways, 417.030

144.420

Aggravated murder, minimum sentence without possibility of work release, 163.095, 163.105

Power of committing magistrate to establish rules under which prisoner in county jail may be employed, 137.520

144.610

Act of Congress granting consent to states to enter into compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes, 63 Stat. 107, 4 U.S.C. §111

Interstate Compact on Juveniles, 417.030

ADMINISTRATION

144.005 State Board of Parole and Post-Prison Supervision; term; compensation. (1) A State Board of Parole and Post-Prison Supervision of at least three but no more than five members hereby is created. At least one member must be a woman.

(2) Members of the board shall be appointed by the Governor and serve for a term of four years. If the number of members falls below three for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. The Governor at any time may remove any member for inefficiency, neglect of duty or malfeasance in office.

(3) Each member shall devote the member's entire time to the performance of the duties imposed on the board and shall not engage in any partisan political activity.

(4) The members shall receive a salary set by the Governor. In addition, all members may receive actual and necessary travel and other expenses incurred in the performance of their official duties within limits as provided by law or under ORS 292.220 and 292.230.

(5) The Director of the Department of Corrections shall serve as an ex officio nonvoting member of the board. [1969 c.597 §102; 1973 c.836 §281; 1975 c.217 §1; 1987 c.320 §47; 1989 c.790 §22; 1991 c.126 §1]

144.010 [Amended by 1953 c.223 §2; 1959 c.327 §1; 1967 c.526 §1; repealed by 1969 c.597 §281]

144.015 Confirmation by Senate. The appointment of a member of the State Board of Parole and Post-Prison Supervision is subject to confirmation by the Senate as provided in ORS 171.562 and 171.565. [1969 c.597 §107; 1973 c.836 §282; 1985 c.565 §15]

144.020 [Repealed by 1969 c.597 §281]

144.025 Chairperson; quorum. (1) The Governor shall select one of the members of the State Board of Parole and Post-Prison Supervision as chairperson and another member as vice chairperson, for such terms and with duties and powers, in addition to those established by law, necessary for the performance of the function of such office as the Governor determines.

(2) A majority of the members of the board constitutes a quorum for decisions concerning rules and policies.

(3) Except as otherwise provided in this chapter, decisions affecting individuals under the jurisdiction of the board shall be made as designated by the rules of the board. [1969 c.597 §106; 1973 c.836 §283; 1975 c.217 §3; 1981 c.644 §3; 1989 c.589 §1; 1991 c.126 §2]

144.030 [Repealed by 1969 c.597 §281]

144.035 Board hearings; panels; exception. (1) In hearings conducted by the State Board of Parole and Post-Prison Supervision, the board may sit together or in panels.

(2) Panels may consist of one or two board members or of one member and one hearings officer, appointed by the chairperson as a designated representative of the board. A panel consisting of one member or of one member and one hearings officer shall be used only when considering inmates convicted of non person-to-person crimes as defined in the rules of the State Sentencing Guidelines Board. The chairperson of the board from time to time shall make assignments of members to the panels. The chairperson of the board may participate on any panel.

(3) The chairperson shall apportion matters for decision to the panels. Each panel shall have the authority to hear and determine all questions before it. However:

(a) If there is a division in the panel so that a decision is not unanimous, another member shall vote after administrative review of the record.

(b) In case of a panel consisting of one board member, another member shall vote after administrative review of the record.

(c) If the original panel was made up of one board member and the member voting after administrative review of the record disagrees with the decision, the matter shall be reassigned to a panel made up of the remaining board members. If this second panel agrees with neither member of the original panel, the matter will be referred to a hearing before the full board.

(4) The provisions of subsections (1) to (3) of this section shall not apply to a decision to release a prisoner sentenced under ORS 144.110 (1). In such cases, the board shall release the prisoner only upon affirmative vote of a majority of the board.

(5) The chairperson may elect to conduct the hearings described in this section by conference call with the prisoner. [1975 c.217 §4; 1977 c.372 §15; 1989 c.105 §1; 1989 c.589 §2; 1991 c.126 §3]

144.040 Power of board to determine parole and post-prison supervision violations. The State Board of Parole and Post-Prison Supervision shall determine whether violation of conditions of parole or post-prison supervision exists in specific cases. [Amended by 1955 c.688 §3; 1969 c.597 §108; 1973 c.836 §284; 1989 c.790 §24]

144.045 [1967 c.560 §2; repealed by 1969 c.597 §281]

144.050 Power of board to grant parole. 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. [Amended by 1959 c.101 §1; 1967 c.372 §7; 1969 c.597 §109; 1971 c.633 §10; 1973 c.694 §2; 1973 c.836 §285; 1974 s.s. c.36 §3; 1981 c.243 §1; 1987 c.320 §48; 1989 c.790 §25]

144.054 When board decision must be reviewed by full board. Whenever the State Board of Parole and Post-Prison Supervision makes a decision affecting a person sentenced to life imprisonment or convicted of a crime involving the death of a victim, whether or not the prosecution directly charged the person with causing the death of the victim, the decision affecting such person must be reviewed by the full membership of the board. [1975 c.217 §5]

144.055 [1955 c.660 §12; repealed by 1969 c.597 §281]

144.060 Acceptance of funds, grants or donations; contracts with Federal Government and others. The Department of Corrections, with the written consent of the Governor, shall:

(1) Accept from the United States of America, or any of its agencies, such funds, equipment and supplies as may be made available to this state to carry out any of the functions of the department and shall enter into such contracts and agreements with the United States, or any of its agencies, as may be necessary, proper and convenient, not contrary to the laws of this state.

(2) Enter into an agreement with the county court or board of county commissioners of any county, or with the governing officials of any municipality of this state having a population of 300,000 or less for the payment by the county or municipality of all or any part of the cost of the performance by the Department of Corrections or State Board of Parole and Post-Prison Supervision of any parole, post-prison supervision or probation services or of the supervision of any parole, post-prison supervision or probation case arising within the county or municipality.

(3) Accept any grant or donation of land or any gift of money or other valuable thing made to the state to carry out any of the functions of the department.

(4) Enter into an agreement with the county court or board of county commissioners of each county within the boundaries of which the largest part of a city having a population of more than 300,000 is situated for the payment by the county of all or any part of the cost of the performance by the department of all or any part of the responsibility for prisoners transferred to the county by section 13, chapter 633, Oregon Laws 1971. [Amended by 1969 c.597 §112; 1971 c.633 §11; 1973 c.836 §286; 1974 s.s. c.36 §4; 1987 c.320 §49; 1989 c.790 §26]

144.070 [Repealed by 1969 c.597 §281]

144.075 Payment of expenses of returning violators of parole or post-prison supervision, conditional pardon or commutation. Any expense incurred by the state for returning to the Department of Corrections any parole or post-prison supervision violator or violator of a conditional commutation or conditional pardon shall be paid out of the biennial appropriations made for the payment of the state's portion of the expenses incident to such transportation. [1953 c.191 §1; 1973 c.836 §287; 1987 c.320 §50; 1989 c.790 §27]

144.079 Determination of total term of certain consecutive sentences of imprisonment; summing of sentences; exceptions. (1)(a) If a prisoner is sentenced to terms of imprisonment that are consecutive to one another and result from crimes committed during the period before the prisoner's first initial parole hearing, or if a prisoner is sentenced to terms of imprisonment that are consecutive to one another and result from crimes committed during the period between any two initial parole hearings, the total term resulting from the crimes committed during each such separate period shall be determined by the State Board of Parole and Post-Prison Supervision as follows, except as provided in subsection (2) of this section, and the total terms so determined shall then be summed as provided in ORS 144.783 (1):

(A) First, the board shall establish the appropriate range for the felony determined by the board, according to its rules, to be the most serious of the felonies committed during the period. If two or more felonies are determined to be equally the most serious, the board shall establish the appropriate range under this paragraph only for one of those felonies.

(B) Second, the board shall establish a range for each of the remaining felonies committed during the same period. For purposes of establishing the ranges for the remaining felonies under this paragraph, the board shall not consider prior criminal history.

(C) Third, the board shall determine the total range applicable in the offender's case for crimes committed during the same period by summing the ranges established under subparagraph (B) of this paragraph with the range established under subparagraph (A) of this paragraph and shall determine an appropriate term within that range.

(D) Finally, the board shall vary the term determined under subparagraph (C) of this paragraph according to rules established under ORS 144.785 (1), if the board finds aggravating or mitigating factors in the case. The board shall consider as an aggravating factor the fact that the prisoner has been sentenced to consecutive terms of imprisonment.

(b) Whenever a prisoner is committed to the custody of the Department of Corrections for a crime that was committed during a period already considered at an initial parole hearing and upon a sentence consecutive to any sentence imposed for crimes committed during that period, the board shall conduct a hearing to consider the previously unconsidered crime. The hearing shall be a hearing supplemental to the original initial hearing concerning crimes committed during the period. Time limitations and other procedural provisions applicable to initial hearings shall apply to a supplemental hearing under this subsection. Upon conclusion of the supplemental hearing, the board shall redetermine the appropriate total term for the period. The redetermination shall be conducted de novo under the provisions of subsection (2) of this section.

(2) The method established by this section for determining, where applicable, the total term resulting from the summing of consecutive sentences shall apply only if none of the crimes involved is:

(a) Murder, as defined in ORS 163.115 or any aggravated form thereof;

(b) Assault in the first degree, as defined in ORS 163.185;

(c) Kidnapping in the first degree, as defined in ORS 163.235;

(d) Rape in the first degree, as defined in ORS 163.375;

(e) Sodomy in the first degree, as defined in ORS 163.405;

(f) Unlawful sexual penetration, as defined in ORS 163.411;

(g) Arson in the first degree, as defined in ORS 164.325; or

(h) Treason, as defined in ORS 166.005.

(3) The duration of imprisonment pursuant to consecutive sentences may be less than the sum of the terms under subsection (1) of this section if the board finds, by affirmative vote of a majority of its members that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect community security.

(4) The State Board of Parole and Post-Prison Supervision shall use the method set forth in subsections (1) to (3) of this section to determine the parole release date for any person serving a sentence in the custody of the Department of Corrections for crimes committed before or after July 11, 1987. [1987 c.634 §§4, 7; 1989 c.641 §1; 1991 c.126 §4; 1991 c.386 §7]

Note: 144.079 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 144 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

144.080 [Amended by 1955 c.688 §4; repealed by 1969 c.597 §281]

144.090 [Amended by 1969 c.502 §4; repealed by 1969 c.597 §281]

144.095 [1967 c.526 §3; 1969 c.314 §7; repealed by 1969 c.597 §281]

POST-PRISON SUPERVISION

144.096 Release plan; contents. (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. [1989 c.790 §32]

Note: Section 31, chapter 790, Oregon Laws 1989, provides:

Sec. 31. Sections 32 to 36 of this 1989 Act [144.096 to 144.108] apply only to defendants convicted of a felony committed on or after November 1, 1989. [1989 c.790 §31]

144.098 Review of release plan. (1) When the State Board of Parole and Post-Prison Supervision reviews a prisoner's release plan as required by ORS 144.096, 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. [1989 c.790 §32b]

Note: See note under 144.096.

144.100 [Repealed by 1967 c.419 §68]

144.102 Conditions of post-prison supervision. (1) The State Board of Parole and Post-Prison Supervision shall specify in writing the conditions of post-prison supervision imposed under ORS 144.096. 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.

(h) Attend a victim impact treatment session in a county that has a victim impact program. If the board requires attendance under this paragraph, the board may require the person, as an additional condition of post-prison supervision, to pay a reasonable fee to the victim impact program to offset the cost of the person's participation. The board shall not order a person to pay a fee in excess of $5 under this paragraph.

(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. [1989 c.790 §32a; 1991 c.597 §1]

Note: See note under 144.096.

144.103 Term of post-prison supervision for person convicted of certain sexual offenses. Any person sentenced to a term of imprisonment for violating or attempting to violate ORS 163.375, 163.405, 163.408, 163.411 or 163.425 shall serve a term of post-prison supervision that shall continue until the term of the post-prison supervision, when added to the term of imprisonment served, equals the maximum statutory indeterminate sentence for the violation. Any costs incurred as a result of this section shall be paid by increased post-prison supervision fees under ORS 423.570. [1991 c.831 §1]

Note: 144.103 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 144 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

144.104 Supervisory authority; revising conditions. (1) Upon release from prison, the person shall be supervised by the Department of Corrections or the corrections agency designated by the department.

(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. [1989 c.790 §§33, 34]

Note: See note under 144.096.

144.105 [1967 c.560 §4; repealed by 1969 c.597 §281]

144.106 Violation of post-prison supervision conditions; sanctions. (1) Except as otherwise provided by rules of the Department of Corrections and the State Board of Parole and Post-Prison Supervision 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.

(2) The sanction continuum shall include adjustments to the level of supervision and, as approved by the State Board of Parole and Post-Prison Supervision:

(a) Modification of or additions to the conditions of supervision; and

(b) Any other appropriate available local sanctions including, but not limited to, community service work, house arrest, electronic surveillance, restitution centers, work release centers, day centers or other local sanctions established by agreement with the supervisory authority.

(3) If the local sanction requires confinement for more than 15 days in a restitution center, work release center or jail, the board or its designated representative shall hold a hearing under the procedures in ORS 144.315 to 144.380. [1989 c.790 §35; 1991 c.836 §1]

Note: See note under 144.096.

144.108 Recommitment to prison for certain violations; procedure; effect of recommitment. (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 ORS 421.121;

(b) Transitional leave as defined in ORS 421.168; 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. [1989 c.790 §36]

Note: See note under 144.096.

PAROLE PROCESS

144.110 Restriction on parole of persons sentenced to minimum terms. (1) In any felony case, the court may impose a minimum term of imprisonment of up to one-half of the sentence it imposes.

(2) Notwithstanding the provisions of ORS 144.120 and 144.780:

(a) The board shall not release a prisoner on parole who has been sentenced under subsection (1) of this section until the minimum term has been served, except upon affirmative vote of a majority of the members of the board.

(b) The board shall not release a prisoner on parole who has been convicted of murder defined as aggravated murder under the provisions of ORS 163.095, except as provided in ORS 163.105. [1977 c.372 §4; 1991 c.126 §5]

Note: Section 28, chapter 790, Oregon Laws 1989, provides:

Sec. 28. 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. [1989 c.790 §28]

144.120 Initial parole hearing; initial release date determination; delay of initial determination; notification of victim. (1)(a) Within six months of the admission of a prisoner to any Department of Corrections

institution, with the exception of those prisoners sentenced to a term of imprisonment for life or for more than five years, the board shall conduct a parole hearing to interview the prisoner and set the initial date of release on parole pursuant to subsection (2) of this section. For those prisoners sentenced to a term of imprisonment for more than five years but less than 15 years, the board shall conduct the parole hearing and set the initial date of release within eight months following admission of the prisoner to the institution. For those prisoners sentenced to a term of imprisonment for life or for 15 years or more, with the exception of those sentenced for aggravated murder, the board shall conduct the parole hearing, and shall set the initial release date, within one year following admission of the prisoner to the institution. Release shall be contingent upon satisfaction of the requirements of ORS 144.125.

(b) Those prisoners sentenced to a term of imprisonment for less than 15 years for commission of an offense designated by rule by the board as a non person-to-person offense may waive their rights to the parole hearing. When a prisoner waives the parole hearing, the initial date of release on parole may be set administratively by the board pursuant to subsections (2) to (6) of this section. If the board is not satisfied that the waiver was made knowingly or intelligently or if it believes more information is necessary before making its decision, it may order a hearing.

(2) In setting the initial parole release date for a prisoner pursuant to subsection (1) of this section, the board shall apply the appropriate range established pursuant to ORS 144.780. Variations from the range shall be in accordance with ORS 144.785.

(3) In setting the initial parole release date for a prisoner pursuant to subsection (1) of this section, the board shall consider the presentence investigation report specified in ORS 144.790 or, if no such report has been prepared, a report of similar content prepared by the Department of Corrections.

(4) Notwithstanding subsection (1) of this section, in the case of a prisoner whose offense included particularly violent or otherwise dangerous criminal conduct or whose offense was preceded by two or more convictions for a Class A or Class B felony or whose record includes a psychiatric or psychological diagnosis of severe emotional disturbance such as to constitute a danger to the health or safety of the community, the board may choose not to set a parole date.

(5) After the expiration of six months after the admission of the prisoner to any Department of Corrections institution, the board may defer setting the initial parole release date for the prisoner for a period not to exceed 90 additional days pending receipt of psychiatric or psychological reports, criminal records or other information essential to formulating the release decision.

(6) When the board has set the initial parole release date for a prisoner, it shall inform the sentencing court of the date.

(7) The State Board of Parole and Post-Prison Supervision must attempt to notify the victim, if the victim requests to be notified and furnishes the board a current address, and the district attorney of the committing county at least 30 days before all hearings by sending written notice to the current addresses of both. The victim, personally or by counsel, and the district attorney from the committing jurisdiction shall have the right to appear at any hearing or, in their discretion, to submit a written statement adequately and reasonably expressing any views concerning the crime and the person responsible. The victim and the district attorney shall be given access to the information that the board or division will rely upon and shall be given adequate time to rebut the information. Both the victim and the district attorney may present information or evidence at any hearing, subject to such reasonable rules as may be imposed by the officers conducting the hearing. For the purpose of this subsection, "victim" includes the actual victim, a representative selected by the victim or the victim's next of kin. [1977 c.372 §5; 1981 c.426 §1; 1985 c.283 §2; 1987 c.2 §14; 1987 c.320 §51; 1987 c.881 §1; 1989 c.589 §3; 1991 c.126 §6]

Note: See note under 144.110.

144.122 Advancing initial release date; requirements; rules. (1) After the initial parole release date has been set under ORS 144.120 and after a minimum period of time established by the board under paragraph (a) of subsection (2) of this section, the prisoner may request, and the board may grant, that the parole release date be reset to an earlier date only upon a showing by the prisoner of:

(a) An extended course of conduct indicating outstanding reformation; or

(b) A severe medical condition including terminal illness.

(2) The Advisory Commission on Prison Terms and Parole Standards may propose to the board and the board shall adopt rules:

(a) Establishing minimum periods of time to be served by prisoners before application may be made for a reset of release date under subsection (1) of this section; and

(b) Detailing the criteria set forth under subsection (1) of this section for the resetting of a parole release date.

(3) The provisions of paragraph (b) of subsection (1) of this section apply to prisoners sentenced in accordance with ORS 161.610. [1983 c.489 §2; 1991 c.133 §1]

Note: See note under 144.110.

144.123 Who may accompany person to parole hearing; rule of State Board of Parole and Post-Prison Supervision and Department of Corrections. When appearing before the State Board of Parole and Post-Prison Supervision an inmate shall have the right to be accompanied by a person of the inmate's choice pursuant to rule promulgated jointly by the State Board of Parole and Post-Prison Supervision and the Department of Corrections. [1981 c.644 §1; 1987 c.320 §52]

Note: 144.123 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 144 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

144.125 Review of parole plan, psychological reports and conduct prior to release; release postponement; criteria for parole plan; Department of Corrections assistance. (1) Prior to the scheduled release of any prisoner on parole and prior to release rescheduled under this section, the board may upon request of the Department of Corrections or on its own initiative interview the prisoner to review the prisoner's parole plan and psychiatric or psychological report, if any, and the record of the prisoner's conduct during confinement. To accommodate such review by the board, the Department of Corrections 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 any 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) The board shall postpone a prisoner's scheduled release date if it finds, after a hearing, that the prisoner engaged in serious misconduct during confinement. The board shall adopt rules defining serious misconduct and specifying periods of postponement for such misconduct.

(3) If a psychiatric or psychological diagnosis of present severe emotional disturbance such as to constitute a danger to the health or safety of the community has been made with respect to the prisoner, the board may order the postponement of the scheduled parole release until a specified future date.

(4) Each prisoner shall furnish the board with a parole plan prior to the scheduled release of the prisoner on parole. The board shall adopt rules specifying the elements of an adequate parole plan and may defer release of the prisoner for not more than three months if it finds that the parole plan is inadequate. The Department of Corrections shall assist prisoners in preparing parole plans. [1977 c.372 §6; 1981 c.426 §2; 1987 c.320 §53; 1989 c.790 §68]

Note: See note under 144.110.

144.126 Advancing release date of prisoner with severe medical condition including terminal illness. The State Board of Parole and Post-Prison Supervision may advance the release date of a prisoner suffering from a severe medical condition including terminal illness who was sentenced in accordance with rules of the State Sentencing Guidelines Board or ORS 161.610. [1989 c.790 §27a; 1991 c.133 §2]

Note: 144.126 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 144 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

144.130 Prisoner to have access to written materials considered at hearings or interviews; access procedures. (1) Notwithstanding the provisions of ORS 179.495, prior to a parole hearing or other personal interview, each prisoner shall have access to the written materials which the board shall consider with respect to the release of the prisoner on parole, with the exception of materials exempt from disclosure under ORS 192.502 (4).

(2) The board and the Director of the Department of Corrections shall jointly adopt procedures for a prisoner's access to written materials pursuant to this section. [1977 c.372 §8; 1987 c.320 §54]

Note: See note under 144.110.

144.135 Bases of parole decisions to be in writing. The board shall state in writing the detailed bases of its decisions under ORS 144.110 to 144.125. [1977 c.372 §9]

Note: See note under 144.110.

144.140 Rulemaking procedure. (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. [1977 c.372 §17; 1989 c.790 §27b]

144.175 [1973 c.694 §4; repealed by 1977 c.372 §18]

144.180 [1973 c.694 §5; repealed by 1977 c.372 §18]

144.183 [Repealed by 1974 s.s. c.36 §28]

144.185 Records and information available to board. Before making a determination regarding a prisoner's release on parole as provided by ORS 144.125, the State Board of Parole and Post-Prison Supervision may cause to be brought before it current records and information regarding the prisoner, including:

(1) Any relevant information which may be submitted by the prisoner, the prisoner's attorney, the victim of the crime, the Department of Corrections, or by other persons;

(2) The presentence investigation report specified in ORS 144.790 or if no such report has been prepared, a report of similar content prepared by institutional staff;

(3) The reports of any physical, mental and psychiatric examinations of the prisoner;

(4) The prisoner's parole plan; and

(5) Other relevant information concerning the prisoner as may be reasonably available. [1973 c.694 §6; 1981 c.426 §3; 1985 c.283 §3; 1987 c.320 §55]

Note: See note under 144.110.

144.210 [Amended by 1959 c.101 §2; 1967 c.372 §8; 1969 c.597 §113; 1973 c.836 §288; repealed by 1985 c.283 §1]

144.220 [Amended by 1959 c.101 §3; 1973 c.836 §289; repealed by 1975 c.564 §1 (144.221 enacted in lieu of 144.220)]

144.221 [1975 c.564 §2 (enacted in lieu of 144.220); repealed by 1977 c.372 §18]

144.223 Examination by psychiatrist or psychologist of parole candidate; report; copies to affected persons. (1) The State Board of Parole and Post-Prison Supervision may require any prisoner being considered for parole to be examined by a psychiatrist or psychologist before being released on parole.

(2) Within 60 days after the examination, the examining psychiatrist or psychologist shall file a written report of the findings and conclusions of the psychiatrist or psychologist relative to the examination with the chairman of the State Board of Parole and Post-Prison Supervision. A certified copy of the report shall be sent to the convicted person, to the attorney of the convicted person and to the executive officer of the Department of Corrections institution in which the convicted person is confined. [1977 c.379 §2; 1987 c.320 §56]

Note: See note under 144.110.

144.226 Examination by psychiatrist or psychologist of person sentenced as a dangerous offender; report. (1) Any person sentenced under ORS 161.725 and 161.735 as a dangerous offender shall within 60 days prior to the parole consideration hearing under ORS 144.228 or the last day of the presumptive sentence established under ORS 161.737 and at least every two years thereafter be given a complete mental and psychiatric or psychological examination by a psychiatrist or psychologist appointed by the State Board of Parole and Post-Prison Supervision. Within 60 days after the examination, the examining psychiatrist or psychologist shall file a written report of findings and conclusions relative to the examination with the Director of the Department of Corrections and chairperson of the State Board of Parole and Post-Prison Supervision.

(2) The examining psychiatrist or psychologist shall include in the report a statement as to whether or not in the psychiatrist's or psychologist's opinion the convicted person has any mental or emotional disturbance or deficiency or condition predisposing the person to the commission of any crime to a degree rendering the examined person a menace to the health or safety of others. The report shall also contain any other information which the examining psychiatrist or psychologist believes will aid the State Board of Parole and Post-Prison Supervision in determining whether the examined person is eligible for parole or release. The report shall also state the progress or changes in the condition of the examined person as well as any recommendations for treatment. A certified copy of the report shall be sent to the convicted person, to the convicted person's attorney and to the executive officer of the Department of Corrections institution in which the convicted person is confined. [1955 c.636 §4; 1961 c.424 §5; 1969 c.597 §114; 1971 c.743 §338; 1973 c.836 §290; 1981 c.644 §4; 1987 c.320 §57; 1989 c.790 §78; 1991 c.318 §1]

144.228 Periodic parole consideration hearings for dangerous offenders; setting of parole date; information to be considered. (1)(a) Within six months after commitment to the custody of the Department of Corrections of any person sentenced under ORS 161.725 and 161.735 as a dangerous offender, the State Board of Parole and Post-Prison Supervision shall set a date for a parole consideration hearing instead of an initial release date as otherwise required under ORS 144.120 and 144.125. The parole consideration hearing date shall be the earliest time the prisoner is eligible for parole under the board's rules.

(b) At the parole consideration hearing, the prisoner shall be given a release date in accordance with the applicable range and variation permitted if the condition which made the prisoner dangerous is absent or in remission. In the event that the dangerous

condition is found to be present, reviews will be conducted at least once every two years until the condition is absent or in remission, at which time release on parole shall be ordered if the prisoner is otherwise eligible under the rules. In no event shall the prisoner be held beyond the maximum sentence less good time credits imposed by the court.

(c) Nothing in this section shall preclude a prisoner from submitting a request for a parole consideration hearing prior to the earliest time the prisoner is eligible for parole or a two-year review. Should the board find, based upon the request, that there is a reasonable cause to believe that the dangerous condition is in remission based upon the information provided in the request, it shall conduct a review as soon as is reasonably convenient.

(2) For the parole consideration hearing, the board shall cause to be brought before it and consider all information regarding such person. The information shall include:

(a) The written report of the examining psychiatrist or psychologist which shall contain all the facts necessary to assist the State Board of Parole and Post-Prison Supervision in making its determination. The report of the examining psychiatrist or psychologist shall be made within two months of the date of its consideration; and

(b) A written report to be made by the executive officer of the Department of Corrections institution in which the person has been confined. The executive officer's report shall contain:

(A) A detailed account of the person's conduct while confined, all infractions of rules and discipline, all punishment meted out to the person and the circumstances connected therewith, as well as the extent to which the person has responded to the efforts made in the institution to improve the person's mental and moral condition.

(B) A statement as to the person's present attitude towards society, towards the sentencing judge, towards the prosecuting district attorney, towards the arresting police officer and towards the person's previous criminal career.

(C) The industrial record of the person while in or under the supervision of the institution, showing the average number of hours per day that the person has been employed, the nature of the occupations and a recommendation as to the kind of work, if any, the person is best fitted to perform and at which the person is most likely to succeed upon leaving the institution in which the person has been confined. [1955 c.636 §5; 1961 c.424 §6; 1971 c.743 §339; 1973 c.836 §291; 1981 c.644 §5; 1985 c.283 §4; 1987 c.320 §58; 1991 c.318 §2]

144.230 [Amended by 1963 c.625 §1; repealed by 1971 c.743 §432]

144.232 Release of dangerous offender to post-prison supervision; eligibility; hearing. (1) A person sentenced under ORS 161.725 and 161.735 as a dangerous offender for felonies committed on or after November 1, 1989, shall be considered for release to post-prison supervision. The offender is eligible for release to post-prison supervision after having served the presumptive sentence established under ORS 161.737.

(2) The State Board of Parole and Post-Prison Supervision shall hold a release hearing no later than 10 days prior to the date on which the offender becomes eligible for release on post-prison supervision as provided in subsection (1) of this section.

(3) The dangerous offender's eligibility for and release to post-prison supervision shall be determined in a manner consistent with the procedures and criteria required by ORS 144.228 for the parole determination process applicable to dangerous offenders sentenced for crimes committed prior to November 1, 1989.

(4) An offender released under this section shall serve the remainder of the sentence term imposed under ORS 161.725 and 161.735 on post-prison supervision, however:

(a) Notwithstanding ORS 137.010 or the rules of the State Sentencing Guidelines Board, the State Board of Parole and Post-Prison Supervision may return an offender to prison for a maximum period of 180 days as a sanction for any supervision violation. The sanction may be imposed repeatedly during the term of post-prison supervision for subsequent supervision violations.

(b) The board may at any time require the offender to submit to a psychiatric examination as provided for in ORS 144.226. If the board determines, as a result of the examination, that the condition that made the prisoner dangerous is no longer in remission or has otherwise returned, the board shall return the offender to prison for an indefinite period of time. An offender returned to prison under this paragraph is entitled to periodic reviews once every two years for possible release to post-prison supervision as provided by subsection (3) of this section. [1989 c.790 §80]

144.240 [Repealed by 1973 c.694 §26]

144.245 Date of release on parole; effect of release order. (1) When the State Board of Parole and Post-Prison Supervision has set a date on which a prisoner is to be released upon parole, the prisoner shall be released on that date unless the prisoner on that date remains subject to an unexpired minimum term during which the prisoner is

not eligible for parole, in which case the prisoner shall not be released until the expiration of the minimum term.

(2) When the board has not set a date on which a prisoner is to be released upon parole, the prisoner shall be released upon a date six months prior to the expiration of the prisoner's term as computed under ORS 421.120 and 421.122 unless the prisoner on that date remains subject to an unexpired minimum term during which the prisoner is not eligible for parole, in which case the prisoner shall not be released until the expiration of the minimum term.

(3) In no case does a prisoner have a right to refuse an order granting the prisoner release upon parole. [1985 c.53 §§2, 3]

Note: See note under 144.110.

144.250 [Amended by 1973 c.836 §292; repealed by 1973 c.694 §26; see 144.183]

144.260 Notice of prospective release on parole or post-prison supervision of inmate. Prior to the release on parole or post-prison supervision of a convicted person from a Department of Corrections institution, the chairperson of the State Board of Parole and Post-Prison Supervision shall inform the Department of Corrections and the sentencing judge, the district attorney, sheriff or arresting agency of the prospective date of release and of any special conditions thereof. At least 30 days prior to the release from actual physical custody of any convicted person, other than by parole or post-prison supervision, whether such release is pursuant to work release, institutional leave, or any other means, the Department of Corrections shall notify the sentencing judge and the district attorney of the impending release. The victim may request notification of the release and if the victim has requested notification, the State Board of Parole and Post-Prison Supervision or the Department of Corrections, as the case may be, shall notify the victim in the same fashion and under the same circumstances it is required to give notification to other persons under this section. [Amended by 1969 c.597 §115; 1973 c.836 §293; 1983 c.635 §1; 1987 c.2 §15; 1987 c.320 §59; 1989 c.790 §29]

144.270 Conditions of parole; copy to parolee. (1) The State Board of Parole and Post-Prison Supervision, in releasing a person on parole, shall specify in writing the conditions of the parole and a copy of such conditions shall be given to the person paroled.

(2) The board shall determine, and may at any time modify, the conditions of parole, which may include, among other conditions, that the parolee shall:

(a) Accept the parole granted subject to all terms and conditions 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 parole officer.

(d) Report to the parole officer as directed by the board or parole officer.

(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, in its discretion, suspend or revoke parole if it determines that the parole is not in the best interest of the parolee, or in the best interest of society.

(3) The board may establish such special conditions as it shall determine are necessary because of the individual circumstances of the parolee.

(4) It shall not be a cause for revocation of parole that the parolee failed to apply for or accept employment at any workplace where there is a labor dispute in progress. As used in this subsection, "labor dispute" has the meaning for that term provided in ORS 662.010.

(5)(a) When the State Board of Parole and Post-Prison Supervision grants an inmate parole from the custody of the Department of Corrections, the board shall order, as a condition of parole, that the inmate reside for the first six months in the county where the inmate resided at the time of the offense that resulted in the imprisonment.

(b) Upon motion of the State Board of Parole and Post-Prison Supervision, an inmate, a victim or a district attorney, the State Board of Parole and Post-Prison Supervision may waive the residency requirement only after making a finding that one of the following conditions has been met:

(A) The inmate provides proof of a job with no set ending date in a county other than the established county of residence;

(B) The inmate is found to pose a significant danger to the victim of the offender's crime, or the victim or victim's family is found to pose a significant danger to the inmate residing in the county of residence;

(C) The inmate has a spouse or biological or adoptive family residing in other than the county of residence who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole;

(D) As another condition of parole, the inmate is required to participate in a treatment program which is not available or located in the county of residence;

(E) The inmate desires to be paroled to another state; or

(F) The State Board of Parole and Post-Prison Supervision finds other good cause, of a nature similar to the other conditions listed in this paragraph, for the waiver.

(c)(A) For purposes of this subsection, "residency" means the last address at the time of the offense, as established by an examination of all the available information in the following records:

(i) An Oregon driver's license, regardless of its validity;

(ii) Records maintained by the Department of Revenue;

(iii) Records maintained by the Department of State Police, Bureau of Criminal Identification;

(iv) Records maintained by the Department of Human Resources; or

(v) Records maintained by the Department of Corrections.

(B) When an inmate did not have one identifiable address of record at the time of the offense, the inmate shall be considered to have resided in the county where the offense occurred.

(C) If the inmate is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.

(D) If the inmate is being rereleased after revocation of parole, the county of residence shall be determined according to the date of the arrest resulting in a conviction of the underlying offense. [Amended by 1973 c.694 §7; 1973 c.836 §294; 1974 s.s. c.36 §5; 1987 c.320 §60; 1987 c.780 §4; 1989 c.1023 §1; 1991 c.278 §1]

Note: See note under 144.110.

144.275 Parole of inmates sentenced to make financial restitution; schedule of payments. Whenever the State Board of Parole and Post-Prison Supervision orders the release on parole of an inmate who has been ordered to pay compensatory fines pursuant to ORS 137.101 or to make restitution pursuant to ORS 137.106, but with respect to whom payment of all or a portion of the fine or restitution was suspended until the release of the inmate from imprisonment, the board may establish a schedule by which payment of the compensatory fine or restitution shall be resumed. In fixing the schedule and supervising the paroled inmate's performance thereunder the board shall consider the factors specified in ORS 137.106 (2). The board shall provide to the sentencing court a copy of the schedule and any modifications thereof. [1977 c.271 §6; 1989 c.46 §1]

Note: 144.275 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 144 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

144.305 Length of parole. Any parole in this state shall extend for the entire term of the offender's sentence; but active supervision of parole may be discontinued after three years if the parolee has substantially complied with the conditions of active supervision and any restitution owed to the victim has been paid. Any additional costs incurred as a result of this section shall be paid for by increased parole fees under ORS 423.570. [1987 c.2 §16; 1991 c.148 §1]

Note: See note under 144.110.

Note: 144.305 was added to and made a part of ORS chapter 144 but was not added to any smaller series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

TERMINATION OF PAROLE

144.310 Final discharge of parolee; period of active supervision. (1) When a paroled prisoner has performed the obligations of parole for such time as satisfies the State Board of Parole and Post-Prison Supervision that the prisoner's final release is not incompatible with the prisoner's welfare and that of society, the board may make a final order of discharge and issue to the paroled prisoner a certificate of discharge; but no such order of discharge shall be made within a period of less than six months after the date of release on parole, except that when the period of the sentence imposed by the court expires at an earlier date, a final order of discharge shall be made and a certificate of discharge issued to the paroled prisoner not later than the date of expiration of the sentence.

(2) A paroled prisoner shall be subject to active parole supervision during the first six months of the period of parole. The board may require a more extended period of active supervision if, in a manner provided by rule, it finds that a six-month period of supervision is incompatible with the welfare of the parolee or of society. In making a determination whether to require active parole supervision for a period longer than six months, the board may consider the extent and availability of Department of Corrections resources.

(3) The board may extend or renew the period of active parole supervision or delay discharge of a parolee if it finds, in the manner provided in ORS 144.343, that the parolee has violated the conditions or terms of parole.

(4) During the pendency of any parole violation proceedings, the running of time periods set forth in this section is stayed and the board has jurisdiction over the parolee until the proceedings are resolved. [Amended by 1963 c.625 §2; 1973 c.694 §18; 1973 c.836 §295; 1974 s.s. c.36 §6; 1981 c.425 §1; 1987 c.320 §61]

144.315 Evidence admissible before board; rules. Evidence may be received in proceedings conducted by the State Board of Parole and Post-Prison Supervision even though inadmissible under rules of evidence applicable to court procedure and the board shall establish procedures to regulate and provide for the nature and extent of the proofs and evidence and method of taking and furnishing the same in order to afford the inmate a reasonable opportunity for a fair hearing. The procedures shall include the means of determining good cause not to allow confrontation of witnesses or disclosure of the identity of informants who would be subject to risk of harm if their identity is disclosed. [1973 c.694 §22]

144.317 Appointment of attorneys; payment. (1) The State Board of Parole and Post-Prison Supervision shall have the power to appoint attorneys, at board expense, to represent indigent parolees and offenders on post-prison supervision if the request and determination provided in ORS 144.343 (3)(f) have been made.

(2) Upon completion of the parole or post-prison supervision revocation hearing, the board shall determine whether the person for whom counsel was appointed pursuant to subsection (1) of this section is able to pay a portion of the attorney fees to be paid by the board. In determining whether the person is able to pay such portion, the board shall take into account the other financial obligations of the person, including any existing fines or orders to make restitution. If the board determines that the person is able to pay such portion, the board may order, as a condition of parole or post-prison supervision, that the person pay the portion to the appropriate officer of the state. [1973 c.694 §23; 1981 c.644 §6; 1987 c.803 §16; 1989 c.790 §40]

144.320 [Repealed by 1961 c.412 §5]

144.330 [Amended by 1973 c.836 §296; repealed by 1973 c.694 §8 (144.331 enacted in lieu of 144.330)]

144.331 Suspension of parole or post-prison supervision; custody of violator; revocation hearing before suspension. (1) The State Board of Parole and Post-Prison Supervision may suspend the parole or post-prison supervision of any person under its jurisdiction upon being informed and having reasonable grounds to believe that the person has violated the conditions of parole or post-prison supervision and may order the arrest and detention of such person. The written order of the board is sufficient warrant for any law enforcement officer to take into custody such person. A sheriff, municipal police officer, constable, parole or probation officer, prison official or other peace officer shall execute the order.

(2) The board or its designated representative may proceed to hearing as provided in ORS 144.343 without first suspending the parole or post-prison supervision or ordering the arrest and detention of any person under its jurisdiction upon being informed and having reasonable grounds to believe that the person under its jurisdiction has violated a condition of parole and that revocation of parole may be warranted or that the person under its jurisdiction has violated a condition of post-prison supervision and that incarceration for the violation may be warranted.

(3) During the pendancy of any post-prison supervision violation proceedings, the period of post-prison supervision is stayed and the board has jurisdiction over the offender until the proceedings are resolved. [1973 c.694 §9 (enacted in lieu of 144.330); 1977 c.375 §1; 1991 c.108 §1]

144.333 [Repealed by 1974 s.s. c.36 §28]

144.334 Use of citations for parole or post-prison supervision violators; conditions; appearance. (1) In addition to the authority granted under ORS 144.331 and 144.370, the State Board of Parole and Post-Prison Supervision may authorize the use of citations to direct alleged parole or post-prison supervision violators to appear before the board or its designated representative. The following apply to the use of citations under this section:

(a) The board may authorize issuance of citations only by officers who are permitted under ORS 144.350 to arrest and detain.

(b) Nothing in this subsection limits the authority, under ORS 144.350, of a supervising officer or other officer to arrest an alleged parole or post-prison supervision violator.

(2) The board may impose any conditions upon an authorization under this section that the board considers appropriate. The conditions may include, but are not limited to, requirements that citation authority be sought on a case by case basis, citation authority be granted in all cases that meet certain conditions, citation authority be allowed for certain types of cases or designation of certain cases be made where citations shall not be used.

(3) The cited offender shall appear before the board or its designated representative at the time, date and place specified in the ci-

tation. If the offender fails to appear as required, the board may issue a suspend and detain order upon its own motion or upon request of the supervising officer. [1991 c.836 §4]

Note: 144.334 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 144 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

144.335 Appeal from order of board to Court of Appeals; effect of filing appeal; appointment of master. (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. [1973 c.694 §24; 1983 c.740 §18; 1989 c.790 §41]

144.337 Public Defender to represent petitioner. Persons petitioning for review under ORS 144.335 shall be represented by the Public Defender pursuant to the terms of ORS 151.210 to 151.290. [1973 c.694 §25]

144.340 Power to retake and return violators of parole and post-prison supervision. (1) The Department of Corrections, in accordance with the rules and regulations or directions of the State Board of Parole and Post-Prison Supervision or the Governor, as the case may be, may cause to have retaken and returned persons to the institution, whether in or out of the state, whenever they have violated the conditions of their parole or post-prison supervision.

(2) Persons retaken and returned to this state from outside the state upon order or warrant of the Department of Corrections, State Board of Parole and Post-Prison Supervision or the Governor, for violation of conditions of their parole or post-prison supervision, shall be detained in a Department of Corrections facility pending any hearing concerning the alleged violation, and ultimate disposition by the State Board of Parole and Post-Prison Supervision. [Amended by 1969 c.597 §116; 1973 c.836 §297; 1987 c.320 §62; 1989 c.790 §42; 1991 c.228 §1]

144.343 Hearing required on revocation; procedure. (1) When the State Board of Parole and Post-Prison Supervision or its designated representative has been informed and has reasonable grounds to believe that a person under its jurisdiction has violated a condition of parole and that revocation of parole may be warranted, the board or its designated representative shall conduct a hearing as promptly as convenient to determine whether there is probable cause to believe a violation of one or more of the conditions of parole has occurred and also conduct a parole violation hearing if necessary. Evidence received and the order of the court at a preliminary hearing under ORS 135.070 to 135.225 may be used by the board to determine the existence of probable cause. A waiver by the defendant of any preliminary hearing shall also constitute a waiver of probable cause hearing by the board. The location of the hearing shall be reasonably near the place of the alleged violation or the place of confinement.

(2) The board may:

(a) Reinstate or continue the alleged violator on parole subject to the same or modified conditions of parole;

(b) Revoke parole and require that the parole violator serve the remaining balance of the sentence as provided by law;

(c) Impose sanctions as provided in ORS 144.106; or

(d) Delegate the authority, in whole or in part, granted by this subsection to its designated representative as provided by rule.

(3) Within a reasonable time prior to the hearing, the board or its designated representative shall provide the parolee with written notice which shall contain the following information:

(a) A concise written statement of the suspected violations and the evidence which forms the basis of the alleged violations.

(b) The parolee's right to a hearing and the time, place and purpose of the hearing.

(c) The names of persons who have given adverse information upon which the alleged violations are based and the right of the parolee to have such persons present at the

hearing for the purposes of confrontation and cross-examination unless it has been determined that there is good cause for not allowing confrontation.

(d) The parolee's right to present letters, documents, affidavits or persons with relevant information at the hearing unless it has been determined that informants would be subject to risk of harm if their identity were disclosed.

(e) The parolee's right to subpoena witnesses under ORS 144.347.

(f) The parolee's right to be represented by counsel and, if indigent, to have counsel appointed at board expense if the board or its designated representative determines, after request, that the request is based on a timely and colorable claim that:

(A) The parolee has not committed the alleged violation of the conditions upon which the parolee is at liberty;

(B) Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justify or mitigate the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; or

(C) The parolee, in doubtful cases, appears to be incapable of speaking effectively on the parolee's own behalf.

(g) That the hearing is being held to determine:

(A) Whether there is probable cause to believe a violation of one or more of the conditions of parole has occurred; and

(B) If there is probable cause to believe a violation of one or more of the conditions of parole has occurred:

(i) Whether to reinstate parole;

(ii) Whether to continue the alleged violator on parole subject to the same or modified conditions of parole; or

(iii) Whether to revoke parole and require that the parole violator serve a term of imprisonment consistent with ORS 144.346.

(4) At the hearing the parolee shall have the right:

(a) To present evidence on the parolee's behalf, which shall include the right to present letters, documents, affidavits or persons with relevant information regarding the alleged violations;

(b) To confront witnesses against the parolee unless it has been determined that there is good cause not to allow confrontation;

(c) To examine information or documents which form the basis of the alleged violation unless it has been determined that informants would be subject to risk of harm if their identity is disclosed; and

(d) To be represented by counsel and, if indigent, to have counsel provided at board expense if the request and determination provided in paragraph (f) of subsection (3) of this section have been made. If an indigent's request is refused, the grounds for the refusal shall be succinctly stated in the record.

(5) Within a reasonable time after the preliminary hearing, the parolee shall be given a written summary of what transpired at the hearing, including the board's or its designated representative's decision or recommendation and reasons for the decision or recommendation and the evidence upon which the decision or recommendation was based. If an indigent parolee's request for counsel at board expense has been made in the manner provided in paragraph (f) of subsection (3) of this section and refused, the grounds for the refusal shall be succinctly stated in the summary.

(6) If the board or its designated representative has determined that there is probable cause to believe that a violation of one or more of the conditions of parole has occurred, the hearing shall proceed to receive evidence from which the board may determine whether to reinstate or continue the alleged parole violator on parole subject to the same or modified conditions of parole or revoke parole and require that the parole violator serve a term of imprisonment as provided by ORS 144.346.

(7) At the conclusion of the hearing if probable cause has been determined and the hearing has been held by a member of the board or by a designated representative of the board, the person conducting the hearing shall transmit the record of the hearing, together with a proposed order including findings of fact, recommendation and reasons for the recommendation to the board. The parolee or the parolee's representative shall have the right to file exceptions and written arguments with the board. The right to file exceptions and written arguments may be waived. After consideration of the record, recommendations, exceptions and arguments a quorum of the board shall enter a final order including findings of fact, its decision and reasons for the decision. [1973 c.694 §13; 1977 c.375 §2; 1981 c.644 §7; 1987 c.158 §20a; 1987 c.803 §17; 1989 c.790 §42a; 1991 c.836 §2]

144.345 Revocation of parole; effect of conviction for crime. (1) Except as provided in subsection (2) of this section, whenever the State Board of Parole and Post-Prison Supervision considers an alleged parole violator and finds such person has violated one or more conditions of parole and evidence

offered in mitigation does not excuse or justify the violation, the board may revoke parole.

(2) When a person released on parole or post-prison supervision is convicted of a crime and sentenced to a term of imprisonment at any institution of the Department of Corrections or its counterpart under the laws of the United States or any other state, such conviction and sentence shall automatically terminate the person's parole or post-prison supervision as of the date of the sentence order. Notwithstanding any other provision of law, the person shall not be entitled to a hearing under ORS 144.343 and shall have a rerelease date set as provided by rule. [1973 c.694 §14; 1977 c.372 §16; 1991 c.836 §3]

144.346 Parole revocation sanctions; rules. (1) The State Board of Parole and Post-Prison Supervision shall adopt rules to establish parole revocation sanctions for parole violations committed on or after November 1, 1989.

(2) To the extent permissible under law, the parole revocation sanctions established under this section shall be consistent with the post-prison supervision violation sanctions set by rules of the State Sentencing Guidelines Board. [1989 c.790 §18b]

Note: 144.346 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 144 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

144.347 Compelling witnesses; subpoena power; fees. (1) Upon request of any party to the hearing provided in ORS 144.343 and upon a proper showing of the general relevance and reasonable scope of the testimony to be offered, the board or its designated representatives shall issue subpoenas requiring the attendance and testimony of witnesses. In any case, the board, on its own motion, may issue subpoenas requiring the attendance and testimony of witnesses.

(2) Upon request of any party to the hearing provided in ORS 144.343 and upon a proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought, the board or its designated representative shall issue subpoenas duces tecum. In any case, the board, on its own motion, may issue subpoenas duces tecum.

(3) Witnesses appearing under subpoena, other than the parties or state officers or employees, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). If the board or its designated representative certifies that the testimony of a witness was relevant and material, any person who has paid fees and mileage to that witness shall be reimbursed by the board.

(4) If any person fails to comply with a subpoena issued under subsection (1) or (2) of this section or any party or witness refuses to testify regarding any matter on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the board or its designated representative or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued by the court. [1973 c.694 §15; 1983 c.489 §3; 1989 c.980 §7]

144.349 When ORS 144.343 does not apply. When an alleged parole or post-prison supervision violator is in custody in a state to which the alleged parole or post-prison supervision violator has not been paroled or released or in federal custody, ORS 144.343 does not apply. [1973 c.694 §16; 1989 c.790 §43]

144.350 Order for arrest and detention of violator of parole, post-prison supervision, probation, conditional pardon or other conditional release; investigation by department. (1) The Department of Corrections may order the arrest and detention of any person then under the supervision or control of the department upon being informed and having reasonable grounds to believe that such person has violated the conditions of parole, post-prison supervision, probation, conditional pardon or other conditional release from custody. Before issuing such an order, the department shall investigate for the purpose of ascertaining whether the terms of the parole, post-prison supervision, probation, conditional pardon or other conditional release have been violated.

(2) Notwithstanding subsection (1) of this section, the department may order the arrest and detention of any person under its supervision or control if it has reasonable grounds to believe that such person is a danger to self or to others. A hearing shall follow as promptly as convenient to the parties to determine whether probable cause exists to continue detention pending a final determination of the case. [Amended by 1969 c.597 §117; 1981 c.644 §8; 1987 c.320 §63; 1989 c.790 §44]

144.360 Effect of order for arrest and detention of violator. Any order issued by the Department of Corrections as authorized by ORS 144.350 constitutes full authority for the arrest and detention of the violator, and all the laws applicable to warrants of arrest shall apply to such orders. [Amended by 1973 c.836 §298; 1987 c.320 §64]

144.370 Suspension of parole or post-prison supervision following order for ar-

rest and detention; hearing. Within 15 days after the issuance of an order, under the provisions of ORS 144.350, the board may order suspension of the detained person's parole or post-prison supervision. A hearing shall then be conducted as promptly as convenient pursuant to ORS 144.343. [Amended by 1973 c.694 §10; 1973 c.836 §299; 1974 s.s. c.36 §7; 1981 c.644 §9; 1983 c.740 §19; 1991 c.108 §2]

144.374 Deputization of persons in other states to act in returning Oregon parole and post-prison supervision violators. (1) The Director of the Department of Corrections may deputize, in writing, any person regularly employed by another state, to act as an officer and agent of this state for the return of any person who has violated the conditions of parole, post-prison supervision, conditional pardon or other conditional release.

(2) Any person deputized pursuant to subsection (1) of this section shall have the same powers with respect to the return of any person who has violated the conditions of parole, post-prison supervision, conditional pardon or other conditional release from custody as any peace officer of this state.

(3) Any person deputized pursuant to subsection (1) of this section shall carry formal evidence of deputization and shall produce the same on demand. [1955 c.369 §1; 1969 c.597 §118; 1973 c.836 §300; 1987 c.320 §65; 1989 c.790 §45]

144.376 Contracts for sharing expense with other states of cooperative returns of parole and post-prison supervision violators. The Department of Corrections may enter into contracts with similar officials of any state, for the purpose of sharing an equitable portion of the cost of effecting the return of any person who has violated the conditions of parole, post-prison supervision, probation, conditional pardon or other conditional release. [1955 c.369 §2; 1969 c.597 §119; 1983 c.425 §1; 1987 c.320 §66; 1989 c.790 §46]

144.380 After suspension of parole, post-prison supervision or revocation of conditional pardon or probation, violator is fugitive from justice. After the suspension of parole or post-prison supervision or revocation of probation or conditional pardon of any convicted person, and until the return of the person to custody, the person shall be considered a fugitive from justice. [Amended by 1973 c.694 §11; 1989 c.790 §47]

144.390 [Amended by 1975 c.589 §1; repealed by 1989 c.790 §47a]

144.395 Rerelease of persons whose parole has been revoked. The board shall adopt rules consistent with the criteria in ORS 144.780 relating to the rerelease of persons whose parole has been revoked. [1977 c.372 §7]

144.400 [Amended by 1973 c.836 §301; repealed by 1973 c.694 §26]

144.403 [Repealed by 1974 s.s. c.36 §28]

SEIZURE OF PROPERTY BY PAROLE AND PROBATION OFFICERS

144.404 Department of Corrections authority to receive, hold and dispose of property. The Department of Corrections is authorized to receive, hold and dispose of contraband, things otherwise criminally possessed or possessed in violation of parole or post-prison supervision conditions, or unclaimed goods seized by a parole and probation officer during the arrest of a suspected parole or post-prison supervision violator or during the search of the suspected violator or of the premises, vehicle or other property of the suspected violator. [1991 c.286 §1]

Note: 144.404 to 144.409 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 144 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

144.405 Duty of officer upon seizure; disposition of property if no claim to rightful possession is established. (1) Upon seizing property in execution of duty, a parole and probation officer shall, as soon thereafter as is reasonably possible, make a written list of the things seized and furnish a copy to the suspected parole or post-prison supervision violator. The list shall contain a notice informing the person of the right to contest the seizure by filing a petition and shall contain such other information as the Department of Corrections, by rule, may require.

(2) If no claim of rightful possession has been established under ORS 144.405 to 144.409, the Department of Corrections may order the sale, destruction or other disposition of the things seized. The department may enter into agreements with other state and local officials responsible under applicable laws for selling, destroying or otherwise disposing of contraband or unclaimed goods in official custody for ultimate disposition of the things seized. The clear proceeds, if any, generated by the disposition of things seized shall be deposited in the State Treasury to the credit of the General Fund.

(3) If things seized by a parole and probation officer in execution of duty are not needed for evidentiary purposes, and if a person having a rightful claim establishes identity and right to possession to the satisfaction of the Department of Corrections, the department may summarily return the things seized to their rightful possessor.

(4) If the things seized are contraband, the fruits of crime or things otherwise

criminally possessed, the Department of Corrections may:

(a) Relinquish custody of the things seized to appropriate law enforcement officials for disposition; or

(b) Hold and safeguard the things seized until directed by appropriate law enforcement officials that the things in question are no longer needed for purposes of criminal prosecution. [1991 c.286 §2]

Note: See note under 144.404.

144.406 Petition for return of things seized. (1) Within 30 days after actual notice of any seizure, or at such later date as the Department of Corrections in its discretion may allow:

(a) An individual from whose person, property or premises things have been seized may petition the department to return the things seized to the person or premises from which they were seized.

(b) Any other person asserting a claim to rightful possession of the things seized may petition the department to restore the things seized to the person.

(2) Petitions for return or restoration of things seized shall be served on the manager of the local field services office having supervision over the suspected parole or post-prison supervision violator.

(3) Service of a petition for the return or restoration of things seized shall be made by certified or registered mail, return receipt requested. [1991 c.286 §3]

Note: See note under 144.404.

144.407 Grounds for valid claim to rightful possession. A petition for the return or restoration of things seized shall be based on the ground that the petitioner has a valid claim to rightful possession because:

(1) The things had been stolen or otherwise converted and the petitioner is the owner or rightful possessor;

(2) The things seized were not, in fact, subject to seizure in connection with the suspected parole or post-prison supervision violation;

(3) Although the things seized were subject to seizure in connection with a suspected parole or post-prison supervision violation, the petitioner is or will be entitled to their return or restoration upon a determination by the Department of Corrections or the State Board of Parole and Post-Prison Supervision that they are no longer needed for evidentiary purposes, do not constitute a parole or post-prison supervision violation or may be lawfully possessed by the petitioner; or

(4) The suspected parole or post-prison supervision violator and the department have stipulated that the things seized may be returned to the petitioner. [1991 c.286 §4]

Note: See note under 144.404.

144.408 Hearing on petition. (1) If, upon consideration of a petition for return or restoration of things seized, it appears to the Department of Corrections that the things should be returned or restored, but there is substantial question whether they should be returned to the person from whose possession they were seized or to some other person, or a substantial question among several claimants to rightful possession, the department may set a further hearing, assuring that all persons with a possible possessory interest in the things in question receive due notice and an opportunity to be heard. Upon completion of the hearing, the department shall enter an order for the return or restoration of the things seized.

(2) Instead of conducting the hearing provided for in subsection (1) of this section and returning or restoring the property, the department in its discretion, may leave the several claimants to appropriate civil process for the determination of the claims. [1991 c.286 §5]

Note: See note under 144.404.

144.409 Granting petition for return of things seized; judicial review. (1) In granting a petition for return or restoration of things seized, the Department of Corrections shall postpone execution of the order until such time as the things in question are no longer needed for evidentiary purposes in establishing either a criminal or parole or post-prison supervision violation.

(2) Judicial review of a department order for return or restoration of things seized shall be available as for review of orders in other than contested cases as provided in ORS 183.310 to 183.550. [1991 c.286 §6]

Note: See note under 144.404.

WORK RELEASE PROGRAM

144.410 Definitions for ORS 144.410 to 144.525. As used in ORS 144.410 to 144.525, unless the context requires otherwise:

(1) "Director" means the Director of the Department of Corrections.

(2) "Department" means the Department of Corrections.

(3) "Department of Corrections institutions" has the meaning found in ORS 421.005. [1965 c.463 §1; 1969 c.597 §120; 1973 c.836 §302; 1987 c.320 §67]

144.420 Department of Corrections to administer work release program; purposes of release; housing of parolee. (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.

(c) Participating in alcohol or drug treatment programs.

(d) Participating in mental health programs.

(e) Specific treatment to develop independent living skills.

(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. [1965 c.463 §2; 1967 c.354 §1; 1969 c.597 §138; 1973 c.242 §1; 1973 c.836 §303; 1974 s.s. c.36 §8; 1987 c.320 §68; 1989 c.790 §69; 1991 c.161 §1]

144.430 Duties of department in administering program. (1) The Department of Corrections shall administer the work release program by means of such staff organization and personnel as the director considers necessary. In addition to other duties, the department shall:

(a) Locate employment for qualified applicants;

(b) Effect placement of persons under the work release program;

(c) Collect, account for and make disbursements from earnings of persons under the work release program;

(d) Generally promote public understanding and acceptance of the work release program; and

(e) Establish and maintain community centers.

(2) The Department of Corrections may enter into agreements with other public or private agencies for providing services relating to work release programs.

(3) In carrying out the provisions of this section, the Department of Corrections may enter into agreements with the Vocational Rehabilitation Division to provide such services as determined by the Department of Corrections and as the Vocational Rehabilitation Division is authorized to provide under ORS 344.511 to 344.550. [1965 c.463 §3; 1967 c.289 §1; 1969 c.597 §121; 1973 c.836 §304; 1987 c.320 §69]

144.440 Recommendation by sentencing court. When a person is sentenced to the custody of the Department of Corrections, the court may recommend to the department that the person so sentenced be granted the option of serving the sentence by enrollment in the work release program established under ORS 144.420. [1965 c.463 §4; 1973 c.836 §305; 1987 c.320 §70]

144.450 Approval or rejection of recommendations; rules; exemptions from Administrative Procedures Act. (1) The director shall approve or reject each recommendation under ORS 144.440 or 421.170 for enrollment in the work release program. No person may be enrolled without the consent of the person in writing. Rejection by the director of a recommendation does not preclude submission under ORS 421.170 of subsequent recommendations regarding enrollment of the same person.

(2) The director shall promulgate rules for carrying out ORS 144.410 to 144.525 and 421.170.

(3) In approving a recommendation and enrolling a person in the work release program, the director may prescribe any specific conditions that the director finds appropriate to assure compliance by the person with the general procedures and objectives of the work release program.

(4) ORS 183.410 to 183.500 do not apply to actions taken under this section. [1965 c.463 §7; 1973 c.621 §8a; 1973 c.836 §306; 1987 c.320 §70a]

144.460 Contracts for quartering of enrollees. The Department of Corrections may contract with the governing bodies of political subdivisions in this state, with the Federal Government and with any private agencies approved by the department for the quartering in suitable local facilities of persons enrolled in work release programs. Each such facility having six or more residents must be licensed under ORS 443.400 to 443.455 and 443.991 (2) and must satisfy standards established by the Department of Corrections to assure adequate supervision, custody, health and safety of persons quartered therein. [1965 c.463 §8; 1969 c.597 §122; 1969 c.678 §1; 1973 c.836 §307; 1977 c.717 §15; 1987 c.320 §71]

144.470 Disposition of enrollee's earnings under program. (1) Each person enrolled in the work release program shall promptly surrender to the Department of Corrections all earnings as the person receives them, other than amounts involuntarily withheld by the employer of the person. The department shall:

(a) Deduct from the earnings an amount determined to be the cost of quartering, feeding and clothing the person;

(b) Allow the person a sufficient amount of money from the earnings to cover incidental expenses arising out of employment;

(c) Make provision for payment of the person's debts and fines incurred prior to enrollment in the program, as directed by the sentencing court; and

(d) Cause to be paid, to the person's dependents, such part of any balance of the person's earnings remaining after deductions under paragraphs (a) to (c) of this subsection as are necessary for the support of such dependents.

(2) Any balance of a person's earnings remaining after all deductions have been made under this section shall be:

(a) Paid to the person upon release under ORS 144.515; or

(b) Credited to the account of the person in the Department of Corrections institution if the person is returned under ORS 144.500. [1965 c.463 §9; 1973 c.836 §308; 1987 c.320 §72]

144.480 Protections and benefits for enrollees. (1) Persons enrolled in a work release program are entitled to the protection and benefits of ORS 653.265, 653.305 and 653.310 to 653.545 and ORS chapters 651, 652, 654, 656, 659 and 660 to the same extent as other employees of their employer. Compensation paid under ORS chapter 656 that is not expended on medical services shall be treated in the same manner as the person's earnings are treated under ORS 144.470.

(2) Persons enrolled in a work release program are not entitled to benefits:

(a) Under ORS 655.505 to 655.550 arising out of any employment during their enrollment if they are eligible for benefits under ORS chapter 656 pursuant to subsection (1) of this section; or

(b) Under ORS chapter 657 during their enrollment. [1965 c.463 §10; 1969 c.597 §122a; 1969 c.678 §2]

144.490 Status of enrollees. (1) A person enrolled in the work release program is not an agent, employee or servant of a Department of Corrections institution, the department or this state:

(a) While working in employment under the program, or seeking such employment; or

(b) While going to such employment from the place where the person is quartered, or while returning therefrom.

(2) For purposes of this chapter, a person enrolled in the work release program established under ORS 144.420 is considered to be an inmate of a Department of Corrections institution. [1965 c.463 §§11, 13; 1987 c.320 §73]

144.500 Effect of violation or unexcused absence by enrollee. (1) If a person enrolled in the work release program violates any law, or any rule or specific condition applicable to the person under ORS 144.450, the Department of Corrections may immediately terminate that person's enrollment in the work release program and transfer the person to a Department of Corrections institution for the remainder of the sentence.

(2) Absence, without a reason that is acceptable to the director, of a person enrolled in a work release program from the place of employment or designated quarters, at any time contrary to the rules or specific conditions applicable to the person under ORS 144.450:

(a) Immediately terminates the enrollment of the person in the work release program.

(b) Constitutes an escape from a correctional facility under ORS 162.155. [1965 c.463 §§16, 17; 1971 c.743 §340; 1987 c.320 §74]

144.510 [Amended by 1961 c.656 §1; renumbered 144.560]

144.515 Release terminates enrollment; continued employment to be sought. A person's enrollment in the work release program terminates upon the release of the person from confinement pursuant to law. To the extent possible, the Department of Corrections shall cooperate with employers in making possible the continued employment of persons released. [1965 c.463 §18; 1973 c.836 §309; 1987 c.320 §75]

144.519 [1967 c.612 §§3, 4; repealed by 1969 c.597 §281 and 1969 c.678 §8]

144.520 [Renumbered 144.570]

144.522 Revolving fund. (1) The Department of Corrections may request in writing the Executive Department to, and when so requested the Executive Department shall, draw a warrant on the amount available under section 6 or 7, chapter 678, Oregon Laws 1969, in favor of the department for use by the department as a revolving fund. The warrant or warrants drawn to establish or increase the revolving fund, rather than to reimburse it, shall not exceed the aggregate sum of $20,000. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the department may draw checks.

(2) The revolving fund may be used by the department for the purpose of making loans to any inmate enrolled in the work release program under ORS 144.410 to 144.525, at a rate of interest prescribed by the department, to pay costs of necessary clothing, tools, transportation and other items from

the time of initial enrollment to the time the inmate receives sufficient income to repay the loan. A loan from the revolving fund shall be made only when other resources available to the enrollee to pay the costs described in this subsection are inadequate.

(3) The Department of Corrections shall enforce repayment of loans under this section by any lawful means. However, the Director of the Department of Corrections may proceed under ORS 293.235 to 293.245 to write off uncollectible debts arising out of such loans.

(4) All repayments of loans from the revolving fund shall be credited to the fund. Interest earnings realized upon any loan from the revolving fund shall be credited to the fund. [1969 c.597 §122d and 1969 c.678 §5; 1975 c.411 §1; 1987 c.320 §76]

Note: The text of 144.522 was enacted by 1969 c.597 §122d and by 1969 c.678 §5. The Legislative Counsel has compiled both enactments as a single section.

144.525 Custody of enrollee earnings deducted or otherwise retained by department. The Director of the Department of Corrections shall deposit in a trust account with the State Treasurer, as they are received, moneys surrendered to the department under ORS 144.470. The State Treasurer shall not credit moneys in the trust account to any state fund for governmental purposes. Disbursements from the trust account for purposes authorized by ORS 144.470 may be made by the director by checks or orders drawn upon the State Treasurer. The director is accountable for the proper handling of the trust account. [1965 c.463 §21; 1987 c.320 §77]

144.560 [Formerly 144.510; repealed by 1969 c.597 §281]

144.570 [Formerly 144.520; repealed by 1969 c.597 §281]

UNIFORM ACT FOR OUT-OF-STATE SUPERVISION

144.610 Out-of-state supervision of parolees; contract with other states. The Governor of this state may execute a compact on behalf of the State of Oregon with any of the United States joining therein in the form substantially as follows:

A compact entered into by and among the contracting states signatory hereto with the consent of the Congress of the United States of America granted by an Act entitled, "An Act Granting the Consent of Congress to any Two or More States to Enter into Agreements or Compacts for Cooperative Effort and Mutual Assistance in the Prevention of Crime and for Other Purposes."

The contracting states agree:

(1) That the judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state") while on a probation or parole, if:

(a) Such person is in fact a resident of, or has the family of the person residing within, the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having the family of the person residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which the person has been convicted.

(2) That each receiving state shall assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon, and not reviewable within, the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there is pending against the probationer or parolee within the receiving state any criminal charge or if the probationer or parolee is suspected of having committed within such state a criminal offense, the probationer or parolee shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states party to this compact without interference.

(5) That the Governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

144.613 Notice when parole or probation violated; hearing; report to sending state; taking person into custody. (1) Where supervision of a parolee or probationer is being administered pursuant to the Uniform Act for Out-of-State Supervision, the appropriate judicial or administrative authorities in this state shall notify the Uniform Act for Out-of-State Supervision administrator of the sending state, as defined in ORS 144.610, whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation.

(2) Prior to the giving of any such notification, a hearing shall be held in accordance with ORS 144.613 to 144.617 within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this state shall, as soon as practicable following termination of any such hearing, report to the sending state, furnish a copy of the hearing record and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state.

(3) Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration. [1973 c.489 §1]

144.615 Hearing procedure. (1) Any hearing pursuant to ORS 144.613 to 144.617 may be before the administrator of the Uniform Act for Out-of-State Supervision, a deputy of the Director of the Department of Corrections or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

(2) With respect to any hearing pursuant to ORS 144.613 to 144.617, the parolee or probationer:

(a) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that the parolee or probationer has committed a violation that may lead to a revocation of parole or probation.

(b) Shall be permitted to confer with any person whose assistance the parolee or probationer reasonably desires, prior to the hearing.

(c) Shall have the right to confront and examine any persons who have made allegations against the parolee or probationer, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(d) May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of the contentions of the parolee or probationer. A record of the proceedings shall be made and preserved. [1973 c.489 §§2, 3; 1987 c.320 §78]

144.617 Hearing on violation in another state; effect of record in such hearing. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Uniform Act for Out-of-State Supervision any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to ORS 144.613 to 144.617, such record shall have the same standing and effect as though the proceeding of which it is a record was

had before the appropriate officer or officers in this state, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter. [1973 c.489 §4]

144.620 Short title. ORS 144.610 may be cited as the Uniform Act for Out-of-State Supervision.

144.622 "Parole" and "parolee" defined for Uniform Act for Out-of-State Supervision. For purposes of ORS 144.610 and 144.613 to 144.617, "parole" includes but is not limited to post-prison supervision, and "parolee" includes but is not limited to persons on post-prison supervision under rules adopted by the State Sentencing Guidelines Board. [1989 c.790 §37]

Note: 144.622 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 144 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

EXECUTIVE CLEMENCY

144.640 Granting reprieves, commutations and pardons generally; remission of penalties and forfeitures. Upon such conditions and with such restrictions and limitations as the Governor thinks proper, the Governor may grant reprieves, commutations and pardons, after convictions, for all crimes and may remit, after judgment therefor, all penalties and forfeitures. [Formerly 143.010]

144.650 Notice of intention to apply for pardon, commutation or remission; proof of service. (1) When an application for a pardon, commutation or remission is made to the Governor, a copy of the application, signed by the person applying and stating fully the grounds of the application, shall be served upon:

(a) The district attorney of the county where the conviction was had;

(b) If the person applying is housed in a correctional facility within the State of Oregon, the district attorney of the county in which the correctional facility is located;

(c) The State Board of Parole and Post-Prison Supervision; and

(d) The Director of the Department of Corrections.

(2) Proof by affidavit of the service shall be presented to the Governor.

(3) Upon receiving a copy of the application for pardon, commutation or remission, any person or agency named in subsection (1) of this section shall provide to the Governor as soon as practicable such information and records relating to the case as the Governor may request and may provide such further information and records relating to the case as the person or agency considers relevant to the issue of pardon, commutation or remission.

(4) Following receipt by the Governor of an application for pardon, commutation or remission, the Governor shall not grant the application for at least 30 days. Upon the expiration of 180 days, if the Governor has not granted the pardon, commutation or remission applied for, the application shall have lapsed. Any further proceedings for pardon, commutation or remission in the case shall be pursuant only to further application and notice. [Formerly 143.040; 1983 c.776 §1; 1987 c.320 §79]

144.660 Communication to legislature by Governor. The Governor shall communicate to the Legislative Assembly at its next regular session thereafter each case of reprieve, commutation or pardon, with the reason for granting the same, stating the name of the applicant, the crime of which the applicant was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve. The Governor shall communicate a like statement of particulars in relation to each case of remission of a penalty or forfeiture, with the amount remitted. [Formerly 143.050]

144.670 Filing of papers by Governor. When the Governor grants a reprieve, commutation or pardon or remits a fine or forfeiture, the Governor shall within 10 days thereafter file all the papers presented to the Governor in relation thereto in the office of the Secretary of State, by whom they shall be kept as public records, open to public inspection. [Formerly 143.060]

MISCELLANEOUS PROVISIONS

144.710 Cooperation of public officials with State Board of Parole and Post-Prison Supervision and Department of Corrections. All public officials shall cooperate with the State Board of Parole and Post-Prison Supervision and the Department of Corrections, and give to the board or department, its officers and employees such information as may be necessary to enable them to perform their functions. [Amended by 1973 c.836 §310; 1987 c.320 §80]

144.720 Judge's power to suspend execution of sentence or grant probation prior to commitment. Nothing in ORS 144.005 to 144.025, 144.040, 144.050, 144.060, 144.075, 144.185, 144.226, 144.228, 144.260 to 144.380, 144.410 to 144.610, 144.620, 144.710 or this section shall be construed as impairing or restricting the power given by law to the judge of any court to suspend execution

of sentence or to grant probation to any person who is convicted of a crime before such person is committed to serve the sentence for the crime. [Amended by 1985 c.283 §5; 1989 c.790 §47b]

ADVISORY COMMISSION ON PRISON TERMS AND PAROLE STANDARDS

144.775 Commission members; terms; compensation; rules on duration of prison terms. (1) There is hereby established an Advisory Commission on Prison Terms and Parole Standards. The commission shall consist of equal numbers of State Board of Parole and Post-Prison Supervision members and circuit court judges appointed by the Chief Justice of the Supreme Court. The legal counsel to the Governor shall serve as an ex officio member of the commission and shall not vote unless necessary to break a voting deadlock. The Director of the Department of Corrections shall act as an advisor to the commission.

(2) The term of office of each of the members appointed by the Chief Justice is four years. Before the expiration of the term of any of those members, the Chief Justice shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Chief Justice shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the commission shall receive no compensation for services as a member. However, all members may receive actual and necessary travel and other expenses incurred in the performance of their official duties under ORS 292.495.

(4) The chairperson of the State Board of Parole and Post-Prison Supervision and a judge elected by the judicial members shall serve in alternate years as chairperson of the commission. The chairperson and a vice chairperson shall be elected prior to July 1 of each year to serve for the year following. The commission shall adopt its own bylaws and rules of procedure. A majority of the commission members shall constitute a quorum for the transaction of business. An affirmative vote of a majority of the members shall be required to make proposals to the board under ORS 144.775 to 144.790.

(5) The commission shall meet at least annually at a place and time determined by the chairperson and at such other times and places as may be specified by the chairperson or five members of the commission.

(6) The State Board of Parole and Post-Prison Supervision shall provide the commission with the necessary clerical and secretarial staff support and shall keep the members of the commission fully informed of the experience of the board in applying the standards derived from those proposed by the commission.

(7) The commission shall propose to the State Board of Parole and Post-Prison Supervision and the board shall adopt rules establishing ranges of duration of imprisonment and variations from the ranges. In establishing the ranges and variations, factors provided in ORS 144.780 and 144.785 shall be considered. [1977 c.372 §1; 1983 c.740 §20; 1987 c.320 §81; 1991 c.126 §7]

144.780 Rules on duration of imprisonment; objectives; considerations in prescribing rules. (1) The commission shall propose to the board and the board shall adopt rules establishing ranges of duration of imprisonment to be served for felony offenses prior to release on parole. The range for any offense shall be within the maximum sentence provided for that offense.

(2) The ranges shall be designed to achieve the following objectives:

(a) Punishment which is commensurate with the seriousness of the prisoner's criminal conduct; and

(b) To the extent not inconsistent with paragraph (a) of this subsection:

(A) The deterrence of criminal conduct; and

(B) The protection of the public from further crimes by the defendant.

(3) The ranges, in achieving the purposes set forth in subsection (2) of this section, shall give primary weight to the seriousness of the prisoner's present offense and criminal history. Existing correctional resources shall be considered in establishing the ranges. [1977 c.372 §2; 1985 c.163 §1]

144.783 Duration of term of imprisonment when prisoner is sentenced to consecutive terms. (1) When a prisoner is sentenced to two or more consecutive terms of imprisonment, the duration of the term of imprisonment shall be the sum of the terms set by the State Board of Parole and Post-Prison Supervision pursuant to the ranges established for the offenses, subject to ORS 144.079, and subject to the variations established pursuant to ORS 144.785 (1).

(2) The duration of imprisonment pursuant to consecutive sentences may be less than the sum of the terms under subsection (1) of this section if the board finds, by affirmative vote of a majority of its members that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect community security. [1987 c.634 §2; 1991 c.126 §9]

144.785 Rules on duration of prison terms when aggravating or mitigating circumstances exist; limitation on terms; dangerous offenders. (1) The commission shall propose to the board and the board shall adopt rules regulating variations from the ranges, to be applied when aggravating or mitigating circumstances exist. The rules shall define types of circumstances as aggravating or mitigating and shall set the maximum variation permitted.

(2) In no event shall the duration of the actual imprisonment under the ranges or variations from the ranges exceed the maximum term of imprisonment fixed for an offense, except in the case of a prisoner who has been sentenced under ORS 161.725 as a dangerous offender, in which case the maximum term shall not exceed 30 years. [1977 c.372 §3; 1981 c.547 §1; 1987 c.634 §3]

144.787 Rules on age or physical disability of victim constituting aggravating circumstance. The Advisory Commission on Prison Terms and Parole Standards and the State Board of Parole and Post-Prison Supervision shall provide, in rules adopted under ORS 144.785, that, in the case of a crime involving a physical or sexual assault, a victim's particular vulnerability to injury in such case due to the victim's youth, advanced age or physical disability, shall constitute an aggravating circumstance justifying a variation from the range of duration of imprisonment otherwise applicable in the case. [1985 c.767 §3]

PRESENTENCE REPORTS

144.790 Presentence report in felony conviction cases; sentencing recommendations; form. (1) When a person is convicted of a felony committed prior to November 1, 1989, and the court, the district attorney or the defendant requests a presentence report, the Department of Corrections shall furnish a presentence report to the sentencing court. Regardless of whether a presentence report is requested, the Department of Corrections shall furnish a presentence report to the sentencing court when a defendant has been convicted of a felony sexual offense. If a presentence report has previously been prepared by the Department of Corrections with respect to the defendant, the department shall furnish a copy of that report, and a supplement bringing it up to date, to the sentencing court. The report shall estimate the range of duration of imprisonment applicable in the individual case and the information used to estimate that range. The reports shall contain recommendations with respect to the sentencing of the defendant, including incarceration or alternatives to incarceration whenever the Department of Corrections officer preparing the report believes such an alternative to be appropriate. Subject to subsection (4) of this section, a report shall contain such additional information as the court may request upon consultation with the district attorney and the defendant or defense counsel. All recommendations shall be for the information of the court and shall not limit the sentencing authority of the court.

(2)(a) Notwithstanding the provisions of subsection (1) of this section, when a person is convicted of a felony committed on or after November 1, 1989, the Department of Corrections shall only furnish a presentence report to the sentencing court if:

(A) Required by the rules of the State Sentencing Guidelines Board under section 7, chapter 790, Oregon Laws 1989;

(B) Ordered by the sentencing judge;

(C) Either party advises the court that the party believes a departure is justified; or

(D) The conviction is for a felony sexual offense.

(b) The contents of any presentence report furnished by the Department of Corrections as required by this subsection shall be as prescribed by rules of the State Sentencing Guidelines Board under section 7, chapter 790, Oregon Laws 1989.

(c) Except in the case of conviction of a felony sexual offense, a presentence report need not be prepared if the parties do not dispute the appropriate grid block classification and no departure is requested or imposed.

(3) Whenever a presentence report is made, the preparer of the report shall make a reasonable effort to contact the victim and obtain a statement describing the effect of the defendant's offense upon the victim. If the victim is under 18 years of age, the preparer shall obtain the consent of the victim's parent or guardian before contacting victim. The preparer of the report shall include the statement of the victim in the presentence investigation report. If the preparer is unable to contact the victim or if the victim declines to make a statement, the preparer shall report that the preparer was unable to contact the victim after making reasonable efforts to do so, or, if contact was made with the victim, that the victim declined to make a statement for purposes of this section. Before taking a statement from the victim, the preparer of the report shall inform the victim that the statement will be made available to the defendant and the defendant's attorney prior to sentencing as required under ORS 137.079.

(4) The State Board of Parole and Post-Prison Supervision, in consultation with the Advisory Commission on Prison Terms and Parole Standards, shall propose to the Department of Corrections and the Department of Corrections shall adopt rules establishing a uniform presentence report form for use pursuant to subsection (1) of this section.

(5) As used in this section, "victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of an offense, and includes, in the case of any homicide, an appropriate member of the immediate family of any such person. [1977 c.372 §10; 1979 c.648 §1; 1981 c.426 §4; 1983 c.723 §2; 1983 c.740 §21; 1985 c.503 §1; 1987 c.320 §82; 1989 c.790 §8a; 1991 c.270 §1]

144.795 [1981 c.136 §2; repealed by 1985 c.503 §4]

144.800 When presentence report required upon commitment to Department of Corrections. Notwithstanding ORS 144.790 (1), when a defendant is committed to the custody of the Department of Corrections, unless the State Board of Parole and Post-Prison Supervision otherwise directs, the department shall provide to the board a complete report as established pursuant to ORS 144.790 (4). [1985 c.503 §2; 1987 c.320 §83; 1989 c.790 §8b]