

# Local Supervisory Authority Procedure Manual



This manual was designed to assist Local Supervisory Authorities in understanding Local Supervisory Authority procedures and practices that should be followed when dealing with felony offenders sentenced to 12 month or less prison and felony offenders under the post-prison supervision Releasing and Sanctioning Authority of the Local Supervisory Authority.

Community Corrections Branch  
Oregon Department of Corrections

In collaboration with the

Multnomah County Department of Community Justice Adult Services Division  
Hearings and Local Control Services Units

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**LOCAL SUPERVISORY AUTHORITY PROCEDURES MANUAL  
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## II. DEFINITIONS

**Abscond:** Unauthorized absence from parole or post-prison supervision.

**Administrative Sanction:** Local, structured, or intermediate sanctions as those terms used in OAR 291-058-0010 et al, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.

**BAF:** A Board order after a decision is called a "Board Action Form".

**Board:** Board of Parole and Post-Prison Supervision.

**Compensatory Fines:** A court-imposed penalty for the commission of a crime resulting in injury for which the person injured has a remedy by civil action (unless the issue of punitive damages has been previously decided on a civil case arising out of the same act and transaction). The court may award compensatory fines in addition to restitution.

**Future Disposition Hearing:** A hearing the Board may set at its discretion for purposes of deciding whether to deny or grant re-release for a violation of parole or post-prison supervision when authorized by law.

**Inactive Parole and Inactive Post-Prison Supervision:** The offender remains under supervision however;

(a) There is no direct supervision by a supervising officer and no requirement of regular reporting;

(b) There are no additional supervision fees; and

(c) The offender remains subject to arrest by a supervising officer for violation of conditions of supervision and return to active supervision at any time until expiration of the sentence or post-prison supervision term as outlined in Division 94; and

(d) (b) and (c) do not apply to those offenders being supervised in another state via Interstate Compact. Those offenders remain on active parole or post-prison supervision.

**In-Camera Hearing:** The inspection of a document by the Hearings Officer in private before the document may be introduced as evidence.

**Inoperative Time:** Time spent on abscond, escape, or unauthorized departure from custody, leave, parole or post-prison supervision, which does not count toward service of the sentence.

**Offender:** Any person under the supervision of the Department of Corrections or a local supervisory authority who is not presently in the custody of a correctional facility, including persons on probation, parole or post-prison supervision.

**Post-Prison Supervision:** Applies to crimes committed on or after November 1, 1989. A term, as set by statute or the court under the supervision of the Department of Corrections or a correctional agency designated by the Department, the Board or a Local Supervisory Authority.

**Revocation:** An action by a Sanction Authority to terminate an offender's parole or post-prison supervision. Sanction Authority may resume an offender's parole or post-prison supervision following the act of revocation.

**Sanction Authority** means:

(a) The Board or its designee for:

(A) Any felony offender who received a sentence of more than twelve (12) months in the custody of the Department of Corrections; or

(B) Any felony offender who received a sentence of twelve (12) months or less but who also has an additional sentence(s) of greater than twelve (12) months.

(i) If an offender is on post-prison supervision for multiple sentences which include a sentence that exceeds twelve (12) months ("Board case") and a less than twelve (12)-month sentence ("Local Supervisory Authority case"), the Board will maintain jurisdiction of the post-prison supervision of the Local Supervisory Authority case until the Board's active involvement in the Board case(s) expires. Following expiration of the Board's case(s), the Board will maintain jurisdiction over the post-prison supervision of the Local Supervisory Authority case(s) until an offender is re-released following revocation of the post-prison supervision for the Local Supervisory Authority case(s), or until the Local Supervisory Authority petitions to assume jurisdiction, whichever comes first. Jurisdiction will fall under the Local Supervisory Authority at that point.

(ii) If the Board issued the order of post-prison supervision for an offender whose only sentence was twelve (12) months or less, jurisdiction will remain with the Board until petition by the Supervisory Authority to assume jurisdiction or upon re-release following revocation of the post-prison supervision for that sentence; whichever comes first.

(b) The Local Supervisory Authority or its designee for any felony offender whose crime was committed after November 1, 1989, was sentenced by the court to twelve (12) months or less, and who does not have an additional sentence of more than twelve (12) months for a felony.

**Senate Bill 156 offenders:** Offenders where the Local Supervisory Authority is the Releasing and Sanctioning Authority over the offender's post-prison supervision (Reference Sanction Authority under Definitions)

**Supervisory Authority:** The state or local corrections agency or official designated in each county by that county's Board of County Commissioners or County Court to operate correction supervision services, custodial facilities, or both (per ORS 144.087(1)).

**Victim:** The actual victim, a representative selected by the victim, the victim's next of kin or, in the case of abuse or corpse in any degree, an appropriate member of the immediate family of the decedent (Per ORS 144.120(7)). The person or persons who have suffered financial, social, psychological or physical harm as a result of a crime and includes, in the case of a homicide or abuse or corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor (Per ORS 131.007).

### **III. Local Supervisory Authority, General**

#### **AUTHORITY & RESPONSIBILITIES**

For Senate Bill 156 offenders, the supervisory authority is responsible for reviewing release plans, imposing conditions of supervision, and imposing sanctions including revocation sanctions. (Refer to Duties of Supervisory Authority)

Senate Bill 156 cases released on post-prison supervision prior to November 1, 1997 remain the jurisdiction of the Board of Parole & Post-Prison Supervision until revocation of that post-prison supervision sentence, then will fall under the jurisdiction of the supervisory authority upon re-release.

If a Senate Bill 156 offender also has a case, which falls under the Board's jurisdiction, the Board maintains jurisdiction over all cases, including the Senate Bill 156 case(s). Following expiration of the Board's case(s), the Board will maintain jurisdiction over the Senate Bill 156 case(s) until revocation of that post-prison supervision sentence, then will fall under the jurisdiction of the supervisory authority upon re-release.

Upon revocation of post-prison supervision, the Board sends out a teletype to OISC (Offender Information and Sentence Computation), county of supervision, and the jail where the offender is housed. The teletype contains language to the effect that the "offender's local control post-prison supervision will be returned to the jurisdiction of the local supervisory authority upon completion of the revocation sanction at which time the Board will close interest."

A Board Action Form (BAF) is then generated, which includes the same language as above. The BAF is currently sent to OISC, the offender c/o the supervising office, the Board file and the SOON Representative.

When the offender's re-release date comes up, the Board's file is closed and the Board sends a Notice of File Closure document to the county where the offender is being supervised. On the bottom of the document, it is indicated that the Board is closing its interest in the offender and that the expiration date for the PPS is \_\_\_\_\_. There should also be language on that document stating that the offender's post-prison supervision has now reverted back to the jurisdiction of the local supervisory authority.

#### **SENTENCING UNDER SENATE BILL 1145 (EFFECTIVE 1/1/97, ORS 137.124)**

Sentences of 12 months or less are served under the supervisory authority of the county of conviction for new sentences and revoked probation cases, and county of last supervision for revoked parole and post-prison supervision cases.

The Supervisory Authority has the ability to move an offender from one custody-type to another or to determine the most appropriate custody-type given the behavior and compliance of the offender. However, the court must order that alternative programming is an option on the case. Absent the order in open court the offender cannot be considered for early release or alternative programs.

## **CONSECUTIVE SENTENCES**

12 months or less are served in the custody of the supervisory authority of the county.

If a Court imposes a felony sentence that includes a term of incarceration that exceeds 12 months the court shall commit the defendant to the legal and physical custody of the Department of Corrections

If the sentence is to be consecutive to a term of felony incarceration of 12 months or less, the defendant shall serve any remaining part of the previously imposed term of incarceration (12 month or less sentence) in the legal and physical custody of the Department of Corrections.

If a Court imposes a felony sentence that includes a term of incarceration that is 12 months or less, the court shall commit the defendant to the legal and physical custody of the supervisory authority of the county in which the crime of conviction occurred.

If the sentence is to be served consecutive to a previously imposed sentence that exceed 12 months or a sentence imposed in the same proceedings that exceeds 12 months, the court shall commit the defendant to the legal and physical custody of the Department of Corrections.

## **CONCURRENT SENTENCES**

Would be sentenced to the supervisory authority on the concurrent less than 12-month sentence. While the exceeds-12 month sentence runs, the offender serves the sentence at DOC. When the exceeds-12 month sentence expires, any balance of the less than 12 month sentence would be served in the county.

## **SERVING LOCAL CONTROL SENTENCE, BUT HOUSED IN ANOTHER STATE OR FEDERAL PRISON**

If an offender received a local control sentence that's runs the same time as an out-of-state or federal sentence and the inmate is serving the out-of-state sentence in the other state or in a federal prison, admit the offender to local control status and then outcount the offender. INAC (for offenders serving sentences in another State), and REVP (for offenders serving time in a Federal facility) have been activated for Local Control use.

Absent time calculation (if no time calculation had been done, time would be just straight time), have the "L" line show the sentence length and when PPS date comes, admit to PPS (even if still in out-of-state or federal prison). A detainer or notifier to the respective facility should be sent, with copy to offender, where the offender is housed advising the offender is serving concurrent sentence through that ends X date and/or has PPS obligation that begins X date and expires X date.

## IV. Post-Prison Supervision (PPS)

### A. Conditions of Supervision

#### **RESIDENCY & SUPERVISION**

The Oregon Association of Community Corrections Directors has agreed that for release planning purposes, county of residence is established as county of last supervision for offenders revoked off active supervision. For new sentences, it is the county of conviction.

ORS 144.270(5) 6 months residency requirement applies to offenders released from the custody of the Department of Corrections and under the authority of the Board only.

#### **SPECIAL CONDITIONS OF POST-PRISON SUPERVISION**

The Board's/Local Supervisory Authority's authority to order special conditions comes from ORS 144.102(3)(a) for Post-Prison Supervision cases and ORS 144.270(3)(a) for Parole cases. In essence they state the Board/ Local Supervisory Authority may establish such special conditions as it shall determine are necessary, based upon the individual circumstances of the offender.

The Board/Local Supervisory Authority does need some explanation if you are recommending special conditions that don't appear appropriate for the crime of conviction. For example, if you are recommending the DV package and the person is incarcerated for a drug crime, the Board/Local Supervisory Authority' will need an explanation under Notable Issues as to why you are recommending the DV Package.

Just because a sentencing court recommends a special condition, does not mean that the Board/Local Supervisory can impose it. Example: The court recommends as a condition of parole that the offender be permitted to live in a structured setting such as a work release or halfway house to become adjusted to society.

It is not necessary to recommend as a special condition that an offender state their true name when they have contact with law enforcement. Failure to do so is a violation of GC10, obey all laws.

- SC1. Offender shall be evaluated by a mental health evaluator and follow all treatment recommendations.<sup>1</sup>
- SC2. Offender shall continue to take any psychiatric or psychotropic medication that was prescribed prior to or at the time of release from custody until otherwise directed by a physician. At the direction of the parole officer, the offender shall undergo a psychiatric

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<sup>1</sup> Note: For SC 1 and SC 2, do not order them unless there is a documented need for them. Please put information under Notable Issues as to why you are recommending them.

It is helpful when you include information about having contacted the mental health staff at the prison for their input.

evaluation and take any medications recommended. The offender shall comply with a medication monitoring program at the request of the parole officer.<sup>2</sup>

- SC3. Offender shall have no contact with minor females and shall not be present more than one time, without the prior written approval of the Board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate. The offender shall also not be present, without the prior written approval of the Board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.
- SC4. Offender shall have no contact with minor males and shall not be present more than one time, without the prior written approval of the Board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate. The offender shall also not be present, without the prior written approval of the Board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.
- SC5. Offender shall submit to random polygraph tests as part of a sex offender surveillance program. Failure to submit to the tests may result in return to custody. Specific responses to the tests shall not be the sole basis for return to custody.
- SC6. Offender shall enter and complete or be successfully discharged from a recognized and approved sex offender treatment program which may include polygraph and/or plethysmograph testing. The offender shall abide by all rules and conditions of the sex offender treatment program. Offender shall abide by a prohibition of sexually deviant materials, activities or behavior that the offender may use for the purpose of deviant sexual arousal, unless otherwise allowed by the Parole Officer in writing.
- SC7. Offender shall pay court ordered restitution to the clerk of the court of the county of sentencing (ORS 137.106, OAR 255-065-0005).
- SC8. If required to report as a sex offender under ORS 181.595, report with the Department of State Police, a Chief of Police, a county Sheriff, or the Supervising Agency when supervision begins, within 10 days of a change in residence and once a year within 10 days of the person's date of birth.<sup>3</sup>
- SC9. Offender shall not possess or use intoxicating beverages.
- SC10. Other: Special conditions may be imposed that are not listed above when the Board of Parole and Post-Prison Supervision determines that such conditions are necessary. You may recommend conditions in relation to the crime committed as well as conditions that reflect behavior. <sup>4</sup>

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<sup>3</sup> Note: This can be a tricky one, especially if their sex offense was committed some time ago in another state. If you aren't sure that it applies, put something under Notable Issues for the Board to please double check with the OSP Sex Offender Registration Unit.

<sup>4</sup> See examples below.

- SC11. Offender shall have no contact direct or indirect with those listed below: (names would be listed).
- SC12. Consent to search of computer or other electronic equipment upon the request of the supervising officer, or their representative, if the supervising officer has reasonable grounds to believe that evidence of a violation will be found.<sup>5</sup>
- SC13. Sex Offender Package:
- (a) Agreement to comply with any curfew set by the Board, the supervisory authority or the supervising officer.
  - (b) A prohibition against contacting a person under 18 years of age without the prior written approval of the Board, supervisory authority or supervising officer.
  - (c) A prohibition against being present more than one time, without the prior written approval of the Board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate.
  - (d) In addition to the prohibition under subparagraph (c) of this paragraph, a prohibition against being present, without the prior written approval of the Board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.<sup>6</sup>
  - (e) A prohibition against working or volunteering at a school, day care center, park, playground or other place where persons under 18 years of age regularly congregate.
  - (f) Entry into and completion of or successful discharge from a sex offender treatment program approved by the Board, supervisory authority or supervising officer. The offender shall abide by all rules and conditions of the sex offender treatment program. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.

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Example: SC10: Do not enter into gambling establishments without the prior written permission of PO.

Example: SC 10: Do not form or engage in personal relationships with persons responsible for the care of minors without the prior written permission of PO.

Example: SC 10: Sex Offender Enhanced Computer Condition. To be imposed only when sex offender's crime is directly related to their use of a computer.

No access to a computer, the internet, digital storage devices or other computer related devices and peripheral computer equipment, without the prior written approval of offenders supervising officer, and where applicable, the sex offender treatment provider, and only under conditions set by them. Conditions shall include random or unannounced examinations by the supervising officer or their designee of any and all computers or other electronic devices to which he/she has access, as well as the installation or use of software capable of determining whether or not sexually explicit materials have been accessed, exchanged or stored.

Note: If this condition is recommended, then do not recommend SC12.

<sup>5</sup> Note: This is the computer condition that will be applied to the majority of sex offenders.

Note: The common meaning of "adjacent" is that the property must have a common border. Therefore, if an offender was across the street, or kitty corner to something, he may not be in violation.

- (g) A prohibition against any contact with the victim, directly or indirectly, unless approved by the victim, the person's treatment provider and the Board, supervisory authority or supervising officer.
- (h) Unless otherwise indicated for the treatment required under subparagraph (F) of this paragraph, a prohibition against viewing, listening to, owning or possessing any sexually stimulating visual or auditory materials that are relevant to the person's deviant behavior.
- (i) Agreement to consent to a search of the person or the vehicle or residence of the person upon the request of a representative of the Board or supervisory authority if the representative has reasonable grounds to believe that evidence of a violation of a condition of post-prison supervision will be found.
- (j) Participation in random polygraph examinations to obtain information for risk management and treatment. The person is responsible for paying the expenses of the examinations. The results of a polygraph examination under this subparagraph may not be used in evidence in a hearing to prove a violation of post-prison supervision.
- (k) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the Board, supervisory authority or supervising officer.
- (l) A prohibition against using a post-office box unless approved by the Board, supervisory authority or supervising officer.
- (m) A prohibition against residing in any dwelling in which another sex offender who is on probation, parole or post-prison supervision resides unless approved by the Board or supervising officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides unless approved by the Board or a designee of the Board. As soon as practicable, the supervising officer of a person subject to the requirements of this subparagraph shall review the person's living arrangement with the persons' sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subparagraph:<sup>7</sup>

- (i) "Dwelling" has the meaning given that term in ORS 469.160.
- (ii) "Dwelling" does not include a residential treatment facility or a halfway house.
- (iii) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

- (n) If the person is in post-prison following conviction of a sex crime, as defined in ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the Board or supervisory authority, if requested by the victim, shall include as a special condition of the person's post-prison supervision that the person not reside within three miles of the victim.

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<sup>7</sup> Requires the Board or the supervising officer to approve the residence of a sex offender, and to review the living arrangement of all sex offenders currently under supervision "as soon as practicable". Therefore, it does apply to all sex offenders currently under supervision. The PPO will provide the offender with written permission to reside with one other sex offender and document in chrono's that the offender was given written permission and that the treatment provider was consulted to ensure that the arrangement supports the goals of offender rehabilitation and community safety.

## Special Condition Packages

**For offenders whose current crime of conviction falls under ORS 181.594, Sex Offender Package A (refer SC13) must be imposed.**

Note: They may not be incarcerated for a sex crime. Look at the Public Information Screen to determine if they have a concurrent probation or Local Control PPS for a sex crime listed in ORS 181.594. If they do, package A is imposed.

Here are the crimes that Package A applies to: Rape in any degree; Sodomy in any degree; Unlawful sexual penetration in any degree; Sexual abuse in any degree; Incest with a child victim; Using a child in a display of sexually explicit conduct; Encouraging child sexual abuse in any degree; Transporting child pornography into the state; Paying for viewing a child's sexually explicit conduct; Compelling prostitution; Promoting prostitution; Kidnapping in the first degree if the victim was under 18 years of age; Contributing to the sexual delinquency of a minor; Sexual misconduct if the offender is at least 18 years of age; Possession of materials depicting sexually explicit conduct of a child in the first degree; Kidnapping in the second degree if the victim was under 18 years of age, except by a parent or by a person found to be within the jurisdiction of the juvenile court; Any attempt to commit any of the crimes set forth in paragraphs (a) to (p) of this subsection; Burglary, when committed with intent to commit any of the offenses listed in paragraphs (a) to (p) or (s) of this subsection; or Public indecency or private indecency, if the person has a prior conviction for a crime listed in paragraphs (a) to (r) of this subsection.

**Use this language (Sex Offender Package B) if an offender is being released for a sex crime that is not listed under 181.594.**

SC3. Offender shall have no contact with minor females and shall not be present more than one time, without the prior written approval of the Board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate. The offender shall also not be present, without the prior written approval of the Board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.

SC4. Offender shall have no contact with minor males and shall not be present more than one time, without the prior written approval of the Board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate. The offender shall also not be present, without the prior written approval of the Board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.

SC5. Offender shall submit to random polygraph tests as part of a sex offender surveillance program at the direction of parole officer. Failure to submit to the tests may result in a return of custody. Specific responses to the tests shall not be the sole basis for return to custody;

SC6. Offender shall enter and complete or be successfully discharged from a recognized and approved sex offender treatment program, at the direction of the parole officer, which may include polygraph and/or plethysmograph testing. The offender shall abide by all rules and condition of the sex offender treatment program. Offender shall abide by a prohibition of sexually deviant materials, activities or behavior that the offender may use for the purpose of deviant sexual arousal, unless otherwise allowed by the parole officer in writing.

SC12. Consent to search of computer or other electronic equipment upon the request of the supervising officer, or their representative, if the supervising officer has reasonable grounds to believe that evidence of a violation will be found.

SC8. If applicable

For offenders who have a **prior sex offense, conviction, arrest or adjudication, but are not currently being supervised for a sex offense**, the following conditions should be recommended per PO (except SC#8, which is the law, if applicable).

SC3 – per PO; SC4 – per PO; SC5 – per PO; SC6 – per PO; SC12 – per PO; SC8, if applicable

**FELONY DUII/CRIMINALLY NEGLIGENT HOMICIDE PACKAGE:** This package cannot be imposed if someone has been convicted of UUMV or DWS.

- SC9. Do not consume or possess alcoholic beverages;
- SC10. (a) Do not own/operate a motor vehicle without the prior written permission of the PO;
- (b) If allowed to operate a motor vehicle, at PO's direction, offender is to equip the motor vehicle with the Guardian Interlock System;
- (c) If the offender is medically able and the PO directs, he/she must take Antabuse;
- (d) Random polygraph examinations at the direction of the PO;
- (e) Offender is not to go to any bars, taverns, or any place where the sale of alcohol is the primary source of revenue;
- (f) Offender is not to have any alcohol in the residence where he/she resides;
- (g) Attend substance abuse support or self-help group, as approved and directed by PO;
- (h) No drug paraphernalia
- SC11. (When there has been a death) Do not have any type of contact with the immediate family of NAME OF DECEASED VICTIM(S) HERE

#### **SUBSTANCE ABUSE CRIMES PACKAGE**

- SC9. Offender shall not possess or use intoxicating beverages;
- SC 10. (a) Do not enter into establishments where alcohol is the primary source of revenue;
- (b) Curfew/ESP/ Geographic restrictions per PO;
- (c) Do not go to places where drugs are known to be used, kept, manufactured or sold;
- (d) Attend substance abuse support or self-help group, as approved and directed by PO;
- (e) Do not possess drug paraphernalia.
- (f) No association with known drug users, outside of a treatment setting, without the prior written permission of PO

#### **I.D. THEFT/FORGERY PACKAGE**

- SC10. (a) Offender is not to possess, own or access any electronic equipment such as computers, duplication equipment, laminating equipment, typewriters, scanners or any other equipment used to reproduce identifications, checks or credit cards without the prior written permission of PO;

- (b) Do not possess any checks or credit cards under true names or any other names without the prior written permission of PO;
- SC11. (a) No contact with INSERT VICTIM(S) NAME HERE;
- (b) No contact with INSERT CO-DEFENDANT(S) NAME HERE

**FINANCIAL CRIMES PACKAGE:** Use this package is for those offenders convicted of embezzling large amounts of money.

- SC 10 (a) Advise employer, including temporary agencies, of this conviction and the nature of the crime;
- (b) Sign release of information to allow for communication between employer and supervising officer;
- (c) Do not accept any employment which includes the handling of money, i.e., cash, checks, credit cards, or bank cards, accounts payable, without obtaining permission from your supervising officer and making a full disclosure to the employer;
- (d) Provide complete personal financial records, i.e., tax records, household income and expenses, bank statements, etc., to the supervising officer upon request;
- (e) Prior to engaging in any financial transaction over \$200.00, you must obtain permission from the supervising officer;
- (f) Submit to polygraph examinations per PO, to determine compliance with special conditions.

#### **ASSAULT PACKAGE (FOR NON DOMESTIC VIOLENCE CASES)**

- SC10. Be evaluated for and successfully discharged from an anger management program approved by the parole officer.
- SC10 Do not knowingly be within 1000 feet of INSERT VICTIM(S) NAME HERE, their residence, employment, school, daycare or motor vehicle.
- SC11 No contact with INSERT VICTIM(S) NAME HERE, without the prior written permission of the PO.

#### **GANG PACKAGE**

- SC10 (a) Do not have any contact or association with gang members or be involved in any gang activity;
- (b) Do not possess any gang related paraphernalia which advocates hate or violence towards others;
- (c) Submit to curfew, ESP or geographic restrictions, per PO;
- (d) Submit to polygraph examinations per PO, to determine compliance with special conditions.

#### **CHILD MISTREATMENT OR NEGLECT PACKAGE**

- SC3. No contact with minor females, per PO;
- SC4. No contact with minor males, per PO;
- SC10. (a) Be evaluated for and be successfully discharged from a Parenting Class approved of by parole officer.
- (b) Do not form or engage in personal relationships with persons responsible for the care of minors, without the prior written permission of PO;

- (c) Do not knowingly be within 1000 feet of NAME OF VICTIM(S) residence, school or daycare without the prior written permission of PO;

SC11. No contact with INSERT VICTIM(S) NAME HERE, without the prior written permission of PO.

**DOMESTIC VIOLENCE PACKAGE:** Cases involving domestic violence are not always identifiable by the conviction type. Convictions where domestic violence was involved could have a conviction for Assault IV, Burglary, Coercion, Kidnapping or other crimes.

**When dealing with past convictions, impose this package per PO. If ordering the DV Package, don't recommend Anger Management Counseling. DV Counseling is more comprehensive than Anger Management, so there is no need for them to attend both.**

- SC10. (a) Be evaluated for and be successfully discharged from a Domestic Violence Intervention program approved of by the PO;
- (b) Submit to polygraph examinations, as directed by the parole officer, to determine compliance with special conditions and treatment;
- (c) Do not knowingly be within 1000 feet of the residence, employment or motor vehicle of NAME OF VICTIM HERE without prior written permission of the PO;
- (d) Do not enter into or participate in any intimate relationship/encounters with any person (male/female) without the prior written permission of PO.

SC11. No contact, direct or by second party, with NAME OF VICTIM HERE without the prior written permission of PO.

**ARSON PACKAGE:**

- SC10. (a) Do not possess any incendiary devices;
- (b) Curfew/ESP/Geographic restrictions per PO;
- (c) Maintain a driving log at the direction of the PO;
- (d) Submit to polygraph examinations, as directed by the PO, to determine compliance with special conditions

**GAMBLERS PACKAGE:**

- SC10: (a) Offender is not to enter any establishment or business where gambling is the primary source of revenue.
- (b) Offender is not to engage in gambling activities of any type, including gambling online using either private or publicly owned computers.
- (c) Offender shall attend Gamblers Anonymous or similar treatment group or gamblers' counseling at the direction of PO.
- (d) Consent to search of computer or other electronic equipment upon the request of the supervising officer, or their representative, if the supervising officer has reasonable grounds to believe that evidence of a violation will be found.
- (e) No association with known gamblers or persons who promote gambling, outside of a treatment setting, without the written permission of PO.

**PARENT/CHILD PACKAGE:** These conditions are only to be considered for those offenders coming out of prison with a conviction for Endangering the Welfare of a Minor and who have no other convictions against children. Additionally, they must have successfully completed a

parenting class or classes while incarcerated and have the recommendation of the program facilitator that these conditions be imposed as part of their Parole or PPS.

This package is different from the other special packages in that you will not order the entire package, rather only the specific conditions that will apply. As you can see from the conditions, we need to have the name of the program, victim(s) and spouse or significant other. As this is a new condition and many POs won't be familiar with it, we'd recommend you include the package on a separate piece of paper within the packet, checking or circling the applicable conditions and filling in the other relevant information.

When listing the conditions in the release plan we ask that you list the specific conditions that will apply on the first line of recommended conditions, with the other information below. See example below.

Special Conditions: SC 9, SC 10, P/C 2, P/C 4, P/C 9  
Substance Abuse Package  
P/C Package Info: Program:  
Victim(s)  
Spouse/Significant Other:

- P/C1. In accordance with (program(s) name), continued *supervised* contact with victim, (victim's name) as set up with and by the supervising officer, the staff of (program(s) name) and the Department of Human Services. Unsupervised contact upon supervising officer approval.
- P/C2. In accordance with institution programming, continued *supervised* contact with victim, (victim's name) as set up with and by the supervising officer, institution staff and the Department of Human Services. Unsupervised contact upon supervising officer approval.
- P/C3. Contact with victim (victim's name), allowed under the direction and supervision of (program(s) name) and the supervising officer.
- P/C4. Allowed to reside with (victim's name), in recognition of continued contact with victim, (victim's name), due to the continued involvement in (program(s) name).
- P/C5. Allowed to reside with (victim's name), in recognition of continued contact with victim, (victim's name), through the supervised State visiting program.
- P/C6. Supervised contact allowed with (name of spouse/significant other), for the purposes of child parenting issues.
- P/C7. Contact with (name of spouse/significant other) for the purposes of continued family therapy *only*.
- P/C8. Contact with (name of spouse/significant other) provided there is continued participation and compliance in family therapy.
- P/C9. Allowed to reside with (name of spouse/significant other) provided there is continued participation and compliance in family therapy.
- P/C10. Contact with (name of spouse/significant other) on community supervision with the written approval of both supervising officers.

For purposes of this package the program(s) name is/are \_\_\_\_\_.

Program Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

The victims are: \_\_\_\_\_

The spouse/significant other is: \_\_\_\_\_

## **IMMIGRATION AND CUSTOMS ENFORCEMENT (I.C.E.) CONDITION**

SC10. If allowed to remain in the U.S.A. or, within 24 hours of return to the U.S.A. report in person to the \_\_\_\_\_ Community Corrections Department.

## **ANY CRIME INVOLVING A VICTIM OR CO-DEFENDENTS**

SC10/11. Victim(s) list names

SC11. Co-Defendant(s) list names

## **ADDITIONAL INFORMATION**

Do NOT recommend the following conditions as they are already listed under the General Conditions:

1. Substance abuse evaluation and follow any treatment recommended. This condition is covered in General Condition #4 and does not need to be a special condition;
2. The only time a recommendation regarding money should be made is if the Court ordered restitution or a compensatory fine, or the Board ordered repayment of extradition costs. Do not recommend offenders pay Court ordered fines and fees as General Condition #1 covers this.

## **RESTITUTION AND MONEY JUDGEMENTS**

Include only attorney fees, compensatory fines and restitution ordered as condition of PPS. Per ORS 144.102(4)(a) The Board or supervisory authority may require the person to pay, as a condition of post-prison supervision, any compensatory fines, restitution or attorney fees:

- (1) As determined, imposed or required by the sentencing court; or
- (2) When previously required as a condition of any type of supervision that is later revoked.

(b) The Board or supervisory authority may require a person to pay restitution as a condition of post-prison supervision imposed for an offense other than the offense for which the restitution was ordered if the person:

- (1) Was ordered to pay restitution as a result of another conviction; and
- (2) Has not fully paid the restitution by the time the person has completed the period of post-prison supervision imposed for the offense for which the restitution was ordered.

If a judgment is made in a case for restitution or compensatory fines, the Board or supervisory authority will include it in their PPS order, if the Board or supervisory authority is made aware of it.

Also, under legislation enacted in 1999, under Senate Bill 157, unpaid restitution from unrelated cases where the court has issued a money judgment at the time of sentencing can be added as a condition of PPS. This includes when there are breaks in supervision.

The Board or supervisory authority may order restitution if the court has ordered restitution in any order relating to the case - either when probation is ordered or when it is revoked.

In summary, this statute allows the Board or supervisory authority to order as a condition of an offender's current Post-Prison Supervision, restitution for a Post-Prison Supervision case that has previously expired, with restitution owing.

## RESTITUTION

- SC7. Is only used for restitution when applicable. Refer to restitution information provided by the Board below.
- SC10. Is used for compensatory fines. The Board will place the repayment of any extradition costs under this special condition if applicable.

For Post-Prison Supervision cases, before the Board can order restitution, we must have a copy of any court order that shows restitution was ordered, as well as the name of the victim and the amount of restitution to be paid to them. Without such documentation, the Board cannot order restitution. An OJIN print-out is not enough evidence for the Board to order restitution or a compensatory fine. We must have a copy of the actual money judgment. If OJIN is all you have, put a copy in the packet and put a remark under Notable Issues advising the Board we will need to order the judgment. The Local Supervisory Authority would adopt their own policy in regards to the above.

**Note:** The Board or supervisory authority has no authority to order the payment of restitution on concurrent probation cases.

## PREDATORY SEX OFFENDER DESIGNATION

Per the Board, the predatory sex offender designation should continue to appear on the Order of Supervision for an offender once it has been made and it does not matter that the offender is not being supervised currently on a sex offense. The Local Supervisory Authority should follow the Board's practice.

**Predatory Sex Offender Findings:** The Local Supervisory Authority can make predatory sex offender finding on a local control inmate serving a felony sentence for Rape in any degree; Sodomy in any degree; Unlawful sexual penetration in any degree; Sexual abuse in any degree; or have been convicted of attempting one of these crimes or has been found guilty except for insanity of one of those crimes. Review OAR 255-060-0011 (Board administrative rule). The procedure should mirror those adopted by the Board.

### **B. Length of PPS under Gaynor v. Board of Parole Final – Effective 5/13/03**

In Gaynor v. Board of Parole, the Court of Appeals ruled that only the sentencing judge can set the length of PPS. Even if the judge does not set the length the way the law requires, the Board/Local Supervisory Authority cannot correct it. The only way it can be corrected is by sentencing judge.

The Board/Local Supervisory Authority will order PPS as stated in the sentencing order even if the order does not comply with Oregon law. The policy applies to cases in which the court has ordered too much PPS or too little PPS under Oregon law.

If the court specifically orders no PPS (i.e., there is a zero on the PPS line of the order), the Board/Local Supervisory Authority will not order any PPS. If the order does not mention any length of PPS [the sentencing order is silent as to PPS], the Board/Local Supervisory Authority will not order any PPS.

If a sentencing order is later amended to comply with Oregon law, the Board/Local Supervisory Authority will issue amended orders of supervision to reflect these changes.

Suggestion: If the Local Supervisory Authority has a case where OJIN or the sentencing order is silent to PPS or no PPS is ordered, the LSA may wish to call the sentencing court to request an amended order with the appropriate term of PPS, unless the court specifically did not want a term of PPS imposed. If the Local Supervisory Authority has not heard back from the Court prior to the offender's release, the Local Supervisory Authority may want to consider sending a letter to the offender before the release date reminding inmate that it is possible the judge may subsequently order PPS after release and to contact PO to make sure.

### INMATES HELD BEYOND THEIR SENTENCE RELEASE DATE

Pursuant to Baty vs. Slater, if an inmate has been held in custody on their felony sentence beyond the calculated release date (due to amended judgments, additional time served credit, etc), the inmate must be credited with the overage time toward their PPS term. In operative terms this means the offender's PPS sentence began while he/she was still incarcerated. The physical release date on the Order of Supervision remains the actual physical release date from incarceration; however, the begin date of the PPS term would reflect the date PPS should have started. For example, the physical release date from DOC was 6/27/07 but the adjusted calculated release date was 4/5/07. The admission date to PPPS [POST] would reflect the physical release date of 6/27/07, however, the PPS sentence begin date is 4/5/07, reflective of the recalculated date.

## C. Orders of Supervision

### **OFFENDER SIGNING ORDERS OF SUPERVISION**

On Orders of Supervision on Board cases, please have the offender sign the order or indicate on the order that he/she refused to sign and make a chrono entry. You should keep the signed Order of Supervision in your file. You do not have to send the signed order to the Board but the Board must be able to verify in the AS 400 chronos the date the offender was provided with the order. If the Board needs a copy of the signed order, they will contact you. This process allows the Board to check the date an offender has been given the order but minimizes the amount of paper being sent to the Board. The offender has only 45 days after release to contest it. If you have been sending the Board a hard copy of the signed order you no longer need to do this so long as you are making a chrono note and retaining the order in your file.

When an amended Order of Supervision is received, the PO should review it with the offender and have it signed at the first opportunity.

The Local Supervisory should follow the above practice.

**Orders of Supervision and Mail for Offenders.** Immediately pass onto your offender all mail/documents sent by the Board or Local Supervisory Authority. Many of these documents are time sensitive and must be delivered as soon as possible. Normally these documents fall into three categories: 1.) Administrative Review Response, 2.) Board Action Forms (BAF), and 3.) Orders of Supervision. When a PO receives an e-mail copy of a Board administrative review response form or a Board action form the PO should make a copy for the offender and make a copy for the PO's file. It would be very helpful if the PO would make a chrono when the order is delivered to the offender.

Making a chrono for when you gave the offender the documents allows the Board or Local Supervisory Authority to more accurately assess whether an offender is timely appealing the order.

Failure to deliver these documents to the offender as soon as possible after receipt could negatively impact the offender's ability to appeal a decision which could result in a legal action being filed by the offender which could involve all of us explaining in Court why we failed to deliver legal documents to the offender.

## **D. Stoppage of Post-Prison Supervision**

### **Policy**

Once started, the period of post-prison supervision will run continuously unless and until the post-prison supervision term expires, the offender absconds supervision and a warrant is issued, or post-prison supervision is revoked by the Board/Supervisory Authority and a revocation sanction is imposed. If an offender's post-prison supervision is revoked by the Board/Supervisory Authority, post-prison supervision will stop during the period of time ordered for the revocation sanction. The post-prison supervision expiration date will be re-calculated and extended to exclude the period of incarceration ordered for the revocation.

### **Practice:**

1) When the Board/Supervisory Authority revokes an offender, the Board/Supervisory Authority will order a revocation sanction and re-calculate the post-prison supervision expiration date according to the length of the incarceration. The offender's post-prison supervision will begin again upon re-release.

### **Clarifications:**

The period of post-prison supervision will not stop running during an administrative structured sanction.

If an offender receives a new local control or prison sentence while on post-prison supervision, the post-prison supervision will stop running only if the offender's existing post-prison supervision is revoked and a revocation sanction is ordered. Post-prison supervision will only stop for the period of the revocation sanction ordered, not for the entire period of incarceration for the new sentence.

When a warrant is issued for an offender on post-prison supervision, the post-prison expiration date is re-calculated based on the amount of abscond or inoperative time.

This policy will not apply to sex offenders whose original term of post-prison supervision extends to the maximum period of the indeterminate sentence for their conviction(s) (ORS 144.103). Since the term of post-prison supervision for these cases is based on the term of the maximum indeterminate sentence for the crime, you cannot extend that date even if they are revoked and given a revocation sanction.

For all offenders, the term of post-prison supervision cannot exceed the maximum indeterminate sentence for the offense for which the offender is on post-prison supervision. No offender will remain on post-prison supervision once the original sentence, all revocation sanctions and the

term of post-prison supervision equal the maximum indeterminate sentence for the offense. The maximum indeterminate sentence is 5 years for a C Felony; 10 years for a B Felony, and 20 years for an A Felony.

### **Data Entry Practice:**

1. When an offender is revoked, community staff shall enter the number of revocation days into a new field from the 'O' sentence line. The 'W/W Revocation Days' screen will track cumulative revocation time for a sentence if there is more than one revocation.
2. The sentence calculator uses the revocation days to extend the maximum date of the 'O' sentence.

### **STOPPAGE OF PPS EXAMPLES**

**Example 1:** Offender was placed on 24 months PPS on November 1, 2005, with a PPS expiration date of October 31, 2007. On September 15, 2006, PPS is revoked and a revocation sanction of 90 days is imposed. Upon re-release, the new PPS expiration date would be extended 90 days from the initial expiration date.

**Example 2:** Offender was placed on 12 months PPS on November 1, 2005, with a PPS expiration date of October 31, 2006. On October 25, 2006, the offender was detained for conduct constituting a crime and a suspend and detain was issued. A revocation sanction can be imposed, which would extend the new PPS expiration date the length of the revocation sanction from the initial expiration date.

**Example 3:** Offender is on post-prison supervision and receives a new local control sentence of 12 months. The Board revokes post-prison supervision for the new criminal conviction and orders a 90 day revocation sanction. Post-prison supervision stops only for 90 days. Post-prison supervision will be re-started on the case after the 90 days even if the offender is still serving the local control sentence. The post-prison supervision for the new conviction will begin when the offender is released from the new sentence. All cases will be consolidated under one order of PPS.

## **E. Warrants**

### **ABSCOND WARRANTS**

Local Supervisory Authority should move to mirror the practice of the Board when issuing warrants in that we will only issue abscond warrants if the offender has absconded, if the offender has changed residence and whereabouts is unknown, or if attempts to contact the offender at known residence have been unsuccessful. There may be other circumstances when the Local Supervisory Authority issues a warrant, such as when an offender presents a significant risk to the community and the warrant would aid in the offender's swift apprehension, but this will be on a case by case basis.

### **TOLLING TIME - SUSPEND/ABSCOND WARRANT HOLD STAYING TIME**

**Suspend and Detain Holds** - The practice of the Board is to stay the running of a PPS case at the point a Suspend and Detain warrant [hold] is placed. The Local Supervisory Authority should mirror that practice. Pursuant to ORS 144.331(3) during the pendency of any PPS

violation proceeding, the period of PPS is stayed and the Board has jurisdiction until the proceedings have been resolved. It will remain stayed until the Board [or local supervisory authority] decides what to do (Note: not upon HO's decision).

Reminder: In cases where PPS is stayed (such as violation proceedings pending even though expiration date has hit), if PPS is revoked, the period of PPS will remain stopped and will not commence again until after the revocation is served. If the Board/local supervisory authority decides to impose an administrative sanction instead, then expiration will go into effect immediately and offender must be released.

ORS 144.331(3) states, "During the pendency 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." Thus, while a SUSPEND & DETAIN is in affect, violation proceedings are pending and therefore the PPS is stayed and cannot expire until after the proceedings have been resolved. If the offender is held with an SUSPEND & DETAIN and the offender is not revoked, his PPS will continue to run as soon as the proceedings are resolved and may expire within a few days (even before the sanction is over). If the offender is revoked, the revoke days would be added on to the PPS expiration date under the current policy. The period the offender was held on the SUSPEND & DETAIN would not be added to the end of PPS under any scenario

Note: Suspend and Detain holds (warrants) are issued when an offender was taken into custody for a violation by a PO or police officer and the SUSPEND & DETAIN was necessary to keep the person in custody for violation proceeding (because a warrant had never been issued).

[Abscond] Warrant Holds - If an [abscond] warrant is issued by the Local Supervisory Authority, upon arrest, the warrant is sufficient to hold the offender in custody until the violation is dealt with. A Suspend and Detain does not also have to be issued, as either a warrant or SUSPEND & DETAIN is the mechanism by which the releasing Authority says there is enough information of a violation for this person to be in custody; therefore, once a warrant is issued, you would not need to then issue a SUSPEND & DETAIN following the arrest on the warrant.

PPS supervision is stayed and the Releasing Authority has jurisdiction over the offender until the proceedings are resolved during the time the offender is in custody on the warrant.

Detainer holds do not stop PPS from running.

## EXTRADITION

2005-07 Extradition Policy from Governor's General Counsel and Extradition Officer dated June 1, 2006, effective said date.

Extradition requests for parole and probation violators of Class A or B felons will be determined on a case-by-case basis since there is little likelihood of incarceration.

The State does not have the funds to return all Class C felons, whether they are untried or parole and probation violators. Generally, the Extradition Officer will approve extradition when the shuttle system can be used for the transport. Shuttle states are **Idaho, Montana, Oregon and Washington ONLY**. California, Colorado, Minnesota, Nevada, North Dakota, South Dakota, Utah and Wyoming are special arrangement states and not shuttle states. Returns of

fugitives from special arrangement states are not automatic and are arranged on a case-by-case basis.

**Exceptions of Class C felony fugitives from outside the shuttle areas will be considered on a case-by-case basis in the following circumstances:**

- The crime is a sex crime.
- The crime is Criminal Nonsupport.
- The fugitive has a substantial prior record including Class A and B felonies, Class B felonies (please note that a lengthy record of Class C felonies will not in itself be sufficient to justify extradition of a particular individual.)
- The fugitive's criminal conduct is such that he or she could have been charged with a Class A or Class B felony, even though the pending charge is a Class C. This would include cases in which the fugitive pleaded down from a Class A or Class B, or cases in which the charge is likely to be increased to a Class A or B if the fugitive is returned.
- The fugitive is likely to make substantial restitution for the crime if extradited.
- The fugitive's offense was extraordinary, and the fugitive will likely be incarcerated for a substantial length of time if he or she is returned.

The agency requesting extradition must make every effort to use the shuttle system for transport. **The Extradition officer must be apprised of all returns including shuttle returns.** Pre-approval for shuttle returns will ensure the return should be unforeseen complications and/or costs.

As with shuttle returns, the demanding agency is responsible for coordinating returns from special arrangement states. If the Oregon agency is not willing to coordinate, the transport arrangements, they should not request extradition.

Contact Information: Frances Lushenko  
Extradition Officer/IAD Administrator  
(503) 378-3156 ext 225  
Cell: (503) 881-4208  
E-mail: Frances.Lushenko@state.or.us

## **F. Revocations**

### **BEST INTEREST RETURN TIME 255-075-0004 GUIDELINES**

Pursuant to ORS 144.270(2)(g), the Board may in its discretion suspend or revoke parole of an offender if it determines that parole is not in the best interest of the offender or society. There is not such a section in ORS 144.102. However, pursuant to ORS 144.350(2), the Board has the same discretion as it relates to PPS offenders. The Board enacted its administrative rules at OAR 255-075-0004 pursuant to each of these statutes. The Board considers this time to count against PPS revocation time available.

When the Sanction Authority determines that an offender's release on parole or post-prison supervision is not in the best interest of the offender or in the best interest of society, the Sanction Authority may return the offender to custody. Best interest returns for offenders on post-prison supervision shall not exceed 90 days, and must be approved by the Sanction Authority. This type of return to custody may apply when:

1) The offender is suffering from an emotional or psychological disturbance which makes the offender dangerous to self or others if left in the community. The following behavior may indicate a dangerous emotional or psychological disturbance;

- a) Showing a present capacity to carry out any statements or threats of violence against the offender or the community; or
- b) Circumstances and conduct similar to that which led to the initial incarceration.

2) The offender's behavior cannot be adequately controlled if left in the community.

### **INOPERATIVE (INOP) TIME**

**Inoperative Time for Auto-Revokes.** Auto revoke time is **not** considered inoperative time (in reference to "stoppage of post-prison supervision" time). The process of auto revoking will be handled the same way as revocations; however, without adding any days to post-prison time.

**Inoperative time for PPS offenders that receive a new felony sentence in another state that also absconded supervision and a warrant had been issued.** The Board calculates inoperative time from the date the abscond warrant was issued to the arrest date, if the arrest date is known. If the arrest date is not known, then inoperative time is from the date the warrant was issued to the date of sentencing on the new conviction. The latter is the most common occurrence. That is the extent of the inoperative time.

The auto revocation action clears the warrant (so warrant is withdrawn at that time) and the Board then files a notifier with the appropriate agency/institution in the other state.

**The Board's policy is that if the warrant is recalled [rescinded] and no violation type of activity follows, inoperative abscond time is not calculated.**

Example: You have a case where a warrant was issued 9/12/06. The EXPI date is 1/13/08. The offender is now in contact and in residential treatment. The PO wants to address the violation via an Intervention Report (SRF) and have the warrant cleared [versus have the offender arrested on the warrant and disrupt treatment]. The PO imposed an intervention on 12/15/07 and teletypes the Local Control Supervisory Authority that the offender appeared on the warrant, the violation was addressed, and for the Supervisory Authority to add inoperative abscond time. Inoperative time would run from 9/12/06 to date violation addressed (12/15/07).

If the PO requested that the warrant be cleared with no sanction or intervention being imposed, there would be no inoperative time.

### **AUTO REVOKE**

When an offender released on post-prison supervision is convicted of a crime and sentenced to the Department of Corrections or its counterpart in other states [including federal sentences], parole or post-prison supervision automatically terminates (ORS 144.345). There is no distinction in the statute between crimes where the felony sentence is more than 12 months or less than 12 months; however, if an offender receives a new conviction in Oregon and is sentenced to local control, by statute, we cannot auto revoke because a county jail is not an institution of the Department of Corrections. However, all cases where a person is sentenced to a term of imprisonment in a prison in another state or in federal custody, then the Board/ Local Supervisory Authority is able to auto revoke subject to the provisos mentioned above.

When an offender receives a new conviction in this or any other state, the Releasing Authority may auto-revoke and re-release to the new conviction, but you would not impose a sanction. The Board issues a BAF (Board Action Form) indicating it is doing an auto-revoke based on the new conviction and immediately re-releasing the offender to the new sentence. There will not be any reference to any sanction time for the auto-revoke. PPS will not stop running for an auto-revoke.

PPS continues to run on the PPS supervision that is being auto-revoked. The term of PPS may expire while the offender is serving the new prison sentence.

### **Auto-revokes on offender for a conviction that occurs during supervision for a crime committed before supervision.**

The Board has advised that it has long been their policy to do an auto-revoke under these circumstances. While there may be concerns about this policy, the Board believes the auto-revoke statute can be read to permit this. Therefore, the Board will continue this practice and you can represent this in your memo to your office. The Local Supervisory Authority may choose to follow this practice, as there is no adverse consequence to the offender; however, not auto-revoking under this circumstance is acceptable as well.

If we have information that a person was convicted of a new crime and sentenced to a term of imprisonment in the Department of Corrections in another state, the Local Supervisory Authority could auto revoke them pursuant to statute.

If an offender was convicted of a crime and sentenced to the Department of Corrections or its counterpart in other states for a crime you already addressed as a violation, you cannot impose any other "sanction" for that same conduct. Therefore, you should not auto revoke. You should do nothing as you have already addressed the conduct. Now, if the offender had committed a technical violation in addition to the criminal violation, but you only addressed the technical violation initially, then after the conviction you could auto revoke.

## **G. Administrative Reviews**

### **BOARD POLICY ON RESPONSES TO ADMINISTRATIVE REVIEW OF LOCAL CONTROL CASES – EFFECTIVE NOVEMBER 29, 2002**

ORS 144.101(3) states, "If a local supervisory authority imposes conditions of post-prison supervision or sanctions for violations of those conditions, the person may request the Board to review the conditions or sanctions. The Board shall review the request and may, at its discretion, review the conditions and sanctions, under rules adopted by the Board."

The Board would like to provide local control offenders with the maximum amount of administrative review to prevent abuses by local jurisdictions. However, this amount of review is not fiscally possible if the Board's responses are ultimately subject to full judicial review upon appeal by an offender. The Board is informed by the Department of Justice that the Court of Appeals is allowing full judicial review of the Board's administrative review responses in local control cases. Due to budget constraints, the Board cannot afford to litigate its administrative review responses for local control cases. The Board also notes that local supervisory authorities have been consistently providing appropriate and informative responses to offenders who seek administrative review of conditions and sanctions imposed by the local supervisory authority.

Based on this background, the approach and language contained in this policy is based on legal advice provided to the Board by the Department of Justice.

ORS 144.101(3) requires the Board to issue some kind of response to an offender's request for administrative review of conditions or sanctions ordered by a local supervisory authority. Therefore, a Board member will read the administrative review request. The Board member's response, however, need not and should not consist of a substantive review of the issue raised. Rather, the Board member shall issue an administrative review response stating, "The Board received your request for administrative review under ORS 144.101(3) on [date]. You object to the conditions of supervision [or sanction] imposed by [name the local control entity] on or about [date]. The Board has decided to not review your conditions [or sanction], because of limited funding to cover the administrative review and any subsequent parole review of the Board's order."

If the Board member reviewing the administrative review request finds the local control authority has acted in an unlawful manner, the Board member should immediately contact the local control authority and urge them to rectify the situation. If this is unsuccessful, the Board member should review the matter with the full Board and determine whether it is necessary to issue an administrative review response to protect the rights of the offender. This situation should and will arise only rarely.

**Note:** The offender would first seek an administrative review response from the Local Supervisory Authority (on Local Supervisory Authority cases). If the Local Supervisory Authority denies relief, then the offender may come to the Board for administrative review, then they would be able to seek judicial review [through Court of Appeals], if relief is denied by the Board.

## **H. Expiration of Post-Prison Supervision & Certificate of Expiration**

There is only a single term of post-prison supervision and the Order of Post-Prison Supervision incorporates all open post-prison supervision offenses into a single term. Whereas, CIS/AS400 lists the offenses individually. As the Certificate is a legal document signed by the local supervisory authority certifying that post-prison supervision expired, it cannot be issued until the single term of post-prison supervision is expired (which would be the farthest out maximum date of all open post-prison supervision offenses)

This DOES NOT mean that open probation cases have to reach their expiration date as well before a "Certificate of Expiration of Post-Prison Supervision" is issued.

In cases with multiple post-prison supervision offenses, the field can close individual post-prison supervision offense lines in CIS/AS400 as they expire. You do not need a "Certificate of Expiration of Post-Prison Supervision" to do this.

### **OFFENDER IN CUSTODY ON LOCAL SUPERVISORY AUTHORITY HOLD WHEN EXPIRATION DATE HITS**

When a PPS offender is held on a Local Supervisory Authority warrant or Suspend and Detain, the period of post-prison supervision is stayed and the Local Supervisory Authority has jurisdiction over the offender until the proceedings are resolved. Do not issue a Certificate of Expiration until the hold and violations are resolved.

## PPS WARRANT OUTSTANDING WHEN EXPIRATION DATE HITS

A PPS warrant suspends the running of PPS. Do not issue a Certificate of Expiration if a PPS warrant is outstanding. You would issue a Certificate of Expiration if the offender has other warrants outstanding but no PPS warrant outstanding.

Per Oregon Administrative Rule, after expiration of the sentence of an offender on post-prison supervision, the Board shall send written notice of the expiration to the offender and the supervisory authority. Local Supervisory Authority should follow the same practice.

## INACTIVE SUPERVISION

Offenders on active post-prison supervision on a “Board” case and picks up a new “local control” sentence: The offender will not be eligible for inactive status while the term of post-prison supervision attached to the underlying “local control” case is open. The post-prison supervision would go to inactive status when the “local control” post-prison supervision term drops off or when the active supervision review date/inactive supervision date occurs on the underlying “I” case, whichever is latter. The supervising officer would need to follow established procedures based on rule and statute when requesting an offender remain on active supervision or notifying the offender of their inactive status.

## I. Miscellaneous

### **MIRANDA WARNINGS**

In Oregon, a defendant who is in "full custody", that is actually under arrest, must be given *Miranda* warnings prior to questioning. In addition, *Miranda* warnings may be required in circumstances that, although they do not rise to the level of full custody, create a "setting which judges would and officers should recognize to be 'compelling.'" *State v. Smith, 310 Or 1 (1990)*. The US Supreme court has defined custody that requires *Miranda* warnings as when a person's freedom has been "significantly restrained," even if the person is in his or her own home or other familiar surroundings. *Oregon v. Elstad, 470 U.S. 298, 309 (1985)*.

In determining whether particular circumstances are compelling, all the circumstances of the situation will be examined by the court, and, "the relevant inquiry is how a reasonable person in the suspect's position would have understood the situation." The circumstances courts will look to in determining whether a person was in custody include; whether the person is actually confined in a closed space, such as the back of a patrol car, or a room; whether the person is handcuffed; the amount of time the person is confined prior to questioning; or the amount of time the person is questioned. However, the court emphasizes that it will be the "totality of the circumstances" and that no single factor will, standing alone, require a finding of custody. *State v. Werowski, 179 Or. App 522 (2002)*.

Several decisions by the Oregon Supreme Court have the legal effect of extending Oregon's "exclusionary rule" to a probation revocation proceeding. This means that statements made by an offender to a PO **while in custody** will be suppressed, upon motion by defendant, in a probation revocation proceeding, unless the offender was read his/her *Miranda* rights prior to questioning.

The PO should read the **Miranda** rights to an offender if the offender is **in custody or the PO has reason to believe that compelling circumstances could result in their being placed in**

**custody.** Therefore, an offender should be read the Miranda rights prior to questioning in the following situations:

- The offender has been placed under arrest; or
- The PO has otherwise indicated to the offender that he/she is not free to leave and the PO intends to take the offender into custody.
- The PO has reason to believe that an offender has violated his/her supervision conditions and that an arrest is now an option worth consideration.

The PO does **not** need to read the Miranda rights to an offender in the following situations:

- Routine home visit;
- Routine office visit;
- Other routine contact such as by telephone.

The exclusionary rule does not apply to administrative sanctions (POs ordering of structured sanctions) or Parole Board or Local Supervisory Authority revocation hearings (parole and/or post prison supervision cases).

## **INFORMANTS**

### **Board of Parole and Post-Prison Supervision Policy on Offenders as Informants (Updated March 19, 2007)**

Under ordinary circumstances, the Board of Parole and Post-Prison Supervision will not approve requests to allow offenders on parole or post-prison supervision to act as informants for law enforcement agencies. However, there are certain circumstances, where such activity may be warranted and the Board will consider approval if the request meets the following criteria:

- The requesting law enforcement agent is a Chief of Police, Sheriff, Captain of the Criminal Investigation Division of the Oregon State Police, or Regional Administrator of a federal law enforcement agency (e.g. Special Agent in Charge of the Field Office);
- The request has been approved by the Community Corrections Director for the county supervising the offender; and
- The targeted situation is of sufficient magnitude to warrant the placement of the offender in circumstances that are ordinarily discouraged by the Board and the supervising officer (i.e., association with persons involved in criminal activity).

When approval is granted, it is the understanding that the offender is still subject to the imposed conditions of supervision unless otherwise specified by the Board. The Board will not enter into any agreement for leniency that may be made by the offender with other criminal justice agencies.

For SB 156 cases, The Local Supervisory Authority may consider mirroring the Board's practice. For probation cases, the sentencing judge and the District Attorney's Office should be consulted.

## **V. HEARINGS PROCESS**

### **NOTICE OF RIGHTS**

Per Board, the purpose of the hearing is to determine whether there has been a violation of post-prison supervision or parole. It is the Board's view that offenders have a right to a formal hearing on whether they violated their supervision, but not on the sanction. While offenders should be given the opportunity to comment to the hearing officer about the sanction after a violation is found, offenders cannot admit to a violation and then demand a formal hearing on the issue of how long the sanction should be. The Local Supervisory Authority should follow this practice on their cases.

### **COPIES OF NOTICE OF RIGHTS AND SANCTIONS REPORTING FORM/VIOLATION REPORT**

The following is a clarification and reminder of the rules regarding the distribution of copies of the Notice of Rights, Sanctioning Reporting Forms/Violation Reports to an offender in custody for a PV:

In compliance with Oregon Administrative Rules and department policy governing the structured sanctioning process, all Parole and Probation Officers must provide copies of the Notice of Rights and Sanctioning Reporting Form/Violation Report to offenders prior to the imposition of a sanction. Understanding that many sanctions occur while offenders are in custody, please review these documents with the offender either telephonically or in person prior to imposing a sanction. If done telephonically and the release of an offender is not imminent, please forward copies of these documents via shuttle to the appropriate correctional facility (US Postal mail if housed in another county). If it appears that the offender will be released before copies can be provided, please ensure that he/she receives these documents if/when they report to their supervising officer.

**Retention, Hearing Tape.** Tape and hard copy of Notice of Rights needs to be retained 4 years.

**Advising Offender's Not to Comment on New Criminal Activity:** It is good practice to practice to advise an offender when addressing new criminal activity as a violation that any comment they make can be used against them in future criminal proceedings.

**3-Day Waiting period on Notice of Rights:** When an offender does NOT waive the 3-day waiting period, that means that 3 working days must pass before the formal hearing is held. In other words when an offender requests a Formal Hearing (this provision does NOT apply when the hearing is waived), they have the absolute right to have at least 3 working days to prepare their defense. They don't have an absolute right to have more time than that, although more time can be given if the Hearing Officer says so. Now if the 3-day waiting period is waived, the Formal can take place right away if everyone is in place (PO, witnesses, etc.).

**Ten-Day Period for Offender's Evidence and Exceptions:** When the offender does not waive the ten-day waiting period, the 10-day waiting period starts the date the offender is mailed a copy of the sanction.

Note OAR 255-075-0065 - Ten-Day Period for Offender's Evidence and Exceptions (1) Within a reasonable time after the hearing, the Hearings Officer shall provide his or her report to the offender. (2) Unless the offender waives the right to respond, the offender shall have 10 days

from the date the Hearings Officer mails the report to the offender to submit evidence and make written exceptions to the report for the Sanction Authority's consideration. (3) If the offender waives the right to respond, the Hearings Officer shall include the waiver in the Hearings Officer's report to the Sanction Authority. (4) When a Hearings Officer makes a final order pursuant to Board authority granted in writing, the offender shall not have a ten-day period within which to submit evidence and written exceptions. The offender may appeal a Hearings Officer's order under Division 80 of these rules.

**Copies to inmates:** If a hearing is done telephonically or by videoconference, send a copy of the Notice of Rights the Hearings Officer filled out to the inmate along with the SRF. If the offender is no longer in custody, send a copy to the Parole/Probation Officer with a notice to give to offender along with a copy of the hearings report.

**Phone (Telephonic) Hearings:** As long as SRF Report and Notice of Rights is read to offender, offender does not need to have copy of report or rights (The Hearings Officer or Parole/Probation Officer may want to consider faxing the SRF and Rights to offender prior to telephonic hearing).

## **SPECIAL CONDITIONS - MODIFICATIONS**

**(When do added or modified special conditions of PPS become effective after an informal or formal Morrissey hearing):**

Refer OAR 255-070-0015: Pursuant to the rule, the Board [or Local Supervisory Authority] may amend any rule administratively if the offender is in custody or the request to amend the rule was made prior to his or her release from custody. If the offender is out of custody, the offender must consent to any change in his or her special conditions before a change can be made. If the offender does not consent, then there must be a hearing prior to the special condition being added or modified.

Section (7) of OAR 255-070-0015 indicates that if the Board [or Local Supervisory Authority] does not override any special condition ordered by a hearing officer or supervising officer, the Board [or Local Supervisory Authority] shall issue an amended order of supervision with the new special conditions that have been ordered by the hearing officer or the supervising officer. However, the special condition is in effect from the date that the hearing officer or supervising officer orders it.

Therefore, if your hearing officers are ordering new special conditions when the offender has waived his right to a Morrissey hearing, but has not consented to the new special condition, it does not violate the OAR because the Board [or Local Supervisory Authority] can amend the order of supervision administratively by adding or modifying special conditions anytime the request is made to do so before the offender is released from custody.

Given the reading of OAR 255-070-0015(7), you can impose, rather than recommend, that special conditions be added or modified in your orders.

Finally, even though there is a distinction between informal and formal hearings in the rule as far as adding or amending special conditions, given the Board's [or Local Supervisory Authority] ability to amend the order of supervision when the offender is in custody or if the request was made prior to the offender's release from custody, it does not really matter. Therefore, it does not make a difference between informal and formal hearings.

## APPOINTMENT OF ATTORNEY

After establishing indigency and if the offender meets any one of the criteria, then an attorney can be appointed. Conversely, you must find that the offender does not meet all three of the criteria to deny appointment of the attorney (after establishing indigency).

- there isn't a timely and colorable claim that the offender has not committed the alleged violations of conditions;
- reasons which justify or mitigate the violation are not complex or otherwise difficult to develop or present;
- offender is capable of speaking effectively on his or her own behalf.

Examples of what the criteria in the rules mean:

- Colorable is defined as that which is in appearance only. Therefore, as an example of the first criterion, if the offender makes a claim right away that appears to show he has not committed the alleged violation, he should be appointed an attorney. If an offender is accused of having contact with a person that he is not to have contact with and he presents a claim that he could not possibly have done it as he was elsewhere and he has the statement of a neutral witness on his/her behalf, this would be an example of an offender making a timely and colorable claim that he/she has not committed the alleged violation.
- The second criterion is somewhat subjective and it depends on a lot of factors that might be present to decide that it applies to any given situation. One example would involve an intricate financial arrangement with an offender who is being supervised for a theft related crime. If the offender was involved in a business arrangement that appeared to be illegal, but, you could not readily tell by just looking at the situation, then it might fit this criterion. A second example would be where the offender is not to have contact with his ex girlfriend/wife and they have a child that is injured to the point of being hospitalized and the offender goes there to see his child and encounters the wife/girlfriend. This is a violation, but the complex mitigating circumstances may be cause for appointing an attorney.
- The final criterion is also subjective, but should be readily recognized if it exists. If you have a mentally ill offender that is said to have used a controlled substance and he has never used before, but he was hanging out with people that fed it to him and he did not understand, then this may be a case where an attorney would be appropriate. The same thing if an offender is accused of pulling a clever ruse to make sure he has contact with minors and he only has a first grade education and completely denies or appears to not understand what he is being accused of, then he might need an attorney.

For Local Supervisory Authority cases, consider using the Court's Indigent Defense listings to draw from when appointing an attorney. Per OAR 255-075-0035, "For Board cases only...payment for a Board appointed attorney...shall not exceed \$60 per hour and \$300 per case."

**Retained Attorneys:** Once an offender has requested a formal hearing and has an attorney representing him/her, the Hearings Officer should speak/correspond through the attorney on the hearing matters.

**Juvenile Rights & Appointing Attorney:** There is nothing in statute or administrative rule that indicates if an offender is a juvenile on adult supervision, he is entitled to the appointment of an attorney for a Morrissey hearing. He is only entitled to an attorney if he meets one of the three criteria that are listed in ORS 144.343.

## **SUBPOENA**

"Offenders shall make their own arrangements for calling and presenting witnesses. However, upon the request for any party to the hearing, and upon a proper showing of the relevance and reasonable scope of the testimony to be offered, the Sanction Authority or Hearings Officer shall issue subpoenas requiring the attendance and testimony of witnesses. In addition, the Sanction Authority or the Hearings Officer may subpoena documents when relevant"

Thus, if a witness is relevant, then the Hearings Officer can subpoena.

Respective to money, 255-075-0036 is also very clear on this issue. "The Board shall reimburse fees and mileage as prescribed by law to witnesses appearing under subpoena, ... provided that Hearings officer or Sanction Authority certifies that the witness's testimony was relevant and material to the hearing." The Local Supervisory Authority, on their cases, would also fall under this rule.

To avoid reimbursement of fees and mileage, the Local Supervisory Authority should consider having witnesses appear by phone, subsequently requiring no payment of funds.

The Local Supervisory Authority should consult with their County Counsel,; however, the subpoena form provided by the Board would suffice for both LOCAL SUPERVISORY AUTHORITY and Board cases, unless the Local Supervisory Authority wishes to develop a form of their own.

## **OUT-OF-CUSTODY FORMAL HEARINGS ON PAROLE AND POST-PRISON SUPERVISION OFFENDERS**

Make sure that if you have an offender requesting an out-of-custody formal hearing that they are provided a copy of the Notice of Rights form with a copy of the Violation Report/Sanction Reporting form [SRF]. If you are relying on other documentation describing the alleged violation behavior, such as a Warrant Request, the offender should get a copy of that too. This is required by administrative rule.

This will ensure that the offender has had the opportunity to review the documents and/or review the documents with their attorney (if they have one) prior to the formal hearing, and to expedite the hearings process.

## **OVERRIDE HEARINGS OFFICER SANCTION**

The Local Supervisory Authority override does not have to be a revocation; as the override authority, the Local Supervisory Authority may impose any sanction that the Local Supervisory Authority feels would be more appropriate---if more time is in order the Local Supervisory Authority may impose that, if less time is appropriate that too could be your option. As the releasing authority, the Local Supervisory Authority's decision is not bound by structured sanctions, you would be the same as the Board or Court in your supervisory authority position.

## **EARNED TIME/GOOD TIME/WORK TIME**

The issue of whether or not to grant earned time/good time on structured sanctions remains a county decision.

## **ABSCOND OFFENDERS**

There may be circumstances where the Hearings Officer relies on the warrant request alone when the PO fails to do a Sanction Reporting Form (SRF) or violation report when conducting hearing on absconders. This may be especially been applicable for offenders who were extradited.

If the Parole/Probation Officer fails to submit a report to the Hearings Officer in a timely manner, the Hearings Officer could consider conducting the Notice of rights based upon the Warrant Request alone and make a proper recommendation. In such cases, the Hearings Officer should interview the offender to determine if other violations have been committed, such as any new crimes and if the offender consents, these are also included as violations (in the findings).

## **SANCTIONING FOR VIOLATIONS OF JAIL RULES**

Violations of jail/custodial rules need to be handled through the custodial facility's internal disciplinary process. Violations of supervision have to be specific to violations of general and special conditions of supervision. Not abiding by the direction of a corrections officer is not a violation of supervision. Jail/custodial rule violations that constitute a crime (failure to obey all laws), such as possession of contraband, or assaultive behavior, would certainly be violations of supervision and subject to sanctioning. Such violations should be reported to the supervising officer for imposition of additional sanctioning.

The jail may want to consider "good" time for administratively sanctioned (not PPS/parole revocations) inmates which may provide incentive for positive behavior and a consequence of loss for negative behavior.

## **DEFERRALS & POSTPONEMENTS**

Per OAR 255-075-0046, the Sanction Authority or Hearings Officer with Sanction Authority approval, may postpone a hearing for good cause and for a reasonable period of time, which shall not exceed 120 days.

The criteria for "good cause" includes, but is not limited to:

- (a) The preparation of defense;
- (b) Illness or unavailability of the offender or other persons;
- (c) Gathering of additional evidence; or
- (d) Avoiding interference with an ongoing police investigation or pending prosecution.

The Sanction Authority, or Hearings Officer with Sanction Authority approval, may make a finding of a violation and defer disposition for a reasonable time which may exceed 120 days if

such delay is reasonably necessary for the offender, the Sanction Authority or Hearings Officer to obtain information relevant to disposition decision.

Any time that there is a request to defer a Morrissey hearing on an offender, a hearings report should ultimately be prepared with a recommendation. If the Hearings Officer happens to run into a situation where the deferral period has lapsed with a hearing, a hearings report should be prepared as offender can receive up to a 180-day revocation sanction for conduct that constituted a crime [and the amount of time in custody has not exceeded the 180 days]. The Hearings Officer could recommend up to 180 days (then he would have to serve balance of time) or recommend time he has already served (then he should be released). The time spent in custody on a deferral counts towards his revocation days. Neither the statutes nor the rules allow the Board to defer the Morrissey hearing on an offender for 120 days, then release him and not use up his revocation days.

## **DUE PROCESS, PRESENCE OF PAROLE & PROBATION OFFICER AT HEARINGS**

### **Morrissey Hearings without PO Present**

Pursuant to the United States Supreme Court ruling in *Morrissey v. Brewer*, 408 US 471 (1972), the minimum requirements of due process for a parole revocation hearing are: (1) written notice of the claimed violations of supervision; (2) disclosure to the offender of the evidence against him/her; (3) an opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses (unless the hearings officer specifically finds good cause for not allowing confrontation); (5) a neutral and detached hearing body such as a traditional parole Board whose members need not be judicial officers or lawyers; and (6) a written statement by the fact finders as to the evidence relied upon and the reasons for revoking supervision.

The U.S. Supreme Court has established that these six factors **HAVE** to be present at a minimum to insure that the offender is receiving due process. **If your hearing officers are conducting parole revocation hearings without the supervising officer being present, you are depriving the offender of factor number four in what the U.S. Supreme Court requires as a minimum for due process.** There will almost be no circumstance where the hearing officer will find that there is good cause to not allow confrontation with the supervising officer.

OAR 255-075-0031 entitled "Hearings Process" indicates that **the supervising officer should always be present at a formal hearing unless the hearing officer finds good cause on the record for the supervising officer not to be present.**

Note: On occasion, it is appropriate to have another officer appear in place of the original officer if the original officer is not available for purposes of the formal hearing. There has to be someone there for the offender to confront and cross-examine. It should not be something that happens often.

## **INDEPENDENT EXAMINATION OF WITNESSES**

Pursuant to OAR 255-075-0036(4), "The hearings officer or Sanction Authority may deny confrontation of witnesses by the offender if that confrontation would subject the witness to the risk of harm." However, pursuant to OAR 255-075-0036(5), "If the Hearings Officer or Sanction Authority denies confrontation of witnesses, the Hearings Officer or Sanction Authority shall state the reason(s) for the decision and conduct an independent examination of the witness on

the record." The offender does not have the right to cross and does not participate in the independent examination of the witnesses. The Hearings Officer would just call the witnesses with a date and time to appear and the Hearings Officer can just ask the witness to tell what happened or ask them pointed questions. If the witnesses do not show up, that is noted on the record just as the Hearing Officer would during a normal hearing if the offender's witness(es) do not show up. Their testimony would be made part of the hearings report that is sent to the Sanctioning Authority.

#### **FORMAL HEARINGS PROCEDURE**

- a) During formal hearings, recount on record all the decisions you made up to that point, including why denied appointed attorney.
- b) During formal hearings, ask the offender "what additional information would you like the Board of LOCAL SUPERVISORY AUTHORITY to consider for further disposition" and put that on record.
- c) During formal hearings, advise the offender that he/she will receive copy of report with findings and will have ten days to submit written appeal on decision (unless waived). The ten-day waiting period will start the date the report is sent to the offender. If the offender is no longer in custody when you go to send he/she the report, send the offender a hard copy of his hearings report via his supervising office.
- d) Hearings officer is not to complete the sanction if the offender reserves the ten-day waiting period.
- e) Delete the violations on the SRF that the offender is not found in violation of.
- f) If found in violation of a condition not noted on SRF, add that violation.

#### **Formal Hearings where Witness is an Individual that Offender has No Contact Condition:**

An offender would not be in violation of SC 11 if the offender was at a Morrissey hearings and a person the Board [or LOCAL SUPERVISORY AUTHORITY] has prohibited the offender from having contact with was there as a witness.

**Victim Notification of Formal Hearings:** When a formal hearing is scheduled, make sure to contact the Board (on Board cases) or the Local Supervisory Authority (on their cases) to see if victim of the supervision crime requests attendance at the formal hearing. By statute, the victim has the right to attend formal PPS/parole hearings if they so request..

#### **FINDING OF FACTS AND VIOLATIONS**

**Abscond Violations:** For the purposes of imposing a sanction using the sanctioning grid, abscond has to meet the criteria of changed residence and do not know whereabouts and supervising officer has exhausted all reasonable means to locate and has requested a warrant. If the offender just changed residence, but is still reporting and/or PO knows whereabouts, the violations would be failing to notify not abscond.

**Violations occurring during a PPS Revocation Sanction:** An offender cannot be violated on PPS for behavior occurring during a revocation sanction. Offender can be violated for newly

discovered violation behavior that occurred before the revocation sanction (obviously had to be on PPS during that time!).

If an offender has been in continuous custody since serving a revocation sanction and the offender is violated for previously unaddressed behavior, the Board has advised that the start date of the sanction on the new behavior could be argued to begin the date the violation was discovered. This event is a rarity; however, for simplicity and consistency with previous practice, the Local Supervisory Authority should use the end date of the last sanction to start the new sanction. Questions, staff with supervisor.

**Making a finding of failing to obey all laws, if the same failing to obey all laws violation was addressed during previous PPS violation proceeding.** If the Hearings Officer found an offender not in violation of a criminal behavior during a previous hearing, the offender cannot be found in violation of that same behavior at a subsequent hearing. If in the initial proceedings the Hearings Officer indicated "that there was insufficient information presented in the report to make a finding in regards to GC10 at this time" then the violation could be addressed at a later time.

**Financial Obligations.** Even if not alleged, you may make a finding of violation for failing to pay supervision fees/paying COFO (court-ordered financial obligations), based on the information pulled into the violation report [especially if offender stipulates]. As this is a "System Response" violation it carries a cap of 2-5 units. There must be some evidence of an offender's ability to pay.

**Conduct Constituting a Crime (New Criminal Activity).** While any traffic infraction is technically a violation of the law (failing to obey all laws), it cannot be considered new criminal activity unless of course the conduct constitutes a misdemeanor or felony. For instance, DWS (Infraction) would not constitute criminal conduct, nor would speeding. Even less than an ounce of marijuana is not new criminal conduct.

If it is conduct constituting a crime, the maximum sanction is 180 revocation units. If the conduct is not a crime, but still a law violation, the offender can be sanctioned up to 90 revocation units.

**Infractions & Law Violations (such as traffic violations)** do not constitute new criminal activity. The new conduct constituting a crime must be a felony or misdemeanor offense.

**Indictments and Finding of Violation.** Per Board of Parole, "If an offender has been indicted on new charges, that is sufficient to support a probable cause finding in an SRF and also to place a suspend and detain warrant. If the only allegation is that they were arrested on new charges, we need additional information to support the violation of GC 10. However if they have been indicted on new charges, that is sufficient."

Note: If the SRF contains insufficient information to establish Probable Cause and does not indicate the offender has been indicted, then you cannot make finding, unless offender admits to violation or being indicted.

**Refusal to participate in or comply with conditions of prescribed treatment programs.** In order to distinguish if a behavior constitutes "refusal to participate in or comply with conditions of prescribed treatment programs" (Behavior Level III) or "participates irregularly or fails to successfully complete prescribed treatment programs" (Behavior Level II), the Hearings Officer

and Local Supervisory Authority should consider whether the offender outright refused treatment, the offender was previously warned and documented by the Parole/Probation Officer at the time of being sanctioned for treatment non-compliance that failure to enter treatment in the future would be considered a refusal, or there has been a continued and repeated pattern of documented and sanctioned treatment non-compliance.

**Polygraph and Countermeasures.** Offenders are astute in awareness that counter-measures, such as muscle tightening/flexing, can distort polygraph results. The number of polygraphs given to an offender are limited over a supervision period and engaging in counter measures is viewed as a willful refusal to participate in prescribed treatment, as a polygraph is a condition of and an integral part of sex offender treatment.

It should be made clear to the offender up front by the supervising officer that new technology exists that measures counter-measures when taking polygraphs, that polygraphs are a part of prescribed treatment, and engaging in counter-measures can be viewed as a refusal to participate in or comply with prescribed treatment. When an offender has been found in violation for such behavior, the hearings officer should advise that engaging in counter-measures on polygraphs in the future can be viewed as a refusal to participate in or comply with prescribed treatment. Consistent language should be used by officers (and even the polygrapher and treatment providers).

The Hearings Officer would make their decision on what "Behavior Level" category to place the violation based on the totality of the report, how well the violation is documented, prior violations for like behavior, etc.

#### **COURT OF APPEALS OPINION (REVOCAION BY COURT IN ADDITION TO SANCTIONS PREVIOUSLY IMPOSED)**

Below is a synopsis of a Court of Appeals decision that allows revocation by the court in addition to structured sanctions previously imposed by the PO for the same occurrence. The offender was stopped for DUII. The PO imposed structured sanctions for violating "no alcohol", but did not mention the "obey all laws" condition. After the offender had served his 2 days in jail on the structured sanctions, the court revoked him on the failure to obey all laws. The Court of Appeals upheld the revocation. (**FILED:** September 10, 2003 IN THE COURT OF APPEALS OF THE STATE OF OREGON STATE OF OREGON v RANDALL THOMAS MELTON, 97CR0900; A114440 Argued and submitted September 25, 2002.)

It was concluded, the sanction agreement did not penalize defendant for violating the probation condition that he obey all laws. Defendant's completion of sanctions for his other violations did not preclude the court from revoking defendant's probation for a separate violation. ORS 137.712(5) provides that,

"[n]otwithstanding [the court's discretionary authority to revoke probation pursuant to ORS 137.545(5)(b)], if a person sentenced to probation under this section violates a condition of probation by committing a new crime, the court shall revoke the probation and impose the presumptive sentence of imprisonment under the [guidelines]."

#### **DANGEROUS OFFENDERS**

Reminder Board cases that are listed as "Dangerous Offenders" can receive repeat 180 day revokes for technical and new criminal behavior violations. They can also be returned to prison. Refer to Board OAR 255 under Division 36 and 37.

## **REQUEST FOR TRANSCRIPT OF A TAPED HEARING**

The Local Supervisory Authority should consult with their County Counsel, but it would appear that the Local Supervisory Authority is not obligated to provide a transcript of taped hearings if requested. If a transcript is requested as part of a public information request, the Local Supervisory Authority could just provide an audiotape copy of the hearing tape and charge for copying process.

## **EXTRADITIONS**

Reminder that offenders extradited from out-of-state are to have a minimum of 60 days imposed as a sanction.

## **CUSTODY START DATES ON SRF**

For offenders returned from other states, start date would be date arrived in Oregon. For offenders arrested in Oregon, start date is date arrested in Oregon.

## **STRUCTURED SANCTIONS BEING INSUFFICIENT TO ADDRESS THE VIOLATION BEHAVIOR**

Per OAR 291-058-0045(h), if structured sanctions are considered insufficient to address the violation behavior, an offender may be returned to court or the Board of Parole and Post-Prison Supervision only after consultation with the unit supervisor and the agreement of the supervisory authority or designee.

This rule is not an avenue, for example to increase an indicated 15 day jail sanction (with a cap of 15 days) to 25 days, but is an avenue to refer the final disposition in the form of a recommendation to the Sanctioning Authority that would exceed an Officer's authority to impose (which is 60 days or for revocation for Parole/PPS cases. The violation report itself should indicate that the Officer's supervisor and Local Supervisory Authority has agreed or is recommending that Rule 58-45 be considered.

It is recommended that the Officer request in the Violation report that "after consultation with the supervisor and Local Supervisory Authority, that Rule 58-40 be applied or considered" or something to that effect. The report should also justify why this rule is being applied.

## **REPORTING INSTRUCTIONS/ABSCOND WARRANTS**

When Parole/Probation Officers request abscond warrants on offenders who never reported following release from a sentence, they need to be able to verify that offenders were given reporting instructions. Instructions are given at time of hearing to all offenders, and a copy is kept in the file.

## **MURDER AND AGGRAVATED MURDER**

The Board received the final advice from DOJ dated February 18, 2003, indicating that the Board may impose PPS sanctions beyond those set forth in OAR 253-11-004(3) (1989) on an offender convicted of and sentenced to murder as it does for offenders convicted of aggravated murder regardless of the date of the offender's crime. Because the Board can treat an offender convicted of aggravated murder under the sentencing guidelines as it does a matrix offender,

the Board can now treat murder offenders in this same way. The numbers on the rule is now OAR 213-005-0004. The Board is not limited to doing continuous 180-day sanctions on such offenders.

If an offender has been convicted of Murder under the Sentencing Guidelines and received a lifetime period of PPS, then the Board can return him/her back to prison in a hearing similar to a future disposition hearing. The result of this hearing could include the offender remaining in custody for the rest of his/her life.

### **AGGRAVATING FACTORS AND PRIOR REVOCATIONS**

Prior revocations can be from prior supervisions and not part of the current custody or supervision cycle.

### **OVERRIDES**

When the Local Supervisory Authority overrides or modifies a sanction, a teletype should be sent to Jail Records, the supervising officer and file, detailing the override/modification. This process will follow the same process as the Board does on overrides. A copy of the teletype will serve as an action form of the Local Supervisory Authority's decision.

### **COMPACT HEARINGS**

**Violation Reports.** The Compact "Offender Violation Report", which is an Option 24 report, needs to be included with all hearings packets sent to interstate Compact. The following is the process that we will be using:

**Timelines for Compact Hearings.** Sanction to be imposed or Notice of Rights received within 15 days of booking.

**Hearing On Compact Returns where Hearing Already Held in Receiving State:** If an Oregon offender is on compact supervision in the receiving state and is returned to Oregon following an Interstate Hearing and recommendation to revoke and return to sending state (Oregon), it is not necessary to conduct a second hearing upon their return to Oregon. The Hearings Officer may simply refer to the receiving state's violation report and findings after meeting with the offender. The Hearings Officer should make sure you get a copy of the Notice/Decisions About Rights form used by receiving state in case it is needed on appeal.

**Interstate Compact Appeals:** Per Oregon Interstate Compact, the appeal process for an offender on a probation case would go to the presiding judge in the County where being held. If the case were a parole/post-prison case, the appeal would go to the Board of Parole and Post-Prison Supervision or the Local Supervisory Authority. ISC would also get a copy of the appeal request from the offender.