Tape 20 - Side 2 - 238 to end
Tape 21 - Side 1 - 1 to end (Begins on p. 6)
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OREGON CRIMINAL LAW REVISION COMMISSION

Thirty-Sixth Meeting, November 20, 1972

Minutes

Members Present: Senator Anthony Yturri, Chairman
Mr. Robert W. Chandler
Representative George F. Cole
Judge Charles S. Crookham
Mr. John W. Osburn representing Attorney General Lee Johnson
Representative Norma Paulus
Mr. Bruce Spaulding
Representative Robert M. Stults

Excused: Senator John D. Burns, Vice Chairman
Mr. Donald R. Blensly
Senator Wallace P. Carson, Jr. (Present for afternoon session)
Mr. Donald E. Clark
Representative Leigh T. Johnson

Staff Present: Mr. Donald L. Paillette, Project Director

Also Present: Mr. Les Belleque, Project Director, Feasibility Study, Corrections Division
Sheriff Jack Dolan, Benton County
Gary Fantz, Portland Police Department and Portland Police Association
Mr. Terry Johnson, Member, Board of Parole
Leonard Skinner, Board of Police Standards and Training
Ms. Melinda Woodward, Project Consultant, Feasibility Study, Corrections Division

Senator Anthony Yturri, Chairman, called the meeting to order at 9:30 a.m. in Room 315 State Capitol.

Minutes of Meeting of October 2 and 3, 1972

Mr. Chandler moved the approval of the minutes of the Commission meeting of October 2 and 3, 1972. The motion was seconded by Judge Crookham and carried unanimously.

Proposed Mandatory Jail Standards

Mr. Paillette explained that the proposed jail standards to be presented to the Commission for consideration today were developed as a result of a Feasibility Study conducted by the Corrections Division. The same agency also planned to present specific amendments to ORS chapter 169.

Mr. Les Belleque explained that the Feasibility Study was attempting to upgrade local jails and to collect data regarding the number of persons going through local jails and the kinds of crimes they had committed. He outlined the method followed in developing the proposed jail standards through a Jail Standards Development Committee composed of, among others, representatives of the Sheriffs' Association, the Association of Chiefs of Police, the Corrections Division, the Association of Oregon Counties and the League of Oregon Cities.

The committee had recommended certain amendments to ORS chapter 169 and had developed a set of minimal mandatory standards for Oregon jails. A copy of the latter is attached hereto as Appendix A. Primarily, the mandatory standards would give the Corrections Division authority to inspect every jail in the state and would also require jail inspection by county health officers.

Mr. Chandler asked how that authority would be granted to the Corrections Division and was told by Mr. Belleque that the proposal was to bestow that authority by statute. He added that one of the mandatory standards would require 24 hour supervision of jails when inmates were confined therein and would further require a personal inspection of the inmates at least once an hour. Furthermore, when a female was confined, a female supervisor would have to be provided. Mr. Belleque advised that this latter standard was directed primarily at the protection of an officer to avoid the situation where he might be faced with a charge of improper conduct filed by a female prisoner.

Chairman Yturri commented that these two requirements could more than double the budget for the operation of jails in some of the smaller communities and Mr. Chandler agreed that their adoption would probably force the closure of some of the jails in small towns. Mr. Belleque conceded that the standards could create a hardship in those areas but the question involved was whether people should be lodged in jails where no one was present, many times in a building that had been condemned as a fire hazard.

Mr. Belleque explained that the third mandatory standard would prohibit firearms from the security area of the jail unless the administrative officer determined an emergency existed. Mr. Spaulding asked why other types of weapons were not also prohibited and Mr. Belleque replied that while firearms were the most critical weapons, all dangerous weapons should be included in the standard. This standard, he said, was directed at the concern that the prisoners might overpower the jail administrator and take the weapon away from him rather than that the officer might injure one of the prisoners.

Mr. Belleque indicated that the fourth standard would require three meals a day to be served at reasonable intervals in all jails. Chairman Yturri inquired as to the meaning of the term, "reasonable intervals," as used in the standard and Mr. Belleque replied that it was intended to refer to breakfast, lunch and dinner.

The fifth standard said that there would be no corporal punishment administered in any jail at any time while the sixth set forth the rights of each person confined in a detention facility.

The Commission was critical of the requirement that an up-to-date set of ORS be made available to each prisoner. Mr. Spaulding commented that the standard as worded could be interpreted to mean that each prisoner was entitled to his personal set because it said, "Have accessible to him." Mr. Osburn pointed out that recent court decisions indicated that acess to legal materials was only necessary where the prisoner did not have access to counsel and if the man had the ability to contact a lawyer, he did not necessarily have to have a law library available to him.

Mr. Belleque advised that the intent of the standard was that somewhere in the law enforcement agency there should be an up-to-date set of Oregon Revised Statutes and if the prisoner wanted to read one of the volumes, he should be allowed to do so.

Chairman Yturri asked if the standard dealing with communications was intended to refer to written communications and received an affirmative reply from Mr. Belleque. He added that in the two major correctional institutions in Oregon censorship of written communications was no longer imposed in any form except where there was a specific reason for monitoring the communications of a particular inmate. Mr. Chandler asked if there was any reason to limit the freedom of communications to the specific persons set out in standard 6c. He raised this question, he said, because in his area there had been a number of letters to newspapers complaining about jail conditions which, upon investigation, were found to be true. Mr. Belleque's answer was that this type of information could be forwarded through the inmate's attorney or through the Governor's office.

Chairman Yturri inquired as to the number of jails that complied at the present time with most of the proposed mandatory standards.

Mr. Belleque replied that nearly all county jails complied, but several of the city jails did not.

With respect to standard 9, Mr. Belleque was of the opinion that a considerable amount of money was being wasted in the construction of jails and this could be avoided if the plans were first submitted to the Corrections Division for review. Most jails, he said, were built totally as maximum security units which was unnecessary. Steel was the most expensive type of construction and even in the major correctional institutions, only a small percentage of inmates were kept under maximum security. Jails could be built more economically if they were constructed on the basis of a percentage of maximum security cells, a percentage of medium security units and the balance minimum security cells.

Mr. Belleque explained that the last portion of the proposal dealt with the procedure to be followed by the Corrections Division in closing a jail that failed to comply with mandatory standards and with the requirement that the State Board of Health make rules and regulations to insure adequate health and sanitation facilities. He advised that the county medical officers had been working on a separate proposal dealing with the latter problem. The two committees had consulted with each other and had incorporated into the Correction Division's proposal the requirement that the county health officer conduct food, health and sanitation inspections of jail facilities at least quarterly. The county medical officers proposed to follow the same procedure for jails as that followed with respect to inspection of restaurant and other food handling facilities.

Mr. Osburn asked if the committee had considered any criteria with respect to medical care for prisoners. Mr. Belleque advised that the county medical officers had prepared extensive recommendations on that subject dealing not only with illness and injuries but also with mental health. He expected one of the recommendations would be to require each prisoner to have a medical inventory taken by a county health nurse. Chairman Yturri asked if that recommendation would require the county health nurse to find the medical records on a person who was, for example, detained for drunkenness. Mr. Belleque confirmed that this was their proposal as he understood it and added that he personally believed the proposals were too broad but they had not yet been drafted in final form.

Mr. Chandler pointed out that the proposed mandatory jail standards were directed at situations where local cities and counties were required to meet all the costs involved and where the state was contributing nothing toward that cost. In some of the smaller counties and cities, he said, the standards would impose a substantial financial burden and he was not in favor of forcing the local agencies to assume such costs as fees for doctors' services. Representative Stults said the other side of the coin was that it was unfair when a prisoner was

taken into jail on Friday night and said he needed certain medication to tell him that a doctor would not see him until Monday morning. Mr. Spaulding observed that at the present time if someone in a jail was seriously ill, he was taken care of under the system in operation today.

Chairman Yturri noted that most arrests in the small towns occurred when the sheriff or the state police called the city marshal and asked him to pick someone up when he came through town. The marshal would do so and the small jails were rarely used for any other purpose, yet they would be subject to all the standards set out in this proposal.

After further discussion, Judge Crookham inquired as to the Commission's role with respect to the proposed jail standards. Chairman Yturri noted that no specific legislation had been submitted for consideration and the proposals in their present form would require a considerable amount of time and labor before they could be presented in bill form. Until that was done, the Commission was not in a position to make specific recommendations to the legislature concerning the proposals.

Mr. Paillette advised that when he had first discussed this matter with Ms. Woodward about three months earlier, they had talked about recommended changes to ORS chapter 169 and it was his thought that those changes might be incorporated into the procedure code. When it became apparent that the Feasibility Study could not meet the necessary deadline in time to incorporate the amendments into the Commission's bill, his secondary thought was that the Commission might want to introduce a separate bill on the subject. He indicated that he had also discussed the mandatory jail standards with Ms. Woodward, and he felt it would give the Commission a better idea of what the Feasibility Study was attempting to accomplish by presenting the two together.

Amendments Proposed by Feasibility Study to ORS chapter 169

Chairman Yturri suggested that the Commission turn to the proposed changes in ORS chapter 169.

Ms. Woodward explained that most of the amendments were housekeeping in nature. Throughout ORS chapter 169, she said, the words "jail" and "prison" were used interchangeably and the suggestion was to use "jail" in every case because "prison" ordinarily was looked upon as a place for incarcerating convicted felons. Chairman Yturri asked if "jail" was defined anywhere and was told by Ms. Woodward that one of the sections of the mandatory jail standards contained a definition of "jail." Mr. Paillette indicated that "correctional facility" was defined in the criminal code and would be inclusive of both "jail" and "prison." Ms. Woodward was of the opinion that there should be a distinction between a local county or city jail as opposed to a state facility.

ORS 169.010. County court's authority to erect jails. Ms. Woodward recommended that the last two sentences of ORS 169.010 be deleted because they were unnecessarily specific. It was the committee's belief, she said, that the sheriff, jailer and correctional authorities should be given more authority over the materials and dimensions used in the construction of a jail facility.

Tape 21 - Side 1

ORS 169.030. Construction, maintenance and use of jails by county and city; renting suitable structure. Ms. Woodward went into considerable detail as to the types of materials used in erecting jails. Commissioner Don Clark, a member of the Jail Standards Development Committee, had contended that the statute should be more flexible concerning the types of materials permitted and the committee had adopted his recommendation. They suggested that subsection (1) of ORS 169.030 be amended to read: "The jail should be constructed of fireproof materials and should have fire exits in sufficient number and suitably located for the removal of the prisoners." They further recommended that subsection (2) be deleted.

Chairman Yturri noted that "shall" would be better than "should be" in the proposed revision and Ms. Woodward concurred.

Mr. Chandler asked if "fireproof" was defined and received a negative reply. Mr. Osburn suggested that "fire retardant" might more accurately describe the materials referred to in the proposed amendment.

ORS 169.040. Inspection of prisons. Ms. Woodward indicated that ORS 169.040 would only need to be amended if the mandatory jail standards were adopted requiring jail inspections by the county health officer and Corrections Division.

ORS 169.140. Furnishing prisoners food and clothing; separating male and female prisoners. ORS 169.200. Punishment of prisoner refusing to work. It was recommended that ORS 169.140 be amended to delete the requirement that male and female prisoners be separated and the committee also recommended repeal of ORS 169.200 which allowed a jailer to deny all food except bread and water to a prisoner who refused to work.

ORS 169.210. Contracts for private employment of prisoners. ORS 169.220. Care of county prisoners. The Jail Standards Development Committee further recommended that ORS 169.210 be amended or, if it could be construed to limit the development of work release programs for county or city jail prisoners, the committee would then recommend its repeal. They also recommended that the second sentence of ORS 169.220 be amended to read: "All persons confined in a county or city jail shall be given three meals a day."

Chairman Yturri asked Ms. Woodward if the committee had discussed any requirements for wholesome food or caloric intake and was told that

the matter had been discussed. Many jails, she said, were serving TV dinners and the requirements for a given number of calories or other specifics became so complicated that the committee had finally decided to employ a general term in the statute requiring three meals a day and leave it to the county medical officer to establish calorie levels.

ORS 169.320. Sheriff's control over prisoners. Ms. Woodward commented that at the present time ORS 169.320 was ignored in many cases and the committee's belief was that the limitation on the number of persons allowed to work at jail maintenance was unnecessarily specific and should be deleted.

General discussion. Mr. Chandler was of the opinion that ORS chapter 169 needed to be rewritten in its entirety, but noted that the Commission was not in a position to undertake such a task.

Following a general discussion of the proposals submitted by Mr. Belleque and Ms. Woodward, the Commission was in agreement that the statutes discussed were in need of review, improvement and updating. They approved the proposals in principle without going into the specifics. The Chairman indicated that to analyze all the proposals presented, particularly with respect to the mandatory jail standards, and to make specific recommendations that would be meaningful and still meet the deadline imposed by the upcoming session of the legislature was a virtual impossibility. The Commission's recommendation was that the Corrections Division draw a bill in proper form containing all the recommendations they wanted to incorporate into the law and submit it to the legislature under the sponsorship of individual legislators or as a legislative committee bill. Mr. Belleque indicated his complete satisfaction with this recommendation.

Sheriff Jack Dolan indicated that he was a member of the Board of Directors of the Oregon State Corrections Association but was speaking neither for that organization nor for the Sheriffs' Association. Sheriff Dolan expressed support of the concept of improving jails through adoption of mandatory standards to upgrade physical facilities.

Parole Standards; Proposal by Parole Board for Amendments to ORS chapter 144

Mr. Paillette recalled that at the time the Commission approved revisions to ORS chapter 144, the Parole Board was also preparing proposed amendments to that chapter for presentation to the Commission at a later time. Mr. Terry Johnson, a member of the Parole Board, was present to explain the board's recommendations for such revisions.

Chairman Yturri indicated that he had recently read a set of documents dealing with the case of Larry Slopak, an inmate in the Oregon State Penitentiary who had been convicted on a sodomy charge and who claimed that his application for parole had been judged on the

religious standards of one of the members of the Parole Board. The Chairman said there were some interesting questions raised and asked Mr. Johnson to make the material available to Mr. Paillette so the other Commission members could read it if they chose to. Mr. Johnson agreed to do so.

Copies of the rules of the Board of Parole together with specific recommendations for amendment to ORS chapter 144 were furnished to Commission members. They also had before them copies of Senate Bills 520, 521, 522 and 618 which had been referred to the Commission by the Senate Criminal Law and Procedure Committee during the 1971 session of the legislature together with a synopsis of each bill prepared by Mr. Paillette. Mr. Johnson indicated that he would explain the Parole Board's attempt to deal with the amendments proposed by Senate Bills 521 and 522. SB 521, he said, dealt basically with the operative standards and procedures of the Parole Board while SB 522 was concerned with parole revocation procedures.

A copy of the rules of the Parole Board are attached hereto as Appendix B.

Appendix C, also attached, contains selected portions of the Parole Board's recommendations for amendment to ORS chapter 144. Omitted from Appendix C are sections of the proposed draft setting out amendments approved by the Commission at its meeting of October 2, 1972.

ORS 144.240. Standards for parole. Mr. Johnson noted that section 12 of the proposal (see page 1, Appendix C) would delete ORS 144.240 in its entirety and would replace that section with language from the ALI draft on parole standards.

Chairman Yturri asked if other states had adopted this criteria or were moving in that direction and was told by Mr. Johnson that he was not aware of any.

Judge Crookham stated that the amendment appeared to say that a parole had to be granted and the inmate's release ordered even though the inmate did not want a parole. Mr. Johnson replied that in that situation the Parole Board required him to execute a written waiver indicating that he did not wish to be paroled together with his reasons. In reply to a further question by Judge Crookham, Mr. Johnson said he did not believe that the revised section was inconsistent with the board's waiver procedure.

Mr. Chandler asked if parole proceedings were instituted by the prisoner and was told by Mr. Johnson that they were not. He called attention to Rule 13 which said that on all sentences in excess of 36 months, the board was to hold a hearing on the case after six months. ORS 144.220 then required the case to be reconsidered by the board "from time to time."

Chairman Yturri inquired as to whether the hearing of a prisoner before the board was considered to be a judicial proceeding and was told by Mr. Johnson that it was an administrative proceeding. Chairman Yturri noted that Rule 9 stated that no attorney may personally represent an inmate at his hearing before the board. Mr. Johnson indicated that the rule was not entirely correct under the present operating structure although it was true prior to the U. S. Supreme Court decision in Morrissey v. Brewer. The board, he said, had never reached the conclusion that an attorney would be of any real assistance to an inmate in making a parole determination because the board ordinarily had more information on the applicant than did the attorney. Since the Morrissey decision, however, the board's policy was to allow attorneys to represent alleged parole violators provided the person could hire an attorney at his own expense.

Mr. Paillette had prepared a synopsis of the Morrissey decision which was distributed to Commission members. A copy of the synopsis is attached hereto as Appendix D.

Representative Paulus asked for the rationale behind Rule 16 which stated that psychiatric reports for the board were not to be provided by "outside psychiatrists." Mr. Johnson explained that the purpose of the rule was to avoid the situation where a judgment made by a psychiatrist could lead to a request for a court ruling.

Mr. Paillette pointed out that there were some differences between ORS 144.240 and Senate Bill 521, one being that SB 521 said that no person was to be paroled unless the prisoner would be rehabilitated more quickly by parole than if he remained in prison. Mr. Johnson commented that a good argument could be made that almost anyone could be rehabilitated more quickly by being released from the institution and even though rehabilitation was the goal, other factors needed to be considered.

Motion to approve the amended version of ORS 144.240 will be found on page 20 of these minutes.

ORS 144.250. Factors considered by board in granting parole. Mr. Johnson advised that the revisions to ORS 144.250 (see page 2, Appendix C) set forth the factors to be considered by the parole board in making a decision to grant parole and were more specific than the existing statute.

Judge Crookham was of the opinion that the factors in the proposed amendments would be better handled by administrative rules rather than by statute. Following a brief discussion, Mr. Johnson conceded that the better approach might be to include the specifics in the rules of the board in order that they could be changed without having to go to the legislature. He added that it was the board's intention to include this material in the rules when they were revised in any event.

During the discussion of ORS 144.270 Chairman Yturri asked Judge Crookham if, in view of the proposed amendments to ORS 144.270, he still believed that ORS 144.250 should be set out in the rules of the board rather than by statute. The Chairman expressed the view that policy of the type described in ORS 144.240 should be in the statute because of the detail that followed in ORS 144.270. Judge Crookham indicated that he was inclined to agree with the Chairman's assessment.

Motion approving the amendments to ORS 144.250 will be found on page 20 of these minutes.

At this point the Commission recessed for lunch and reconvened at 1:30 p.m. with the same members present as had been in attendance at the morning session. Senator Carson arrived during the discussion of section 26.

Section 15. Data to be considered in determining parole release. Mr. Johnson explained that section 15 (see page 3, Appendix C) contained new material and set forth the information and the source of information to be utilized by the board in making a parole determination.

Judge Crookham asked if the prisoner was to be given access to the information proposed by this section. He said he raised this question because subsection (4) referred to reports of the prisoner's prior criminal record and the Court of Appeals had held that, while the defendant was not entitled to see the presentence report, he was entitled to examine his record of prior convictions which the court considered in determining his sentence.

Mr. Johnson replied that under the board's present operating procedure the prisoner did not have access to the information on the board's calendar, but the recent Morrissey decision posed a problem with respect to parole violation proceedings so far as that practice was concerned. Under that decision the inmate would be entitled to see the "rap sheet" in a parole violation proceeding.

Mr. Chandler commented that there was a difference between a parole violation proceeding where the person was about to lose liberty he had whereas under section 15 that liberty had not yet been granted. Mr. Osburn's opinion was that the prisoner should be given access to the information considered by the board concerning his criminal record in both situations.

Mr. Chandler recalled that this subject had been discussed at considerable length by Subcommittee No. 1 and it was pointed out at that time that because the FBI information was supposed to be kept confidential by the receiving agency, the FBI might refuse to continue to furnish information on prior criminal records if the receiving agency violated the confidentiality and disclosed the information.

Mr. Osburn indicated he had received a lengthy letter from the Department of Justice setting forth their policy in that regard which said in effect that so long as discrimination was used in disclosing that type of information, it did not mean that the FBI would refuse to share their information with police departments, courts, etc.

Mr. Paillette recalled that the Commission had been told by Richard Barton that there was to be a change in FBI policy whereby the "rap sheet" was going to show only those arrests where disposition had been made of the case, and they would no longer release information showing arrests where no disposition had been made.

Mr. Osburn commented that generally this was not the kind of information the Parole Board would be concerned with in any event, and Mr. Johnson agreed.

Approval of section 15 will be found on page 20 of these minutes.

ORS 144.260. Chairman to inform judge, district attorney and others of prospective release on parole of inmate. Mr. Johnson explained that SB 521 recommended that the family of the convicted person be notified of the time of his release on parole. That provision had been deleted in the proposed amendment to this section because the board did not feel it was in a position to undertake that responsibility. At the time of the hearing, he said, the person was given a tentative release date but never a specific date and such a policy was therefore unworkable.

Approval of ORS 144.260 will be found on page 20 of these minutes.

ORS 144.270. Conditions of parole shall be in writing; delivery of copy thereof to parolee. Mr. Johnson advised that the proposed amendments to ORS 144.270 (see page 4 of Appendix C) attempted to deal with specific conditions of parole and specified generally the conditions of the parole order. He noted that subsection (3) gave the board power to establish special conditions for parole and those conditions were related to the particular circumstances of the individual case rather than to the crime for which the person was committed.

Judge Crookham recalled that there was a recent decision out of the Court of Appeals which said that a person on parole or probation had diminished his Fourth Amendment rights and could be subject to search by his probation officer for less than probable cause when the search was a legitimate function of the probation process. Inasmuch as the Commission was proposing to codify other search and seizure provisions, he suggested that it might also be appropriate to codify that decision as one of the conditions under ORS 144.270. He added that the courts throughout the state were using that decision at the present time as a condition of probation.

Mr. Johnson replied that while the Parole Board had not discussed the matter, as he understood the policy of the Corrections Division on this subject, it was that search and seizure should not be a condition imposed by a parole officer.

Mr. Johnson indicated that two special conditions imposed automatically by the board when dealing with persons convicted of narcotic or drug violations were that he could not use or possess drugs or narcotics while on parole and that he was not to associate with any drug or narcotic user or addict. He added that if the board were to consider the problem of search and seizure raised by Judge Crookham, he would speculate that they would shy away from imposing a condition of that nature in every case. If it were to be imposed, it would be better imposed as a special condition dependent on the facts of the case involved.

Chairman Yturri and Judge Crookham were of the opinion that the proposed amendment was sufficiently broad to permit such a special condition to be imposed at the discretion of the board.

Approval of the amendment to ORS 144.270 will be found on page 20 of these minutes.

ORS 144.310. Final discharge of parolee. Mr. Johnson explained that when capital punishment was abolished in Oregon, ORS 144.310 was amended to provide that a person could not be paroled after one year if he had been convicted of murder in the first degree. Under the new Criminal Code there were no longer degrees of murder, thus creating an ambiguity in this statute. The position of the board was that anyone should be eligible for discharge on parole after serving one year of his sentence and the proposed amendment to ORS 144.310 would accomplish that purpose. (See page 5 of Appendix C.) Chairman Yturri commented that such an amendment would undoubtedly generate considerable anxiety on the part of society.

See page 20 of these minutes for motion approving amendments to ORS 144.310.

ORS 421.120. Reduction in term of sentence of inmates. (See Appendix C, page 5.) Mr. Johnson explained that under present law when a person was paroled and later returned as a parole violator, all good time credits accumulated prior to parole were forfeited and could only be restored at the recommendation of the superintendent of the institution with the approval of the Parole Board. He had, he said, conducted a three year study and had found that when the superintendent recommended restoration of forfeited good time, the Parole Board accepted that recommendation in 77 to 85% of the cases. The board, he said, would prefer to get out of the business of restoring good time and leave that decision entirely to the superintendent.

Mr. Chandler commented that the figures cited by Mr. Johnson indicated that in 15 to 23% of the cases the board apparently had good reason to overrule the superintendent's recommendation. Mr. Johnson replied that the superintendent looked at the institutional adjustment of the individual whereas the Parole Board looked at his conduct on parole, and he doubted that the proposed amendment would have an appreciable effect on society.

Motion approving the amendment to ORS 421.120 will be found on page 20 of these minutes.

Repeal of ORS 144.330 and substitution of section 20. Cancellation and suspension of parole, arrest and detention. Mr. Johnson indicated that the subsequent amendments related to the revisions suggested by Senate Bill 522 concerning parole violation procedures. In addition to the proposed amendment to ORS 144.050 which he explained following this section, ORS 144.330 would be repealed and section 20 enacted in its place. (See Appendix C, page 6.) It would use the terms "cancel and suspend" rather than "revoke" which was intended to permit termination of parole status temporarily pending the hearings required before parole could be revoked.

Chairman Yturri inquired as to the difference between the meanings of "revoke" and "cancel" and was told by Mr. Johnson that a revocation was a permanent termination of parole status whereas cancellation and suspension carried the connotation of termination for a temporary period of time. Mr. Osburn added that his office had suggested using "cancel" rather than "revoke" in the proposed amendment because "revoke" connoted a final decision by the board without the right to further hearings. "Suspend," he said, would probably suffice in this amendment without including the term "cancel."

Chairman Yturri suggested that "cancel and" be deleted from the amendment to ORS 144.330 and Mr. Johnson concurred. Judge Crookham so moved and the motion carried unanimously.

Judge Crookham noted that the same language, "cancel and suspend," appeared in ORS 144.370, 144.380 and 144.400 and the Commission was in agreement that "cancel and" should be deleted in those sections also.

Mr. Johnson advised that the revised version of ORS 144.330 accomplished two things not authorized by present statute. First, it indicated that the Parole Board could suspend rather than revoke a parole and, second, rather than finding a violation as a matter of fact, it gave the board power to suspend parole and detain the person when there was information or reasonable grounds to believe a violation of the conditions of parole occurred. He was of the opinion that the proposal conformed to the Morrissey decision.

Approval of section 20 as amended will be found on page 20 of these minutes.

ORS 144.050. Power of board to parole inmates. Mr. Johnson advised that the amendment to ORS 144.050 (see page 1, Appendix C) was also in accord with the Morrissey decision and was intended to show that a person could be arrested or detained either by action of the Corrections Division or by an order of the Parole Board when they had reason to believe there was a parole violation. It would conform the statute to the present operating procedure of the Parole Board.

Judge Crookham noted that ORS 144.050 gave the board authority to parole a person confined in a county jail for six months to a year even though that person was there as a condition of probation. Mr. Johnson replied that time spent in a county jail as a condition of probation was not considered as time spent in serving a sentence. The Parole Board did not, he said, take jurisdiction of such cases.

Approval of the amendments to ORS 144.050 will be found on page 20 of these minutes.

Counsel at parole violation hearings. Chairman Yturri asked Mr. Johnson what the board's policy was with respect to attorneys at parole violation hearings and was told that the board had no power to provide attorneys but inmates were permitted to hire attorneys if they had funds to do so. In reply to a further question by the Chairman concerning attorneys at the inmate's final hearing, Mr. Paillette explained that the Morrissey decision drew no distinction between the two hearings with respect to attorneys and the Court did not even say that the inmate had a right to a retained attorney.

Chairman Yturri asked if the proposed amendments had been designed so that they would not have to be amended again in the event there was a decision by the Supreme Court saying that counsel was mandatory. Mr. Johnson replied that the provisions relating to on-site preliminary hearings and parole violation hearings in section 26 to 28 of their proposal contained an attempt to comply with the Morrissey decision as interpreted to the board by the Attorney General.

Mr. Chandler commented that if an indigent inmate wanted counsel provided, he would have to go to court to get one appointed. Mr. Johnson confirmed that statement and reiterated that the board had no authority to appoint counsel. Judge Crookham asked who would be required to pay for counsel. Mr. Osburn replied that probably the court's alternatives would be to say that the board could either provide counsel or they could not hold a hearing, in which case they would have to turn the inmate loose.

Mr. Johnson said the board anticipated that it would not be long before the question would arise in the courts as to whether the board was required to provide counsel for indigents because their policy now was to permit counsel for those who could afford it and without question this raised an equal protection problem.

Chairman Yturri asked how many cases of this type the board heard each year and was told by Mr. Johnson that between September 15 and November 1 they had about 30, and their projection from their experience over a two year period was that there would be approximately 15 per month.

Chairman Yturri suggested that it might be advisable to anticipate what it appeared the Supreme Court was going to have to do with respect to appointed counsel and provide by statute for counsel for indigents. There followed a lengthy discussion of the problems inherent in such a statute including the matter of which county would pay for the services when the person was, for example, sentenced originally in Douglas County and picked up in Multnomah County. If provision were not made for charging expenses back to the sentencing county, the brunt of the expense would be borne by Marion County where the inmates' hearings were held. Also discussed was the necessity of hiring reporters and making transcripts and the expense involved in that procedure.

Following the discussion, Chairman Yturri indicated that if the statute was not changed and the Supreme Court at some time in the future ruled that an indigent parole violator was entitled to appointed counsel, the board would have to comply with that decision regardless of the statutory requirements.

Mr. Johnson noted that there were several areas in addition to the one being discussed which he had intentionally omitted from the proposed amendments:

(1) Subpena powers of the board;

(2) Self-incrimination and whether or not it attached to a parole violator;

(3) If the parole violator was heard on some matter for which he could be prosecuted in a criminal trial, whether or not the matter raised at that hearing could later be used during a trial.

Mr. Johnson's suggestion was that the Attorney General's office should consider these matters and advise the Parole Board as to the positions it should adopt.

Section 26. On-site preliminary hearing. Chairman Yturri called attention to subsection (5) of section 26 which stated, "At the hearing, a parolee is entitled to the right to counsel at his own expense." He suggested that subsection be deleted. Representative Stults commented that as a practical matter and so long as the board continued to follow that policy, the gate was open to require counsel regardless of any statutory provision. Mr. Spaulding suggested that the subsection be deleted and that the board change its practice in that respect to conform to the deletion.

Mr. Johnson's comment on the proposed revision was that the board had been advised by the Attorney General that attorneys should be permitted at the hearings. Mr. Osburn expressed objection to the concept of banning attorneys from Parole Board hearings.

Representative Paulus called attention to paragraph (d) of subsection (4) of section 26 and said the provision appeared to say that the person who was in jail would have the right to be taken out to confront witnesses who would appear against him at his hearing.

Mr. Johnson explained that the intent was to say that within a reasonable time after a person's arrest he was entitled to (1) receive notice of the hearing and (2) to have the right to present evidence on his behalf at the hearing. The remaining paragraphs under subsection (4), he said, should be made the subject of a separate subsection. The same would be true with respect to subsection (3) of section 27.

Chairman Yturri asked if witnesses were to be placed under oath at the on-site hearing proposed by section 26 and was told by Mr. Johnson that the board had no power to administer oaths. Mr. Paillette commented that the Court in Morrissey pointed out that the hearing was supposed to be a very flexible kind of proceeding and the Parole Board should have the latitude to receive testimony and other types of evidence that would not normally be admissible in an adversary type trial. He did not believe, he said, that the question of whether the witness was under oath was relevant to the Morrissey opinion. Chairman Yturri asked how the decision could be appealed if the witnesses were not under oath and was told by Mr. Osburn that a decision on revocation of parole was not supposed to be appealable. The Chairman then inquired how Morrissey went up to the Supreme Court and was told that it was a federal habeas corpus case. Chairman Yturri's conclusion was that since a revocation was not appealable, the inmate could resort to a habeas corpus proceeding if he was unhappy with the board's decision.

Mr. Chandler said that if evidence was to be permitted at these hearings, the one who was the subject of that evidence should be entitled to require witnesses to give their evidence under oath and to compel the presence of witnesses in his behalf. Representative Paulus added that witnesses should also be subject to perjury charges if they presented false evidence.

Chairman Yturri asked Mr. Osburn whether, in light of the Morrissey decision, he was satisfied with the procedures described in the proposed amendments. He pointed out that he could see little point in having either retained or appointed counsel with right of confrontation, cross examination, etc. when no one had the power to administer an oath or subpena a witness. The record could not be relied upon and the inmate would have to go to a habeas corpus proceeding to appeal from the board's decision in any event. Mr. Osburn replied that he did not think the mere presence of a lawyer necessitated such formalities as court reporters and a record.

In response to the same question the Chairman had directed to Mr. Osburn, Mr. Paillette indicated he was satisfied with the Parole Board's recommendations so far as the Morrissey decision was concerned. He said he was not impressed with the need to formalize the proceedings simply because of the presence of an attorney and agreed with Mr. Osburn that once the Supreme Court had gone so far as to hold that an inmate had the right to a lawyer, it was unlikely that they could draw a distinction between a retained counsel and an appointed one in a parole proceeding any more than they could draw that distinction in the trial process. The Morrissey court, however, was very careful not to equate the second stage of a parole revocation proceeding with a criminal prosecution in any sense.

Tape 21 - Side 2

Mr. Chandler was of the opinion that if an inmate had a right to counsel, it would follow that he would have a right to have the witnesses sworn, to compel the attendance of witnesses and also the right to cross examination. Representative Paulus concurred and said she disagreed with Mr. Osburn's statement that the presence of a lawyer would not necessarily bring about a formalization of the proceedings; she believed that an attorney's presence would force formality upon the proceedings. Mr. Paillette again pointed out that that concept was contrary to the Morrissey decision because the proceeding would then be equated with a criminal trial. He said that just because a lawyer was present, it did not mean that the witnesses had to be sworn. Mr. Spaulding agreed that technically one did not necessarily follow the other but, on the other hand, it made little sense to even have a witness if he was unsworn because nothing could be done about it if the witness gave false testimony.

Mr. Paillette's contention was that Morrissey did not say that the inmate was entitled to a lawyer. If the Commission were to assume that he was entitled to a lawyer, it did not necessarily follow that all the proceedings would have to be formalized and equated with a criminal trial. He again pointed out that the Morrissey decision did not require either a lawyer or a formalized proceeding.

Mr. Chandler's position, with which the Chairman, Representative Paulus and Mr. Spaulding agreed, was that if the right to a lawyer was given to a person who could afford to retain counsel, that same right had to be extended to a person who did not have the necessary funds and he would have to be furnished with a lawyer. If that course were followed, the lawyer then had the right to cross examine together with all the other rights the Commission had been discussing.

Mr. Johnson indicated he was most concerned with the board's power to make witnesses available for the hearing and, in response to a question by the Chairman, said that if the board had subpena powers, he would not be particularly concerned with whether the witnesses were sworn because the board was trying to avoid a formal procedure.

Chairman Yturri again proposed to delete subsection (5) of section 26. Judge Crookham agreed and said that if the board then continued to permit an attorney only when the inmate could retain one with his own funds, that would be the board's decision and not something that had been sanctioned by this Commission or by statute.

Representative Paulus moved to delete subsection (5) of section 26. Motion carried with Mr. Osburn voting no.

Approval of section 26 as amended will be found on page 20 of these minutes.

Subpena powers of Parole Board. Chairman Yturri next asked the Commission to make a decision concerning subpena powers for the board. Mr. Osburn commented that in his opinion subpena powers for the board were desirable but not critical. He explained that the purpose of the on-site hearing was to permit someone to go out and get the witnesses for the inmate because he was locked up and was unable to do it himself. He said that probably the inmate should either be given the right to counsel or the right to subpena witnesses.

In view of Mr. Osburn's statement, Mr. Chandler moved to include the right of the parole board to subpena witnesses for its own and the inmate's benefit.

Judge Crookham asked how the board would pay for the cost of subpenaing witnesses. Chairman Yturri replied that the hearings officer would be representative of the board and would exercise his discretion as to whether the board's budget would permit the subpenas and how important the witnesses would be to a particular case. Mr. Johnson commented that if that were the case, there would never be any witnesses subpenaed.

Representative Cole asked whether the motion to extend subpena powers was applicable to both hearings by the Parole Board or only to the final hearing and was told by Mr. Chandler that it would extend to both hearings.

Vote was then taken on the motion and it carried. Voting for the motion: Chandler, Cole, Osburn, Spaulding, Stults, Mr. Chairman. Voting no: Carson, Crookham, Paulus.

Chairman Yturri inquired as to the proper placement of subpena powers for the board in the statute, and it was decided to leave that matter to the discretion of Mr. Johnson.

Repeal of ORS 144.400. Power of board to parole violator again and without recommitment. Mr. Johnson noted that the board proposed to repeal ORS 144.400, but the recommendation to replace it with a new section 24 relating to reinstatement of parole was in error because

section 27 conferred that authority on the board. It was only necessary, he said, to repeal ORS 144.400.

Representative Stults so moved and the motion carried unanimously.

Section 28. Parole violator in custody in another state. Mr. Johnson indicated that he had included section 28 to indicate that when an alleged parole violator from another state was in federal custody, the preliminary hearing proceeding and the parole violation proceeding would not apply to parole violations and would be deferred until the violator was returned to this state. This provision was an attempt to solve the problem raised in the situation where the parole violator was paroled to the jurisdiction of another state and absconded from that state to a third state that did not operate under the interstate compact.

Chairman Yturri was of the opinion that the language of section 28 did not accomplish its objective and the Commission discussed alternative language. Following the discussion, Mr. Osburn moved to amend section 28 to read:

> "When the alleged parole violator is in custody in a state to which he has not been paroled, or in federal custody, sections 26 and 27 do not apply and all matters regarding the parole violation shall be deferred until the alleged parole violator has been returned to this state."

Motion carried unanimously.

In reply to a question raised by Judge Crookham as to the minimal safeguards extended to a parolee, Mr. Johnson explained that the theory of section 28 was that when the parolee was paroled to a non-compact state, he was protected by extradition proceedings and when he was paroled to a compact state, he was protected by the on-site preliminary hearing.

Approval of section 28 as amended will be found on page 21 of these minutes.

Waiver of preliminary hearing. Mr. Johnson explained that one thing omitted from this proposal which should be included either in the statutes or in the rules concerned the board's operating procedure that called for an inmate to be permitted to waive a preliminary hearing with attorneys, witnesses, etc. and instead to be heard only by the hearings officer or the board. He asked whether such a waiver provision should be included in the statute or in the rules.

The concensus of the Commission was that the waiver provision should be included in the board's rules rather than in the statute.

Approval of proposed amendments. The Commission then reviewed the draft for the purpose of making specific recommendations with respect to the sections just discussed.

Mr. Chandler moved to approve ORS 144.050 as amended. Motion carried unanimously.

Mr. Chandler moved approval of section 12, ORS 144.240. Motion carried unanimously.

Mr. Chandler moved adoption of the amendments set forth in section 13 dealing with ORS 144.250. Motion carried.

Mr. Chandler moved to approve section 15 dealing with data to be considered in determining parole release. Motion carried.

Judge Crookham moved that ORS 144.260 be adopted with the deletion of the words "and Probation" but that the addition of the language suggested by SB 521 not be included in the section. Motion carried.

Mr. Spaulding moved to adopt the language of the amendment to ORS 144.270 and to approve the section as amended. Motion carried.

Judge Crookham moved the adoption of the amendment to ORS 144.310 making it possible for all persons to be discharged on parole after serving one year of their sentence. Motion carried. Chairman Yturri voted no.

Representative Stults moved to amend ORS 421.120 to remove the Parole Board from the function of approving "good time." Motion carried.

Representative Cole moved to approve section 20 dealing with the suspension of parole, arrest and detention with the amendment approved earlier which deleted "cancel and". Motion carried.

Representative Cole moved to approve section 21 with the amendment to read "shall be suspended by order of the board and". Motion carried.

Representative Stults moved to approve ORS 144.380 with the amendment deleting "cancellation and". Motion carried.

With respect to the on-site preliminary hearing in section 26, Representative Paulus recalled that paragraphs (c), (d), (e) and (f) under subsection (4) were added as a new subsection. Also, subsection (5) of section 26 had been deleted. Representative Stults moved to approve section 26 with the above amendments. Motion carried.

In regard to section 27, Mr. Chandler noted that paragraphs (c), (d), (e) and (f) of subsection (3) were to become a part of subsection (4) and subsection (4) as set forth in the amendment would be deleted. Mr. Chandler moved the adoption of section 27 with those amendments. Motion carried.

Judge Crookham moved to adopt section 28 as amended by the Commission. Motion carried.

The Commission unanimously agreed to submit the amendments just discussed to the legislature as a Commission bill to be introduced at the request of the Criminal Law Revision Commission.

Senate Bill 520 of 1971 Legislative Assembly relating to probation procedures, revocation and conditions of probation. Mr. Paillette explained that the major purpose of SB 520 was to set out more definitive guidelines for standards for probation and for probation revocations. He explained the bill in considerable detail.

Following a brief discussion, Mr. Chandler moved that SB 520 be given no further consideration by the Commission. Motion carried.

Senate Bill 618 of 1971 Legislative Assembly relating to sexually dangerous persons. Mr. Paillette advised that although SB 618 was referred to this Commission by the 1971 Senate Committee on Criminal Law and Procedure, it was not in his opinion a bill with which the Commission should be concerned.

Mr. Chandler moved that no further consideration be given the bill. Motion carried unanimously.

General Discussion of Proposed Oregon Criminal Procedure Code

Mr. Paillette indicated that the Proposed Criminal Procedure Code would be numbered Senate Bill 80 in the forthcoming legislative session while the resolution with respect to the constitutional amendment on grand juries would be Senate Joint Resolution 1. He was still hopeful, he said, that the final draft and report would be printed and ready for distribution the first part of December.

There was a discussion of distribution of the Code by the Oregon State Bar. The Commission was hopeful that wide distribution could be made to members of the Bar, and Mr. Paillette indicated that the Commission staff would make certain that every legislator and every public attorney as well as law enforcement agencies received sufficient copies.

The meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Criminal Law Revision Commission

MANDATORY STANDARDS

The Oregon State Corrections Division is hereby given the responsibility for providing and coordinating State service to local governments with respect to local confinement facilities. The Oregon State Corrections Division Administrator will have the following powers, duties and responsibilities:

A. To provide consultation and technical assistance to Chiefs of Police, Sheriffs and other local government officials, confinements and other correctional facilities and programs.

B. To visit and inspect local detention facilities to insure that the following minimum standards for the secure custody, protection, health, comfort and welfare of persons confined and safety of staff is provided:

1. Twenty-four hour supervision shall be maintained when inmates are confined and a personal inspection of the persons confined shall be made at least every hour.

2. When a female is confined, a female supervisor must be available to provide supervision and inspection in person at least every hour.

3. Firearms shall be prohibited from the security area of the detention facility except in times of emergency as determined by the administrative officer.

4. Three meals a day shallbe served at reasonable intervals.

5. No corporal punishment shall be administered at any time.

6. Each person confined in a detention facility shall be insured the following:

   a. That the detention facility is kept safe and secure;

   b. Have accessible to him an up-to-date set of the Oregon Revised Statutes;

   c. That his communications with the Governor, administrative officer, State's attorney and his own attorney are forwarded without examination or censorship; and

   d. Have provided to him the rules and regulations of the detention facility governing correspondence, visiting privileges and disciplinary rules and regulations governing his behavior.

7. Persons being detained as witnesses in a detention facility must be segregated from other inmates.

8. The following instructions or plans shall be formulated and published by each detention facility:

   a. Comprehensive plans to meet emergencies involving escape, riots, assaults, fires, rebellions and other types of major disaster.

   b. A manual of policies and regulations for the operation of the detention facility.

9. All plans of new construction or major renovation of detention facilities shall be submitted to the Corrections Division for review and consultation.

C. Provide a written report twice each year to the Sheriff, Chief of Police, County Commissioner, Mayor and other appropriate officials describing the compliance or noncompliance with minimum standards of their respective detention facilities, and to make suggestions for the improvement of the respective detention facility.

The Administrator of the Oregon State Corrections Division shall designate staff to consult with officers of city and county detention facilities. The consulting staff shall advise the detention facility staff concerning applicable provisions of law and proper rehabilitative practices. When, in the judgment of the consulting staff, the condition of the detention facility or the treatment of the inmates make the detention facility an unfit or unsafe place for confinement, the consulting staff will notify in writing the appropriate sheriff or police chief and the appropriate county commissioner or mayor and city council.

If corrective measures are not taken within a reasonable amount of time, and it appears to the consulting staff that efforts to provide for the safekeeping of inmates or detention personnel are not being made, the Corrections Division may request the Attorney General to institute proceedings in the Circuit courts to enforce obedience thereto by injunction, or by other processes, mandatory or otherwise, restraining such detention facility from further violation of such statutes or the impairment of the general welfare, health or safety of inmates or detention personnel.

The Administrator of the Oregon Corrections Division shall publish and distribute a manual of guidelines for the operation of local detention facilities and lockups as developed by the Jail Standards Committee. This

manual shall be revised when appropriate with consultation and advice of the Oregon Sheriffs Association, the Oregon Association Chiefs Of Police, Association Of Oregon Counties, the League Of Oregon Cities and other appropriate groups and agencies and will be redistributed upon the approval of the Director of the Department of Human Resources and the Governor.

The State Board of Health, pursuant to ORS 431.130, shall make such rules and regulations as in its judgment are necessary to insure adequate health and sanitation of city and county detention facilities.

The County Health Officer or his representative must conduct food, health and sanitation inspections of the city and county detention facilities and lockups at least quarterly.

The County Health Officer may suspend the operation of any detention facility if it appears upon a hearing before the County Board of Health that the operation of the detention facility is not in accordance with the rules and regulations established by the State Board of Health.

RULES OF

OREGON STATE BOARD OF PAROLE AND PROBATION

Effective August 1, 1970
(Adopted July 29, 1970)

1. The Oregon State Board of Parole and Probation, hereinafter called Board, shall hold regular and business meetings in accordance with a schedule to be determined by the Chairman. Two members shall constitute a quorum, without which official action cannot be taken.

2. The Board shall select one of its members as Chairman who shall hold office for a period of one year. The term of office of the Chairman shall commence July 1 of each year. The Chairman may be re-elected to serve one additional term upon vote of the Board. The election shall be held within 30 days preceding the expiration of the present term.

3. The Chairman shall appoint one of the members of the Board to act in the capacity of Chairman in his absence. The person so selected shall be designated Acting Chairman.

4. It is the intent of the Board that one of its special functions shall be to aid every paroled man to reestablish himself in life. With this in view, the Administrator of the Corrections Division shall keep comprehensive watch over the actions of paroled men, and especially lend them every assistance in his power, not only in securing employment and making progress, but also in protecting them against the persecution which is often imposed upon ex-convicts.

5. It is the policy of the Board that no prisoner be paroled unless satisfactory employment or proper care and supervision are assured. In this connection, the Administrator of the Corrections Division is authorized to take such steps as may appear proper to encourage interest on the part of employers and other responsible citizens in giving parolees opportunities of employment or care and supervision, and to make such arrangements as he can to secure the proper rehabilitation for inmates who are to be paroled.

6. In determining parole selection, the Board will evaluate the readiness of the inmate for release, including, but not limited to, personal history factors, offense committed, institutional adjustment, personality changes, and the attitude of the community.

7. The Board may record proceedings conducted by it either manually or by mechanical recording device. The recording of such proceedings shall be maintained and preserved for a reasonable period of time in the offices of the Oregon State Board of Parole and Probation in Salem, Oregon.

8. No person shall attend regular meetings of the Board except upon a prearranged invitation by the Board.

9. No person nor attorney interested in behalf of any inmate will be permitted to personally represent the inmate at his or her hearing before the Board, but any person or attorney interested on behalf of any inmate or patient over which the Board has parole authority may present to the Board any information or documents pertinent to the case. The Board shall review such information and may reserve the right to invite any person or attorney interested in a particular case to attend a subsequent business meeting.

RULES - 8.1.70

10. Every attorney who shall undertake professional employment in connection with a parole matter of official interest to the Board shall immediately, upon undertaking such employment, file with the Board a statement in writing disclosing said employment and further stating whether any fee has been or is to be paid and, if so, the amount thereof and by whom paid or to be paid.

11. Statements and accompanying papers cannot be withdrawn after they have been referred to the Board. Action will be withheld, however, by request of petitioner or any person in his behalf at any time before the case has been finally determined.

12. All paroles granted shall be subject to the following conditions:

(1) I understand that this parole is granted to and accepted by me subject to all its terms and conditions and with the understanding that the State Board of Parole and Probation may at any time, in case of violation of any of the terms of this parole, cause me to be returned to the physical custody of the Corrections Division to serve the remainder of my sentence/s. Pending action by the Board, I understand that any representative of the Corrections Division may order and execute my arrest and detention upon being informed and having reasonable grounds to believe that I have violated any condition of my parole. I shall submit to such detention.

(2) I understand that I am under the supervision of the Corrections Division and its representatives and that I must abide by their direction and counsel.

(3) Upon release, I shall proceed at once to my place of residence and report my arrival to the nearest office of Parole and Probation, Corrections Division, according to instructions provided at time of release.

(4) If my residence is within the State of Oregon, I shall not leave the state without first securing permission in writing from my supervising officer.

(5) If my residence is outside the State of Oregon, I shall not re-enter the State of Oregon without permission in writing from the Administrator, Corrections Division.

(6) I shall make a written and truthful report on the last day of each and every month to the Administrator, Corrections Division, on blanks which will be furnished, giving information required therein. It is my responsibility to see that my report is received by my supervising officer not later than the fifth day of the month following.

(7) I shall not own, possess or be in control of any weapon.

(8) I shall respect and obey all municipal, county, state, and federal laws.

(9) I understand that the Board may, in its discretion, at any time revoke my parole if it determines that my parole is not in my best interest, or in the best interest of society.

RULES - 8.1.70

13. An inmate of any county jail of this state serving a sentence of six months to one year shall be eligible for parole consideration at such time as application is made by the inmate to the Board. An inmate of the Oregon State Penitentiary, the Oregon State Women's Correctional Center, or the Oregon State Correctional Institution normally shall be eligible for parole hearing consideration in accordance with the following schedule:

(1) On a sentence of 12 through 13 months, a hearing not later than the third month.

(2) On a sentence of 14 through 16 months, a hearing at the end of four months.

(3) On a sentence of 17 through 19 months, a hearing at the end of five months.

(4) On a sentence of 20 through 36 months, a hearing at the end of six months.

On all sentences in excess of 36 months, the Board shall make a complete study of the case not later than the end of the sixth month and set the parole hearing date at a preliminary hearing with the inmate. Inmates convicted of murder in the first degree and sentenced to life imprisonment prior to November 3, 1964, will be eligible for parole hearing after they have served seven years. Inmates who have been convicted of murder in the first degree and sentenced to life imprisonment subsequent to November 3, 1964, will be eligible for a parole hearing after they have served ten years. Inmates serving life sentences for murder in the second degree will be eligible for parole hearing after they have served seven years.

14. The inmate or parolee shall be notified of actions taken by the Board regarding his or her case.

15. Physical and psychiatric reports are to be submitted to the Board on all "life" cases and the following major crimes: homicide in any degree, treason, rape where violence is an element of the crime, kidnaping, burglary when armed with a dangerous weapon, or assault with intent to kill while being armed with a dangerous weapon. Such reports are to be made prior to the inmate's parole hearing.

16. Psychiatric reports for the Board shall be provided by the Corrections Division and not by outside psychiatrists employed by private individuals.

17. A parole violator will be given a hearing by the Board following his or her return to the Oregon State Penitentiary, the Oregon State Women's Correctional Center, or the Oregon State Correctional Institution at which time the parole violator will appear. The Board will at that time discuss the violations charged, and either grant immediate reparole, deny reparole, or set a date for a further reparole hearing.

18. In the event of the transfer of a female inmate from the Oregon State Women's Correctional Center to an institution in another state under the provisions of ORS 421.210, or the transfer of a male inmate from the Oregon State Penitentiary under the provisions of ORS 421.211, the parole hearing will be conducted in the following manner: one or more Board members, designated by the Chairman, will interview the inmate at the place of confinement and will make a full report and recommendation to the other members.

RULES - 8.1.70

19. The Administrator and parole officers of the Corrections Division shall be empowered to arrest and retake parole violators, and hold them in any city or county jail in the State of Oregon pending an investigation or revocation of parole by the Board.

20. It shall be the policy of the Board to return parole violators from any state in which they may be found. However, where unusual circumstances are present, indicating the presence of rehabilitative factors, the Administrator of the Corrections Division is empowered to present the case to the Board with his recommendation that the revocation be set aside and the parole be reinstated.

21. Parole violators may be returned to the physical custody of the Corrections Division by parole officers or by such police or peace officers as the Administrator may appoint. All such agents shall carry formal evidence of appointment. They shall be instructed regarding the proper method to be followed when performing this duty.

22. It shall be the policy of the Board that one on parole shall not be discharged from parole prior to the expiration of the sentence pronounced by the court except under unusual circumstances. Applications for discharge may be considered upon recommendation of the Corrections Division.

Addition

To conform to operating procedures.

144.050. (Power of board to parole inmates) Subject to applicable laws, the State Board of Parole /and Probation/ may authorize any inmate, who is confined in any county jail for a period of six months or more or committed to the legal and physical custody of the Corrections Division, to go upon parole subject to being arrested and detained pursuant to written order of the Board or as provided in ORS 144.350. The state board may establish rules and regulations applicable to parole.

ORS 144.240
Section 12. Repeal / add following section in place of:

144.240 Stamdards for parole. Whenever the Board of Parole considers the release of a prisoner who by its rules or order is eligible for release on parole, it shall be the policy of the board to order his release, unless the board is of the opinion that his release should be deferred or denied because:

(1) there is a reasonable probability the inmate will not, after parole, remain outside the institution without violating the law and that such release is incompatible with the welfare of society;

(2) there is substantial risk that he will not conform to the conditions of parole; or

(3) his release at that time would depreciate the seriousness of his crime or promote disrespect for law; or

(4) his release would have a substantially adverse effect on institutional discipline; or

(5) his continued correctional treatment, medical care or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life when released at a later date.

Comment: To clarify standards used by Board when determining when to release upon parole (ref. SB 521 - 1971).

ORS 144.250

Section 13. Repeal / add following section in place of:

144.250 Factors considered by board in granting parole. In making its determination regarding a prisoner's release on parole, it shall be the policy of the Board of Parole to take into account each of the following factors:

(1) the prisoner's personality, including his maturity, stability, sense of responsibility and any apparent development in his personality which may promote or hinder his conformity to law;

(2) the adequacy of the prisoner's parole plan;

(3) the prisoner's ability and readiness to assume obligations and undertake responsibilities;

(4) the prisoner's intelligence and training;

(5) the prisoner's family status and whether he has relatives who display an interest in him, or whether he has other close and constructive associations in the community;

(6) the prisoner's employment history, his occupational skills, and the stability of his past employment;

(7) the type of residence, neighborhood or community in which the prisoner plans to live;

(8) the prisoner's past use of narcotics, or past habitual and excessive use of alcohol;

(9) the prisoner's mental or physical make-up, including any disability or handicap which may affect his conformity to law;

(10) the prisoner's prior criminal record, including the nature and circumstances, recency and frequency of previous offenses;

(11) the prisoner's attitude toward law and authority;

(12) the prisoner's conduct in the institution, including particularly whether he has taken advantage of the opportunities for self-improvement afforded by the institutional program, whether he has been punished for misconduct prior to his hearing or reconsideration for parole release, whether he has forfeited any reductions of term during his period of imprisonment, and whether such reductions have been restored at the time of hearing or reconsideration;

(13) the prisoner's conduct and attitude during any previous experience of probation or parole and the recency of such experience.

Section 14. Add Section 15 to and make part of ORS Chapter 144.

Section 15. (Data to be considered in determining parole release.) Before making a determination regarding a prisoner's release on parole, the Board of Parole may cause to be brought before it all of the following records and information regarding the prisoner:

(1) the reports, statements and information specified in ORS 144.210;

(2) any relevant information which may be submitted by the prisoner, his attorney, the victim of the crime, or by other persons;

(3) a report prepared by the institutional parole staff, relating to his personality, social history and adjustment to authority, and including any recommendations which the institutional staff may make;

(4) all official reports of his prior criminal record, including reports and records of earlier probation and parole experiences;

(5) the presentence investigation report of the sentencing court or the Division of Correction;

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

(7) the prisoner's parole plan;

(8) such other relevant information concerning the prisoner as may be reasonably available.

Section 16. Amendment

To set forth standard guidelines for behavior in order that parolee may know what is expected of him. (ref. SB 521 - 1971).

144.270. (Conditions of parole shall be in writing; delivery of copy thereof to parolee.) (1) The State Board of Parole /and Probation/, in releasing a person on parole, shall specify in writing the conditions of his parole and a copy of such conditions shall be given to the person paroled.

(2) The Board shall determine, and may at any time modify, the conditions of parole, which may include, as well as any others, that the parolee shall:

(a) Accept the parole granted subject to all terms and conditions specified by the Board.

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

(c) Answer all reasonable inquiries of the Board or the parole officer.

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

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

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

(g) Understand that the Board may, in its discretion, cancel and suspend or revoke parole if it determines that the parole is not in the best interest of the parolee, or in the best interest of society.

(3) The Board may establish such special conditions as it shall determine are necessary by reference to the individual circumstances of the parolee.

TERMINATION OF PAROLE

144.310 Final discharge of parolee. When any paroled prisoner has performed the obligations of his parole for such time as satisfies the State Board of Parole [and Probation] that his final release is not incompatible with his welfare and that of society, the board may make a final order of discharge and issue to the paroled prisoner a certificate of discharge; but no such order of discharge shall be made [in] the case of a person convicted of murder in the first degree and in no other case within a period of less than one year after the date of release on parole, except that when the period of the sentence imposed by the court expires at an earlier date, a final order of discharge shall be made and a certificate of discharge issued to the paroled prisoner not later than the date of expiration of the sentence.
[Amended by 1963 c.625 §2]

144.320 [Repealed by 1961 c.412 §5]

Section 17. Amendment

Comment to s. 1.

Deletion

Makes all persons eligible for discharge after one (1) year.

Section 18. Amendment to ORS 421.120 (Reduction in term of sentence of inmates)

Amendment to subsection (2) removes board from good time approval function:

(2) When a paroled inmate violates any condition of his parole, no deduction from the term of his sentence, as provided in subsection (1) of this section, shall be made for service by such inmate in the penal or correctional institution prior to his acceptance and release on parole, except when authorized by the [State Board of Parole and Probation upon recommendation of the] superintendent thereof.

Section 19. Repeal 144.330 and enact Section 20 in place of.

Section 20. (Cancellation and suspension of parole, arrest and detention) The State Board of Parole may Cancel and suspend the parole of any person under its jurisdiction upon being informed and having reasonable grounds to beleive such person has violated the conditions of his parole and may order the arrest and detention of such person. The written order of the board is sufficient warrant for any law enforcement officer to take into custody such person. All sheriffs, police, constables, parole and probation officers, prison officials and other pease officers shall execute such order.

Section 21
Amendment

144.370 Investigation following order for arrest and detention; revocation of parole, conditional pardon or probation or release. Upon issuing an order for the arrest and detention of any person under the provisions of ORS 144.350, the [Director of Parole and Probation] shall proceed immediately to investigate for the purposes of ascertaining whether or not the terms of the parole, probation or conditional pardon have been violated. Within 15 days after the issuance of any such order, the detained person's parole, probation or conditional pardon shall either be revoked as provided by law or such person shall be released from detention.

Corrections Division

shall be cancelled and suspended by order of the Board and

Section 22. Amendment

144.380. (After revocation of parole, conditional pardon or probation violator is fugitive from justice.) After the cancellation and suspension of parole or revocation of the parole, probation or conditional pardon of any convicted person, and until his return to custody, he shall be considered a fugitive from justice.

Comment: Conforms to Supreme Court decision.

144.400 Power of board to parole violator again and without recommitment. The State Board of Parole and Probation may parole a violator of parole, conditional pardon or probation. The board may by order duly entered of record, without first returning a parole violator to the Oregon State Penitentiary, cancel a revocation of a parole previously issued by it and by such order restore the parolee to his former parole status.

Section 23 Repeal and enact section 24 in place of

Section 24 (Reinstatement of parole) The Oregon State Board of Parole may by order duly entered of record rescind the outstanding order of cancellation and suspension issued by it and by such order restore the parolee to his former parole status.

Section 25 - Sections 26 to 28 of this act are added to and made a part of ORS 144.310-144.400.

Section 26 - (On-Site Preliminary Hearing)

(1) When a parolee is arrested and detained pursuant to ORS 144.330 or ORS 144.350 the Board or its designated representative shall conduct a hearing within a reasonable time from the date of arrest and detention to determine whether there is probable cause to believe a violation of one or more of the conditions of parole have occurred and whether the alleged parole violator ought to be returned to custody regarding the matter of the alleged parole violation. The location of the hearing shall be reasonably near the place of the alleged violation or the place of confinement.

(2) The Board or its designated representative shall:

(a) Determine whether there is probable cause to believe a violation occurred which is sufficient to return the alleged parole violator to custody.

(3) The Board may:

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

(b) Order a return to custody for further proceedings before the Board.

(4) Within a reasonable time prior to the hearing, the parolee shall:

(a) Receive notice of the time, place and location of the hearing

(b) Receive a concise written statement of the suspected violation and reasons therefore

(c) Have the right to present evidence on his behalf

(d) Have the right to confront witnesses against him, except for good cause.

(e) Have the right to examine information or documents which form the basis of the alleged violation

(f) Receive notice regarding the decision made on the matter of the alleged violation of parole.

(5) At the hearing, a parolee is entitled to the right to counsel at his own expense.

Section 27 - (Parole Violation Hearing)

(1) Whenever an alleged parole violator is ordered returned to custody pursuant to Sub-Section (3) of Section 26 of this Act, the Board shall conduct a parole violation hearing within a reasonable time after his return to the institution and shall:

(a) Determine whether violation of parole in fact occurred, and

(b) Determine whether the violation, if found to exist, warrants revocation of parole.

(2) The Board may:

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

(b) Revoke parole and require that he serve the remaining balance of his sentence as provided by law.

(3) Within a reasonable time prior to the hearing, the parolee shall:

(a) Receive notice of the time, place and location of the hearing.

(b) Receive a concise written statement of the suspected violation and reasons therefore.

(c) Have the right to present evidence on his behalf.

(d) Have the right to confront witnesses against him, except for good cause.

(e) Have the right to examine information or documents which form the basis of the alleged violation.

(f) Receive notice regarding the decision made on the matter of the alleged violation of parole.

(4) At the hearing, a parolee is entitled to the right to counsel at his own expense.

Section 28 - When the alleged parole violator is in custody in another state or in Federal custody, Sections 26 and 27 do not apply and all matters regarding the parole violation shall be deferred until the alleged parole violator has been returned to this state.

CRIMINAL LAW REVISION COMMISSION

SYNOPSIS

Morrissey v. Brewer; Booher v. Brewer

These two cases which were consolidated on appeal to the U. S. Supreme Court, involved parolees whose paroles were revoked on the basis of a written report by the parole officer without receiving a hearing prior to revocation.

In their habeas corpus proceedings the petitioners argued that because their paroles were revoked without a hearing they were denied due process. They were denied relief in both the U. S. District Court and the Court of Appeals.

The Supreme Court reversed and remanded the cases, holding:

1. Though parole revocation does not call for a "full panoply" of rights due a defendant in a criminal proceeding, a parolee's liberty involves significant values within the protection of the Due Process Clause of the Fourteenth Amendment, and termination of that liberty requires an "informal hearing" to give assurance that the finding of a parole violation is based on verified facts to support the revocation.

2. Due process requires a reasonably prompt informal inquiry by an impartial hearing officer near the place of the alleged parole violation or arrest to determine whether there is reasonable ground to believe that the parolee has violated a condition of parole. The parolee should receive prior notice of the inquiry, its purpose, and the alleged violations. The parolee may present relevant information and (absent security considerations) question adverse witnesses. The hearings officer should consider the evidence on reasonable cause and state the reasons for holding the parolee for the decision by the parole board.

3. At the revocation hearing itself, which must be held "reasonably soon" after the parolee's arrest, minimum due process requirements are:

(a) Written notice of the alleged violations.

(b) Disclosure to the parolee of the evidence against him.

(c) Opportunity to be heard in person and to present witnesses and other evidence.

(d) Right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation).

(e) A "neutral and detached" hearing body such as a traditional parole board, but the members need not be judicial officers or lawyers.

(f) A written statement by the factfinders as to the evidence relied on and the reasons for revoking parole.

The Court emphasized that it was not equating this second stage of parole revocation to a criminal prosecution in any sense. It is to be a "narrow inquiry," and the process should be flexible enough to consider evidence such as letters, affidavits and other material that would not be admissible in an adversary criminal trial. The Court noted that it did not reach or decide the question whether the parolee is entitled to the assistance of retained counsel or to appointed counsel if he is indigent.