



## **Advisory Commission on Prison Terms and Parole Standards**

2575 Center Street NE, Suite 100  
Salem, Oregon 97301

**\*\* DRAFT \*\***

### **Advisory Commission on Prison Terms & Parole Standards Meeting Minutes Thursday, February 10, 2012**

**Facilities:** This meeting was held at the Oregon State Archives Building located at 800 Summer Street NE, Salem OR 97301.

**Call to Order and Note of Attendance:** The meeting was called to order at 9:05a.m., and note of attendance made: Chairperson Aaron Felton, Member Jeremiah Stromberg, Member Candace Wheeler, Advisory Commission Secretary Jay Scroggin, Judge Dale Penn, Member Liani Reeves, Legal Counsel Steven Wolfe, Judge Julie Frantz and Mike Gower of the Department of Corrections. Attending via telephone was Judge Michael Sullivan. Assisting with the meeting were Oregon Board of Parole & Post-Prison Supervision staff Debbie Wojciechowski, Marshall Morales and Debra Zwicker. Also in attendance were members of the public.

**Meeting Structure:** The public testimony today will assist the Commission in their approval to propose the two proposals to the Oregon Board of Parole & Post-Prison Supervision (Board). The Board will then take more public testimony on these proposals and ultimately turn the proposals into Administrative Rule.

**Approval of Minutes from January 12, 2012:** Judge Michael Sullivan moved that the minutes be approved as received. Seconded by Judge Dale Penn. Passed.

#### **Public Testimony:**

*Proposal to the Adult Matrix exhibits A1 and A2 (Crime severity rating and crime severity subcategory rationales):*

Andy Simrin, an attorney who has had experience with cases concerning the two proposals, commented that after working this between the Court of Appeals and Supreme Court that the rule proposed today to fill in the gaps missing in the matrix are appropriate and solve the problem we have dealt with for many years.

*Proposal to Juvenile Aggravated Murder Rules:*

The key comments of the three *opponents* of this proposal were:

- They voiced frustration with the multiple rule changes throughout the years and are hoping that this will be the last of the changes.

- Would like to see each offender judged individually by their actions as juveniles when they committed the murder and as adults after they were convicted. Their age at the time they committed the murders should not be the only mitigating factor used to determine their release date.
- There is a feeling of betrayal by the system after the conviction. It becomes more about the rights of the offender and less about the rights of the victim.

The key comments of the four *proponents* of this proposal were:

- They feel it is important to recognize the differences between a juvenile brain and that of an adult as juveniles are not fully mature and have a greater capacity for rehabilitation.
- They advocated for more leniency for juvenile offenders using their youth at the time of crime commitment as a mitigating factor when setting prison sentences.
- Feels that, even after an offender is released, they must live a life sentence due to their conscience and because society doesn't forgive them.

Further public comments to this proposal were:

- One person said that she would like the Board, in its rule making process, to look at the Criminal History Risk Assessment, OAR 255-35-015(d), as she feels this discriminates against offenders based on their age at the time of crime commitment.
- Andy Simrin stated that we are guided by constitutional principles. Within that framework, the legislature of the State of Oregon enacts laws. Pursuant to those laws the Board promulgates rules that are aimed to be consistent with the policy choices made by the legislature so long as those policy choices made by the legislature are consistent with the over arching constitutional principles. Regrettably, the framework within which those principles have operated in the last 22 years are exceedingly complex and the courts and the Board have made mistakes in interpreting those principles and creating rules to embody those principles. But things have painfully been sorted out by the Oregon Supreme Court. We come here today to weigh whether the application of the matrix rules that govern the setting of prison terms for adult aggravated murderers should also be applied to the juvenile offenders. He projects that, if the rules that are being proposed today were to be applied to the juvenile offenders in question, he would not anticipate, at least from his standpoint, any further litigation about the validity of those rules.

Commissioners' Comments:

- When the juvenile rules were invalidated by the Oregon Supreme Court, and direction was given that OBPPPS would have to adopt new rules, this commission was formed to provide advice to the Board about what rule changes might be recommended to them. The challenge is how to look back 18-20 years without violating the ex post facto clause of the Oregon and United States constitutions which says you cannot go back and add penalty to what was in place back when the crime actually occurred. This proposal tries to look at the sentencing structure that was already in place for adults who had committed aggravated murder and apply it to juveniles of that time without violating any of the ex post facto concerns. There is no guarantee that there will be no challenge to these rules once they are put into place, but the Advisory Commission is confident that what is proposed is the most legally solid recommendation they can present to the Board.

- Chairperson Aaron Felton explained that, if these proposals are made into Administrative Rules, the next step would be setting Prison Term hearings for the five people affected by the Juvenile Aggravated Murder rule change. He gave a description of Prison Term and Exit Interview hearings. Chairperson Felton stated that what the Commission is doing today and what the Board does next in regard to these rule changes will not result in the release of the affected offenders.

**Commission Recommendations:**

*Regarding the proposal to the Adult Matrix exhibits A1 and A2 (The restoration of the crime severity rating and crime severity subcategory rationales)*

Judge Dale Penn moved that the Advisory Commission recommend to the Oregon Board of Parole & Post-Prison Supervision that the amendment to OAR 255-032-0037(2) as well as amendments to Exhibit A I and Exhibit A II which would have the effect of providing aggravated murder to the matrix with subcategories of 7 & 8 as prescribed for their rule making process. Seconded by Judge Julie Frantz. Passed

*Regarding the proposal to amend the OARs concerning the Juvenile Aggravated Murder Rules*

Judge Penn moved that the commission recommend to the Board to adopt the amendment to OAR 255-032-0005(4) and repeal OAR 255-032-0011 in its rule making process. Seconded by Judge Sullivan. Passed.

**Future Meetings:** Public Hearing by the Board of Parole to take further public testimony concerning the two proposals on Friday, February 17, 2012 at 9:00a.m. in room 108 at the Dome Building located at 2575 Center Street NE, Salem OR 97301.

*Meeting adjourned at 10:35a.m.*

**\*\* NOTE: These minutes have not been approved. \*\***