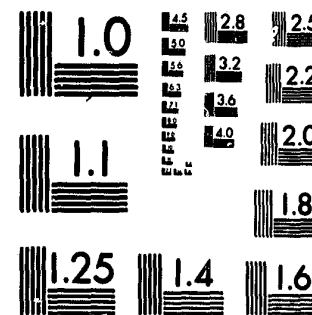


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Periodicals Probation

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This Issue in Brief

ACQUISITIONS

Mandatory Sentencing: The Politics of the New Criminal Justice.—New mandatory sentencing policies are winning political support in the 50 states and Congress; however, despite stated goals to equalize sentencing and deter crime, the new laws probably can be expected to aggravate prisoners' grievances and serve as simply another bargaining tool in the criminal justice system, asserts Professor Henry R. Glick of Florida State University. Little empirical research exists on the impact of the new sentencing laws, but available evidence strongly suggests that they will have few beneficial results, he adds. The only major change may be an explicit abandonment of the reform ideal and existing, albeit limited, rehabilitation programs.

The Failure of Correctional Management—Revisited.—In "revisiting" the case of correctional management failure (his first article appeared in 1973), Dr. Alvin W. Cohn appears to be painting a drab, bleak picture. Yet, he maintains, from the time the original paper was written until now, he does believe that there has been some meaningful change. While no one could or should argue that corrections has successfully reformed itself or is being reformed appropriately, there have been some significant changes that suggest a brighter future, especially with regard to the status of management, he concludes.

Rethinking the President's Power of Executive Pardon.—Although only superficially understood by most citizens, the President's power of executive clemency has undergone a protracted evolution in terms of legal scope and constitutional interpretation, according to Professor Christopher C. Joyner of Muhlenberg College. Pronounced an "act of grace" by the Supreme Court in 1833, the pardon power in 1927 was deemed an act intended

primarily to enhance public welfare. As such, the President's pardoning authority has become broad and multifaceted, immune from review by court action or congressional restriction. A pardon neither obliterates the record of conviction nor establishes the innocence of a person; it merely forgives the offense.

Team Approach to Presentence.—An interdisciplinary team approach is the trademark of the Seattle Presentence Investigation Unit, reports Chuck Wright, Adult Probation and Parole supervisor for the State of Washington. This collective approach is used when most feasible, and has led to effective improvements in investigation, information gathering, report writing and recommen-

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In Search of Equity: The Oregon Parole Matrix

BY ELIZABETH L. TAYLOR
Member, Oregon Board of Parole

DURING the past several years, criminal justice agencies in general and parole boards in particular have increasingly become the subject of criticism. Popular scapegoats, parole boards have been disparaged by the public media, district attorneys, judges, politicians, citizens, and prisoners. The Oregon Board of Parole is no exception.

In Oregon, criticism concentrated around what was perceived as arbitrary, capricious, and disparate decisionmaking by the parole board. The lack of published standards to guide decisionmaking, combined with the lack of written reasons for decisions, contributed to this perception. Additionally, the durational uncertainty of prison terms caused much unrest for both prisoners and prison administration alike. Prisoners often did not know until well into their terms how long they would actually have to serve. Prison administrators could not effectively manage bed space and transitional programs without the knowledge of whether prisoners were near release or not. These problems became increasingly critical as the institution population continued to grow.

These criticisms led to a movement for more durational certainty in prison terms with a variety of bills to attain this objective surfacing during the 1977 session of the Oregon Legislature.

The final result, after months of consideration, was the passage of House Bill 2013. This bill, itself supported by the Board of Parole, was an aggressive response to the criticisms of Oregon's parole system. The purpose of this article is to analyze the movement for greater determinacy in Oregon and its impact upon parole practice. This experience may provide useful insights for other states facing similar concerns.

Historical Sketch of the Oregon Parole Board

The Oregon parole system dates back to 1905 when paroling authority was first given to the governor. As one might expect, Oregon governors had little time to thoroughly consider individual cases and paroles were seldom granted. In 1915, Oregon's first parole officer was appointed. Nevertheless, few changes occurred in the ensuing years. Not many paroles were granted and the supervision of parolees was practically nil.

In 1937 Governor Martin appointed a special commission on the Improvement of Oregon's Parole, Probation and Sentencing System. This commission was composed of three associate justices of the Oregon Supreme Court, two circuit judges, one district attorney, the chairman of the State Probation Commission, one member of the Board of Governors of the Oregon State Bar, and the

chairman of the House and Senate Judiciary Committees of the 1937 State Legislature. Wayne Morse, then serving as administrative director of the United States Attorney General's Survey of Release Procedures and formerly dean of the University of Oregon Law School, chaired the commission. In December of 1938, the commission submitted its findings and recommendations to the governor. Two bills, drafted by the commission, were subsequently passed by the state legislature creating Oregon's first parole board, with three part-time members. Although the Board became full time in 1969 and its membership was expanded to five in 1975, its basic operations and procedures remained the same until 1977.

Traditionally, Oregon parole boards believed that the primary purpose of incarceration was rehabilitation, but that the rehabilitative process could not be completed while in prison. The Board's basic function, therefore, was to determine who was "ready" for release into the community on parole without unreasonable risk to the public at large. To accomplish this, officials believed that broad, unchecked discretion was necessary. This philosophy governed the Board's decisionmaking until 1975.

Political Environment

About 1975, vocal dissatisfaction on the part of Oregon's citizenry toward what it perceived as an overly lenient and unresponsive criminal justice system became apparent. Violence seemed to appear everywhere, especially on the front page of the daily newspapers. Disagreements between various components of the criminal justice system frequently were aired through the mass media. Elected officials, in particular, chose newspapers as their battleground.

At the same time, prison administrators found their populations growing substantially¹ and, as a result, began to experience serious management problems. Not only had the size of the population at criminal risk increased,² but expanded police efforts and more vocal public demands for stringent prosecution and punishment contributed to a rising rate of prison commitments. Furthermore, the median length of stay in state institutions had increased significantly.³

Consequently, the Board of Parole found itself in a dilemma. Overcrowding created prisoner unrest and an increase in incidents of misconduct. But the Board's practice at that time of routinely deferring release for prisoners reported by the prisons to have violated institutional rules resulted in still more overcrowding.

Additionally, prison officials were frustrated by the unpredictability of release decisions. Lack of firm release dates created a barrier to rational planning for programming and for population management. Prisoners, moreover, found uncertain release dates and the absence of articulated reasons for parole decisions to be anxiety-inducing and seemingly irrational.

Oregon judges were also expressing concern and discomfort with the parole process. Functionally, the parole board was, in many respects, the sentencing agency for all felons committed to prison, because it had control (within the judicially imposed maximum sentence, less good time) over the duration of the prisoner's term and of the period of parole supervision. Many of the judges were frustrated by the lack of explicit criteria in parole decisionmaking, and there seemed no way for them to participate or intervene in the process. As a result, the judiciary began exerting pressure on the legislature to amend the statutes to permit greater judicial intervention. Some supported mandatory minimum sentences with the total elimination of parole. Most, however, favored retaining the parole board with some additional judicial control and participation in the setting of prison terms.

Moreover, the parole board's visibility made it a target for general frustration with the criminal justice system. Since prosecutors, courts, and legislators had no control over the release of inmates, anything that went wrong was obviously the fault of the parole board, which had been either too harsh or too lenient. Civil libertarians saw the Board's practices as arbitrary, capricious, biased, and too punitive, while law enforcement personnel felt the Board lacked accountability to the public and was too lenient. The media was always quick to cover a sensational story regarding a parolee who had committed a new crime or the plight of an inmate whom the Board had not released. As the attacks on its use of discretion mounted, the Board became more cautious and often deferred release because the inmate was "not ready." Criticism, however, continued to increase.

¹ In 1973, the average daily population in Oregon prisons was 1781. In 1975 this figure was 2254. Personal communication with Neil Chambers, Executive Assistant to Administrator of Corrections Division, November 6, 1978.

² I.e., population between the ages of 15 and 29. See Governor's Task Force on Corrections, *Oregon Corrections Master Plan*, (December, 1970), p. 9.

³ In 1973, the median time served prior to release was 16.8 months. By 1975, it had increased to 25.2 months.

The public was incensed by incidents resulting from the release of two inmates. Both were convicted murderers: one had been released by the institution administration on a social pass; the other had been paroled by the Board. Shortly after release, both men murdered again. Stiffer penalties were demanded; petitions to reinstate the death penalty were circulated; and proposals for mandatory sentences began to surface.

A number of groups, including the Governor's Task Force on Corrections (appointed by Governor Bob Straub to design a 15-year master plan for corrections in Oregon), a research team from the *Oregon Law Review* (an American Bar Association funded project), and the Interim Joint Judiciary Committee of the Oregon legislature initiated studies of the correctional system. Interestingly, the findings of these groups differed significantly from those embraced by the public. These groups concluded that building a large, new prison would be an expensive, short-lived and unacceptable solution. Instead, they looked to community corrections programs and to reform of policies and practices of the institutions and the parole board. Basically, they suggested that inmates committed for less serious crimes be incarcerated for shorter, more certain terms. Recommendations aimed at the parole board included proposed requirements that the basis for parole decisionmaking be explicit; that the board develop guidelines articulating the weight given to specific factors considered and that these guidelines be made available to prisoners and to the public; and that the uncertainty of terms be reduced.

During this period, the Board itself was undergoing structural and philosophical changes. Between 1974 and 1975 two members left the Board and, consequently, with the statutory increase from a three to five-member board, four members were appointed. The change in membership stimulated an atmosphere for innovation. New members felt uncomfortable having unguided discretion and far-reaching responsibility without rules and guidelines for decisionmaking. Consequently, the Board began to examine its decisionmaking process. Members scrutinized the actions of previous Oregon boards, studied the policies and practices of other paroling jurisdictions, and reviewed recent texts by academicians involved in the study of criminal justice. From this, the Board

developed and began to use a "guideline" model for decisionmaking. This model was the prototype of the rules and guidelines adopted by the Board under the State Administrative Procedures Act in January 1977.

House Bill 2013

During the 1977 legislative session, the Oregon legislature was deluged by proposals for mandatory sentences. The public was continuing to demand stiffer penalties with less emphasis on rehabilitative programming. At the same time, Oregon judges were exerting substantial pressure on the legislature to strengthen their role in the prison term decision.

Rather than eliminate the parole release authority, as some had suggested, the legislature chose to adopt a model supported by the parole board itself. Through its development and adoption of explicit rules based on a "just deserts" principle, the Oregon Board had already structured its own discretion. The House Judiciary Committee, upon consideration of testimony and proposals by, among others, Peter Hoffman of the U.S. Parole Commission, Andrew von Hirsch of Rutgers University, and Ira Blalock, chairperson of the Oregon Board of Parole, endorsed House Bill 2013. The bill was passed by the 1977 legislature and was enacted into law.⁴

As enacted, HB 2013 required the Oregon Board of Parole to operate under what is primarily a "just deserts" model. In doing this, the bill required the parole board to structure and limit its discretionary powers through promulgation of published rules. Increased due process was also mandated.

Specifically, the new law required the parole board to establish a matrix of ranges for terms of imprisonment to be served for felony offenses prior to release on parole based on offense and offender characteristics.⁵ These ranges must be designed to achieve the primary objective of punishment commensurate with the perceived seriousness of the prisoner's criminal conduct. That is, ranges are to give primary weight to the seriousness of the present offense⁶ and the criminal history of the prisoner. To the extent not inconsistent with this primary goal, the deterrence of criminal conduct and the protection of the public from further crimes by the prisoner were additional objectives.

Thus, the Oregon legislation calls for a "modified just deserts" rationale, which provides that

the Board consider not only the seriousness of the offense but also the secondary objectives of deterrence and incapacitation. This allows the Board some leeway to consider the risk of recidivism. Nonetheless, "just deserts" is the limiting principle—prediction, incapacitation, and deterrence may only be considered to the extent that punishment imposed is justly deserved given the seriousness of the criminal conduct. The Board was also required to adopt rules regulating variations from the ranges to be applied when aggravating or mitigating circumstances exist.

In addition, the Board was required to conduct its hearings to determine the duration of imprisonment within the first 6 months of the prisoner's incarceration. Thus, each prisoner, as well as the administration, would know near the beginning of his or her imprisonment the probable duration of confinement prior to release on parole or, in rare cases, release upon expiration of sentence.

Almost all prisoners in Oregon now are released via parole. Under exceptional circumstances, however, the parole board may deny parole, in which case the prisoner is released by expiration of sentence.⁷

Once a parole release date has been set, release can be postponed beyond the scheduled date only if: (1) the Board, after a hearing, determines that the prisoner has engaged in serious misconduct during his confinement (rules must define serious misconduct and specify allowable periods of postponement), (2) psychiatric or psychological diagnosis of present severe emotional disturbance has been made, or (3) the prisoner's parole plan is inadequate under the Board rules specifying the elements of an adequate parole plan. The Board may postpone release for up to 90 days for an unacceptable parole plan. Findings and written reasons must be provided when release is deferred.

Through HB 2013, the Oregon legislature has specifically structured the parole board's discretion in determining the duration of imprisonment and the granting of parole release through its requirement for explicit guidelines. In addition to reducing the disparities through the use of explicit criteria, the legislation also increases due

process protections afforded prisoners by providing for written notice of hearings, access to information relied upon, and the requirement of written reasons for parole decisions.

The legislation has also enhanced cooperation among the various components of the criminal justice system. Criteria for parole decisionmaking is now available to law enforcement agencies, corrections agencies, and the judiciary. Of great significance is the Advisory Commission on Prison Terms and Parole Standards established by the legislation. This Commission is composed of the five parole board members, five circuit court judges appointed by the Chief Justice of the Oregon Supreme Court, and the legal counsel to the governor, who serves as an ex-officio member voting only to break ties. The Administrator of the Corrections Division acts as an advisor to the Commission. All judicial commission members serve staggered 4-year terms. The purpose of the Advisory Commission is to propose to the Board rules to be adopted in the establishment of the ranges for prison terms, as well as the rules regulating variations from the ranges when aggravating or mitigating circumstances exist.⁸ Although advisory in nature, the Commission wields great strength due to the communication and cooperation it creates between the judiciary and the parole board. The Commission combines the sentencing expertise and sensitivity to the public of the judiciary with the experience of the parole board in the development and application of explicit guidelines to all individual cases under the jurisdiction of state institutions. The involvement of the Administrator of Corrections has made the Commission aware of problems and needs of the institutions and correctional programs and how they may be affected. The judiciary's involvement in the policy and rule making of the parole board has increased confidence in those guidelines systemwide.

In addition to their involvement in the Advisory Commission, the judiciary has been given further opportunities for input into the parole release decision by HB 2013. The judiciary, at the time of sentencing, is provided a presentence report that includes the same information which will be used by the parole board in establishing a release date. The judge's sentence and reasons for its imposition then become the framework within which the prison term will be defined. The legislation also allows the judge to impose a minimum term of up to one-half of the executed sentence which

⁴ Oregon Revised Statutes, Chapter 144, as amended 1977.
⁵ The ranges, of course, may not exceed the maximum sentence prescribed by Oregon statute.
⁶ The harm done or risked by the commission of the offense, as well as the culpability of the offender, defines its seriousness.

⁷ These exceptional circumstances are limited to: (a) a prisoner sentenced for a particularly violent or otherwise dangerous offense; (b) whose present offense was preceded by two or more Class A or B felonies (the most serious felonies under Oregon law); or (c) whose record includes a psychiatric or psychological diagnosis of severe emotional disturbance. The Board is required to develop specific rules governing such cases.

⁸ The Commission is advisory and cannot set standards due to the separation-of-powers provision of the Oregon Constitution.

must be served prior to parole release. The parole board, however, may override such a sentence upon affirmative vote of at least four members of the Board. In addition, when a judge imposes two or more consecutive sentences, the Board must sum the ranges established for the offense when determining the prison terms for those prisoners, subject to rules governing aggravation or mitigation.

Administrative Rules and Guidelines

By January 1977 the parole board had already, on its own initiative, filed its rules under the State Administrative Procedures Act. During the year after the legislation became effective, the Advisory Commission on Prison Terms and Parole Standards met three times to review the Board's existing rules and guidelines and to propose revisions to the Board. The Board accepted the recommended changes and filed them for public comment with the Secretary of State in March 1978. During the next two months, public hearings were held to take testimony from interested persons in a variety of locations around the state, including within the prisons.

The Board's administrative rules cover 110 pages, including six exhibits. The heart of those rules is the "matrix" (Exhibit 1), which indicates the ranges of time to be served in light of the seriousness of the crime and the prisoner's criminal history and perceived risk of repetition. All felonies are categorized within seven severity ratings (Exhibit 2). The harm done or risked by the commission of the offense was considered in determining the "severity rating" of each crime. Twenty-one crimes have been further "subcategorized" based upon the specific circumstances surrounding the particular episode.

The prisoner's prior criminal history is assessed through the use of a "criminal history/risk assessment" scale (Exhibit 3). The instrument weighs prior convictions; prior incarcerations; age at the time of first incarceration; prior escapes and failures on probation and parole; alcohol or heroin abuse problems; and a 5-year conviction-free period in the community.

The rules governing parole board decisionmaking and actions require the Board to specifically record how it has assessed the guidelines in each

* Although the extent of judicial review by the State Court of Appeals has not yet been determined, a case is presently pending which is expected to resolve this question. *Harris v. Board of Parole*, Oregon Court of Appeals No. 11120. Other judicial recourse (for example, habeas corpus or mandamus) is also available.

¹⁰ *Doing Justice*, A. von Hirsch, New York: Hill and Wang, 1976, pp. xxxvii-xxxviii.

prisoner's case and the specific reasons for any departure therefrom. If a prisoner is dissatisfied with a decision of the Board, internal administrative review by the chairperson and state judicial review can be sought.⁹

The structuring of the parole board's discretion through explicit rules and guidelines has prompted the Corrections Division to do likewise. The Division has developed rules for determining custody status of prisoners and classifications for types of supervision of parole and probation cases using the parole board guidelines as a base. In addition, the parole board and Corrections Division have developed joint rules governing sanctions for serious misconduct by prisoners and defining specific procedures. There is a general movement within the entire corrections system in Oregon to structure broad discretion by explicit rules and guidelines, stimulated by the Board's efforts in this area. The development of these rules has increased cooperation and coordination between the various parts of the system. In addition, several Oregon judges have begun to utilize a sentencing matrix based primarily on the Board's matrix to assist in the determination of appropriate sentence length.

Policy in Practice

Given the present state of corrections, HB 2013 seems to be the best available option if justice and fairness are to be sought. The decision to make such a major policy change concerning rehabilitation was not an easy one. The Board sympathizes with the views of Willard Gaylin and Dave Pathman in their introduction to *Doing Justice*:

It is not easy to abandon the rehabilitative model, for it was a scheme born to optimism and faith, and humanism. It viewed the evils in man as essentially correctable, and only partially the responsibility of the individual . . . The simple fact is that the experiment has not worked out. Despite every effort and every attempt, correctional treatment programs have failed. The supporters of rehabilitation will say, and perhaps rightly so, that it was never really given a complete chance, that it was only accepted in theory, while in practice the system insisted on maintaining punitive practices. On the other hand, the question remains whether one can reasonably continue to expect anything different given the extended trial that rehabilitation has had.¹⁰

But for all of its altruistic intentions, the rehabilitative model has in many ways been a very punitive one. Indeterminacy and unfettered discretion were frequent byproducts of that system. Injustices can be easily cloaked beneath the help-

ful hand of rehabilitation. As McMurphy fatally discovered in Ken Kesey's *One Flew Over the Cuckoo's Nest*, where a prisoner traded a determinate jail sentence for an indeterminate mental hospital sentence, it is possible literally to be "treated" (rehabilitated) to death.¹¹

By adopting the "just deserts" model, Oregon has announced that the commission of certain acts is wrong and demands punishment. Furthermore, the state has admitted that prisons actually punish. More importantly, though, the state has limited the degree of punishment depending upon the seriousness of particular crimes and has emphasized fairness. At the very least, an attempt is being made to prevent further injustices and inequities in the system.

Nevertheless, the new legislation and administrative rules of the parole board, although innovative, are not welcomed by all. A significant number of inmates and prison reform groups are extremely disturbed by the use of the word "punishment" and the minimization of rehabilitative considerations under the new system of "just deserts." Some say it is in violation of the Oregon State Constitution, which calls for "reformation," not "vindictive justice." In particular, inmates serving long prison terms feel all hope of release has been taken away. Under the present rules, inmates feel there is no way they can earn early release even if treatment programs are successfully completed. Prison reform and prisoner advocate groups feel it is cruel to remove all hope and incentive for rehabilitation and treatment. Prison officials have expressed concern that they will be unable to coerce prisoners into behaving appropriately absent traditional rewards and that this may cause management problems in the future. The parole board has recently attempted to respond to these concerns by establishing rules provided for periodic reviews to consider certain exceptional circumstances which may warrant modification of the originally established parole date.

By publishing explicit rules, the parole board has made it possible for its critics to be specific. Criticism can now be focused and therefore constructive. The rules have tremendously improved the internal operations of the Board. They offer

¹¹ Ironically, the Oregon Board of Parole now occupies one of the buildings, formerly part of Oregon State Hospital, in which the movie version of "Cuckoo's Nest" was filmed.

¹² This does not mean that rehabilitative programs in prison are to be diminished. It does mean that program participation will be made more voluntary by being substantially detached from the parole release process.

a reference point for settling disagreements among Board members. This has significantly increased equity in decisions. Additionally, the plea bargaining process is made more fair due to the knowledge on the part of the defendant of the probable duration of his or her prospective incarceration.

Standards for parole decisionmaking have improved the Board's relationship with the Corrections Division and its institutions. Program and custody planning can now take place early in an inmate's term. Prison officials can more effectively manage bed space and program utilization, being assured that they know when release will occur. Rules governing their own decisionmaking process can now be developed and implemented. Inmate anxiety caused by uncertainty has been reduced. Inmates now know early in their terms when they will be released if no serious misconduct occurs.

Establishment of the Advisory Commission on Prison Terms and Parole Standards has proven a highly successful endeavor. It taps the input and output expertise of the Oregon criminal justice system, while preserving the independence of both the judiciary and the parole board. It strengthens the system by its very existence through communication, coordination, compromise and understanding.

The durational prison term decision in Oregon is delegated to a small specialized body: the parole board. This specialization allows for ongoing consultation and sharing of views, as well as a view of the full spectrum of cases committed to prison. This, combined with use of the guidelines matrix, reduces unwarranted disparity in prison terms, as well as uncertainty on the part of both the prisoner and the system. Nevertheless, the ability to respond to significant changes in circumstances is retained.

Oregon, by embracing the "just deserts" model, has admitted that for a variety of reasons—lack of resources, lack of sufficient knowledge, and so on—the "coercive rehabilitation model" in prisons has failed.¹² And, although HB 2013 by no means presumes to provide the total solution, its supporters believe the new system is a step in the right direction. Through further research and study, the Oregon Board of Parole hopes to gain new insights in the development of a truly just and humanistic model for parole decisionmaking in Oregon.

EXHIBIT 1.—Total Time to be Served*

CRIMINAL HISTORY/RISK ASSESSMENT SCORE

	11-9	8-6	5-3	2-0
	Excellent	Good	Fair	Poor

OFFENSE SEVERITY RATING

(All ranges in Categories 1-6 shown in months)

Category 1	≤ 6	≤ 6	6-12	12-22
			(4-8) ¹	(8-18)
Category 2	≤ 6	6-10	10-18	18-28
		(4-8)	(8-14)	(14-24)
Category 3	6-10	10-16	16-24	24-36
	(4-8)	(8-12)	(12-20)	(20-32)
Category 4	10-16	16-22	22-30	30-48
	(8-12)	(12-18)	(16-24)	(24-42)
Category 5	18-24	24-30	30-48	48-72
	(12-20)	(20-26)	(26-40)	(40-62)
Category 6	36-48	48-60	60-86	86-144
Category 7				
Subcategory 2	8-10 yrs	10-13 yrs	13-16 yrs	16-20 yrs ²
Subcategory 1	10-14 yrs	14-19 yrs	19-24 yrs	24-Life

1. Months in parentheses represent ranges for youthful offenders (21 or younger at time of conviction).

2. See Exhibit 2 for subcategory explanation.

* From Oregon Administrative Rules, 254-30-032.

EXHIBIT 2.—Offense Severity Scale*

OFFENSE	RATING
---------	--------

MURDER

Subcategory 1 (stranger to stranger, extreme cruelty, 7 prior conviction for murder or manslaughter, significant planning/preparation)

Subcategory 2 (all other cases)

7

TREASON

7

MANSLAUGHTER I

6

KIDNAPPING I

6

RAPE I

Subcategory 1 (stranger to stranger, aggravated cus- 6 todial interference, breaking/entering, weapon, serious physical/emotional harm, female victim under 12 years old)

Subcategory 2 (all other cases)

5

SODOMY I

Subcategory 1 (same as Subcategory 1—Rape 1) 6

Subcategory 2 (same as Subcategory 2—Rape 1) 5

ROBBERY I

Subcategory 1 (discharge of firearm/actual use of 6 weapon; explicit threats by word or gesture, of death or serious bodily harm; serious injury)

Subcategory 2 (all cases except those described in 5 Subcategory 1)

ASSAULT I

Subcategory 1 (all cases except those described in 6 Subcategory 2)

Subcategory 2 (cases in which victim(s) provoked 5 the crime to substantial degree, or evidence that misconduct of victim contributed substantially to criminal episode)

ARSON I

Subcategory 1 (knowing premises were occupied at 6 time of act, actual serious injury)

Subcategory 2 (all other cases)

5

ESCAPE I

5

BURGLARY I

Subcategory 1 (involves actually or regularly occu- 5 pied building where used or threatened to use dangerous weapon and caused or threatened physical injury)

Subcategory 2 (involves a non-dwelling/value of 4 goods taken is over \$5,000 or involves a residence or temporary residence except cases described in Subcategory 3)

Subcategory 3 (all other cases involving a non- 3 dwelling or a residence or temporary residence where defendant is not armed, no extensive property damage and value of goods taken was below \$1,000)

ASSAULT II

4

KIDNAPPING II

4

RAPE II (non-forcible intercourse involving incapacitated female or female under 14)

Subcategory 1 (all cases except those fitting Sub- 4 category 2)

Subcategory 2 (not both under 16 and incapacitated; 3 no coercion or undue influence; and no position of trust (e.g., counselor, doctor)

SODOMY II

4

COMPELLING PROSTITUTION

4

ROBBERY II

4

CRIMINAL ACTIVITY IN DRUGS (involving minors)

Subcategory 1 (furnishing heroin or other opiates; 4 or sale for profit of any drug)

Subcategory 2 (furnishing any drug other than 3 heroin, opiates or less than one ounce of marihuana)

Subcategory 3 (furnishing less than one ounce of 2 marihuana)

CRIMINAL ACTIVITY IN DRUGS (other)

Subcategory 1 (manufacture, cultivation or sale for 3 profit, or possession with intent to sell for profit of any heroin or opiate derivative)

Subcategory 2 ([same as above] of any other drug) 2

Subcategory 3 (manufacture for own use or posses- 1 sion for own use)

NOTE: Possession of less than one ounce of marihuana is not a crime

COERCION; THEFT BY EXTORTION

Subcategory 1 (threat of serious bodily harm or 4 death)

Subcategory 2 (all others)

3

MANSLAUGHTER II

3

BRIBE GIVING

3

BRIBE RECEIVING

3

SEXUAL ABUSE I

3

RIOT

3

BURGLARY II

Subcategory 1 (over \$5,000 loss)

3

Subcategory 2 (\$1,000 to \$5,000 loss)

2

Subcategory 3 (less than \$1,000 loss)

1

THEFT I, Theft of Services; Theft by Deception; For- 1 gery I

Subcategory 1 (theft or receiving of over \$5,000) 3

Subcategory 2 (theft or receiving of \$1,000 to \$5,000; 2 of a firearm or explosive; of a livestock animal; or theft during a riot or catastrophe)

Subcategory 3 (theft under \$1,000 except those in- 1 cluded in Subcategory 2)

PERJURY

2

ESCAPE II

Subcategory 1 (all cases of escape except those fitting 2 Subcategory 2)

Subcategory 2 (escape from minimum custody for no 1 more than 30 days)

FAILURE TO APPEAR I

2

BRIBING A WITNESS

2

WITNESS RECEIVING BRIBE

2

CRIMINALLY NEGLIGENT HOMICIDE

2

CRIMINAL MISTREATMENT

2

CUSTODIAL INTERFERENCE

2

RAPE III

2

SODOMY III

2

ABANDON CHILD

2

THEFT BY RECEIVING

2

UNAUTHORIZED USE OF A MOTOR VEHICLE

Subcategory 1 (injury to others or loss, destruction 2 or severe damage to vehicle or property)

Subcategory 2 (other)

1

ARSON II

2

ROBBERY III

2

ASSAULT III

2

SPORTS BRIBERY

2

SPORTS BRIBERY RECEIVING

2

EX-CONVICT IN POSSESSION

2

SALE RELATED (firearms)

2

CARRYING A WEAPON WITH INTENT TO USE

2

PROMOTING PROSTITUTION

2

OBTAINING DRUGS UNLAWFULLY

2

POACHING

Subcategory 1 (poaching of game valued over \$3,000 2 or commercial operation)

Subcategory 2 (other)

1

SUPPLYING CONTRABAND

1

HINDERING PROSECUTION

1

BIGAMY

1

INCEST

1

CRIMINAL NONSUPPORT

1

THEFT: Lost, Mislaid

1

CRIMINAL MISCHIEF I

1

FORGED INSTRUMENT

1

FORGERY DEVICE

1

FRAUDULENT USE OF A CREDIT CARD

1

FRAUDULENT COMMUNICATION DEVICE

1

PROMOTING GAMBLING

1

POSSESSION OF GAMBLING RECORDS I

1

TAMPERING WITH DRUG RECORDS

1

WELFARE FRAUD

1

FELONY TRAFFIC

1

INTERCEPTION OF COMMUNICATION

1

* From Oregon Administrative Rules, 254-30-030

EXHIBIT 3.—Criminal History/Risk Assessment Score*

ITEM	SCORE
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(A) No prior felony or misdemeanor convictions as 1 an adult or juvenile=3

One prior conviction=2

Two or three prior convictions=1

Four or more prior convictions=0

(B) No prior incarcerations (i.e., executed sentences 1 of 90 days or more) as an adult or juvenile=2

One or two prior incarcerations=1

Three or more prior incarcerations=0

(C) Age at first commitment of 90 days or more 1 26 or older=2

19 thru 25=1

18 or younger=0

(D) Never escaped, failed parole or probation=2 1 One incident of the above=1

Any two or more incidents of the above=0

(E) Has no admitted or documented heroin or opiate 1 derivative abuse problem, or has no admitted or documented alcohol problem=1

One or more of the above=0

(F) Verified period of 5 years conviction free in the 1 community prior to present offense=1

Otherwise=0

TOTAL HISTORY/RISK ASSESSMENT SCORE: 1

(1) Do not count convictions over 20 years old, convictions 1 that have been pardoned, or juvenile or adult "status offenses" (runaway, truancy, incorrigibility, drunk in public).

(2) If no prior commitment, use age at present conviction. 1

(3) Count probation failure only if it resulted from new 1 crime, count any parole failure.

* From Oregon Administrative Rules 30-031

THE FAIRNESS of the parole process depends almost directly on the fairness of the sentencing process. Much has been done to improve parole, and I would be the first to say that the courts have been extremely influential in this respect.—MAURICE H. SIGLER

END