

**75th OREGON LEGISLATIVE ASSEMBLY – 2009 Regular Session
BUDGET REPORT AND MEASURE SUMMARY**

MEASURE: HB 3508-A

JOINT COMMITTEE ON WAYS AND MEANS

**Carrier – House: Rep. Barker
Carrier – Senate: Sen. Verger**

Action: Do Pass with Amendments to Resolve Conflicts and Be Printed A-Engrossed

Vote: 16 – 5 – 1

- House – Yeas: Buckley, C. Edwards, D. Edwards, Galizio, Jenson, Kotek, Nathanson, Shields
– Nays: Garrard, Gilman, Richardson
– Exc: G. Smith
- Senate – Yeas: Bates, Carter, Johnson, Monroe, Nelson, Verger, Walker, Winters
– Nays: Girod, Whitsett
– Exc:

Prepared By: Michael A. Kennedy, Department of Administrative Services

Reviewed By: Doug Wilson, Legislative Fiscal Office

Meeting Date: June 18, 2009

Agency
Oregon State Police

Budget Page
D-20

LFO Analysis Page

Biennium
2009-11

Budget Summary*

	2007-09 Legislatively Approved Budget (1)	2009-11 Essential Budget Level	2009-11 Committee Recommendation	Committee Change from 2007-09 Leg. Approved	
				\$\$ Change	% Change
General Fund	\$	\$	\$ 8,088,305	\$ 8,088,305	100%
Other Funds	\$	\$	\$	\$	
Total	\$	\$	\$ 8,088,305	\$ 8,088,305	100%

Position Summary

Authorized Positions		39	39
Full-time Equivalent (FTE) positions		35.88	35.88

(1) Includes adjustments through the December 2008 meeting of the Emergency Board

* Excludes Capital Construction expenditures

Summary of Public Safety Subcommittee Action

House Bill 3508 makes a number of changes in sentencing and other changes that generate net savings by reducing the need for prison beds and community corrections caseloads. The bill includes:

- phasing the implementation of Measure 57;
- increasing earned-time from 20% to 30% for certain offenders;
- allowing the Board of Parole and Post-Prison Supervision to hold parole hearings in other than two year increments under certain circumstances;
- limiting to 60 days of incarceration in jail that a judge may impose on an offender that violates probation;
- allowing reduction in a person’s probation for good behavior not to exceed 50%;
- reducing the term of active post-prison supervision and probation and allows for the return to active supervision;
- streamlining the commutation process for inmates subject to a US Immigration and Customs Enforcement Order,
- reducing the penalty for possession of a controlled substance from a B or C felony to an A misdemeanor if the amount possessed is one gram or less and the person has no prior drug offenses; and
- increasing the penalty for the crimes of strangulation, kidnapping with the purpose of committing a sex crime against a victim who is under the age of 12 years old, and assault in the third degree where the assault resulted from the defendant driving under the influence of intoxicants (DUII).

The savings identified below are savings to the Department of Corrections and are based on the numbers of offenders that each provision affects; the budget for the agency will be adjusted based on the savings if this bill passes.

Increased Earned Time**Estimated Savings \$6,000,000**

This bill will increase the amount of earned time an offender can accumulate from 20% of their sentence 30% of their sentence. Only nonviolent offenders are eligible and this provision sunsets on July 1, 2013. For current inmates to be eligible for the 30% earned time, the sentencing court shall resentence after notice to the state, the victim, and the offenders. If the District Attorney and the Courts do not object to the early release, the resentencing would be an expedited process that would allow the court to authorize the sentence without a hearing. If the District Attorney or the Courts contest the early release, a more formal process would need to be undertaken. The process of resentencing will result in additional cost to the Oregon Judicial Department (OJD) and Public Defense Services Commission (PDSC). There will be approximately 4,500 offenders affected by this provision and it is not known how many of these offenders may go through the expedited process and how many may go through the contested case process. If the costs are significant, the agencies affected by this bill may require a budget adjustment, by the current Legislature, the Emergency Board, or a future Legislature, if the agency's budgeted resources prove insufficient to cover the actual cost of this measure.

Phase-In of Measure 57**Estimated Savings \$58,750,000**

This bill would phase-in the provisions of Measure 57 with full implementation on January 1, 2012. Increased sanctions would still apply to those committing fraud on the elderly, delivery of a controlled substance to a minor or those who sell significant quantities of a controlled substance. The estimated savings are net of \$4.0 million for incarceration and programming costs for M57 offenders sentenced before July 1, 2009 and \$10.0 million that will be distributed to community corrections programs for alcohol and drug treatment programs and increased sanctions. The presumptive sentence for repeat property offenders is currently 18 and 24 months, depending on the particular property crime. The bill phases in these sentences on January 1, 2012. In the interim, the presumptive sentences are 13 and 19 months, respectively. The intensive supervision requirements of Measure 57 will be phased in on January 1, 2012. These pieces, and the treatment/grant components, are the "phase in."

Probation Revocation**Estimated Savings \$9,800,000**

Under current law, if an offender on probation for a felony violates the terms of the probation, they may have their probation revoked and sentenced up to 180 days in jail. This bill would set the maximum jail time at 60 days unless the offender committed a new crime. Savings result from lower community corrections costs. Sunsets 7/1/2011.

Active and Inactive Probation Status**Estimated Savings \$5,100,000**

This bill would set the minimum amount of time an offender must serve under active supervision. An offender may be transitioned to inactive supervision or remain on active supervision depending upon the offender's compliance with their terms of probation supervision, employment status, treatment program outcomes, and the status of the offenders meeting court ordered monetary obligations. The Department of Corrections will adopt rules to carry out the provisions of this section, including a description of the manner in which persons may be placed on inactive probation and returned to active status. Community corrections departments would not be paid for offenders on inactive status. The Department of Correction's (DOC) community corrections grants assumes \$8.11 per day for each offender on probation supervision and shortening the length of time on probation supervision for offenders who comply with their conditions of release will result in fewer days assumed in these community corrections grants. Sunsets 7/1/2011.

Inactive Local Control Post-Prison Supervision Status**Estimated Savings \$1,100,000**

This bill would set the minimum amount of time an offender must serve under active supervision. An offender may be transitioned to inactive supervision or remain on active supervision depending upon the offender's compliance with their terms of post-prison supervision, employment status, treatment program outcomes, and the status of the offenders meeting court ordered monetary obligations. Community corrections departments would not be paid for offenders on inactive status. The Department of Correction's (DOC) community corrections grants assumes \$12.34 per day for each offender on probation supervision and shortening the length of time on probation supervision for offenders who comply with their conditions of release will result in fewer days assumed in these community corrections grants. Sunsets 7/1/2011.

ICE Detainers**Estimated Savings \$2,100,000**

Streamlines the commutation process for inmates subject to a US Immigration and Customs Enforcement Order, incarcerated for a nonviolent felony and who have agreed not to object to deportation. This would apply to inmates that have six months or less to serve on their sentences. The bill would also require the appointment of counsel for the purpose of advising the offender regarding the waiver of statutory or constitutional rights. Sunsets 7/1/2011.

Drug Possession Status**Estimated Savings \$4,800,000**

This bill would lower the penalties for the possession of a controlled substance from a B or C felony to a Class A misdemeanor if the individual has less than one gram and has no prior drug offenses. CJC has estimated that approximately 1,250 offenders per year, who would have received a felony conviction, will now receive a misdemeanor conviction instead. In addition, the provisions of this bill would reduce the number of individuals on probation by approximately 1,900. The change from a felony to a misdemeanor would result in cost avoidance to the Oregon Judicial Department (OJD). The difference in cost between a felony and a misdemeanor is \$344. OJD may also see increased costs associated with bench probations in cases where an offender may be subject to local supervision. Likewise, Public Defense Services Commission would see reduced costs in defending a misdemeanor instead of a felony. The difference between defending a Class B felony and a misdemeanor is \$537 and the difference between a Class C felony and a misdemeanor is \$167. Sunsets 7/1/2011.

Assault in the Third Degree**Estimated Cost \$100,000**

This bill would increase the penalty for assault in the third degree where the assault resulted from the defendant driving under the influence of intoxicants (DUII), from a Class C felony to a Class B felony with a crime seriousness level of 8, which would result in a prison sentence of 27 months. Currently this crime would be prosecuted as a Class C felony with a crime seriousness level of 6 which would result in a prison sentence of 22 months. On average, a Class B felony with a crime seriousness level of 8 results in a prison sentence 46% of the time and a Class C felony with a crime seriousness level of 6 results in a prison sentence 30% of the time. This bill would likely result in more prison sentences for a longer period of time. This bill would likely result in the need for one additional prison bed at a cost of \$63,509 in 2009. The full effect of the bill would not be seen until 2013-15. The Public Defense Services Commission estimates an additional 100 cases per year translating into \$37,000 per year in additional costs to the agency.

Strangulation**Estimated Cost \$500,000**

This bill would increase the crime of strangulation from a misdemeanor to a Class C felony and extend the statute of limitations for this crime. The Department of Corrections estimates the cost for prison beds, post-prison supervision, and probation costs for the 2009-11 biennium is \$271,815. The Public Defense Services Commission (PDSC) estimates an average of 127 cases per year that would qualify for this sanction with an estimated annual impact is \$21,209. The Oregon Judicial Department (OJD) estimates that a this provision will have a cost of \$131,064 in 2009-11

Crime of Kidnapping**Estimated Cost Unknown**

This bill expands the crime of kidnapping in the first degree to include kidnapping with the purpose of committing a sex crime against a victim who is under the age of 12 years old. Under current law this crime would most likely be charged as a Kidnapping 2, a class B felony, with a sentence of 70 months (5 years and 10 months). This bill would change the crime to Kidnapping 1, a class A felony, with a sentence of 300 months (25 years). The fiscal impact of this bill would not be seen until after the offender had served 5 years and 10 months and started serving the additional sanction of 18 years and two months.

Parole Hearings**Estimated Cost Unknown**

This bill allows the Board of Parole and Post-Prison Supervision (BPPPS) to hold parole hearings in other than two year increments under certain circumstances. Offenders may have a cause for action in cases where their parole hearing has been put off for more than two years. The number of cases that may filed with the courts is not known, but this population is known for filing actions and it is certain this will increase the number of cases filed with the courts and increase the cost to defend the actions in court.

Appropriation

House Bill 3508 appropriates \$8.1 million for a targeted enforcement program for the Oregon State Police for improving public safety. The Subcommittee approved this to add 39 troopers to the Patrol Division to conduct performance-based enforcement on Oregon's highways. Accident and fatality incident patterns will be used to maximize the effectiveness of these resources. The cost of the package is \$8.1 million and includes 39 positions (35.88 FTE). This amount assumes that 20 troopers will be added in August of 2009 and the remaining 19 being added in October 2009.

The bill also provides for a \$100 assessment of persons convicted of drug offenses. This \$100 is to be paid to the Oregon Criminal Justice Commission account for disbursement to drug court programs. It is not clear how many of these assessments may be collected from offenders. The assessment would be in addition to any other fines, restitution, or fees that may be assessed to an offender.