



COMMISSION ON PUBLIC SAFETY REPORT TO THE GOVERNOR

December 30, 2011

Chief Justice Paul J. De Muniz



Oregon Supreme Court

December 30, 2011

The Honorable John A. Kitzhaber, M.D.
Governor
254 State Capitol
Salem, OR 97301

Dear Governor Kitzhaber:

On behalf of the members of the Commission on Public Safety, I am pleased to provide you with the Commission's report, as directed by Executive Order 11-06.

Some people have questioned the work that we have undertaken, saying that Oregon's public safety system is not broken. Although Commission members agree with that statement, we are unanimous in believing that Oregon's public safety system can be improved to better protect the public at less cost.

In the short time available for the Commission to conduct its work, it has learned that Oregonians are largely unaware of the steady reduction in crime over the last decade and that many opportunities exist to improve how Oregon protects its residents from crime while limiting or reducing costs to government, to the public, and to victims of crime. Our specific findings and recommendations are included in the attached report.

I would like to thank the Commission members, who have worked diligently, expeditiously and collaboratively to fulfill your charge. I also need to thank Judge Darryl Larson, Craig Prins, Michael Wilson, and Liz Skinner from the Criminal Justice Commission, your Deputy General Counsel, Steven Powers, and David Factor and Phil Lemman of the Oregon Judicial Department, whose assistance has made this report possible.

We are pleased to present our report to you, and look forward to continuing this critically important work.

Sincerely,

Paul J. De Muniz, Chief Justice
Commission Chair

COMMISSION ON PUBLIC SAFETY

MEMBERS

Honorable Paul J. De Muniz
Chief Justice of the Oregon Supreme Court, Chairman

Governor Ted Kulongoski
Appointed by Governor Kitzhaber

Senator Jackie Winters
Appointed by the Senate President

Senator Floyd Prozanski
Appointed by the Senate President

Representative Andy Olson
Appointed by the Co-Speaker of the Oregon House of Representatives

Representative Chris Garrett
Appointed by the Co-Speaker of the Oregon House of Representatives

Dick Withnell
Public Member

STAFF

Honorable Darryl Larson, Executive Secretary
Chairman of the Oregon Criminal Justice Commission

Craig Prins, Executive Director
Oregon Criminal Justice Commission

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INTRODUCTION

In 2009, faced with the new economic realities the continuing recession created for Oregon's next decade, Governor Kulongoski established a Reset Cabinet, asking leaders from all three branches of government to analyze the core functions of state government and recommend strategies to more efficiently reach Oregon's policy objectives. The Reset Cabinet responded in June 2010 with its report calling for Oregon's leaders to shift from "short-term budgeting to long-term planning" for Oregon's future.

The reset report focused on the three largest governmental systems in Oregon: education, human services, and public safety. In 2011, Governor Kitzhaber and the Oregon Legislature made the type of advances in long-term planning envisioned by the reset report in education, with the Oregon Education Investment Board, and health care with the creation of the Oregon Health Authority and Oregon Health Policy Board. The Reset Cabinet identified Oregon's felony sentencing system as the key driver of Oregon's public safety system that needed examination and updating.

THE GOVERNOR'S CHARGE TO THE COMMISSION

On July 15, 2011 Governor Kitzhaber, by executive order (EO11-06), created the Commission on Public Safety to focus Oregon's long-term planning efforts on sentencing and public safety as envisioned by the Reset Cabinet. Planning for the future was the purpose Governor Kitzhaber set for the Commission on Public Safety in his executive order:

"In the 2011-13 biennium, Oregon faces a multi-billion dollar deficit and substantial general fund cuts. In the midst of this economic crisis, we must take a strategic look at our sentencing policies. With limited dollars, we must ensure the public's safety by making smart investments across our adult and juvenile justice system, including law enforcement, courts, local jails, state prisons, community corrections and other critical public safety partners."

The Governor asked the Commission to develop specific concepts on comprehensive public safety policy for consideration by the public and policy makers, informed by the recommendations of the Reset Cabinet. The charge asked the Commission to focus on four outcomes:

- The safety of our citizens in their homes and communities;
- Accountability for criminal offenses;
- An efficient system that controls costs; and
- A system that is smart and fair.

The Governor made the Commission small and bipartisan. He directed that it consist of leaders from all three branches of government and the public. He gave the Commission a short, five-month time frame in which to work, to make clear the Commission's purpose was to recommend the path for a broader discussion with all stakeholders before the 2013 legislative session. This report outlines the work of the Commission, identifies key findings, recommends future work, and establishes the principles to guide that work.

THE COMMISSION'S WORK

THE COMMISSION'S STARTING POINT

The Commission's starting point is to recognize that Oregon, and the United States, have experienced significant crime reductions in the last 20 years. Oregon violent crime saw its highest rate in 1985, a year in which Portland's crime rate was similar to that of Detroit, Michigan.

Today, Oregon's crime rates have dropped to where

they were in the late 1960s. Oregonians are safer today than they have been in 40 years. Unfortunately, this impressive fact is often missed by Oregon's citizens, because their reality is shaped by the daily depiction of crime and violence in today's news and entertainment media rather than FBI crime data.

While crime rates are going down, Oregon has also been experiencing a decline in state revenues to fund governmental programs. Reduction in revenues to fund state services has made maintaining the status

Oregon and U.S. Violent Crime Rate



Oregon and U.S. Property Crime Rate



quo impossible. Oregonians deserve an improved and more efficient public safety system that makes the wisest use of limited resources.

Governor Kitzhaber and this Commission are not alone in looking at sentencing policy by focusing on the bottom line: using more cost-effective methods to address crime. Across the country, states are confronting growth in corrections spending, and asking if there is a better way to increase the level of public safety at less cost.

The framework of Oregon's prison system is supported by Oregon's criminal sentencing structure. This structure developed over the last 25 years by legislative actions and ballot measures resulting in a sentencing system that is complex and is not informed by the scientific data available today on changing behavior and reducing recidivism. In this complexity a key reality is sometimes lost: 93% of those sent to prison in Oregon return to our communities. The safety of Oregon's citizens demands a system that does a better job of planning for this reality and putting in place safeguards to ensure that released offenders are less likely to commit new crimes.

One result of the changes in sentencing policy has been to more than double the number of people in Oregon's prisons, from 6,596 in December 1991 to 14,061 in December 2011. This increased use of prisons as the centerpiece of our corrections system policy comes at substantial cost: during the 1993-1995 biennium the total fund budget for the Oregon Department of Corrections was just under \$400

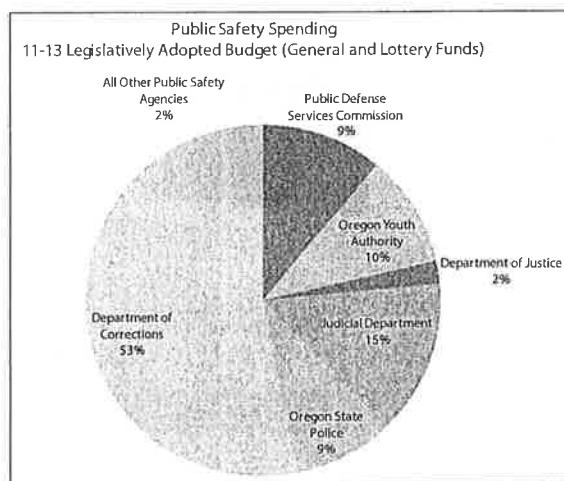
million. In the current biennium, that budget has more than tripled to just under \$1.36 billion. The Department of Corrections dwarfs all other state spending on public safety.

The last comprehensive review of felony sentencing in Oregon began in 1987 and culminated in the 1989 adoption of sentencing guidelines. The 1989 sentencing guidelines were based on the following principles: the corrections system should operate consistent with available resources, truth in sentencing, balancing resources between imprisonment and supervision, and treating offenders consistently statewide. These principles should not be abandoned, but updated to include the advances in the science of corrections and offender supervision culled from the last 20 years of rigorous social science research on what is effective to reduce recidivism and control crime.

The legislature intended the sentencing guidelines to be a flexible tool, to be continually updated, to provide longer prison terms when necessary, as well as providing the general fund dollars to pay for them. The sentencing guidelines have not operated as the legislature originally intended. Instead, multiple ballot measures have resulted in the increased use of incarceration in Oregon's prisons. These ballot measures now affect the majority of Oregon's prison sentences. Governor Kitzhaber's executive order creating the Commission on Public Safety correctly describes the relationship between the guidelines and ballot measures:

"Since the last comprehensive review of sentencing policy in 1989, our current sentencing structure has been developed by separate legislative actions and ballot measures. These two processes have created policies that are independent, and in some cases inconsistent with each other and with little uniformity between the two."

Governor Kitzhaber formed the Commission on Public Safety to study the costs of incarceration and strategize how the state can most effectively and efficiently use taxpayer dollars to provide necessary sanctions in our criminal justice system and keep all Oregonians safe. While the recession might have initiated this review, Governor Kitzhaber's order was clear that the Commission's focus must be on a long-term strategic plan that maximizes public safety with the resources available, not on merely cutting costs.



NATIONAL PERSPECTIVE

A comparison of three states with dramatic reductions in crime in the last 15 years illustrates why Oregon must review the sustainability and efficiency of its current criminal sentencing policies, rather than be satisfied with the status quo.

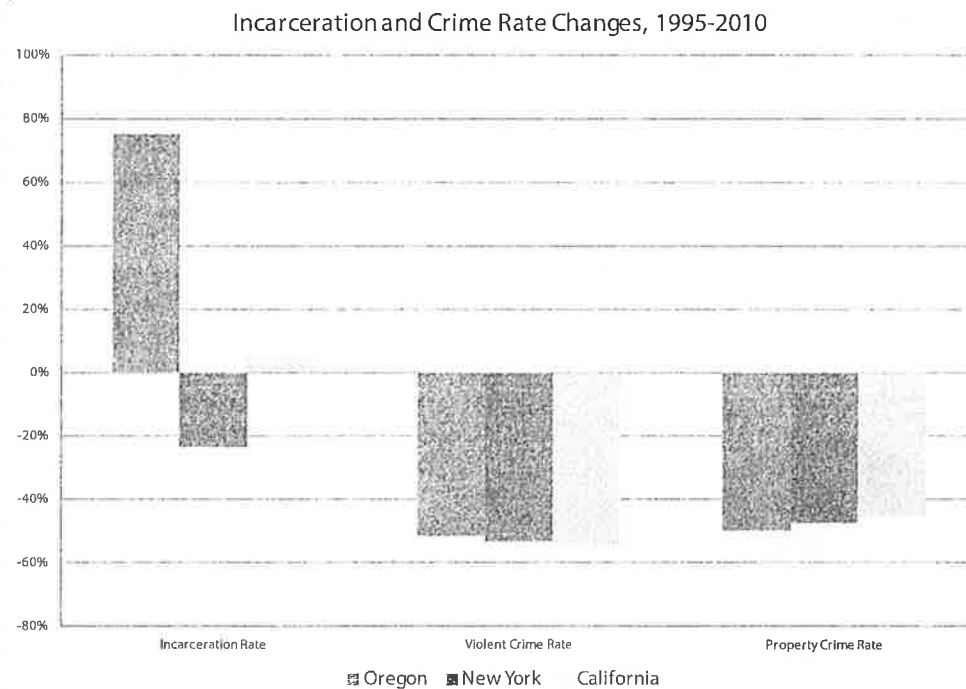
New York, Oregon, and California are three of the four states that have experienced the greatest drops in their violent crime rates from 1995-2010. New York had a 53% reduction in violent crime, as measured by the FBI Uniform Crime Report (UCR), during this time period. New York's crime rate has continued to drop while New York has reduced its incarceration rate by 24%. These states have also experienced substantial reductions in property crime rates.

California experienced a similar decrease in violent crime of 54% during the same period. However, the United States Supreme Court found California's prison system unconstitutionally overcrowded. Federal authorities have ordered California to reduce

by over 30,000 the number of prisoners incarcerated under its sentencing policies. California could not financially afford the sentencing policies that it had enacted, and is now forced by the courts to plan for a sustainable future.

Across the country, state public officials are reducing their reliance on prison as a crime-control program. From 2006-2010, 26 states, including Oregon, experienced a drop in violent crime rate while reducing their incarceration rate. Twenty-seven states experienced a drop in property crime while reducing their incarceration rate during this same period. The economic recession has caused a significant shift in how states address crime and sentencing. A new focus on ensuring the wisest use of our public investments is noticeable.

Oregon can look to New York and California for two important lessons: states are reducing crime without increasing incarceration, and all states must assure the sustainability of their incarceration policies.



Change in Incarceration Rate and Index Violent Crime Rate: 2006–2010

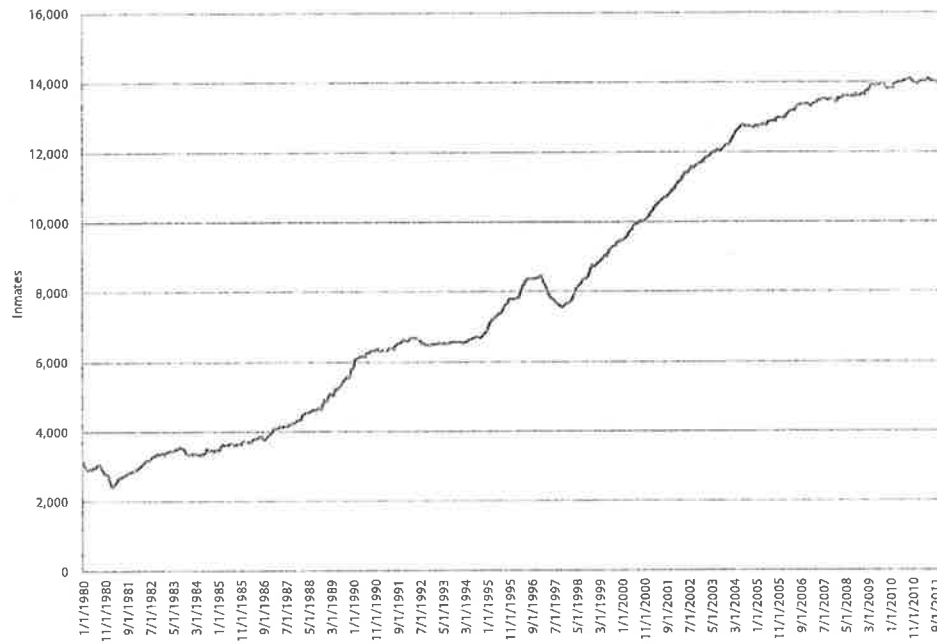
Legend:

- + Inc and + Index Crime
- + Inc and - Index Crime
- Inc and + Index Crime
- Inc and - Index Crime

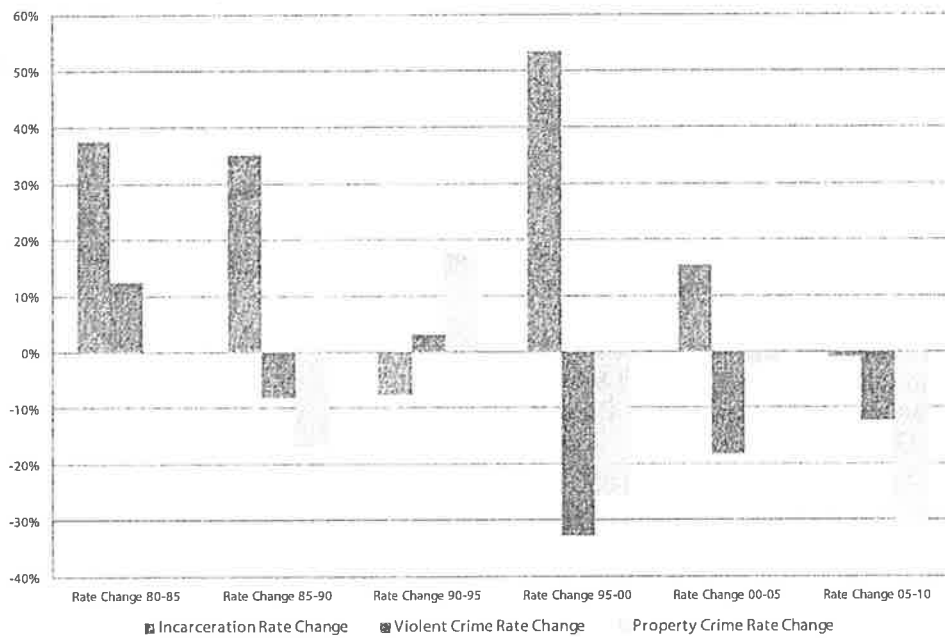
In the 1970s and early 1980s when crime rates rose steadily, the size of Oregon's prison system was inadequate, and prison overcrowding became a serious problem. Major investments had to be made. In December of 1985, 3,714 prisoners were housed in Oregon prisons. By December of 2005, Oregon had built and staffed enough prisons to house 12,954 prisoners. Since 2005, the growth in prison beds has kept pace with Oregon's total population. The state now houses 14,000 offenders.

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Oregon's Historical Prison Population



Oregon Crime and Incarceration Rate Changes each 5 Years



CURRENT TRAJECTORY OF OREGON'S CORRECTIONS GROWTH

According to the Office of Economic Analysis' October 1, 2011 prison population forecast, Oregon will need an additional 1,200 prison beds in the next three years, and 2,000 prison beds in the next 10 years to carry out the current sentencing policies.

Currently, the Oregon Department of Corrections (DOC) estimates that such an expansion would cost \$600 million over the next decade. That investment will require the 2013 legislature to authorize the opening of over 1000 beds at the Deer Ridge Correctional Facility and build more than 800 new prison beds at the proposed Junction City prison site. The state will also be required to staff and operate those facilities over the next decade.

Most of these additional prison beds will be used to incarcerate offenders who have committed non-violent offenses, for longer duration as ballot measures passed in recent elections take effect. According to a study presented to the Commission by the Oregon Criminal Justice Commission (CJC), these offenders are 17% less likely to recidivate than those incarcerated for the same offenses today.

The construction and operation of more prison beds will result in fewer resources for other segments of Oregon's public safety system. For example, in the last 30 years, while the incarceration rate in Oregon has increased 212% (tripled), the number of sworn state police troopers has declined 39%. This result is more obvious when all state resources are reduced as they are now. The Oregon State Police will not be able to provide 24/7 coverage on Oregon's highways this biennium due to reductions in patrol troopers. The Oregon Youth Authority has reduced its closed custody capacity by 150 beds, from 900 to 750. The community corrections grants used by Oregon's 36 counties to supervise over 30,000 felons on probation or post-prison supervision were cut by \$26 million in the 2011-13 biennium thereby impeding the ability of officials in local public safety systems to make swift and certain sanctions part of offender supervision in our communities.

THE COMMISSION'S WORK PLAN

The first task of the Commission was to adopt a work plan. The Commission established a plan to hold four public meetings, with keynote speakers from Oregon and across the country. Each of the four meetings would be developed around specific themes identified in the Commission's work plan.

In addition, the commission created seven work groups, each one chaired by a Commission member.

The work groups are:

- Law Enforcement and Criminal Defense (Rep. Andy Olson, Chair);
- Victims' Issues (Rep. Chris Garrett, Chair);
- Business Community (Dick Withnell, Chair);
- Adult and Juvenile Community Supervision and Services (Sen. Jackie Winters, Chair);
- Data and Cost Benefit Analysis (Gov. Ted Kulongoski, Chair);
- Substance Abuse and Mental Health Treatment (Sen. Floyd Prozanski, Chair); and
- Public Outreach (Chief Justice De Muniz, Chair).

These workgroups were asked to review the presentations and proposed findings from the four public meetings, and to present additional information to shape the Commission's recommendations. Considering the limited time frame, the workgroups provided dialogue with the broader array of leaders across Oregon who will need to advise and cooperate in a review of Oregon's sentencing system and public safety policy. Workgroup input became an important dialogue with the Commission, and the Commission thanks the workgroup members for their valuable input into this process and this report. The Commission will continue to seek input and advice from stakeholders in its future work.

COMMISSION MEETINGS

National and local experts on public safety policy and sentencing testified at each of the four public meetings held in three different locations: Salem, Ashland, and Portland. The expert presentations provided a basis for understanding Oregon's sentencing history, how other states have grappled with similar sentencing questions, the latest information from the science of criminology on how to effectively supervise offenders and reduce recidivism, and the results of citizen surveys on what Oregonians ask of their state's public safety system.

A summary of the four public hearings is provided here, with the key speakers and themes reviewed. All presentations and written testimony received by the Commission are available on the Commission's website.¹

- **Meeting 1 - September 30, 2011- Salem, Oregon**

Themes: Crime and incarceration rates, current sentencing policy, and corrections costs if Oregon does nothing to control forecast growth over the next decade

Keynote Speakers:

Craig Prins, Executive Director, Oregon Criminal Justice Commission
Max Williams, Director, Oregon Department of Corrections

The first order of business was to review the Executive Order that created the Commission on Public Safety and to adopt the Commission Work Plan.

Mr. Prins provided a review of current and historical data on crime and incarceration rates in the United States and Oregon, perceptions of crime in Oregon, and Oregon's sentencing history.

Mr. Williams explored Oregon's next decade in terms of statewide economic forecasts, costs and operations in the Oregon Department of Corrections, and the costs of responding to the Office of Economic Analysis' forecasted need for 2,000 more prison beds in the next decade under current law.

- **Meeting 2 - October 21, 2011- Ashland, Oregon**

Themes: Bipartisan leadership to control corrections costs, Justice Reinvestment, and cost-benefit analysis in criminal justice spending

Keynote Speakers:

Rep. Jerry Madden, Chairman, Corrections Committee of the Texas House of Representatives
Jake Horowitz, Project Manager, Public Safety Performance Project, Pew Center on the States
Michael Wilson, Economist, Criminal Justice Commission
Danny Jordan, Administrator, Jackson County

This meeting was devoted to reviewing Texas' bipartisan approach to controlling corrections spending, and Texas' Justice Reinvestment Initiative: re-investing the savings from reducing prison growth in local crime-control strategies that reduce crime at a lower cost than prisons.

Rep. Madden described the politics of Texas — the toughest of the tough on crime states. The Commission learned that although Texas is different from Oregon both states face the same issue: economic necessity drives each state to do everything it can to keep crime low with available resources.

Mr. Horowitz provided national context to the Justice Reinvestment concept. Fourteen states are using this model to reduce crime and costs, with the assistance of the Bureau of Justice Assistance (BJA), a division of the Office of Justice Programs, U.S. Department of Justice.

Mr. Wilson demonstrated the Oregon Criminal Justice Commission's already established cost-benefit analysis tool that could guide the investment of limited public safety resources toward those programs that provide the highest return on investment. This tool was authored by the Washington

State Institute for Public Policy and Mr. Wilson is pioneering its use in Oregon and other states.

Mr. Jordan explained how Oregon's counties have planned for a bleaker economic environment and suggested performance investment in local community corrections systems as a more cost-effective investment to control crime than the reliance on increasing state prison capacity.

- **Meeting 3 - November 21, 2011- Portland, Oregon**

Theme: Evidence-Based Sentencing, and Evidence-Based Decision Making

Keynote Speakers:

Honorable Roger Warren, President Emeritus, National Center for State Courts; Chair of Board of Directors, Justice at Stake; Scholar in Residence, California Judicial Council

Honorable John Collins, Presiding Judge of the Yamhill County Circuit Court, and the Yamhill County Evidence-Based Decision Making Team

Craig Prins and Kelly Officer, Oregon Criminal Justice Commission

Scott Taylor, Director, Multnomah County Department of Community Justice, and Ginger Martin, Assistant Director, Oregon Department of Corrections

Judge Warren discussed the principles of evidence-based sentencing with the Commission. He outlined the advances in criminology and corrections supervision that have been made in the last 20 years and how those advances can be brought into the courtroom to inform judges about what sentences would best protect the public.

Judge Warren identified the science of risk and needs assessment, their use in corrections and how those principles can be brought into sentencing decisions in the courtroom. He also outlined how California has used

performance incentives for local governments to assure efficiency in spending to promote public safety. Most importantly, he described how these principles could be employed in Oregon to modernize Oregon's sentencing structure and make reducing recidivism a new focus of that system.

Judge Collins and the Yamhill County team reported that it has embarked, as part of a national demonstration project, on the type of evidence-based decision making described by Judge Warren. The Commission learned how Yamhill County has worked toward a goal of "One less offender. One less crime. One less victim." Oregon's oldest county is beginning to implement a changed system that incorporates data and evidence about risk and recidivism reduction at every key decision point from arrest to completion of supervision.

Mr. Prins and Ms. Officer presented Oregon's Public Safety Checklist, an actuarial risk tool that can be used at sentencing as well as by community corrections officials to determine an offender's likelihood to recidivate.

Mr. Taylor and Ms. Martin identified the successes of Oregon's community corrections system. They reviewed how Oregon's strong local supervision system had the lowest three-year return to prison rate in the country for released prisoners (22.8%), and had produced the steepest drop in recidivism rates in the country.²

Oregon has already integrated the use of evidence-based practices into community corrections and supervision. They outlined how these practices could produce even better results with a system of adequate baseline funding and performance incentives for counties that reduce recidivism. They also pointed out that the legislature had reduced Oregon's community corrections funding despite the fact that community corrections had successfully reduced recidivism and achieved success in the rate that offenders complete supervision.

- **Meeting 4 - December 2, 2011 - Salem, Oregon**

Themes: Measure 11, and Public Attitudes about Crime and Justice

Keynote Speakers:

Steve Doell, President, Oregon Crime Victims United

Doug Harclerod, Senior Policy Analyst, Oregon Anti Crime Alliance

Dr. Jody L. Sundt, Associate Professor, Division of Criminology and Criminal Justice, Portland State University

Mr. Doell and Mr. Harclerod provided a review of Measure 11. They noted that Measure 11 originally consisted of 16 crimes, and that it had been legislatively amended over the years to include additional crimes, and to allow judges to “opt out” of mandatory minimum sentences in certain situations. They noted that 17 years ago, Measure 11 passed with a clear majority of Oregon voters (65%) favoring it.

Dr. Sundt concluded the fact-gathering of the Commission by providing a new perspective on attitudes of Oregonians on crime and justice derived from the results of a 2010 scientific survey of a sample of more than 1500 Oregonians of voting age. Portland State University conducted the survey to better understand Oregonians’ attitudes about crime and criminal justice.

Dr. Sundt summarized the survey as showing that 90% of Oregonians were unaware that Oregon’s crime rate declined. She described how 85% of Oregonians who responded to the survey prioritized government spending on crime prevention, rehabilitation, and law enforcement, over punishment via longer sentences and more prisons. The results showed Oregonians prioritized public safety and rehabilitation over punishment as the primary purpose of Oregon’s prison system.

FINDINGS

CORRECTIONS GROWTH AND COSTS

Oregon's annual average prison population has grown substantially over the last 30 years, from 3,120 offenders to approximately 14,000 offenders today. This represents growth of nearly 350%, or an average of roughly 11% per year. In contrast, Oregon's population grew by more than 1.2 million people or by about 45% (1.5% per year) during the same period.

The October 2011 prison forecast³ projects that the Oregon Department of Corrections will be tasked with housing, providing necessary treatment for, and managing over 2,000 additional inmates over the next 10 years. Current vacant budgeted capacity and existing emergency bed inventory is inadequate to accommodate future growth of this magnitude without building more capacity into the state corrections system.

To meet the projected demand the Department of Corrections will first activate all current emergency bed capacity before opening new permanent housing. Beginning in August 2013, the Deer Ridge medium-custody facility will begin to phase in 786 new permanent beds during the 2013-15 biennium and be fully occupied by September 2019.

In order for the new male minimum-custody facility planned for Junction City to be available by the scheduled opening in December 2015, additional financing and project authority will be needed during the February 2012 session to ensure design is complete by June 2013.

Construction authority and financing for actual construction must be provided by the 2013 legislature in order for construction to move forward immediately in the 2013-15 biennium. Junction City project costs (\$80,707,738) and resulting interest expense (\$76,396,920) create a long-term obligation for the state totaling \$157,104,658, with repayment likely to begin during the 2015-17 biennium.

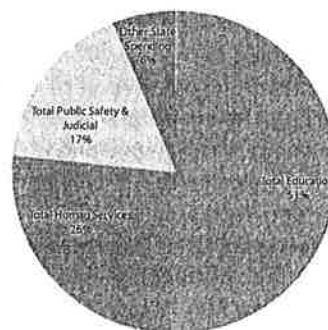
When fully implemented, the projected prison population will require an increase in the biennial Corrections Department budget of approximately \$130 million and over \$12 million out of the general fund for increased debt service for new construction costs. The total estimated costs to the state of the additional 2,000 beds over the next 10 years is more than \$600 million.

CURRENT CORRECTIONAL COSTS

Most state general fund dollars are spent in three broad areas: education, human services and public safety. Public safety is the smallest of these three areas, accounting for 17% (\$2.5 billion) of general fund and lottery funds in the 2011-13 Legislatively Adopted Budget. Within the public safety budget, the largest appropriation is the Department of Corrections, accounting for more than 50% (\$1.36 billion) of the state's total public safety budget.

Over the past 15 years public safety has consumed a larger portion of the total general and lottery funds spending. In the 1985-87 biennium public safety was 12% of total spending and has now risen to 17% of total spending. While the general fund and lottery fund spending has increased by 330% over this time period, public safety spending has increased by more than 500% and the DOC budget has increased 770%.

2011-2013 Legislatively Adopted General and Lottery Funds Budget



OREGON'S USE OF INCARCERATION

Since 1980 the incarceration rate (the number incarcerated divided by the population) in the United States has more than tripled. Every state experienced an increase in its incarceration rate over this time period. Oregon had a similar increase, tripling its incarceration rate over this same time period.

In recent years many states have begun to reduce this trend. In 2009, the Bureau of Justice Statistics (BJS) reported that for the first time in nearly 30 years the number of offenders incarcerated in state prisons had decreased. Federal prisons increased their use of incarceration so that overall the number of offenders housed in state and federal prisons increased slightly. BJS just released their 2010 report and for the first time since 1972 the number of inmates in both state and federal prison decreased.⁴

Oregon's incarceration rate has remained relatively flat since 2004. The most recent BJS report shows that in 2010 Oregon's incarceration rate decreased by more than 3% and Oregon is now one of 29 states that has decreased its incarceration rate over the past five years.

CRIME RATES

Over the past 30 years crime has decreased across the United States. Nearly all states experienced a decrease in their overall Uniform Crime Reporting (UCR) rate, with only one state having an increase in its crime rate. The United States overall index crime rate decreased 43% over this time period and Oregon experienced an even larger crime decrease than the U.S. average.

In Oregon violent crime is at the lowest rate since 1969 and has declined 12% since 2005 and 52% since 1995 (the fourth largest drop of all states). Since 1985 Portland had the largest decrease in its crime rate of any city with a population of more than 250,000 people. Property crime inched up in 2010 but is still near the lowest level since 1966. Since 2005 Oregon's property crime rate has fallen 32% (the third largest drop of all states), and since 1995 has dropped 51% (the fifth largest drop of all states).

The FBI just released crime data for the first six months of 2011 for the four largest cities in Oregon. In these four cities crime continues to decline.

Compared to the first six months of 2010, violent crime is down nearly 3% and property crime is down more than 1%.

EVIDENCE-BASED DECISION MAKING

Evidence-based principles have long been part of Oregon's corrections policy. The legislature adopted SB 267 in 2003 (ORS182.515-.525). It requires that services aimed at reducing future criminal conduct must be based on credible research and be cost effective. These principles can be brought into the courtroom to inform judges about what sentences will best protect the public — not only to hold offenders accountable, but also to reduce future criminal conduct.

JUSTICE REINVESTMENT

The concept of justice reinvestment calls for shifting public safety resources to programs and activities that research has shown can reduce crime in a cost effective manner. Many states around the country, including Texas, have had bipartisan legislative support for reducing state prison populations and reinvesting a portion of the savings into evidence-based, cost-effective criminal justice programs.

There have been hundreds of rigorous studies of criminal justice programs and we now have a much richer knowledge of what works — and what doesn't — to reduce recidivism. Oregon has developed one of the nation's first cost-benefit models to calculate the return on investment from a spectrum of crime control techniques — from incarceration to evidence-based criminal justice programs.

CRIME PERCEPTIONS

Even though crime rates have been steadily declining for years and are now near 40 year lows in Oregon and the United States most people do not know crime has dropped. National surveys and Oregon-specific surveys both show that many people do not know that crime has declined. Two-thirds of Americans believe there is more crime in the United States than there was a year ago and over half of Oregonians believe that crime rates in Oregon have increased over the past year.

RECOMMENDATIONS AND NEXT STEPS

- The Commission on Public Safety recommends that the Commission be extended until July 2013. That would allow the Commission to develop and propose to the 2013 Legislative Assembly revisions to Oregon's sentencing guidelines and policies that would optimize the use of Oregon's most expensive corrections resource – prisons.
- To complete this work, the leaders of Oregon's legislative, judicial, and executive branches should commit themselves to bipartisan partnership and pursue a Justice Reinvestment Initiative (JRI) grant from the federal government. This partnership and assistance from the BJA is how several states have made their criminal justice systems more efficient in this economic environment.⁵

These revised guidelines and sentencing policies, could incorporate the intent underlying the mandatory minimum sentencing initiatives, the principles of the 1989 sentencing guidelines, and the advances in the science of recidivism reduction gleaned from the last 20 years of rigorous evaluation of criminal justice programs and offender supervision.

Governor Kitzhaber's executive order created a small, bipartisan group to begin the important work of transforming Oregon's current sentencing policy. Now, this small group of leaders must build on what it has learned, and include a broader array of stakeholders and experts who will be needed to transform Oregon's sentencing policy.

The Commission must reach out and engage stakeholders and experts in our effort to modernize Oregon's sentencing laws. Sheriffs, police chiefs, district attorneys, defense attorneys, victim advocates, business people, corrections officials, addictions and mental health experts, community corrections directors, trial judges, and others must be part of a collaborative effort to ensure our citizens are safe and secure in their homes and communities and, at the same time, policy makers are smarter and more effective with their tax dollars.

The goal of this broader group of Oregon stakeholders must be made clear at the outset, so that the 2013 legislature will be presented with a product that embodies the principles described in this report.

This leadership and assistance would greatly improve the comprehensive sentencing guidelines that are recommended, by taking advantage of Oregon's existing criminal justice data and the technical expertise and assistance of those who have already pursued a reform path nationally, creating a sentencing system developed specifically to meet Oregon's unique situation and needs.

PRINCIPLES ON WHICH TO BUILD THE REVISED SENTENCING POLICIES

Oregon's Constitution

Article I, Section 15: Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation.

Justice Reinvestment

Oregon can increase public safety at less cost by investing in more cost-effective programs targeted at offenders for the purposes of reducing recidivism and preventing future crime and victimization. This principle has had noticeable success in Texas and other states. It has been used to reduce the future need for additional prisons and to reduce crime by determining what is driving recidivism and identifying evidence-based programs that will reduce the likelihood of future crimes once an offender is sentenced to probation or leaves the prison. Less crime at less cost is the goal of justice reinvestment. Other states have used justice reinvestment with excellent results. Although Oregon's use of incarceration is less than that of Texas, Oregon shares the problem that Texas faced: an unsustainable trajectory of future prison growth in this economy.

Cost-Benefit Analysis

Oregon should continue to use evidence-based research and cost-benefit analysis to guide future investments in public safety. The Commission recommends that Oregon use the cost-benefit analysis tool developed by the Washington State Institute for Public Policy (WSIPP) and the Oregon Criminal Justice Commission (CJC) to guide future investments in public safety. Public safety demands using rational business-like approaches that are the basis of the WSIPP model. The CJC has pioneered the use of this process in Oregon, and this should be the basis for demanding the best return on our investment in public safety spending.

Increased Judicial Discretion

Oregon's sentencing guidelines reduced judicial discretion in sentencing offenders. The mandatory minimum sentences subsequently passed by the voters and the legislature have further reduced judges' discretion.

Neither the legislature nor the ballot initiative can adequately craft a "one size fits all" criminal sentence. Appropriate sentencing law requires individual application. The penalty for a crime must be proportionate to the gravity of that specific offense, the culpability of that individual offender, and the impact on that victim(s) caused by that specific crime.

Our nation's government was established on the constitutional principle of "separation of power" between the executive, legislative, and judicial branches. In the executive branch, the police and prosecutor's function is to investigate, formally charge, prosecute and, upon conviction, recommend a sentence to the court. The prosecutor has the ethical duty to seek justice, not merely to convict people. The legislature or the citizens through the initiative process establish the legal framework for the court's decision. The sentencing court considers all the necessary evidence the parties can produce and imposes a sentence that best carries out the constitutional principles set forth in Article I, Section 15 of Oregon's Constitution. The revised sentencing policies and guidelines must empower the court by better distributing and structuring discretion and informed decision making between the executive and judicial branches of state government.

Informed Decision Making In Sentencing

The National Center For State Courts (NCSC) has developed a protocol for using offender risk and needs assessment information at sentencing.⁶

Providing the judge with an offender risk and needs assessment at sentencing gives the judge one more tool to use in fashioning a sentence appropriate for the offender.

NCSC has provided guidance for Oregon and other states on how to update sentencing laws in light of the evidence about what works to reduce recidivism. In Oregon, Yamhill County has shown these principles can be incorporated into Oregon's local public safety systems. Informing the decision making process with a risk and needs assessment of the offender can further all four of the core outcomes the Governor outlined for this Commission.

Juvenile Justice

Oregon's juvenile justice system is inextricably linked to the adult criminal justice system.

In the past five months, the Commission has not had the time needed to make informed findings and recommendations on Oregon's juvenile justice system. The Commission recommends that the necessary resources be provided to allow a thorough review of the sentencing components of Oregon's juvenile justice system.

The Commission must review Oregon's system of sentencing and incarceration of juveniles in light of the principles and policies identified in this report.

Oregon's juvenile justice system is a necessary part of our criminal justice system that holds youthful offenders accountable but at the same time provides them with opportunity, education, and treatment to allow them to be productive citizens.

The principles outlined in this report, and science presented to this Commission should be used to improve Oregon's critical juvenile justice system.

Crime Victim Services

Historically, the role of crime victims in our nation's criminal justice system has been overlooked. Oregon has constitutionally and statutorily elevated crime victims' rights to a never before seen level ensuring

the right to participate in every critical stage of a criminal proceeding. There is more that can be done. Holding offenders accountable upon conviction is only part of the answer to serving crime victims because much crime goes unreported. A portion of any savings derived from changes to Oregon's sentencing system should be dedicated to programs that help crime victims; including crimes which are often not reported (e.g., sexual assault and domestic violence).

Offender Reentry

Ninety-three percent of all prisoners currently incarcerated in Oregon's prisons will be released from institutions and return to Oregon communities. In 2011, more than 4,500 inmates were released from Oregon's state prisons. Oregon's sentencing system must be mindful of this reality, and not consider prison to be the "end of the story." Oregon has taken some strides with the Governor's Re-entry Council in recognizing that a key component in reducing crime is to provide support and supervision to offenders returning from prison.

Inmate reformation is enshrined in our Constitution, but only 2.5% of DOC's total budget is spent on programs and education for those in prison to prepare them for re-entering society. Retaining resources and continuing partnerships to reduce crime when offenders return from prison requires that Oregonians understand this reality, and that our system target recidivism reduction at this key point in an offender's sentence.

Listen to and interact with Oregon's voters

The public is concerned about crime and wants offenders held accountable. Oregonians also want interventions that are smart, cost-effective, and likely to change future criminal behavior.

It is clear that the public lacks accurate information about crime and criminal justice. Oregonians' belief that crime is high and rising varies significantly from the reality, but is completely rational considering the media and entertainment's constant feeding of the public's fascination with crime.

The survey of Oregonians' attitudes about crime and justice presented by Portland State University's Division of Criminology and Criminal Justice (PSU) was very helpful to this Commission.

The survey illuminated a welcoming environment for the principles outlined above, and continued surveys and polling must be relied on so that the Governor and the Legislature are not relying on untested assumptions about what citizens think.

If given accurate information about crime levels, costs of various options regarding sentencing and what is now possible through the application of the principles identified in this report, the public is more likely to support evidence-based adjustments to Oregon's sentencing laws.

ENDNOTES

¹ <http://www.oregon.gov/CJC/CommPubSaf.shtml>

² http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf

³ <http://www.oregon.gov/DAS/OEA/docs/prison/DOCForecast201110.pdf>

⁴ <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf>

⁵ http://www.ojp.usdoj.gov/BJA/pdf/JRI_FS.pdf

⁶ See: *Using Offender Risk and Needs Assessment Information at Sentencing*. <http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Sentencing%20Probation/RNA%20Guide%20Final.ashx>