

TESTIMONY – June 22, 2020 – for Legislative Special Session
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HOW TO RELEASE MORE PRISONERS DURING THE PANDEMIC

At this time of deadly pandemic, when it is essential for safety and health to be able to socially distance from other people who may be infected and to acquire whatever protective products are needed, these two laws are in conflict:

423.020 (1) The Department of Corrections is created. The department shall:

(d) Provide adequate food, clothing, health and medical care, sanitation and security for persons confined;

ORS 137.700 *Oregon* voters approved Ballot Measure 11 in November 1994 (reaffirmed in 2000) to apply mandatory minimum prison sentences to certain crimes against persons committed on or after April 1, 1995, with no possibility for any reduction in sentence, such as for good behavior.

It seems to me that the requirements in 423.020 take precedence if the requirement in 137.700 cannot ensure health and medical care, sanitation and security at this time. It seems to me that it is immoral to not include any Measure 11 prisoners who would otherwise qualify for an early release plan, if it means endangering their lives.

Some Measure 11 prisoners are undoubtedly medically compromised, some are close to their release date, and others would qualify as not a risk to public safety. Since Measure 11 prisoners comprise about 40% of Oregon's prisoner population, it appears to be impossible to provide health and safety inside Oregon's 14 prisons without releasing a significant number of them.

Here is a possible way to reconcile the conflicting requirements of the two laws: Temporarily release eligible Measure 11 prisoners but require them to finish their sentence at a later time when it is safe.

In addition, there is a particular group of Measure 11 prisoners that could become eligible immediately for early release consideration: all those who received a Measure 11 sentence as juveniles.

SB 1008, passed in July of 2019, allowed for such releases. However, this law applied only to youth who commit crimes on or after the January 1, 2020 effective date of the legislation; it was not applied retroactively to those who committed crimes as youth prior to that date.*

There are an estimated 100 people in Oregon prisons who would qualify for parole hearings if SB 1008 were applied retroactively.

My second proposal for this time of dangerous pandemic: Oregon legislators should vote in the upcoming special session to make the new legislation in SB 1008 retroactive.

* <https://www.prisonlegalnews.org/news/2020/jan/8/oregon-passes-historic-juvenile-justice-reform-bill-refuses-apply-it-retroactively/>

Multnomah County Democratic Central Committee
Resolution 2020-8: Safety in Oregon Prisons during Pandemic

Whereas Governor Kate Brown took great care to keep Oregonians safe from Covid-19 by having non-essential businesses close, cancelling gatherings and schools, and requiring social distancing and use of protective gear;

Whereas the Governor, however, did not include Oregon's 14 prisons in her social distancing and protective orders;

Whereas it is not possible to significantly social distance in Oregon prisons given the current populations of these facilities;

Whereas neither the prisoners nor the employees of Oregon's prisons can achieve safety from the virus under current conditions;

Whereas it will be a threat to public safety when prisoners who have completed their sentences are released in 2020-21 if they have been exposed to or contracted Covid-19;

Whereas there are a large number of prisoners, in several categories, who would not present a danger to the community if they were to be released now, prior to completion of their sentence of incarceration;

Therefore, to allow for safety measures in Oregon prisons, the Democratic Party of Multnomah County calls for all prisoners who fall into the following categories, provided there is no compelling reason that the community would be endangered, to be removed from Oregon prisons as soon as possible:

- Prisoners with 6 months or less remaining on their sentence.
- Parole violators who did not commit another crime.
- Elderly individuals with long sentences who have "aged out" of criminal behavior.
- Non-dangerous individuals who are seriously ill, physically disabled, mentally challenged, or have underlying health issues particularly susceptible to dying from Covid-19.
- People claiming wrongful conviction who are currently pursuing a retrial or exoneration.
- People with non-unanimous jury convictions.
- Those being punished by incarceration for non-violent crimes for which alternatives to incarceration exist.
- Non-dangerous rehabilitated individuals who would qualify for parole but can't because of a mandatory sentence.

Depending on what is appropriate for their category, they should be either released outright, assigned house arrest, re-sentenced to an alternative to incarceration, under supervision in the community, or released on bond while pursuing an appeal.

In addition, we call on all prisons to institute all the safety measures and social distancing that are possible after the reduction of prison populations, and that outside health inspectors ensure that the facilities are safe for both prisoners and staff.

Adopted on June 11, 2020.

Resolution submitted by Platform Resolution and Legislative Committee, Justice Study Group

This Resolution should be sent to Governor Kate Brown, Attorney General Ellen Rosenbaum, Director of Oregon DOC Colette Peters, all Oregon District Attorneys and all Oregon state legislators.