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In Support of SB 819  
House Committee on Judiciary  
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I want to thank Chair Bynum, Vice-Chair Noble, and the members of the House Committee on Judiciary for the opportunity to submit written testimony in support of SB 819. For decades, Oregon, along with the rest of the nation, focused a vast majority of its public safety resources on sentencing individuals to lengthy prison terms. Evidence and data have proven that this overly punitive approach has failed to meaningfully impact public safety. Senate Bill 819 would allow Oregon’ courts, through a joint petition by an adult in custody and a district attorney, to reduce prison sentences that are no longer serving the interest of public safety. This measure will allow Oregon to better utilize its finite correctional resources, reduce wasteful spending, recognize rehabilitation, and reunite families whose lives have been upended by unnecessarily lengthy incarceration.

Oregon’s approach to sentencing has led to an excess of lengthy prison terms and elderly incarcerated individuals. The median length of stay in an Oregon state prison is nearly 70 months.<sup>1</sup> This figure does not include adults in custody serving life sentences, meaning more than half of Oregon’s prison population is serving more than 6 years in custody. Oregon’s lengthy sentencing laws have also resulted in a high proportion of aging adults in custody. As of November 2020, 3,171 adults in custody were between the ages of 45 and 60 and 1,111 adults in custody were over the age of 60.<sup>2</sup>

There is a mountain of evidence that shows that lengthy incarceration is not a deterrent against future criminal behavior. The National Institute of Justice (NIJ) has stated, “research clearly shows that the chance of being caught is a vastly more effective deterrent than even draconian punishment.”<sup>3</sup> The NIJ also notes that “prison sentences (particularly long sentences) are unlikely to deter future crime.”<sup>4</sup>

The evidence also shows that incarcerating elderly individuals is particularly ineffective. Criminological scholarship has identified the existence of an “age-crime curve” that shows individuals, by and large, age out of crime. This theory shows that people become involved in criminal behavior in late adolescence and their involvement increases steadily – but only for a

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<sup>1</sup> “Quick Facts” Oregon Department of Corrections, November 2020.

<https://www.oregon.gov/doc/Documents/agency-quick-facts.pdf>

<sup>2</sup> Ibid.

<sup>3</sup> “Five Things About Deterrence,” National Institute of Justice, (May 2016), 1.

<https://www.ojp.gov/pdffiles1/nij/247350.pdf>

<sup>4</sup> Id, 1.



short period of time.<sup>5</sup> As an individual reaches adulthood, and particularly late adulthood, the risk of criminal behavior drops off significantly.<sup>6</sup> This has been demonstrated in real world data. For example, the United States Sentencing Commission’s study of individuals released from federal prison in 2005 concluded, “recidivism measured by rearrest, reconviction, and reincarceration declined as age increased.”<sup>7</sup> Data from Oregon’s Department of Correction further supports this theory. The three-year reconviction rate for individuals over 46 years old released from Oregon DOC custody in 2016 was 31.9 percent and the reincarceration rate was only 9.1 percent.<sup>8</sup> This is significantly lower than other age cohorts. Individuals between 31 and 45 years old released in 2017 had a reconviction rate of 44.8 percent and reincarceration rate of 14.4 percent.<sup>9</sup> Individuals aged 18 to 30 years old had a reconviction rate of 53.2 percent and a reincarceration rate of 19.2 percent.<sup>10</sup>

These lengthy prison sentences and sentences for elderly individuals have little positive impact on public safety and are a tremendous financial burden for the state. People over age 50 are less of a danger to public safety but are estimated to cost three to nine times as much to incarcerate as younger people, depending on their health and medical needs.<sup>11</sup> The average daily cost of incarceration in Oregon is \$116.89.<sup>12</sup> Based on this figure, Oregon spends at least \$47.4 million annually to incarcerate individuals older than 61 (an estimate that is likely lower than the actual figure given the historically higher cost of incarcerated aging individuals). And the state will continue to spend this money – and more – on this population even as it ages and becomes more costly and less dangerous. This is money that could go towards more effective measures of deterring or interrupting crime in the community.

Senate Bill 819 would be a good step toward relieving Oregon of the burden of ineffective lengthy prison sentences. By allowing district attorneys and adults in custody to bring joint motions for resentencing in the event that the original sentence “no longer advances the interests of justice,” Oregon can safely and confidently release individuals who no longer pose a threat to public safety. Such a release would not only save the state money and better utilize Oregon’s finite correction resources, but also reunite families and communities throughout the state.

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<sup>5</sup> Marc Mauer, “Long-term Sentences: Time to Reconsider the Scale of Punishment,” University of Missouri-Kansas City Law Review, Vol. 87:1, (November 2018), 121-122. [file:///C:/Users/Daniel/Downloads/UMKC-Law-Review-Scale-of-Punishment%20\(2\).pdf](file:///C:/Users/Daniel/Downloads/UMKC-Law-Review-Scale-of-Punishment%20(2).pdf)

<sup>6</sup> “From Juvenile Delinquency to Young Adult Offending,” The National Institute of Justice, (March 2014). <https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending#reports>

<sup>7</sup> Kim Steven Hunt and Billy Easley II, “The Effects of Aging on Recidivism Among Federal Offenders,” The United States Sentencing Commission, (December 2017), 3. [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207\\_Recidivism-Age.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf)

<sup>8</sup> “Recidivism Dashboard,” Oregon Department of Corrections, <https://www.oregon.gov/CJC/SAC/Pages/Recidivism-dashboard.aspx>

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Mary Price, “Everywhere and Nowhere: Compassionate Release in the States,” FAMM, (June 2018), 9. <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf>

<sup>12</sup> “Quick Facts,” Oregon Department of Corrections, November 2020. <https://www.oregon.gov/doc/Documents/agency-quick-facts.pdf>

People in prison change, and our laws need to reflect that. Those who no longer need to be incarcerated could be productive citizens who work, pay taxes, take care of their families, and serve their communities. SB 819 provides a reasonable, safe way to bring these people home.

FAMM strongly supports SB 819. We thank the committee for its time and consideration of our views.