



# Commission on Public Safety Report to the Governor

*December 17, 2012*

## Foreword

In this stark fiscal climate, Oregon has distinguished itself by prioritizing data-driven policymaking focused on smart investments in the long-term needs of our state. In the past two legislative sessions, our state's leaders have shepherded comprehensive, bipartisan legislation to reform our highest spending areas—education and healthcare—to ensure taxpayers are getting the best return on their investment in these core functions of state government. It is now time to turn our collective attention to another core function and the state's third highest category of spending: public safety.

While Oregon has been considered a national trend-setter in sentencing and corrections policy, recent trends threaten our leadership position and our ability to deliver citizens the best possible public safety results. In the past decade, Oregon's prison population has grown by nearly 50 percent to over 14,000 inmates and taxpayers now spend more than \$1.3 billion each biennium to pay for corrections. Meanwhile, Oregon has cut funding to critical public safety areas like state police, county sheriffs, community corrections, and victim services. Without action, prisons will consume an even greater share of Oregon's public safety budget and overall state spending. The state projects its prison population will grow by another 2,300 beds in the next 10 years. This prison growth—fueled mostly by nonviolent offenders—will cost taxpayers an additional \$600 million dollars.

Our state has convened several working groups to analyze the sentencing and corrections policies that drive our rising correctional population and costs, including the 2011 Commission on Public Safety. This prior work established an important foundation, but did not culminate in comprehensive legislative action. This time must be different. Oregon cannot afford inaction.

In May of this year, following a request from legislative leadership, Governor Kitzhaber reconvened and expanded the Commission on Public Safety (Commission), a bipartisan, inter-branch task force, charged with analyzing Oregon's sentencing and corrections data, auditing existing policies, and submitting recommendations that will protect public safety while containing corrections costs and holding offenders accountable. In addition to legislators from both parties and chambers, the 2012 Commission includes practitioners from the criminal justice system including a district attorney, a defense attorney, a community corrections director, a trial judge, a sheriff, a public member, and the director of the Oregon Department of Corrections.

What the Commission found in Oregon's data was, as expected, a state with tremendous public safety achievements. Commissioners were in complete accord that we begin our process by taking stock of the many things we have done well in our public safety system. Paramount among these is the historic and sustained crime decline we have experienced in Oregon. What's more, we have achieved this crime decline with a comparably modest incarceration rate (still below the national average) and a prison system that focuses largely on offenders convicted of violent and sex offenses. This means that, for the most part, our state is appropriately focusing its most expensive public safety resource on the offenders who need it most. Finally, through its renowned commitment to evidence-based practices, Oregon's corrections system has achieved one of the nation's lowest recidivism rates.

However, the Commission found that Oregon has lost ground on some of these achievements over the past 10 years. Even though our state imprisonment rate hovers below the national average, it has grown at over three times the rate of the national average in the last decade. During that same period, Oregon's prison admissions have grown to include increasing percentages of nonviolent offenders, diluting the state's strategy of concentrating prison beds on the violent and sex offenders who warrant

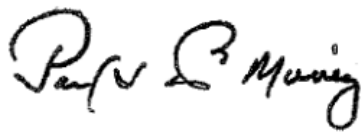
them most. Oregon also has been handing down longer sentences for all offense types, including nonviolent offenses. Despite a growing body of research that points to the diminishing public safety returns of longer prison sentences, Oregon offenders are staying longer in prison today than they have at any point in the last decade.

Finally, the Commission found that as the state directs increasing resources to prisons, resources for Oregon's community corrections programs, lauded across the country for their success in reducing recidivism, have shrunk. Many counties face significant shortfalls in the sanctions and services they need in order to hold offenders accountable at the local level. Additionally, critical public safety agents like sheriffs, victim service providers, and the state police have gone underfunded. These shortfalls pose a real and pressing threat to sustaining Oregon's reductions in recidivism and victimization.

This report provides analysis and policy options. The Commission considered these recommendations and options and agreed to forward them to the Governor and legislature for consideration and action in the 2013 legislative session.

The Commission recommends that where potential savings are achieved, the savings should be reinvested into those policies, programs, and practices proven to reduce recidivism and improve public safety. These include investing in evidence-based community corrections, law enforcement, victim services, and specialty courts.

We have done a lot of things right in our public safety system in Oregon but we must remain vigilant in maintaining these achievements. We cannot afford even small slips in our commitment to focus prison beds on those offenders who need it most, and to ensure we are using taxpayer dollars in the most effective way to protect public safety in our communities.

A handwritten signature in black ink, reading "Paul De Muniz". The signature is written in a cursive, flowing style.

Justice Paul De Muniz (Commission Chair)

## **Acknowledgements**

The Commission would like to thank the following agencies, associations, and individuals for their assistance throughout the Commission's work:

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### Oregon State Sheriffs' Association

Sheriff Thomas Bergen, Clatsop County  
Sheriff John Bishop, Curry County  
Sheriff Patrick Garrett, Washington County  
Sheriff Jim Hensley, Crook County  
Holly Russell  
Sheriff Diana Simpson, Benton County

### Oregon Youth Authority

Jan Blanshan, Fairborz Pakseresht, Lance  
Schnacker

### Victim Roundtables

36 victim advocates and survivors in attendance  
in Salem and Klamath Falls

## Overview of the Commission's Work

Following a request from legislative leadership, Governor Kitzhaber issued Executive Order No 12-08<sup>1</sup> in May 2012 to reconvene and expand the Commission on Public Safety (Commission), a bipartisan, inter-branch task force. The Order begins

*The state is on an unsustainable path of corrections growth that will limit funding available for proven crime-prevention, reformation, and re-entry strategies. We must reverse the presumption of unlimited corrections growth and redesign a sustainable system that provides opportunities to reduce victimization and keep people safe in the long term, as it holds offenders accountable and protects public safety.*

The Governor charged the Commission with analyzing Oregon's sentencing and corrections data, auditing existing policies, and identifying and recommending "fiscally responsible and sustainable, evidence-based policies and practices that will control corrections growth, hold offenders accountable, and protect public safety."

In addition to legislators from both parties and chambers, the Commission includes practitioners from the criminal justice system including a Supreme Court Justice, a district attorney, a defense attorney, a community corrections director, a trial judge, a sheriff, a public member, and the director of the Oregon Department of Corrections.

The Commission met 10 times over six months to review data, hear testimony, and engage in policy discussions that were open to the public and are archived online.<sup>2</sup> In order to engage a broader audience, the Commission held meetings in Bend, Salem, and Roseburg, and also reviewed feedback from victim roundtables in Salem and Klamath Falls.

After an extensive review of Oregon's sentencing and corrections data, the Commission divided into two subgroups to develop specific policy options in those two areas. The subgroups met three times during the fall to explore policy options before presenting their findings and recommendations to the Commission. The Commission has assembled packages of policy options with the underlying goal of protecting public safety and compiled this report to the Governor for full consideration by both the Governor and the Legislature in the 2013 legislative session.

The purpose of this report is to provide the Governor and the Legislature with options to achieve cost savings in our prison system. Part of this savings would result from avoiding growth in the state prison population – and the costs associated with such growth – over the next ten years. Several proposals considered by the Commission were not included in the report, and unfortunately it does not address with enough attention cost drivers outside of prison population. Further, some of the recommendations included in the report do not have unanimous support of the Commission members. However, despite a lack of complete agreement on all of the recommendations, this report puts forward proposals that should be weighed, vetted, and considered by policy makers. That consideration is necessary if Oregon is ever to achieve a goal of saving funds, particularly from prison population growth, so that scarce resources can be redirected to other areas of the public safety system that are in dire need of support.

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<sup>1</sup> Executive Order NO. 12-08- Reconvening the Governor's Commission on Public Safety  
[http://www.oregon.gov/gov/docs/executive\\_orders/eo12-08commissiononpublicsafety.pdf](http://www.oregon.gov/gov/docs/executive_orders/eo12-08commissiononpublicsafety.pdf)

<sup>2</sup> For agendas, presentations, and audio, see <http://www.oregon.gov/CJC/Pages/2012ComPubSaf.aspx>

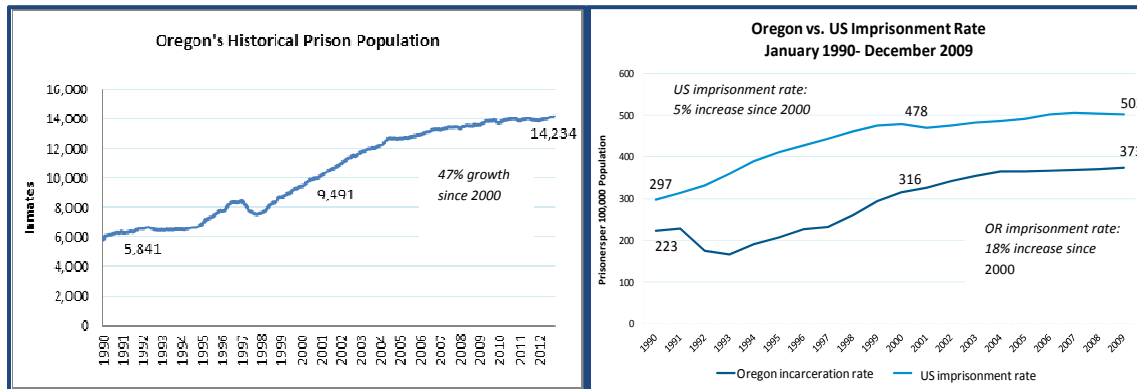
The Commission received technical assistance from the Public Safety Performance Project of the Pew Center on the States (Pew) as part of the Justice Reinvestment Initiative of the United States Department of Justice. The Justice Reinvestment Initiative supports bipartisan and inter-branch efforts, driven by data and evidence on what works and focused on achieving fiscally sound and pragmatic policy solutions that offer a better public safety return on taxpayer investments. In Oregon, Pew's team was assisted by the Crime and Justice Institute at Community Resources for Justice. The Commission also received staffing support from Oregon's Criminal Justice Commission and the Oregon Justice Department.

### **Members of the Governor's Commission on Public Safety**

Justice Paul DeMuniz (Chair)	Oregon Supreme Court
Representative Chris Garrett	House of Representatives, District 38- Lake Oswego
Representative Andy Olson	House of Representatives, District 15- Albany
Senator Floyd Prozanski	State Senate, District 4- South Lane and North Douglas Counties
Senator Jackie Winters	State Senate, District 10- Salem
Director Colette S. Peters	Department of Corrections
Director Scott Taylor	Multnomah County Department of Community Justice
Sheriff Jason Myers	Marion County Sheriff's Office
District Attorney John Foote	Clackamas County District Attorney's Office
Honorable John Collins	Yamhill County Circuit Court
Larry Matasar, Attorney	Oregon Criminal Defense Lawyers Association
Dick Withnell	Public Member

## Oregon's Prison Growth in the National Context

Since 2000, Oregon's prison population has grown by nearly 50 percent, from 9,491 inmates to more than 14,234 inmates today. During this time, Oregon's imprisonment rate has remained below the national average but has grown more than three times faster than the national average.<sup>3</sup>



As Oregon's prison population has grown, the state's biennial corrections budget has expanded by nearly 40 percent since 2001-03 to more than \$1.3 billion in 2011-2013.<sup>4</sup> Oregon's corrections budget, largely consumed by prisons, has grown as a percentage of state spending (by 23 percent in the past decade) and now accounts for nearly one in every 10 state dollars.<sup>5</sup>

During the next 10 years, Oregon's prison population is forecasted to grow by 2,300 inmates.<sup>6</sup> Oregon taxpayers will be forced to spend an additional \$600 million on prison construction and operations in order to accommodate this growth. Because the Oregon prison system is nearing capacity, the Department of Corrections (DOC) will need to launch construction of a 15th state prison, in Junction City. The DOC also will need funds to open two vacant prisons, including opening a never-used medium security unit at Deer Ridge Correctional Institution in Madras, and converting a closed minimum security prison in Salem into a women's prison. To respond to both the imminent growth and 10-year growth, the DOC will require funds to start all three projects inside the next two biennia. Finally, while the most significant cost driver in Oregon's corrections budget is its growing inmate population, Oregon's cost of incarceration, fueled in part by steep rises in inmate healthcare costs (which have grown 180% in the last decade), also contributes to the growing cost of corrections.

Though Oregon's public safety system stands out in many positive ways from the rest of the nation, its struggle with unsustainable prison growth is not unique. Across the nation, state prison populations have grown dramatically and budget appropriators have diverted an increasing share of taxpayer dollars to keep pace with soaring prison costs. During the 20 years ending in 2010, state spending on corrections has been the second fastest growing major state budget item behind Medicaid.<sup>7</sup>

<sup>3</sup> Bureau of Justice Statistics. National Prisoner Statistics (NPS) Series. Accessed at: <http://bjs.ojp.usdoj.gov/index.cfm?ty=dcdetail&iid=269>

<sup>4</sup> Legislative Fiscal Office, Budget Information Report, "Correctional Spending Trends." September 2011. [http://www.leg.state.or.us/comm/lfo/correctional\\_spending\\_trends\\_2011.pdf](http://www.leg.state.or.us/comm/lfo/correctional_spending_trends_2011.pdf)

<sup>5</sup> Ibid. Combined General and Lottery Funds. The national average is one in 14 state general fund dollars.

<sup>6</sup> Oregon Office of Economic Analysis. October 2012 Corrections Population Forecast.

<http://www.oregon.gov/DAS/OEA/docs/prison/DOCForecast201210.pdf>

<sup>7</sup> Analysis performed using data from the National Association of State Budget Officers Expenditure Reports.

This high price of prisons would be more than defensible had it yielded proportionate improvements in public safety in the most cost-effective manner. And evidence suggests that a meaningful share of prison expansion did result in substantial reductions in crime. The national crime rate has been falling since the early 1990s, and is now at its lowest level since 1968.<sup>8</sup> Oregonians, for example, are as safe today as they were 40 years ago.<sup>9</sup> Prison expansion certainly contributed to this trend: the most often-cited research credits prison growth for one-quarter to one-third of the crime drop during the 1990s.<sup>10</sup> In short, the increased use of incarceration had an important but minority role in improved public safety. Other factors likely included increasing numbers of law enforcement officers on the streets, advances in law enforcement practices, changes in drug markets, and an aging resident population.<sup>11</sup> Finally, while a simple glance at the nation's rising incarceration rates and falling crime rates might imply a direct causal relationship, a deeper look at state trends reveals a far more complicated picture.

Consider Florida and New York, two states that began the 21<sup>st</sup> century with nearly the same size prison population of approximately 70,000 inmates. In the ensuing decade, Florida added 30,000 inmates and now has more than 100,000 offenders behind bars. Meanwhile, New York's prison population fell below 60,000. Yet the crime rate dropped in both states by about the same amount. In fact, New York's crime drop was slightly larger (29.2 percent) than Florida's (28.2 percent).<sup>12</sup>

New York is not alone. Between 2000 and 2010, all 17 states that reduced their imprisonment rates also experienced a decline in their crime rates.

State examples like these, plus dramatic reforms in law-and-order states like Texas and supportive public opinion, have combined with state budget pressures to provoke a growing national conversation that puts prison spending under greater scrutiny than ever before. For the better part of the past four decades, the most common question that policy makers asked about their state corrections budgets was, "How many more prisons do we need?" Today, state leaders from both parties are asking a much tougher question: "How do we get taxpayers a better public safety return on their corrections dollars?"

Last year, policymakers in Georgia faced a projected eight percent prison population growth over the next five years at a cost of \$264 million. Rather than invest more taxpayer dollars in prisons, Georgia legislators looked to more cost-effective approaches. They unanimously passed a package of reforms that controlled prison growth through changes to drug and property offense sentences, and invested in improving public safety by strengthening community supervision and investing in local sanctions, treatment, and accountability courts.<sup>13</sup>

Similar bipartisan, inter-branch efforts have succeeded in bending the corrections cost curve and enhancing recidivism reduction efforts in states like Arkansas, Hawaii, Kentucky, and South Carolina. Just this fall, a Justice Reinvestment Act was signed into law in Pennsylvania. This omnibus, bi-partisan legislation is expected to save the state nearly \$253 million through 2018. The new law requires that a portion of these savings be reinvested to support local law enforcement, victim services, county,

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<sup>8</sup> FBI. Uniform Crime Reports as prepared by the National Archive of Criminal Justice Data. Accessed December 2012.

<sup>9</sup> Ibid.

<sup>10</sup> William Spelman, "The Limited Importance of Prison Expansion," in *The Crime Drop in America*, eds. Alfred Blumstein and Joel Wallman (Cambridge University Press, 2000), 97-129; Steven D. Levitt, "Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six That Do Not," *Journal of Economic Perspectives* 18, no. 1 (Winter 2004): 163-190, <http://pricetheory.uchicago.edu/levitt/Papers/LevittUnderstandingWhyCrime2004.pdf>.

<sup>11</sup> Levitt (2004).

<sup>12</sup> Pew Center on the States, "State of Recidivism," April 2011.

<sup>13</sup> Pew Center on the States, "2012 Georgia Public Safety Reform." July 2012.



probation and parole, and other programs and services that work to cut crime and increase criminal justice system effectiveness.<sup>14</sup>

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<sup>14</sup> Council of State Governments, "Pennsylvania General Assembly Sends Justice Reinvestment Bill to Governor Corbett," October 2012. Accessed at: <http://justicereinvestment.org/files/10-18-12-CSG-JC-Justice-ReinvestmentPR.pdf>

## Sidebar: Oregon's Prison Forecast

Oregon's prison population has grown nearly 50 percent since 2000. Without policy change, there is no reason to expect that it will stop growing now. Oregon's Office of Economic Analysis (OEA) has conducted the state's correctional forecasts since 1995, releasing an updated forecast every six months in April and October. In 2000 OEA's forecasting model was revised and since then has become increasingly accurate.

Prison population forecasts include two different types of growth: baseline growth (or the continuation of current growth) and growth from new policies. Forecasters have a wealth of data to use when forecasting baseline growth (including population demographics, crime rates, and criminal justice practices affecting admissions and length-of-stay in prison). In Oregon, the prison population's steady growth during the past two decades suggests continued baseline growth.

Forecasting the impact of new policies is more complicated because it relies on estimates about how those policies will be implemented. A Forecast Advisory Committee of criminal justice experts approves all forecast assumptions regarding policies and practices in the criminal justice system and the impact of policy changes on the corrections populations.

The OEA forecasters are unusually well-equipped to forecast on the Measure 57 (M57) impact (that represents a significant portion of the 10-year forecast) because they rely not just on assumptions from the Advisory Committee but also on data from the brief implementation of M57 in 2009. Additionally, this year's October forecast has another eight months of data on how M57 has been implemented since it came back into effect in January of this year.

The October 2012 forecast projects a 14 percent growth in Oregon's prison population over the next 10 years (from 14,234 inmates to 16,534 inmates). Baseline growth accounts for approximately 60 percent of this 2,300 bed growth, with the remainder attributed to recently or soon-to-be implemented policies.

Charting a sustainable path for the next 10 years is critical for budgeting and planning purposes, but prison population growth is not just a distant problem. Approximately half of the 10-year growth is projected to occur in the next two to three years. This imminent growth is predicted with more confidence because short-term prison forecasts are historically very accurate. The past 20 two-year forecasts (going back to 2000) have had an accuracy rate within one percentage point.<sup>15</sup>

The Forecasting Advisory Committee consists of:

Honorable Julie Frantz (Chair), Multnomah County Chief Criminal Judge

Aaron Felton, Board of Parole & Post-Prison Supervision

John Haroldson, Benton County District Attorney

Greg Hazarabedian, Public Defender Services of Lane County

Craig Prins, Criminal Justice Commission Executive Director

Donald Rees, Multnomah County Deputy District Attorney

Colette Peters, Director of the Department of Corrections

Jeffery Wood, Director of Marion County Community Corrections

Diana Simpson, Benton County Sheriff

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<sup>15</sup> Oregon Office of Economic Analysis. Presentation to the Corrections Population Forecast Advisory Committee. September 2012.

## Findings on Oregon's Corrections System

During the past six months, the Commission conducted an extensive review of Oregon's sentencing and correction data to better understand and evaluate the state's public safety system and corrections spending.

Snapshots of Oregon's prison population over the past decade show a system largely focused on violent and sex offenders. This Commission emphasized that it was commendable that Oregon has traditionally focused its prison beds on those offenders who deserve them most. However, the pressing issue that commanded the Commission's attention was not a snapshot of the prison population but rather the trends that have contributed to prison growth over the past decade and the trends that will drive the prison population in the coming decade. In particular, the Commission focused on sentencing and corrections policies driving Oregon's prison growth.

Prison populations rise and fall according to two variables: 1) how many offenders are admitted to prison, and 2) how long those offenders remain behind bars. Beyond the crime control benefit, many Oregonians support the use of prison and even long prison terms for serious, violent offenders for retributive purposes. However, there is a growing body of research showing that for many low-level offenders, prison terms are more likely to increase than to reduce recidivism.<sup>16</sup> At the same time, for a substantial number of offenders there is little or no evidence that keeping them locked up longer prevents additional crime. This research has provoked serious questions about whether long prison terms are the most effective way to increase public safety.

There are two methods by which length of stay in prison could benefit public safety: incapacitation (the reduction of current criminal involvement because offenders are physically held in prison) and deterrence (the reduction of future criminal involvement because of the increasing severity of the current penalty). Incapacitation is very effective at preventing individual offenders from committing crimes (though the number and type of crimes averted varies substantially by offender and offense type) and it comes at a substantial cost. The best measurement for whether deterrence works is whether similar offenders, when subjected to different terms of incarceration, recidivate at different levels. The most methodologically sophisticated research studies (those matching offenders to minimize the effect of pre-existing differences) find no significant effect, positive or negative, of longer prison terms on recidivism rates.<sup>17</sup> A 2012 study of three states found that between 28 and 57 percent of nonviolent offenders could have been released between three months and two years ahead of schedule without losing either incapacitation or deterrent effects.<sup>18</sup> A study of violent inmates in Georgia showed that the ability to earn time had a greater effect on reducing recidivism than longer lengths of stay.<sup>19</sup>

Based on this research, many states are reducing length of stay through the reclassification of offense types (Alabama, Arkansas, California, Colorado, Delaware, Kentucky, Montana, South Carolina, and Washington among others), revision of mandatory minimum laws (including Michigan and New York),

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<sup>16</sup> Daniel S. Nagin, Francis T. Cullen, and Cheryl Lero Jonson, "Imprisonment and Reoffending," in Michael Tonry (ed.), *Crime and Justice: A Review of Research*, Vol. 23 (Chicago: University of Chicago Press, 2008).

<sup>17</sup> G. Matthew Snodgrass, Arjan A. J. Blokland, Amelia Haviland, Paul Nieuwbeerta, Daniel S. Nagin, "Does the Time Cause the Crime? An Examination of the Relationship Between Time Served and Reoffending in the Netherlands," *Criminology* 49 (2011): 1149–1194; Thomas A. Loughran, Edward P. Mulvey, Carol A. Schubert, Jeffrey Fagan, Alex R. Piquero, and Sandra H. Losoya, "Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders," *Criminology* 47 (2009): 699–740.

<sup>18</sup> Pew Center on the States, "Time Served: The High Cost and Low Return of Longer Prison Terms," June 2012.

<sup>19</sup> Ilyana Kuziemko, National Bureau of Economic Research Working Paper (2007): "Natural experiment when Georgia eliminated parole for violent offenders."

expansion of earned time opportunities (including Colorado, Kansas, Pennsylvania, and South Carolina), and alteration of parole policy and practice (including Georgia and Mississippi).

Despite these research findings, Oregon has increased both its prison admissions and the amount of time offenders stay in prison during the past decade.

### *Admissions*

Oregon has traditionally sentenced the vast majority of its felony offenders to probation rather than to prison. However, in the past decade, Oregon has increased its use of prison sentences in lieu of probation and local jail sentences by 18 percent. The vast majority—90 percent—of this growth in the use of imprisonment for convicted felons was among offenders convicted of nonviolent offenses (including drug, property, and other nonviolent offenses).

Looking at Oregon's prison admissions over the past decade, the Commission found several trends that cut against the state's long-standing strategy of focusing its prison resources on violent and sex offenders. First, Oregon has been increasing its use of prison as a sanction for "technical violations" of supervision. Eighteen percent of all prison admissions in 2011 were offenders admitted on a technical violation of supervision. These violations include both noncriminal infractions of the rules of supervision and criminal conduct that would not have resulted in prison but for the fact that the offender was already on supervision. Since 2000, technical violators of probation as a share of all prison admissions increased by 26 percent.

Second, offenders convicted of nonviolent crimes have increased by 10 percent as a share of all prison admissions during the past decade. This includes offenders convicted of property offenses (this admissions group grew by eight percent as a share of all admissions) and "other" nonviolent offenses (a DOC category largely comprised of DUI and weapons offenses). Offenders convicted of "other" offenses grew by 42 percent in that same period as a share of all prison admissions. Finally, half of the top 10 offenses resulting in prison admissions in 2011 were drug or property offenses.

Nearly half the projected prison growth in the next decade will be a result of M57, an initiative passed by voters in 2008. M57 reduces the number of prior offenses needed for a prison sentence and creates mandatory prison sentences for certain drug offenses, thus increasing the number of drug and property offenders admitted to prison.

### *Length of Stay*

As Oregon has been sentencing more offenders, including more nonviolent offenders, to prison, the state has also been handing down longer sentences for all offense types. Since 2000, length of stay for drug offenses has climbed 22 percent and length of stay for technical violations of probation has risen 20 percent. All in all, offenders are staying in prison longer in 2011 than at any other point in the past decade.

Finally, while much of the prison growth from Measure 11 (M11), which was approved by voters in 1994, has leveled off in the second half of this last decade, M11 is still a major contributor to the prison population (accounting for 14 percent of 2011 admissions but 49 percent of the prison time imposed in 2011) due to the lengthy sentences for offenses within that mandatory minimum sentencing scheme as well as the lengthy sentences for M11 indictments that ultimately result in lesser convictions.

Again, nearly half the projected prison growth in the next decade will be a result of M57. This growth is due in part because the measure increased sentence lengths for certain drug and property offenders.

### *Community Corrections*

Oregon has received recognition from across the nation for its early endorsement of evidence-based practices in community corrections. Since 2003, Oregon has statutorily required that a portion of its investments in corrections programs be evidence-based and cost-effective.<sup>20</sup> This unique support for research-based correctional practices has contributed to one of Oregon's most pronounced public safety achievements: while other states struggle to drive their recidivism rates down, Oregon public safety professionals have succeeded in cutting the recidivism rate by 21 percent in the past decade alone.<sup>21</sup> A 2011 study that compared post-prison recidivism rates across states found that Oregon had the lowest rate in the country.<sup>22</sup>

The Commission conducted a review of current research guiding evidence-based practices in corrections and then assessed Oregon's practices against these standards. Not surprisingly, Oregon corrections programs largely adhere to the research about what works to reduce recidivism. For example, many states do not supervise certain offenders when they are released from prison, despite evidence that supervision within the first year of release is crucial to reducing recidivism. In Oregon, every offender released from prison is supervised through post-prison or parole supervision. Also, Oregon incorporates risk and needs assessments at various points across the corrections process in order to target supervision and services to the appropriate offenders.<sup>23</sup>

Another practice supported by research is to respond to violations of supervision with swift, certain, and proportional sanctions. Too often, offenders accumulate many violations before facing any type of consequence. When offenders are finally cited back to court, prison seems the only appropriate sanction for the ongoing pattern of violations. This is not swift, certain, nor proportional, and it undermines the deterrent value of the sanctions. To Oregon's great credit, supervision officers for nearly two decades have used a structured sanctioning grid that boosts swiftness, certainty, and proportionality and has contributed to the reduction in recidivism.<sup>24</sup>

The Commission did identify some gaps in Oregon's use of evidence-based practices. Though Oregon does rely on risk and needs assessments at various stages in the criminal justice process, there is no requirement to conduct risk and needs assessments prior to setting conditions of probation supervision. Risk and needs assessments are conducted once offenders are transferred to supervision but this is after conditions of probation have been set by the court. As a consequence, probation conditions may not target appropriate offenders or risk factors. Also, although supervision officers do use a structured sanctions grid to respond swiftly and proportionately to violations of probation, these structured sanctions can be waived at sentencing by the judge. In these instances, probationers need to be taken

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20 SB267 <http://www.leg.state.or.us/03reg/pdf/ESB267.pdf>

21 This decline is based on a felony reconviction inside of three years. Comparing the first half of 1999 to the first half of 2009, probation recidivism declined 21% to 18.8% (this is measured from the beginning of the probation term out 36 months) and post-prison/parole recidivism declined 21% to 25.6% (this is measured from release to post-prison supervision/parole out 36 months).

22 Pew Center on the States, "State of Recidivism," (2011). This study measures recidivism as return to prison within 3 years.

23 An offender's risk of recidivism is only one element among many used to make decisions throughout the criminal justice system. Probation and parole agencies, prison and jail systems, and the courts must evaluate numerous factors about the offense (such as the severity of the crime and harm to victims) and the offender and then must consider multiple goals (including retribution, incapacitation, general deterrence, specific deterrence, rehabilitation, and victim restoration) before selecting an appropriate course of action. A recidivism risk score provides valuable information but is just one piece of information in a highly complex set of deliberations, and it should never alone determine decisions. See "Pew Risk Memo to Commission" <http://www.oregon.gov/CJC/Pages/2012ComPubSaf.aspx>

24 [http://www.oregon.gov/DOC/CC/pages/structured\\_sanctions.aspx](http://www.oregon.gov/DOC/CC/pages/structured_sanctions.aspx)

back to court for noncriminal violations, a practice that can result in uncertain, delayed or disproportionate sanctions.

Earned discharge credits can provide a powerful incentive for offenders to participate in programs, obtain and retain a job, and remain drug- and alcohol-free. The Commission found that Oregon probation and post-prison supervision does not allow for earned discharge.

Evidence-based supervision requires a balance of sanctions and treatment options to target offenders' risks and needs. After assessing Oregon's use of evidence-based practices, the Commission found that the most pressing threat to sustaining Oregon's recidivism reduction is the shortfall and geographic variation of local sanctions and community-based treatment options, often funded precariously by private or federal dollars.

By way of example, the four counties in the table below on the left<sup>25</sup> each have markedly different access to the sanctions listed on the Oregon sanctioning grid. Of the five sanctions listed on the sanctioning grid, the only sanction that all four counties have available is jail, and while all counties have a jail, not all counties have jail space available. In the table below on the right <sup>26</sup>are four counties close in geographic proximity but with widely different access to treatment and services.

Sample of Available Sanctions by County	Marion	Josephine	Harney	Clackamas	Sample of Available Treatment and Services by County	Benton	Lane	Linn	Polk
Jail	X	X	X	X	Cognitive	X			X
Day Reporting Center	X		X		Domestic Violence		X	X	
Substance Abuse - Inpatient			X	X	Employment		X		
Corrections Work Center	X			X	Mental Health	X	X		X
Electronic Home Detention	X	X			Sex Offender Treatment	X	X	X	X

A 2011 survey of Oregon community corrections directors<sup>27</sup> revealed a significant lack of resources in community corrections and concluded that these shortfalls were detrimental to evidence-based supervision. For example, a third of the counties surveyed reported that GPS and other electronic monitoring were not available to manage offenders in their jurisdictions. Additionally, after Community Corrections sustained state budget cuts<sup>28</sup> in 2011, half of Oregon's counties experienced reductions in substance abuse outpatient treatment and mental health services.

The impacts, illustrated by Umatilla and Klamath Counties, can be dire. As a result of budget reductions over the past several years, Umatilla County has closed its residential treatment center, its Day Reporting Center Program, its Early Re-entry Program, and its subsidized sex offender treatment. In Klamath County, community corrections has reduced staffing levels from 39 employees on July 1, 2010 to 19 employees on July 1, 2012 and has also reduced contracts for sex offender treatment and domestic violence treatment by 23 percent since July 1, 2010.

<sup>25</sup> Oregon Department of Corrections

<sup>26</sup> Ibid.

<sup>27</sup> OACCD Member Survey Results, Oregon Association of Community Corrections Directors, November 2011

<sup>28</sup> Community Corrections sustained \$26.1 million in cuts in 2011

Recognized nationally for its approach to community corrections and significant recidivism reduction, Oregon's community corrections agencies have faced a series of budget reductions that are placing their practices and outcomes in jeopardy. The loss of programs and services and the limited availability of jail beds have forced these counties to make very difficult decisions that transfer corrections and cost burdens to the state prison system and, more importantly, undercut public safety achievements.

## **Policies to Protect Public Safety, Control Prison Costs, and Hold Offenders Accountable**

Over the years, Oregon has achieved remarkable public safety outcomes through its sentencing and corrections system. The Commission's goal is to fine-tune Oregon's already advanced public safety system in order to protect public safety, control prison costs, and hold offenders accountable. Based on Oregon's data, the growing body of research about what works in corrections, and examples of successful innovations from states across the nation, the Commission proposes the following set of policies, grouped under five objectives:

- Ensure prison beds are focused on serious violent offenders
- Incentivize good behavior and reduce the likelihood of recidivism
- Enhance evidence-based, cost-effective community supervision practices
- Establish performance objectives and measure outcomes
- Promote sustainable use of corrections resources

### **Ensure Prison Beds Are Focused on Serious Violent Offenders**

#### ***1. Weight Thresholds for Marijuana***

Oregon's sentencing options for possession and, separately, manufacturing and distribution of marijuana are more severe than those under federal law. Sentences are longer and the quantity of marijuana triggering a long sentence is less than required under federal law. While these offenses are not significant drivers of the prison population, in some cases they lead to offenders occupying expensive prison beds for extended periods.<sup>29</sup> Reducing the sentence ranges for marijuana offenses was recommended by the Oregon District Attorneys Association (ODAA) and would be in keeping with the strategy to concentrate prison resources on serious violent offenders.

**Recommendation:** Align marijuana weight thresholds in Oregon with the federal marijuana weight thresholds and set sentencing ranges according to the new thresholds. This reform would be prospective and would not apply to offenders currently in the custody of DOC.

#### ***2. Presumptive Sentences for Driving While Suspended***

In Oregon, felony Criminal Driving While Suspended or Revoked (DWS) is a Class B felony and is classified as crime category 6 with a sentencing range from 90 days probation to 25 months in prison. While this offense is not a significant driver of the prison population, some of these offenders occupy expensive prison beds for an extended period.<sup>30</sup> Reducing penalties for DWS offenses was recommended by the ODAA and would be in keeping with the strategy to concentrate prison resources on serious violent offenders.

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<sup>29</sup> Marijuana offenders made up approximately two percent of admissions in 2011 and had an average length of stay of 17 months.

<sup>30</sup> Based on the 41 admissions to prison in 2011 the average length of stay is 17 months

**Recommendation:** Reduce penalties for felony DWS sentences so that the presumptive sentence is either a jail or probation sentence. This reform would be prospective and would not apply to offenders currently in the custody of DOC.

### ***3. Sentences for Robbery 2<sup>nd</sup>, Assault 2<sup>nd</sup>, and Sex Abuse 1<sup>st</sup> - M11 Modification***

The Commission decided not to recommend any changes to 19 of the 22 M11 offenses. The three offenses included in this recommendation<sup>31</sup> warrant a different approach (and have already received some attention from the legislature<sup>32</sup>) because of the broad spectrum of criminal conduct encompassed by their definitions.

For example, Robbery 2<sup>nd</sup> can include everything from two teenagers pushing a man down and stealing his cell phone to a person holding an unloaded gun at someone's head and demanding money.<sup>33</sup> Assault 2<sup>nd</sup> can capture everything from causing "substantial pain"<sup>34</sup> by using a shoe as a weapon to beating someone into a life-threatening medical condition<sup>35</sup>. Finally, Sex Abuse 1<sup>st</sup> includes everything from an adult patting the clothed buttocks of a 13 year old for purposes of sexual arousal to forcible sexual contact short of rape.<sup>36</sup> In each of these comparisons, there are significantly different types of criminal conduct and, possibly, very different impacts on the victims of the offenses.

Option 1: Mandatory minimum sentencing restrictions do not permit the courts to exercise discretion that responds to the particulars of the offense or the criminal history of the offender. This leads to extended stays in expensive prison beds by offenders who could be better managed with shorter prison terms and more intensive community supervision. Moving these sentences into a penalty range with high maximums (available so that judges can apply appropriate and lengthy sentences for those offenders who warrant them) while lowering minimums will help the courts tailor punishments that fit the crimes and ensure that prison beds are reserved for serious violent offenders.

**Recommendation 1:** Remove Robbery 2<sup>nd</sup>, Assault 2<sup>nd</sup>, and Sex Abuse 1<sup>st</sup> from the list of offenses with required mandatory minimum sentences and allow judges to sentence offenders based on current sentencing guidelines, which take into account criminal history and seriousness of offense. This reform would be prospective and would not apply to offenders currently in the custody of the DOC.

Option 2: A lower mandatory minimum threshold would lessen the severity of the sanctions in these offenses but would limit the ability of judges to take into account criminal history and seriousness of offense.

**Recommendation 2:** Reduce the mandatory minimum sentence for Robbery 2<sup>nd</sup>, Assault 2<sup>nd</sup>, and Sex Abuse 1<sup>st</sup> to 36 months. This reform would be prospective and would not apply to offenders currently in the custody of DOC.

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<sup>31</sup> These three crimes accounted for approximately 10 percent of prison admissions for a new crime in 2011 and had average expected length of stay of 63, 58, and 109 months, respectively.

<sup>32</sup> SB 1049 <http://www.leg.state.or.us/10ss1/measpdf/sb1000.dir/sb1049.intro.pdf>

<sup>33</sup> ORS 164.405

<sup>34</sup> ORS 161.015(7)

<sup>35</sup> ORS 163.175

<sup>36</sup> ORS 163.427



#### **4. Sentences for Certain Repeat Property and Drug Offenses – M57 Modification**

Over the past few years, restrictive sentencing changes have increased the proportion of offenders in prison for property and drug offenses. There are 16 property offenses and 21 drug offenses for which a second conviction requires a de facto mandatory sentence. The judge is restricted from imposing a downward departure or probation sentence depending on the criminal history. These sentencing restrictions are projected to be a major driver of the continued prison growth as noted previously.

Option 1: Altering the sentence restrictions and giving judges a sentencing range including high maximums (so that judges can apply appropriate and lengthy sentences for those offenders who warrant them) while lowering minimums would help the courts tailor punishments that fit the crimes and further focus prison resources on serious violent offenders.

**Recommendation 1:** Provide a wider sentence range for repeat property offenders (19-24 months or 13-18 months, depending on the seriousness of the offense and the criminal history) and retain the mandatory sentence requirements for repeat drug offenders who target minors. This reform would be prospective and would not apply to offenders currently in the custody of DOC.

Options 2: Allowing judges to deviate from the sentencing restrictions in specific cases would enable judges to impose a less severe sentence in extenuating circumstances.

**Recommendation 2:** Establish an opt-out provision (available to judges only in extenuating circumstances) that allows departure from the required sentence. This reform would be prospective and would not apply to offenders currently in the custody of DOC.

#### **Incentivize Good Behavior and Reduce Recidivism**

##### **5. Transitional Leave**

The DOC is able to prepare certain offenders<sup>37</sup> for release with a 30-day period of community supervision prior to release in order to support their successful reentry. During this time, the offender continues to be a DOC inmate and can be returned to prison at any time. Offenders who successfully complete the 30-day reentry period are transferred to post-prison supervision.

Currently, the DOC and community corrections do not proactively assist eligible offenders with their transitional leave applications or transitional plans. Additionally, some of Oregon's community corrections professionals assert that 30 days is not a sufficient period to take on the complex work of reentry. Expanding transitional leave would ensure that more offenders would be better prepared for successful reentry into the community.

**Recommendation:** Extend transitional leave to 90 days and strengthen the transitional leave application process such that DOC and community corrections proactively assist eligible inmates in applying and preparing a case plan. This reform would be prospective and would not apply to offenders currently in the custody of DOC.

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<sup>37</sup> Measure 11 offenders are not eligible for transitional leave nor are offenders sentenced prior to the sentencing guidelines (prior to 1989; parole eligible population). Also, the DOC is restricted from releasing an offender on transitional leave unless the court authorizes the defendant's eligibility with specific language in the sentencing judgment.

## 6. *Earned Time*

Offenders are staying in prison longer in Oregon than at any other point in the past decade and this increased length of stay is a driver of prison population growth. As discussed above, research suggests that for many offenders length of stay can be decreased without affecting recidivism, particularly when combined with programs proven to reduce recidivism and participation incentives.

For eligible offenders in Oregon, earned time is periodically reviewed and calculated by the DOC. Half of all eligible earned time can be earned for participation in programs and the remaining half can be earned for good behavior. From July 2013 forward, earned time eligible offenders<sup>38</sup> will be able to earn as much as 20% off their sentence (with the possibility of exiting prison after serving 80% of their sentence).

**Recommendation:** Expand earned time so that eligible offenders can earn an additional 10 percent (with the possibility of exiting prison after serving 70 percent of their sentence) for participating in programs and exhibiting positive conduct. The Commission emphasized that this policy must include rigorous conditions. Offenders would have to *earn* their time off. Earned time should never be automatically given to offenders as credit for time simply spent in prison. Additionally, this reform would not be available to offenders with non-qualifying concurrent sentences, would not require resentencing of any offenders, and would not apply to offenders currently in the custody of DOC.

## 7. *Alternative to Incarceration Program*

DOC operates an Alternative to Incarceration Program (AIP) that consists of two phases: a six-month institutional phase with 14-16 hours per day of highly structured and regimented routine and a three-month non-institutional phase, also with structured programming. Offenders can earn a maximum amount of 20 percent additional time off their prison stay for successful completion of both AIP phases. Certain crimes are statutorily ineligible for AIP, such as M11 and all sex crimes.<sup>39</sup> Prior to 2009, the DOC could release an offender on AIP so long as the court did not restrict the offender from AIP in the sentence.

**Recommendation:** Expand AIP access by changing AIP to an “opt out” instead of an “opt in,” making AIP the default option that can be affirmatively prohibited by the sentencing judge. This policy would be prospective and would not apply to offenders currently in the custody of DOC.

## 8. *Earned Review for Youth Offenders: “Second Look”*

Some youth offenders aged 15 to 17 who are convicted in adult court are eligible to be evaluated by judges after serving half of their sentences in order to determine if they can be safely transferred to community placement. This is called “second look” in statute.<sup>40</sup> During this review, a judge determines whether the eligible youth offender has been “rehabilitated and reformed,” based on the youth’s behavior and participation in recidivism reduction programs. This review is not available for M11 youth offenders (accounting for 27 percent of the Oregon Youth Authority standing population), and also can be denied to other youth offenders as a part of a plea agreement.

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<sup>38</sup> Repeat offenses under the “Denny Smith Law” and Measure 11 offenses are statutorily ineligible for any earned time that would reduce the minimum sentence ORS 137.635 and ORS 137.700. Accessed at: <http://www.leg.state.or.us/ors/137.html>

<sup>39</sup> M11, assaults in the 3<sup>rd</sup> degree, incest, failure to perform duties of a driver to someone seriously injured as a result of an accident, and sex crimes/attempts. ORS 137.751

<sup>40</sup> ORS 420A.203

**Recommendation:** Allow all youth offenders sentenced as adults to be reviewed by a judge at 50 percent and 75 percent of their sentences upon petition by the Oregon Youth Authority (OYA). This policy would be prospective and would not apply to youth offenders currently in the custody of OYA.

## **9. Community Corrections Earned Discharge**

Currently in Oregon, earned discharge is not available to offenders on probation or post-prison supervision for complying with the terms of supervision, participating in recidivism reduction programs, or paying victim restitution.<sup>41</sup> The average length of supervision for probationers has increased from 1.3 years in 2000 to 1.8 years in 2011 (a 38 percent increase) and post-prison supervision periods have increased from 1.3 years in 2000 to 1.5 years in 2011 (15 percent growth).

States like Arkansas, Arizona and Missouri have implemented earned credits in order to incentivize good behavior, reduce recidivism, and allow community supervision officers to focus more time, supervision and resources on higher-risk offenders.

**Recommendation:** For offenders on probation and post-prison supervision, allow community supervision officers to calculate day-for-day earned time and terminate supervision based on credit earned for satisfying the conditions of supervision and participation in recidivism reduction programs.

*Note:* The Commission recognized that without explicit efforts, the implementation of earned discharge could negatively affect community corrections budgets. The Commission recommends earned discharge if probation and post-prison funding allocations are amended so that they are based on supervision intakes rather than volume. This would allow community corrections to implement this best practice without triggering additional budget cuts.

## **Enhance Evidence-Based, Cost-Effective Community Supervision Practices**

### **10. Structured Sanctions**

Oregon has been a leader in the use of swift, certain, and proportional sanctions to respond to violations of supervision conditions. Oregon's probation officers use a research-proven sanction grid including further restrictions on movement, additional drug testing or substance abuse treatment, curfews, more frequent reporting, and other sanctions. These sanctions are targeted to deter or respond to the offending behavior and designed to get the immediate attention of violating probationers. Research shows that this kind of measured, immediate response reduces the likelihood of revocation hearings and the use of revocation sanctions and jail.<sup>42</sup>

A provision in the current statute guiding structured sanctions can be used to prohibit supervising officers from applying structured sanctions and instead require that offenders be returned to court for non-criminal violations. A requirement that probation officers be allowed to use graduated sanctions on all probationers will enhance public safety and reduce costs related to the use of court time and local jail beds for non-criminal violations.

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<sup>41</sup> ORS 144.085

<sup>42</sup> Martin B, Van Dine S. Examining the Impact of Ohio's Progressive Sanction Grid, Final Report. Office of Policy and Offender Reentry, Ohio Department of Correction. August 2008.

**Recommendation:** Prohibit the judgment order from restricting the use of structured sanctions in response to non-criminal violations of supervision.

### ***11. Supervision Conditions***

The conditions of probation supervision, such as frequency of reporting and participation in cognitive therapy or substance abuse treatment, should be based on the offender's individual risks and needs. In Oregon, supervision conditions are set by the court after sentencing but not necessarily before assessment of risks and needs. Probation officers do use a risk and needs assessment tool to further refine the supervision plan, but the conditions previously set by the court must be followed even if they conflict with the probation plan. This can lead to over-supervision of offenders or conditions that are expensive to carry out and unrelated to public safety outcomes.

The Oregon Board of Parole and Post-Prison Supervision recently established a new policy requiring that a risk and needs assessment be conducted prior to setting any supervision conditions. The policy requires the supervising officer in the community to review the assessment results and set supervision conditions based on the risk to reoffend and programmatic conditions based on identified needs. A similar policy for probationers would make their supervision in the community more effective and efficient.

**Recommendation:** Require conditions of probation be determined with the guidance of a risk and needs assessment by the supervising officer at the community corrections level.

## **Establish Performance Objectives and Measure Outcomes**

### ***12. Oversight Entity***

Reforms to Oregon's sentencing and corrections system will require careful implementation and oversight. Several states that have undertaken similar comprehensive criminal justice reforms have established time-limited entities to track implementation and to report on the outcomes.

**Recommendation:** Establish an oversight entity, including representatives from the executive, legislative, and judicial branches as well as from across the public safety sector, to track the implementation and outcomes of the public safety reforms. For the next four years, the entity should meet quarterly and submit annual progress reports to the Governor and the legislature.

### ***13. Definition of Recidivism***

States, localities, and research institutions measure recidivism differently. Oregon's current measure of recidivism, a felony conviction within three years of release from prison, is a common measure across the field. However, this definition, as with all others, has limitations in what it indicates about offender behavior and public safety. Since recidivism rates frequently are used to judge the effectiveness of correctional agencies, it is important to look at the rates separately for offenders of different risk levels. This will help paint a more accurate picture of system performance as Oregon seeks to further concentrate its prison space on serious, violent and chronic offenders—that is, inmates who will tend to have a higher risk of recidivism.

**Recommendation:** Establish and expand the definition of recidivism in statute to include re-arrest, re-conviction, and re-incarceration. Require that these recidivism outcomes be reported at least annually to an oversight entity, and that the rates be reported by offender risk levels.

#### ***14. Specialty Courts Standards***

Oregon's specialty courts (drug courts, veterans' courts, and mental health courts) are known for effectively addressing the risks and needs of participating offenders. These courts, operated throughout the state, have shown an ability to reduce recidivism and stabilize successful participants, which improves public safety and uses few, if any, corrections resources. However, these courts operate independently from county to county with few standardized practices, including offender eligibility criteria, supervision or treatment standards, or data collection protocols. Drug court practices are based on the 10 key components established by the National Association of Drug Court Professionals, but there are no specific statewide standards which the courts must follow.<sup>43</sup>

A 2010 cost-benefit study of Oregon's drug courts identified significant positive results. The analysis, which looked at drug court investments, recidivism outcomes, and the costs of recidivism, concluded that "there is a net benefit to the public safety system of at least \$2.41 for each \$1 invested in drug court." Certain courts had greater recidivism reduction rates than others and the report found that the use of the key components was not consistent throughout the state.<sup>44</sup>

**Recommendation:** Require statewide standards based on the 37 recommendations from the Oregon study and the key components document for data collection, staff training, specialty court team composition, and eligibility criteria that focus on moderate- to high-risk offenders.

#### ***15. Correctional Forecasts***

OEA releases a prison forecast every six months (in April and October) that includes information about forecasted prison growth over a 10-year period.<sup>45</sup> OEA has conducted the state forecast since 1995, and has used its current forecasting model since 2000. The forecast report is crucial to ensuring policy makers and taxpayers have a comprehensive understanding of Oregon's correctional population over time.

**Recommendation:** Require that OEA publish its margin of error and include a breakdown of growth in its six-month forecast reports such that any growth or decline is attributed, where possible, to specific policies or to specific components of the "baseline" (e.g. population demographics or crime trends).

#### ***16. Program Evaluation***

SB267,<sup>46</sup> passed in the 2003 legislative session, demonstrates the state's commitment to investing in what works by requiring that 75 percent of Oregon's correctional programs be evidence-based and cost-effective. However, the statute does not detail how these programs should be evaluated to meet these requirements. As a result, program evaluation is inconsistent across the state. Along with several other states, Oregon has built substantial capacity to conduct cost-benefit analysis of in-state programs and policies. Oregon's analytic capacity and software is housed at the Criminal Justice Commission (CJC) and

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<sup>43</sup> Defining Drug Courts: The Key Components. National Association of Drug Court Professionals, Drug Court Standards Committee, Bureau of Justice Assistance, October 2004 (Reprinted).

<sup>44</sup> Oregon Drug Court Cost Study: Statewide Costs and Promising Practices <http://nicic.gov/Library/025100>

<sup>45</sup> ORS 184.351

<sup>46</sup> <http://www.leg.state.or.us/03reg/pdf/ESB267.pdf>

is capable of evaluating a host of correctional programs based on an analysis of available research to identify what works; a calculation of Oregon's potential return on investment; an assessment of risk; and a ranking of Oregon's programs based on their costs and benefits.

**Recommendation:** Strengthen statutory standards for the terms “evidence-based” and “cost-effective” by requiring the use of the CJC Cost-benefit Analysis tool to assess and guide all state investments in correctional programs. Additionally, strengthen statutory standards for evaluation to encourage the best possible evaluations of correctional programs including randomized controlled trials where possible and appropriate.

### ***17. Fiscal Impact Notes***

Currently, agencies must submit an Agency Fiscal Impact Statement form when a legislative measure or concept has an actual or potential fiscal impact on the agency.<sup>47</sup> A fiscal impact means an increase or decrease in state agency expenditures and/or revenues and/or full time equivalent positions. The form must include agency written analysis, agency quantitative analysis, and descriptions of other considerations. It currently requires information regarding the fiscal impact exclusive to the next biennium.

Many sentencing and corrections reforms do not affect biennial budgets, but have significant impacts on budgets four, six, and eight years out or longer. Fiscal impact statements that cover a longer period of time would give policy makers a more accurate account of the budget implications of proposed sentencing and corrections policies.

**Recommendation:** Require a 10-year time horizon in required fiscal impact statements for legislation and initiatives that change sentencing or corrections policies.

## **Promote Sustainable Use of Corrections Resources**

### ***18. Performance Incentive Funding***

Currently, local public safety professionals who reduce their county's impact on the state prison population through decisions made in sentencing, supervision, and revocation are not fiscally compensated for doing so. For instance, if a court holds a probation violator accountable with a swift and certain sanction in the community, local government continues to shoulder the cost of supervision when it could have reduced that cost by revoking the violator to state prison. Savings at the state level are not reinvested in front-line public safety agents or agencies.

In order to build community corrections and local law enforcement capacity, several states have implemented performance incentive funding models.<sup>48</sup> In one version of the model, participating counties enter into an agreement with the state to protect public safety while reducing their impact on the prison population by a specified percentage over a specified period of time. If reduction targets are met, counties receive funds for local public safety programs and practices.

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<sup>47</sup> 2012 Legislative Session INSTRUCTIONS FOR AGENCY FISCAL IMPACT STATEMENT FORM  
[http://www.leg.state.or.us/comm/lfo/2012\\_session/c%202012%20FIS%20Instructions.pdf](http://www.leg.state.or.us/comm/lfo/2012_session/c%202012%20FIS%20Instructions.pdf)

<sup>48</sup> The Vera Institute of Justice, Performance Incentive Funding. Accessed at: <http://www.vera.org/project/performance-incentive-funding>

**Recommendation:** Create a voluntary performance incentive grant program that provides fiscal incentives for counties to reduce recidivism and safely reduce their impact on the state prison population. This incentive funding program would be in addition to, and not supplant, the Community Corrections Partnership Act (SB 1145) baseline funding for community supervision. In addition, counties receiving a performance incentive grant would also have the option of holding offenders sentenced from 12-15 months in local control.<sup>49</sup>

### ***19. DOC Cost Per Inmate Per Day***

The majority of the state's 10-year \$600 million projected cost increase is tied to the growing inmate population and not to increases in the DOC cost per inmate per day. However, in addition to looking at those policies that would contain corrections costs by averting inmate population growth, the Commission also explored the possibility of containing the DOC cost per inmate per day.

Oregon's cost per inmate per day is currently \$82.48, which includes security, health care, food, recidivism reduction programs like mental health and drug treatment, and other operational costs, but excludes community corrections grants, debt service, capital construction, and new prison start-up costs. Since 1993-95, the overall DOC budget has grown by over 250 percent. In that time, the DOC cost per inmate per day has grown by 65 percent.<sup>50</sup> This demonstrates that while most of the growth in corrections costs is attributed to growth in the inmate population, some of the growing costs are associated with growth in the cost per day.

However cost per day should not be considered in a vacuum. Programs and practices that may add to the DOC cost per day have also been shown to reduce recidivism and improve public safety.

**Recommendation:** Set a legislative target to reduce the DOC cost per inmate per day by a specified percentage in the next 10 years and ensure that reducing the cost per day does not diminish public safety outcomes and holds harmless prison security and recidivism reduction programs.

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<sup>49</sup> Currently, Oregon felony offenders sentenced to 12 months or less serve their sentence in local control.

<sup>50</sup> Legislative Fiscal Office, Budget Information Report, "Correctional Spending Trends." September 2011.  
[http://www.leg.state.or.us/comm/lfo/correctional\\_spending\\_trends\\_2011.pdf](http://www.leg.state.or.us/comm/lfo/correctional_spending_trends_2011.pdf)

## Policy Options and Impacts

Some of the recommendations in the section above would greatly improve public safety and offender accountability but may not directly impact prison population or cost growth. Policies addressing probation conditions and program evaluation are examples of those policies that would not directly impact prison population growth. Other policy recommendations, like performance incentive funding, could impact prison population growth but the impact cannot be measured with any confidence at this time because impacts would vary widely depending on how many and which counties opt in to the program, what reduction targets are set for each county, and over what period of time.

The prison bed impacts of the policy packages below are based on those policies that can be confidently projected to impact prison population growth. However, it is important to note that because the Commission was interested in more than controlling prison population and cost growth, each package below also includes the remaining (non-impact) policies listed in the section above.

Policy Options	Package 1	Package 2	Package 3
Marijuana	x	x	x
DWS	x	x	x
M11 Modification Option 1	x		
M57 Modification Option 1	x		
M11 Modification Option 2		x	
M57 Modification Option 2		x	
Earned Time	x		
Transitional Leave	x	x	
AIP	x	x	
Juvenile Earned Review	x	x	
<b>Prison Bed Impacts (negative numbers indicate averted beds)</b>			
10-year DOC projected growth of 2,275 beds <sup>51</sup>			
10-year OYA projected growth of 47 beds <sup>52</sup>			
2-year DOC Bed Impact	-786	-278	-90
10-year DOC Bed Impact	-2,498	-1,128	-129
2-year OYA Bed Impact	-31	-8	0
10-year OYA Bed Impact	-197	-180	0

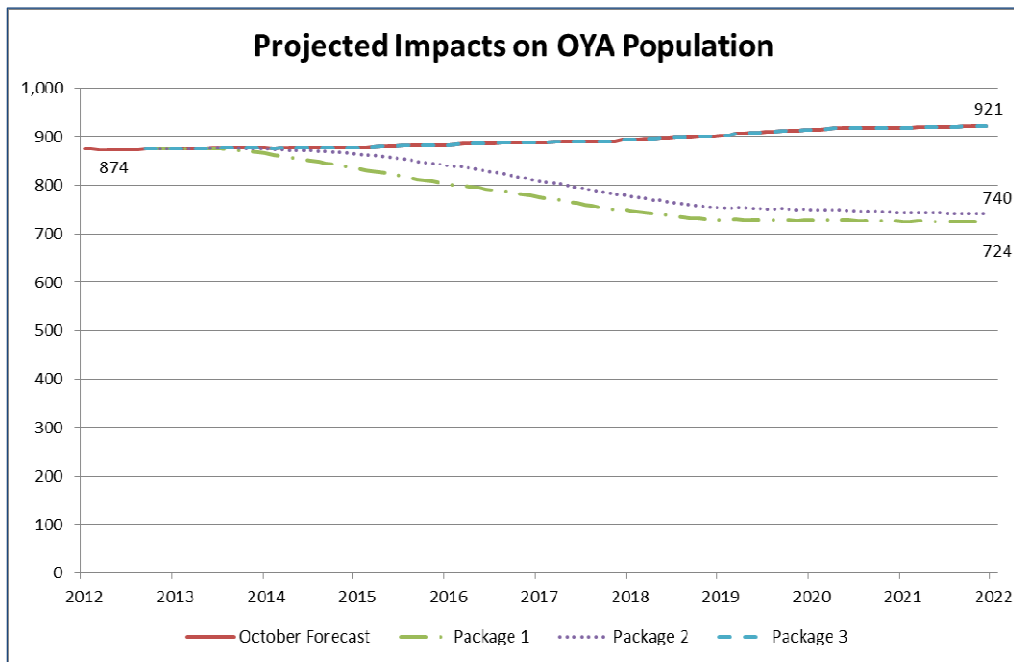
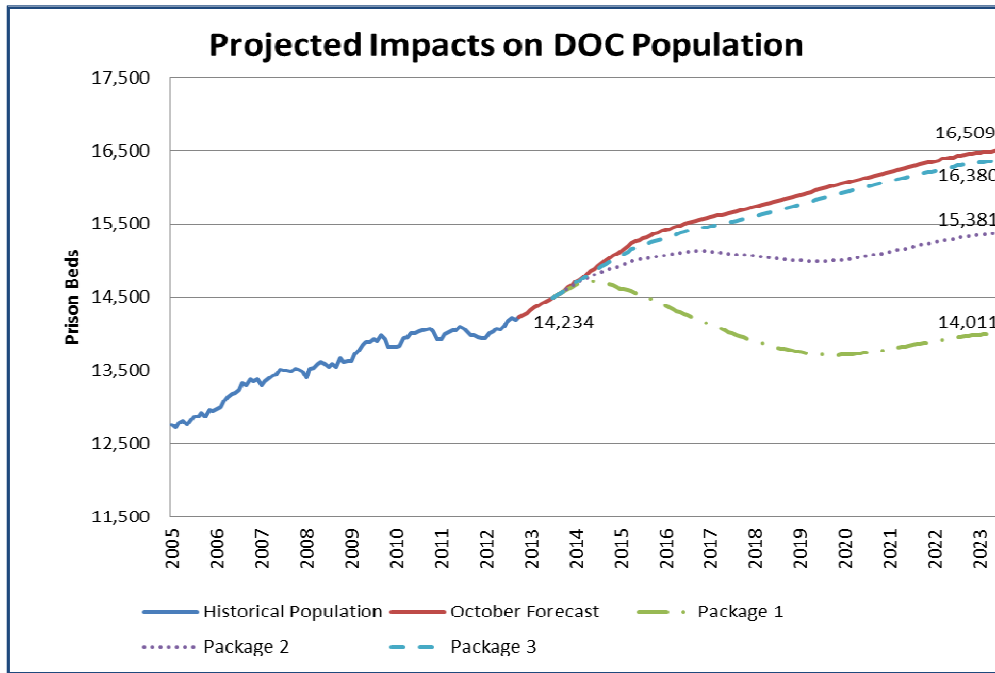
Taken together, these policies would meet the charge of the Governor's executive order by holding offenders accountable, protecting public safety, and averting all of the growth in the prison population projected for the next 10 years. Under this scenario, the DOC population would fall from what where it is today by approximately 220 beds rather than increase by approximately 2,300 beds. Package 1 would

<sup>51</sup> While the projected policy impacts were projected over a 10 year period beginning with an effective date of July 2013, 2,275 includes all growth projected from October 2012 to July 2023. The state forecasts that 253 beds will be needed between October 2012 and July 2013, and 25 beds added after the period shown here, between July 2023 and December 2023.

<sup>52</sup> The OYA forecast only goes until October 2022, therefore both the original forecast and policy impact forecasts end on that date. While the current projected OYA growth begins in October 2012, no growth is projected before the effective date for the policy impacts of July 2013.



also reduce the OYA close custody population by approximately 150 beds from where it is today rather than increase the population by approximately 50 beds (through policy changes affecting youth offenders sentenced in adult court) during the same period. At a minimum, this policy package would avert \$600 million in otherwise required spending.



Should Package 1 be adopted, the Commission strongly recommends that a portion of any savings be reinvested in programs and practices to improve public safety.

The Commission considered two other policy packages (Packages 2 and 3) with much more modest impacts on projected prison population and cost growth. These packages did not receive the support that Package 1 received. Package 2 contains modest sentencing changes and excludes the earned time policies of Package 1 and, consequently, the prison population would still grow by more than 1,100 offenders in the next decade. As a result, Commissioners foresaw little chance for reinvestments in community supervision, policing, and victim services. Package 2 is projected to have a similar long-term impact on the OYA population as Package 1.

The Commission also considered Package 3 which included two sentencing policies. This package is projected to have relatively minor impacts the prison population would grow by more than 2,100 offenders in the next decade. Additionally, Package 3 would have no impact on the OYA population. Due to the continued growth of the DOC population under Package 3, Commissioners also foresaw little chance for reinvestments in community supervision, policing, and victim services.

The Commission agreed to include all three packages in this report to better inform decision making in the 2013 legislative session.

## Reinvestment Priorities

The Commission urges the Governor and legislature to take the action necessary to reduce the need for funding of additional prison beds and reinvest savings from controlled prison growth into local law enforcement, community corrections, victim services, and specialty courts.

***Invest in community corrections including probation and post-prison supervision, as well as local alternatives that reduce recidivism and support offender re-entry.***

The Commission heard numerous examples of how the vital work done by local public safety agencies has been seriously compromised as a result of repeated budget cuts in recent years. The Commission found that many programs have been recently reduced or eliminated across the state, including

- Josephine County closed its mental health court,
- Douglas County eliminated its ADAPT offender outpatient program and its mental health treatment program,<sup>53</sup>
- Klamath County is now unable to provide misdemeanor supervision,
- Lane County closed a wing of its jail and had to release 31 inmates in November 2012,<sup>54</sup> and
- Baker County eliminated its cognitive restructuring program and its work crew program.<sup>55</sup>

These were only a few of the examples reviewed by the Commission highlighting the reduced capacity to apply the evidence-based practices for which Oregon is well known.

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<sup>53</sup> OACCD Member Survey Results, Oregon Association of Community Corrections Directors, November 2011

<sup>54</sup> <http://www.kmtr.com/news/local/story/Lane-County-jail-releases-31-more-inmates-one-re/TPRiYGcfi02I4Y8A75Finw.csp>

<sup>55</sup> OACCD Member Survey Results, Oregon Association of Community Corrections Directors, November 2011

The Commission discussed the extent to which investments in local programs could, alone and without sentencing or corrections reform, control prison growth by stopping the cycle of offenders returning to prison. There are three primary reasons why, critical as they will be to protecting public safety, these investments will not be able to control the projected prison growth.

First, the majority of Oregon's prison growth is due not to revocations from supervision but to sentencing policies and practices that send more offenders (including many first time offenders) to prison, and keep them for longer stays. Oregon's probation recidivism rate declined 21 percent in the past decade while the prison population grew by 50 percent. While reducing recidivism can have some impact on prison growth, it is no match for the sentencing and corrections policies driving Oregon's increased admissions and length of stay.

Second, while offenders on community supervision are more likely to be returned to prison after recidivating than in the past and therefore make up an increasing share of admissions (nearly half the offenders entering prison in 2011 were on some form of community supervision), they do not stay as long in prison as other offender groups. Therefore, targeting these offenders alone will not be enough to curb the projected growth (or equalize the number of admissions with releases).

Finally, without additional revenue sources, Oregon's budget cannot accommodate expansion of recidivism reduction programs and other local efforts. In fact, if the state's prison growth continues, existing community corrections resources may be reduced further in order to build and operate additional prison beds. While driving Oregon's low recidivism rate even lower is a worthwhile goal, the Commission finds that the more immediate challenge is simply to maintain the current rate.

***Invest in victim services to ensure that crime victims have access to emergency shelter and support in their communities and can achieve their constitutional rights in the justice system.***

At a state and local level, the Commission finds that the delivery of services to victims of crime is inadequate. The crisis in available shelter beds highlights the severity of the lack of services. In 2011, there were over 20,000 requests for emergency shelter from violence that could not be met because of a lack of funding for community-based domestic and sexual violence programs.<sup>56</sup> Similar to other areas of the justice system, funding has not kept up with need.

The victim roundtables, conducted as part of the Commission's work, illustrated in great detail the challenges faced by victims of crime. The consensus priorities from those roundtables can be found in the Victim Roundtable Report,<sup>57</sup> but Commissioners have identified three investment priorities from that document. The first is to increase funding for the Oregon Domestic and Sexual Violence Services Fund, which is the only support from the state general fund for domestic and sexual violence services that provide access to lifesaving shelter and support. The second is to increase funding for system-based victim services programs to ensure that victims who are going through the criminal and juvenile justice systems can access their rights under law at every stage of system. The third priority is to increase funding for the Child Abuse Multidisciplinary Intervention Program (CAMI), which funds the development and maintenance of specialized multidisciplinary investigative teams and specialized child abuse intervention centers.

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<sup>56</sup> "Striving to Meet the Need: Summary of Services Provided by Sexual and Domestic Violence Programs in Oregon" - January through December 2011. DHS Child Welfare Programs, April 2012. [http://www.oregon.gov/dhs/abuse/domestic/docs/dv\\_sa\\_11summary.pdf](http://www.oregon.gov/dhs/abuse/domestic/docs/dv_sa_11summary.pdf)

<sup>57</sup> <http://www.oregon.gov/CJC/Pages/2012ComPubSaf.aspx>

### ***Invest in the Oregon State Police crime lab and in law enforcement leadership training.***

In the past decade, Oregon law enforcement budgets have not kept pace with Oregon's correctional budget and the Commission identified two key law enforcement areas as priority reinvestments. First, the Commission felt it was critical to support the Oregon State Police in order to ensure Oregonians access to emergency assistance, criminal investigation, and other critical protections. Specifically, the Commission felt strongly that investments in the Oregon State Police crime lab were critical to ensuring speedy and rigorous investigations. Second, cuts to the Department of Public Safety Standards (DPSST) and Training have resulted in the elimination of leadership training programs for officers across law enforcement, including state and city police, as well as county sheriffs. To ensure that law enforcement leaders receive cutting-edge training on emergency response, crime reduction strategies, and professional standards, the Commission recommends investing in leadership training. Specifically, the Commission recommends investing in an evidence-based policing center at DPSST to promote police services that are based on the latest science of crime control.

### ***Invest in specialty courts, including drug, veterans', mental health, and DUII courts.***

The majority of Oregon's specialty courts (drug, veterans', mental health, and DUII courts) are funded through federal grants distributed through the CJC. Many of these federal grants are set to expire in 2013 and, without additional funding, several of Oregon's specialty courts will cease to exist. Specialty courts can provide cost-effective options for improving public safety by targeting sanctions and treatment options based on offenders' risks and needs in order to reduce recidivism and stabilize participants. As described above, a 2010 cost-benefit study of Oregon's drug courts found significant positive results. Specialty courts also provide a significant amount of the treatment options available throughout Oregon. In Umatilla County, for example, drug courts provide 75 percent of the county's available treatment. The Governor has demonstrated a commitment in his budget to fund these courts for the 2013-2015 biennium, with almost \$9 million in general funds directed towards drug courts. The Commission recommends investing in statewide, sustainable funding for specialty courts.

## **Items Recommended for Further Review**

There were five policy areas that carried significant support from Commissioners but required further analysis before a complete recommendation could be formed. The Commission encourages the legislature to look into these issues further. The first policy area was to address the rising cost of Oregon's inmate health care, which grew 181% from 2001-2011, with health costs for the 61 and over age group averaging more than five times the cost for age groups under 45.<sup>58</sup> According to a 2012 study published by the Federal Bureau of Justice Statistics, between 2001 and 2008 Oregon had the second fastest growing prison medical costs of any state in the nation, both in absolute and per capita terms.<sup>59</sup> Prisons are not eligible for federal reimbursement for healthcare under Medicaid rules and so these costs are shouldered entirely by the DOC. These rising costs drive up the direct DOC cost per day. The Commission discussed several options for expanding Oregon's medical release policies (just two

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<sup>58</sup> Legislative Fiscal Office, Budget Information Report, "Correctional Spending Trends." September 2011.

[http://www.leg.state.or.us/comm/lfo/correctional\\_spending\\_trends\\_2011.pdf](http://www.leg.state.or.us/comm/lfo/correctional_spending_trends_2011.pdf)

<sup>59</sup> Bureau of Justice Statistics, "State Corrections Expenditures, FY 1982-2010," December 2012. Accessed at: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4556>

offenders<sup>60</sup> have been released under existing statutes<sup>61</sup> since 2009), but ultimately could not be assured that these expansion options would not shift cost burdens to localities.

Second, there was significant discussion around the effect of *State v. Bucholz*.<sup>62</sup> Under this case, when a person is before the court for sentencing on multiple felonies, each offense advances the criminal history score under sentencing guidelines thus increasing the length of the sentence. It has the effect of treating, for example, a person before the court on one occasion for sentencing on three felonies the same as a person with two prior convictions before the court for her/his third felony. Some Commissioners felt this was inequitable and resulted in inappropriately longer total sentences. While there was interest in exploring this issue farther, the Commission felt the issue was much more complex than could be addressed in the limited time.

The Commission also discussed two policy areas affecting youth convicted of M11 offenses: removing the automatic waiver to adult court for M11 youth<sup>63</sup> and extending earned time to M11 youth.<sup>64</sup> There was support from many Commissioners that changes should be made to address these restrictions on M11 youth, but ultimately there was no consensus on a single recommendation. Finally, the Commission discussed a review of Oregon's expungement laws and the importance of pursuing expungement laws that promoted successful reentry. Because a separate review of these laws is already underway by a working group, the Commission did not develop its own policy on this issue.

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<sup>60</sup> Email from the Department of Corrections, October 22, 2012.

<sup>61</sup> ORS 144.122 and ORS 144.126

<sup>62</sup> *State v. Bucholtz*, 317 Or. 309, 855 P.2d 1100 (1993)

<sup>63</sup> Juveniles age 15-17 charged with Measure 11 offenses are automatically waived to adult court and are subject to the same mandatory minimum sentences as adults. These youth are ineligible for early release through earned time or Second Look.

<sup>64</sup> Measure 11 offenses are statutorily ineligible for any earned time that would reduce the minimum sentence, therefore juveniles who have been sentenced under Measure 11 are not eligible for earned time.