
**REPORT OF THE
RESET SUBCOMMITTEE ON
PUBLIC SAFETY**

June 2010

REPORT OF THE RESET SUBCOMMITTEE ON PUBLIC SAFETY

June 2010



Cameron Smith, *Senior Policy Advisor*
State Capitol, Room 160
900 Court Street NE
Salem, OR 97301-4047
Office: (503) 378-5884
cameron.smith@state.or.us



The Crime & Justice Institute (CJI)
at Community Resources for Justice
355 Boylston Street
Boston, Massachusetts 02116
phone 617.482.2520 fax 617.262.8054
www.cjinstitute.org www.crjustice.org

Table of Contents

ACKNOWLEDGMENTS	i
EXECUTIVE SUMMARY	1
I. THE RESET CABINET	4
II. THE PUBLIC SAFETY SUBCOMMITTEE’S CONTEXT	5
III. VALUES GUIDING SUBCOMMITTEE’S WORK	8
IV. CORE PUBLIC SAFETY AGENCIES AND BUDGETS	9
V. CRIME TRENDS IN OREGON	12
Violent Crime	12
Property Crime.....	13
VI. FACTORS CONTRIBUTING TO THE DECLINE IN CRIME.....	17
Demographic Shift	17
Reduction in Meth Related Crime.....	18
Greater Reliance on Evidence-Based Practices in Community Corrections.....	19
Increase in Incarceration	20
Commentary	22
VII. GROWTH OF PUBLIC SAFETY BUDGETS	23
VIII. COST DRIVERS	25
IX. IMPACT OF MANDATORY MINIMUM SENTENCES ON OREGON’S PUBLIC SAFETY SYSTEM	27
X. POTENTIAL FOR REINVESTMENTS.....	29
XI. SUSTAINABLE FUTURE BUDGETS	32
XII. EXPERIENCE OF OTHER STATES AND COMMON THEMES.....	34
Overall Prison Population	34
Crime and Incarceration Rates.....	34
Overall Progress	35
Reinvestment Strategies.....	35
Early Release and Increased Credits	36
Performance Incentive Funding.....	37
Proposed National Legislation	38
Common Themes: Experience of Other States.....	39
XIII. “DO NOTHING” OPTIONS.....	40
XIV. GENERAL PRIORITIZATION OF PUBLIC SAFETY FUNCTIONS	44
XV. OPTIONS TO ACHIEVE A BALANCED PUBLIC SAFETY SYSTEM	45
Long Term Options.....	45
Short Term Options.....	46
Both Short Term and Long Term.....	46
Policy and System Change Options.....	47
Future System Changes	48
XVI. FOUR SPECIFIC OPTIONS	49
Sentencing Changes.....	49
Earned Time Policy.....	49
Options for Sentencing Changes.....	50
Options for Earned Time.....	52
XVII. LEGISLATIVE AND POLITICAL STRATEGIES TO IMPROVE THE SYSTEM	55
XVIII. SUMMARY.....	57
XIX. SUBCOMMITTEE ROSTER AND PROCESS	58
SURVEY HIGHLIGHTS.....	59

ACKNOWLEDGMENTS

Rather than acknowledge those who helped us in the preparation of this report, the Subcommittee would like to recognize the many individuals, groups, citizens, front line law enforcement staff, advocacy groups, and elected officials in cities, towns, counties and at the State itself that have worked diligently and effectively in support of the Oregon public safety system over the past twenty years.

In the face of challenging economic conditions, countless individuals and groups have assisted in lowering Oregon's crime rate to a point not seen for forty years. There are many reasons for this reduction: the use of evidence based practices, community policing, increased prison capacity and increased incarceration rate, better community corrections practices, and favorable demographics. It is open for debate which of these factors has made the biggest difference.

Regardless of the reasons, the public safety sector was meeting benchmarks set for property crime, violent crime, juvenile crime, and juvenile person crime. (Oregon is not yet meeting the benchmarks established for behavioral crime or recidivism, but the State is making progress even on those fronts).¹

As the subcommittee examined the financial dilemmas of other states and study their public safety reform efforts, it became clear that Oregon has already adopted many of the practices that are just now being put in place by other states, from modifying revocation systems for post-prison supervision to double-bunking prison populations. Oregon ranks 29th among states in its per capita rate of incarceration, primarily because Oregon has chosen to sentence drug offenders and non-violent offenders to community based punishments. More than fifteen years ago, community corrections reforms were made, so that, the "low hanging fruit" of reforming re-incarceration for technical violations has been picked.²

Too often, however, the public safety system is treated like it's the roof of a house. Citizens all acknowledge its importance, but rarely show it off to friends and neighbors. Repairs are expensive, unglamorous, but essential if the house is to provide protection.

It could be tempting to rest on our laurels, pat ourselves on our back, and suggest that the "system" is working well and is therefore not a good target for reform or budget savings. Given the magnitude of Oregon's financial crisis, our charge was to dig deeper and find those areas where cost effective improvements and budget savings are still possible.

The subcommittee is very proud of our State's public safety system and the men and women that make it work every day and we are determined to find solutions to improve its outcomes in keeping Oregonians safe in the face of continuing budget challenges.

¹ See State Benchmarks 62 -66:

<http://benchmarks.oregon.gov/default.aspx> <http://benchmarks.oregon.gov/default.aspx>

² See The Effectiveness of Community Based Sanctions in Reducing Recidivism (2002 Study)

http://www.doc.state.or.us/DOC/TRANS/CC/docs/pdf/effectiveness_of_sanctions_version2.pdf

EXECUTIVE SUMMARY

The key objective of the Reset Cabinet is to “develop a plan containing specific recommendations to the Governor to reset State government’s core functions and stabilize its revenue structure.” We have developed options at a time when, according to the FBI’s Uniform Crime Reporting indexes, Oregon’s person and property crimes are at historic lows, prison capacity has grown to its highest level, and the cost of operating the prison system has increased dramatically over the last fifteen years.

The Public Safety subcommittee has addressed the expected \$2.5 billion shortfall in the 2011-13 biennial state budget by focusing primarily on the most expensive element of the state’s public safety system – prisons. During the next decade, when the shortfall between revenue and expenses is expected to remain at more than \$2 billion if nothing is done, the April 2010 Department of Corrections prison forecast predicts 2,000 additional prison beds will be necessary to carry out our current sentencing policies – pushing the prison population to 16,000 by 2020.

There are three main cost drivers in building and operating prisons. Our efforts focused on two: who is entering the prison system and how long they stay. (The third cost driver – the pay and benefits of public safety workers – will be addressed in the main Reset Cabinet report.³)

The subcommittee options will impact those two cost drivers by looking with a cost/benefit eye at what gives taxpayers the greatest return on their public safety investment and continues to protect communities and reduce future crime victimization.

Because the budget savings from some of the options presented will take several years to realize, we provide both short-term and long-term steps to optimize the use of our most expensive public safety resource, state prison beds. These options require weighing difficult trade offs in how to reduce budgets and must be driven by evidence based practices and the experience of other states.

None of these options are easily achieved, but we believe these options represent a viable opportunity for the State to emerge from its financial crisis with a well balanced and efficient system that prioritizes the public’s safety. In concert with other options, these reductions will provide some budgetary protection for key programs in education and health and human services systems – including mental health and alcohol and drug treatment that directly impact crime and incarceration rates. These systems are essential areas of investment to break cycles of criminality and reduce crime long term.

Both the Reset Cabinet and the Subcommittee were asked to put traditional thinking and structures aside and develop options that could be used as new, more economical models of service delivery. This request proved to be a challenge. But the Subcommittee has identified options that meet this test and bear further consideration.

These options include modifications in the relationship between the state and counties and the current cost structures for public safety funding. The Subcommittee looked for options that would provide models for incentives to form new partnerships with counties to encourage district attorneys to adopt uniform charging and sentencing practices. Also, the subcommittee suggests that counties use local cost effective, accountability measures to deal with short term, non-violent offenders who will be shortly

³ http://governor.oregon.gov/Gov/governor_reset_cabinet/reset_state_govt.shtml

returning to their communities. These policies, if implemented, would make more effective use of the expensive prison bed resource. Given the expected loss of federal timber revenue in several counties, these partnerships are critical to maintaining an acceptable level of county services.

The subcommittee during the course of its work produced a survey instrument to gauge the reaction of various stakeholders to the acceptance of the problem statement set forth by the Governor in the executive order, and to determine whether there were potential solutions or options around which public safety stakeholders could coalesce. A brief summary of the survey results are provided later in this report and the full results are available at <http://cjinstitute.org/projects/oregonreset>. In addition, the subcommittee spent time discussing both the challenges and options for solutions with many stakeholder and partner groups including sheriffs, chiefs of police, district attorneys, victims advocates from the Attorney General's office, community corrections leaders, leadership from the Oregon Youth Authority, Board of Parole and Post-Prison Supervision, the Judicial Department and others.

Because sentencing policy, not crime rates, drives the use of expensive prison beds, the subcommittee believes a restructuring of sentencing policy to a modern, uniform sentencing guideline system based upon truth in sentencing will provide fair, transparent allocation of prison time to those offenders posing the greatest long term threat to our communities. These guidelines must:

- Take advantage of the more than 9,000 prison beds that have been added to system since the old guideline system was created in 1989
- Keep faith with the spirit of the statutory sentencing changes that have been implemented by the Legislature and citizens since those guidelines were created
- Acknowledge the scarcity of resources in this environment, an issue that is too often ignored when sentencing policies are established.

Finally, at the recommendation of many in the public safety community, the subcommittee has proposed that the State adopt federal earned-time guidelines including 15 percent earned time for all offenders that are not incarcerated for life, and greater use of transitional resources such as halfway houses and electronic monitoring at the end of their sentences.

Many of the options presented in this report, if implemented, would take more than a single biennium to achieve their desired result. In some cases it may be five or more years before the financial impacts of these policy choices will be reflected in the State budget. Yet the material addressed later in this report demonstrates that the cumulative effect of these changes, if enacted and adhered to over time, can result in potentially hundreds of millions of dollars in avoided costs and system savings.

The short-term budget challenge is, however, more daunting. While politically difficult to address, the Subcommittee believes the biggest short-term savings would come from a further legislative delay in the implementation of sentence enhancements contained in Ballot Measure 57, dealing with repeat property offenders. Property crime rates are at historic lows in Oregon, and a decision to delay the measure's implementation would result in estimated savings of almost \$40 million in the 2011-2013 biennium alone.

Virtually all of these options would require legislative action. The key sentencing guidelines measure, however, will require a bi-partisan legislative effort with a 2/3 approval or a citizen referral and vote in May, 2011. The incoming Governor and Legislature must understand the gravity of the State's financial situation and seriously consider their role in crafting a long term stable public safety system against the backdrop of our current and projected financial picture.

The alternatives are much worse.

If Oregonians fail to plan for our public safety system's future with an honest assessment of the financial situation, the State will not avoid the problem. The State will still have to deal with less money, but rather than using long term, careful planning to assure our ability to carry out the sentences that are imposed, the State will be forced to consider the early release of offenders who have already been sentenced and will risk the same overcrowding of inmates that brought federal litigation in Oregon in the 1980's. Rather than the temporary policy that bridges the State to sustainable corrections practices, these early releases and prison overcrowding will become the norm.

In addition, the State risks disproportionate reductions in certain segments of the public safety system that create dangerous imbalances in the system as a whole. Cuts, for example to courts and indigent defense, have the effect of shutting down the criminal justice system. These actions erode the principle of "swift and certain" sanctions and destroy accountability as certain crimes are essentially ignored. Likewise, limiting resources for law enforcement, prosecutors, and community corrections can create an unbalanced system.

In short, if we fail to plan for a changed economic future, we plan to fail as a public safety system.

I. THE RESET CABINET

Faced with implementing reductions in the state budget following the 2009 Legislative Session, Governor Ted Kulongoski issued Executive Order #09-13 on September 3, 2009.

The Executive Order established a Governor's Reset Cabinet to "reexamine and prioritize the core functions of State government in Oregon, to advise the Governor on opportunities to create efficiencies, improve outcomes, and stabilize existing revenue streams and to provide the basis for a report from the Governor to the citizens of Oregon on options for resetting the priorities and functions of government to better serve the interests and needs of Oregonians." "The Cabinet shall oversee and coordinate the work of subcommittees...focused on education, human services, and public safety."

The Executive Order provides that the subcommittees shall:

- a. "Identify and prioritize the core functions of State government in each of the areas of education, human services, and public safety;
- b. Review and recommend the consolidation and elimination of boards and commissions;
- c. Analyze our existing structure for providing services, revenue streams and investments in education, human services, and public safety;
- d. Study, assess, and analyze strategies to increase efficiency, improve outcomes, and stabilize revenue streams for education, human services, and public safety;
- e. Identify opportunities to consolidate service delivery and provide greater flexibility, where needed, and
- f. Develop a plan containing specific recommendations to the Governor to reset State government's core functions and stabilize its revenue structure."

The Reset Cabinet stated its objectives as follows:

1. Articulate our understanding of the core functions of government (which the Cabinet identified in rough fashion with the creation of our four subcommittees – K-12 Education, Higher Education, Public Safety, and Human Services);
2. Prioritize responsibilities and commitments within those core functions;
3. Improve how we meet those responsibilities and commitments (with changes in delivery systems and the achievement of new efficiencies);
4. Reprioritize our responsibilities and commitments based on expected resources and the options we create from identifying changes in delivery systems, policies and practices.

II. THE PUBLIC SAFETY SUBCOMMITTEE'S CONTEXT

The Public Safety Subcommittee identified the following current circumstances relevant to assigned task:

- Oregon is in the midst of an unprecedented financial crisis, which requires dramatic rethinking about how and to what extent the state can fulfill its basic mission.
- By objective measures, crime has declined in the state. Citizens and their property are safer than they have been in decades.⁴
- Public safety professionals are rightly proud of their work, but feel increasingly burdened by shrinking budgets and fewer resources and a perceived decline in public respect for the important work they do.
- Oregon invested hundreds of millions of dollars in increased incarceration in the last twenty years. That investment improved public safety, but is susceptible to the economic law of diminishing marginal returns. The new beds had their greatest impact when filled by the most violent offenders, when crime rates were over 40 percent higher than they are today.
- Spending in Oregon has focused on the severity of punishment as measured by the length of the prison sentence, at the expense of swiftness and certainty in our response to crime. While the State spent millions of dollars over the last two decades lengthening state prison sentences, cities' and counties' local response to crime has been hampered by a lack of funding. Local jail beds, probation officers, and police officers that can quickly detect crime and sanction offenders provide crime control that is more immediate and cost effective than state prisons. The State invested heavily in longer sentences, without assuring swiftness and sureness of sanctions in the local community. This trend tends to create a snowball effect of increased reliance on state prisons: the less investment in local public safety, the more officials rely on state prison.
- Investing in incarceration feels like a sure bet. While the offender is locked up he or she cannot commit new crimes. However, this approach ignores the reality that 93 percent of all offenders return to the community. The jails, police, treatment, and supervision systems that exist when offenders transition back to our counties and cities are critical to future safety.
- Oregon is a leader in the adoption and implementation of evidence-based policies and practices in public safety. In 2003 the Oregon Legislature passed Senate Bill 267 that required State agencies use "evidence-based programs" for drug and alcohol treatment, some mental health treatment, adult recidivism prevention and juvenile crime prevention.
- Oregon is also a leader in using data to inform decisions at the policy and practice level. Oregon is one of the few states with an information system capable of tracking felony offenders throughout their custody and supervision, from probation, to prison, to post-prison supervision. The data available in this system are used regularly to share assessment information and case plans across systems and jurisdictions, resulting in better correctional case management. The data are used routinely to monitor system outcomes and adjust performance at the officer level, the program level, the agency level, and the State level. Finally, this comprehensive data set allows State policymakers to understand how the system works today, and to predict the impact of changes to policy, practice, or law.

⁴ www.fbi.gov/ucr/ucr.htm

- While much remains to be done in improving outcomes on treatment tied to reducing recidivism, Oregon has accomplished much and is positioned to do more. The Governor’s Alcohol and Drug Policy Commission, chaired by the Attorney General, is tasked with improving outcomes and accountability in Oregon’s alcohol and drug (A & D) treatment system. Over 70 percent of the offenders in Oregon’s prisons need some level of A & D treatment.
- Opinion polls indicate that the public believes crime is on the increase, although it is not one of the major issues in the public’s mind.⁵ This suggests a disconnect between Oregonians’ perceptions of crime and the reality that they are safer today than they have been in decades. Media coverage of crime and violence exaggerates the risk of crime, fueling a fear of crime that is not consistent with our improved safety.⁶
- For a variety of reasons, the public policy discussions about public safety have become increasingly polarized and politicized.
- There are examples from numerous states of how bi-partisan efforts can reduce deficits by redirecting resources from building and operating new prisons to community based treatment and punishment.⁷
- Investments solely in traditional criminal justice resources (police, jails, prosecution, courts, and prisons) may not be the best long term way to reduce the number of new crimes committed by offenders leaving jail and prison. Those investments should be accompanied by long term prevention strategies using treatment and health and human services that address some of the root causes of criminality. Finally, greater resources should be tied to the reentry and reintegration of offenders into society.
- A new Governor and new Legislature in 2011 will need the best objective thinking and recommendations if they are to balance competing priorities and maintain an effective public safety system. Strong, principled leadership will be needed to help Oregon through this difficult process.

Evidence-Based Practices

In 2003, the Oregon Legislature passed SB 267. By July, 2009, the measure required the Department of Corrections, the Youth Authority, the State Commission on Children and Families, the Criminal Justice Commission, and the part of the Department of Human Services that is responsible for mental health and addictions treatment— to spend at least 75% of the money they invest in programs intended to reduce criminal behavior on evidence-based programs.

The bill defined evidence-based programs as programs based on scientifically based research and required the foregoing agencies to demonstrate the cost-effectiveness of the programs. The legislation pushed Oregon agencies to look to meta-research on which programs have garnered results and invest in those programs. It raised the profile of program design and evaluation of programs, and provided the agencies with a stake in Oregon’s public safety efforts and gave them a starting point that enabled them to have a more unified approach to investing Oregon’s limited public safety resources, which come from many different sources.

⁵ www.gallup.com/poll/102262/Perceptions-Crime-Problem-Remain-Curiously-Negative.aspx

⁶ See Mark Warr, in his article “Fear of Crime in the United State: Avenues for Research and Policy,” [\[http://www.ncjrs.gov/criminal_justice2000/vol_4/04i.pdf\]](http://www.ncjrs.gov/criminal_justice2000/vol_4/04i.pdf).

⁷ [http://www.pewcenteronthestates.org/uploadedFiles/State-Local%20Fiscal%20Partnerships%20July%202008\(1\).pdf](http://www.pewcenteronthestates.org/uploadedFiles/State-Local%20Fiscal%20Partnerships%20July%202008(1).pdf)

-
- Ten Oregon counties will be facing at least 20 percent reductions in their discretionary general fund revenues as the federal timber safety net ends in 2012. This will create a disproportionate burden on those counties and will require new models and structures of service delivery to meet the needs of citizens in those counties.⁸
 - Rather than debating who is “tough on crime” or “soft on crime”, the subcommittee hopes that our elected officials will emphasize the most effective way to keep citizens safe with the limited taxpayer resources is being “smart on crime” by using a fair and transparent criminal justice system.
 - The subcommittee remains confident that the number of Oregonians victimized by crime will be reduced and that many offenders in the system, having served their sentence and been held accountable, can become productive citizens in our society. Our challenge is to structure a system that balances accountability, reformation and the public’s safety.

⁸ Governor’s Task Force on Federal Forest Payments and County Services: Final Report, Jan. 2009.
[\[http://www.oregon.gov/Gov/tf_fed_forest_pmts/tffop_index.shtml\]](http://www.oregon.gov/Gov/tf_fed_forest_pmts/tffop_index.shtml).

III. VALUES GUIDING SUBCOMMITTEE'S WORK

One of the first steps in the Committee's process was to agree on the values that would guide deliberations.

1. Be consistent with and support the goals of public safety as established in the Oregon Constitution; Article 1, Section 15 of the Oregon Constitution establishes the foundation principles of criminal law: "Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation."
2. Proceed with an appreciation for the limitations of the public safety system in eliminating the underlying causes of crime and changing the behavior of offenders. Recognize that ultimate solutions for healthy and safe communities may be outside the scope of the public safety system.
3. Be driven by the clear direction in the Governor's Executive Order that we must seek cost effectiveness and efficiency in operations. Use evidence-based practices whenever possible to reduce new offenses by people currently in the criminal justice system.
4. Expect that dramatic structural changes in the current system may be necessary in order to free up resources to expand essential services. Achieve less fragmentation by rethinking the respective roles between the State and counties. Seek consistency of operational practices across jurisdictions.
5. Recognize that 70 percent of the offenders who enter prison are not re-convicted for a felony within three years of release. Be guided by the underlying belief that with the right interventions, people can lead productive lives that will not involve them further with the criminal justice system. Maintain our belief that for the great majority of those in prison, individual change and reformation are possible.
6. Test all options against the following core criteria: Transparency; accountability; sense of justice for victims; fairness; do no harm.
7. Achieve a properly balanced system that the state is able to support through stable, ongoing resources (i.e. "rightsizing" the system to achieve public safety and a stable economic base) and develop policy options to achieve that system sustainability.
8. Provide support services for crime victims to assist them in the transition to their futures.

IV. CORE PUBLIC SAFETY AGENCIES AND BUDGETS

The State of Oregon provides the following core public safety functions: The budget numbers reflected in these descriptions reflect both the total biennial budget and (in parenthesis) the general fund budget of each area.⁹

The **Department of Corrections** manages offenders sentenced for felonies by the courts with biennial budget of \$1.408 billion (\$1.259 billion GF). DOC distributes funds to counties for management of offenders on probation, parole, post-prison supervision, or who have been sentenced to incarceration for one year or less, and directly provides those services in some counties. DOC operates over 14,000 prison beds. The felony probation caseload is approximately 22,000 and the parole and post-prison supervision caseload is approximately 14,600. County Community Corrections operations makes up \$214 million or 17 percent of DOC's general fund and Debt service to cover the borrowing for prison construction is \$130 million or 10 percent of DOC's general fund.

The **Department of Justice**, with a biennial budget of \$384 million (\$54.7 million GF), under the leadership of the Attorney General, provides legal counsel to state officials and agencies. The DOJ represents the state in court actions, assists District Attorneys in investigating and prosecuting certain limited crimes, enforces child support obligations, antitrust laws, coordinates consumer protection services, provides compensation, funding for direct services, and advocacy to victims of crime, and works with law enforcement to prosecute organized crime.

The **Department of State Police** with a biennial budget of \$355 million (\$251 million GF) is responsible for a wide variety of public safety infrastructures, including a uniformed police presence across the state, enforcement of fish and wildlife laws, investigation of certain crimes, forensic laboratory services, the state-wide law enforcement data system.

The **Oregon Judicial Department** is a separate branch of government with a biennial budget of \$352 million (\$293 million GF) operates the unified state funded court system. The Chief Justice is the administrative head of the system. This system includes the Oregon Supreme Court, Court of Appeals, the Tax Court, and twenty seven judicial districts. Municipal courts and justice courts remain outside the state system.

The **Oregon Youth Authority**, with a biennial budget of \$312 million Total Funds (\$266 million GF), is the state's juvenile corrections agency. It serves the state's most delinquent youth ages 12 through 24 who commit crimes prior to their 18th birthday. OYA is funded to oversee 900 youth in 11 close-custody facilities, and to provide parole and probation services to approximately 1,100 youth in communities. OYA provides a range of evidence-based treatment and education programs to youth in close custody, and contracts for community-based foster care, residential treatment and specialized treatment programs for youth on parole and probation. Treatment programs are designed to address and reduce or eliminate the criminogenic factors that contributed to the youths' criminal behaviors. In addition, OYA distributes funds to county juvenile departments for prevention, intervention and diversion services to minimize the number of youth who need to be placed in state institutions.

⁹ http://www.leg.state.or.us/comm/lfo/2009_11_budget/PUBLIC_SAFETY.pdf & http://www.leg.state.or.us/comm/lfo/2009_11_budget/2009-11_Budget_Highlights_Update.pdf

The **Public Defense Services Commission** with a biennial budget of \$214 million (\$210.8 million GF) is an independent body that governs the Office of Public Defense Services (OPDS). The Contract and Business Services Division of the Office administers the public defense contracts that provide trial representation for financially eligible criminal and juvenile defendants. The Appellate arm of OPDS provides constitutionally mandated representation in the appellate courts for financially eligible persons.

The **Oregon Military Department** with a biennial budget of \$371 million (\$24.8 million GF) provides combat-ready units and equipment for deployment in support of national defense, assistance in natural disasters or civil unrest. OMD operates the Office of Emergency Management. The Oregon National Guard has 8,650 Army and Air Guard members, 596 facilities, and manages a federal program of 2,153 federal employees.

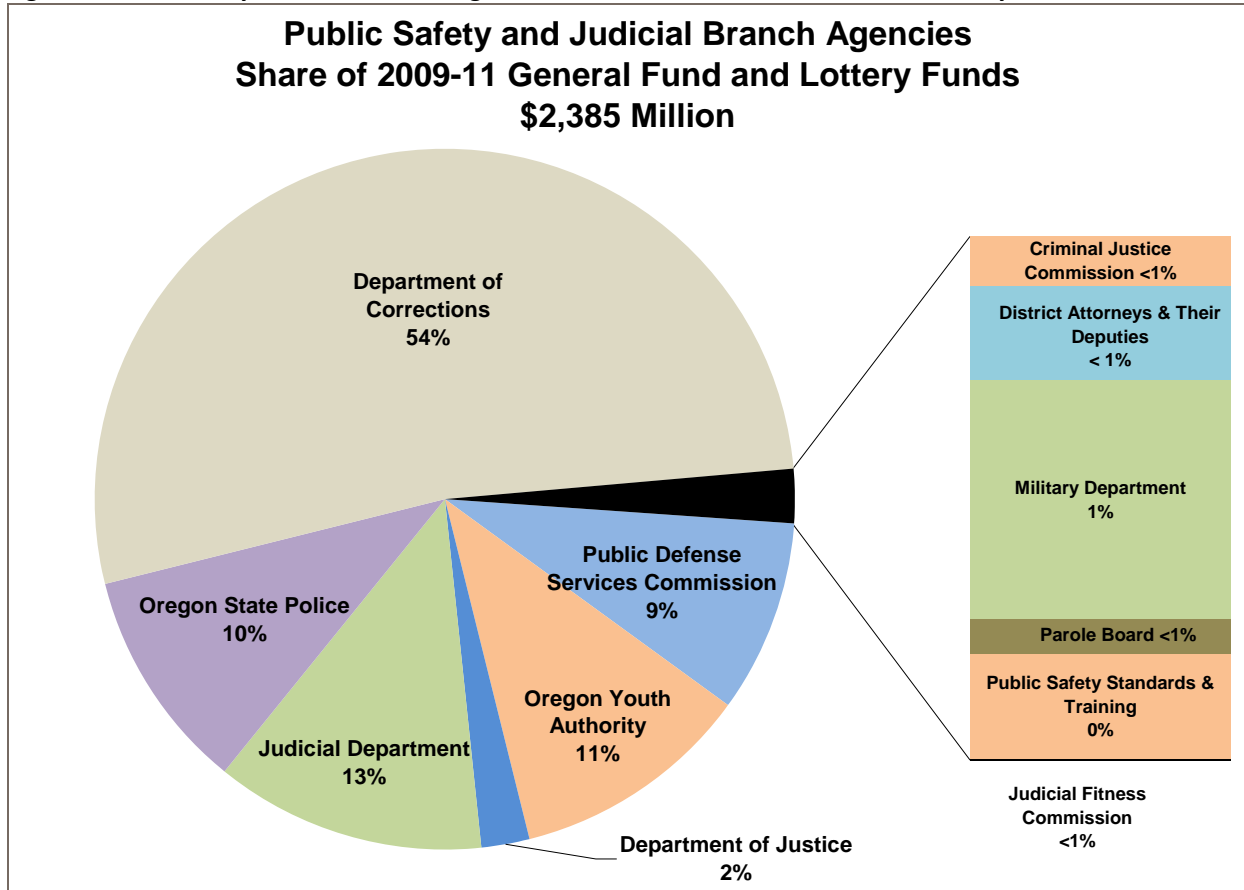
District Attorneys and their Deputies with a biennial budget of \$10 million (all general fund) dollars (plus the shared costs of counties) prosecutes criminal offenses and civil forfeitures, represents the state in juvenile courts, and advises local public safety officers and enforces child support orders. The state funds less than 5 percent of the total operating expenses of district attorney offices and county governments provide the additional support required for state criminal prosecutions.

The **Criminal Justice Commission** with a biennial budget of \$18 million (\$5.4 million GF) provides an impartial forum for criminal justice policy planning. The Commission's focus is on sentencing, specifically analyzing the use of incarceration and services to reduce recidivism, and strives to make the criminal justice system effective and efficient in preventing crime. Starting in 2009, the Commission also administers Oregon's portion of the federal Byrne/JAG funds by establishing grant programs funneling those vital dollars into our counties and communities.

The **Department of Public Safety Standards and Training** with a biennial budget of \$48 million (\$11.4 million GF) is responsible for standards, certification, accreditation, and training of public safety personnel in law enforcement, county corrections, parole and probation, law enforcement telecommunications, firefighting, and private security.

The **State Board of Parole and Post-Prison Supervision** with a biennial budget of \$11.4 million GF sets parole release plans for offenders convicted of felonies committed prior to November 1, 1989 and post-prison release plans for felony offenders convicted after that date, and determines when "dangerous offenders" should be released. It establishes conditions of parole and post-prison supervision for all offenders being released from prison, and works with local community corrections agencies to impose sanctions for offenders who violate these conditions.

Figure 1: Public Safety & Judicial Branch Agencies Share of 2009-11 General Fund & Lottery Funds



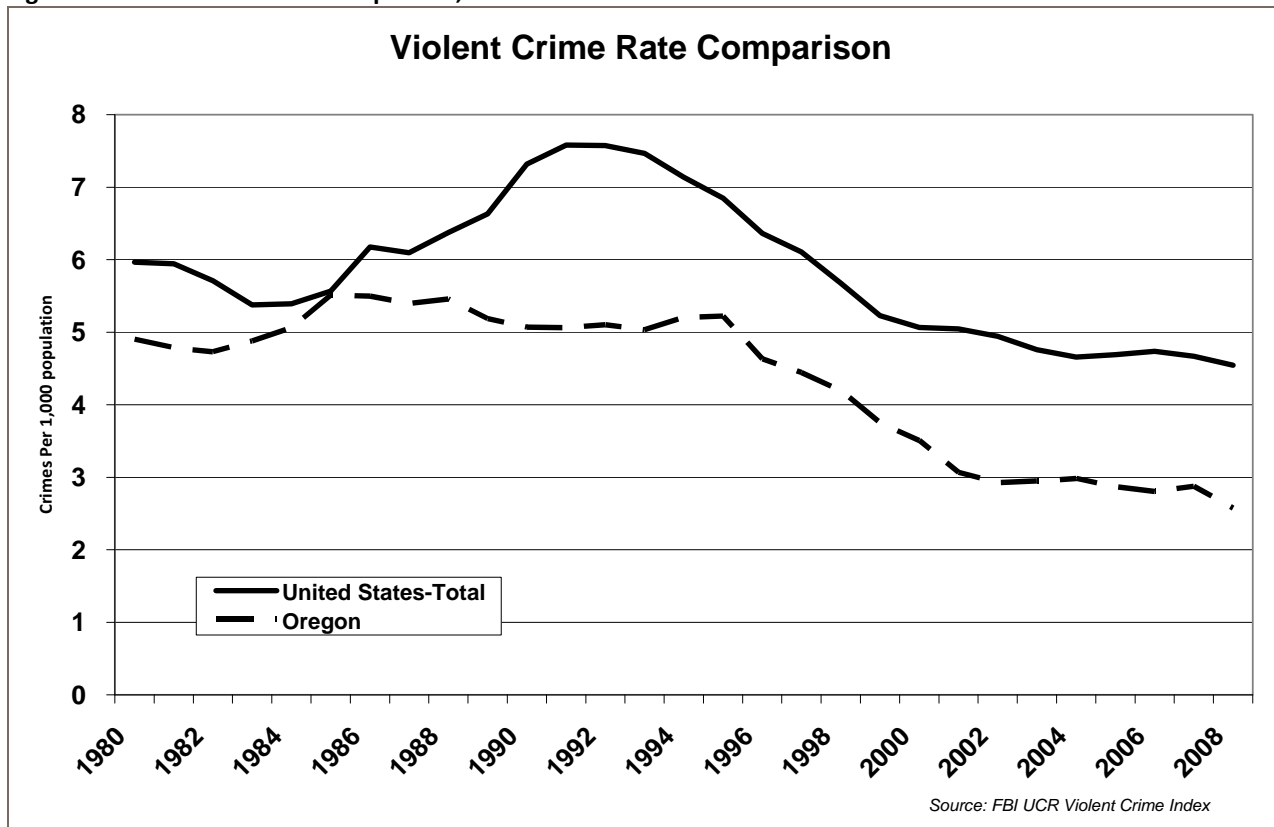
V. CRIME TRENDS IN OREGON

It is important to note Oregon's efforts at impacting the crime rate over the last several years.

Violent Crime

- According to the FBI UCR's violent crime index, Oregon ranks 40th in the nation (1 being the highest) for violent crime (murder, forcible rape, robbery, aggravated assault) -- the lowest state ranking since data were available in 1965.¹⁰
- Violent crime rates fell by 14 percent from 2004 to 2008 and by 11 percent between 2007 and 2008, the largest percentage reductions in any state.
- Preliminary reports from the FBI for 2009 show that Oregon's four cities over 100,000 have reduced crime from 2008 to 2009. (See table on page 15.)
- Data extracted from Oregon's Uniform Crime Reports for selected cities shows the same trend, reductions in violent crime. (See table on page 15.)

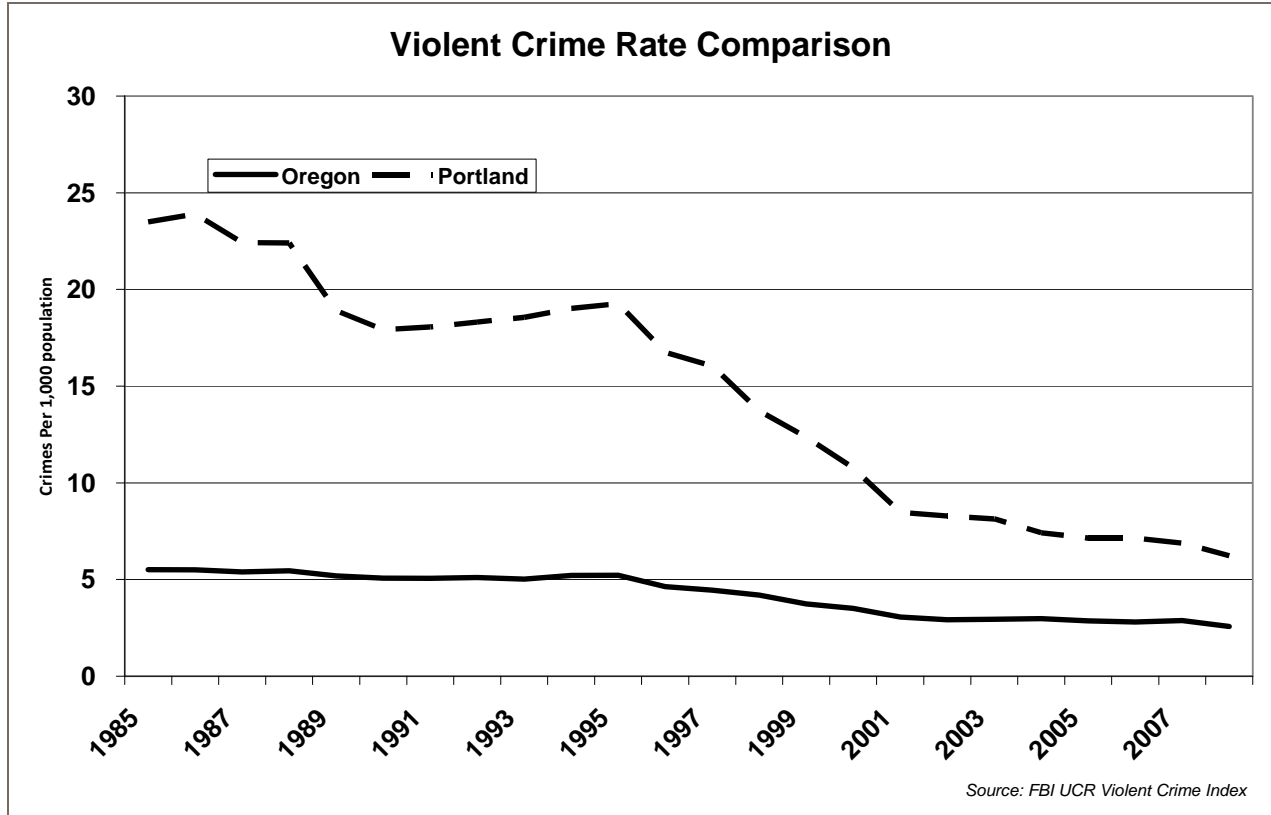
Figure 2: Violent Crime Rate Comparison, US & OR



¹⁰ www.fbi.gov/ucr/ucr.htm

The decline in violent crime has been most pronounced in Portland. As the following chart shows, in 1985, Portland accounted for 58 percent of the state's violent crime. By 2008, that percentage had declined to 34 percent. Overall, Portland's violent crime rate has declined by 70 percent since 1985 - a remarkable accomplishment.

Figure 3: Violent Crime Rate Comparison, OR & Portland



Property Crime

- According to the FBI UCR's property crime index, Oregon ranks 23rd in the nation for property crime (i.e., burglary, larceny, theft, motor vehicle theft, arson) -- the lowest state ranking since data were available in 1965.¹¹
- Property crime rates fell by 29 percent from 2004 to 2008 and by 7 percent from 2007 to 2008, the largest drop of any state in the country.
- Preliminary data from the FBI for 2009 shows that property crime dropped from 2008 to 2009 in Portland, Salem, & Eugene. (See tables on page 15.)
- Oregon Uniform Crime Reports for Oregon's smaller cities indicate Oregon will have an overall reduction in the property crime index crimes in 2009. (See tables on page 15.)

¹¹ www.fbi.gov/ucr/ucr.htm

Figure 4: Property Crime Rate Comparison, US & OR

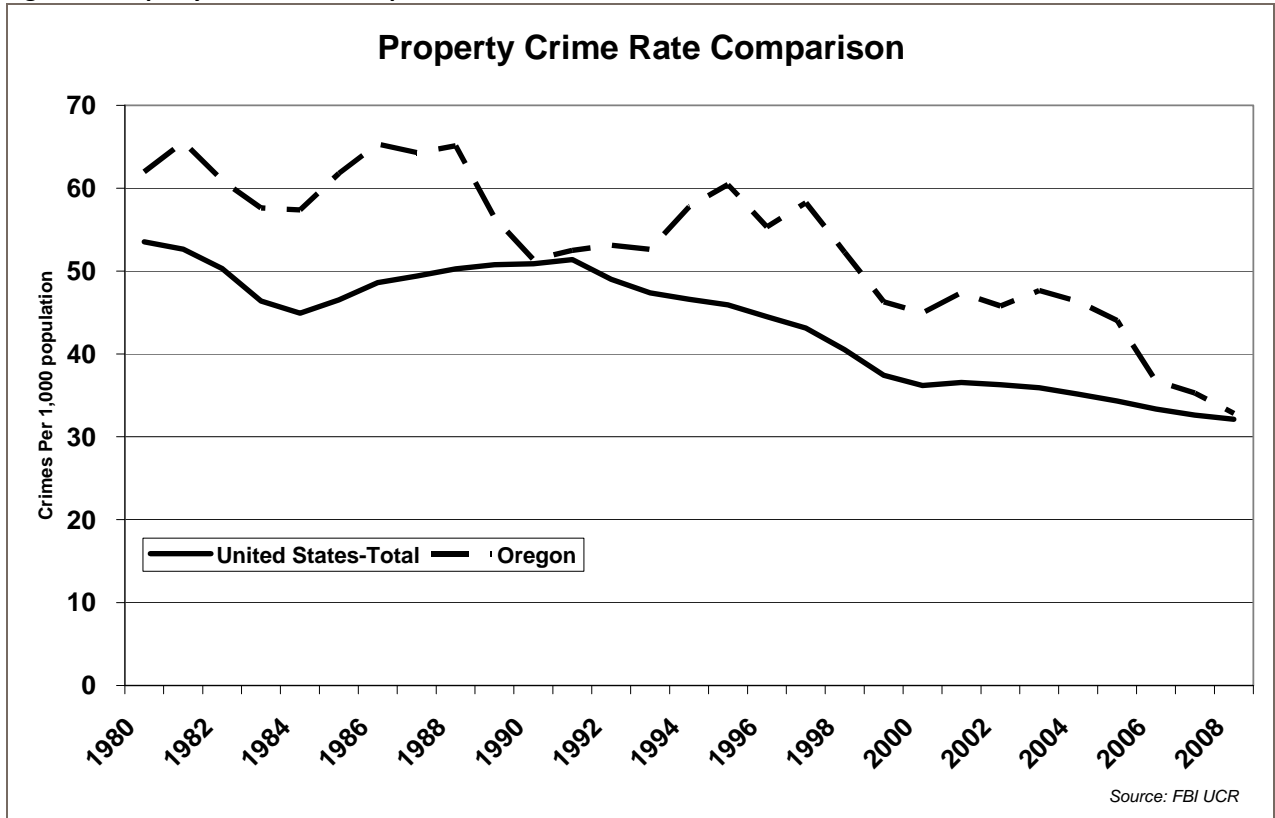
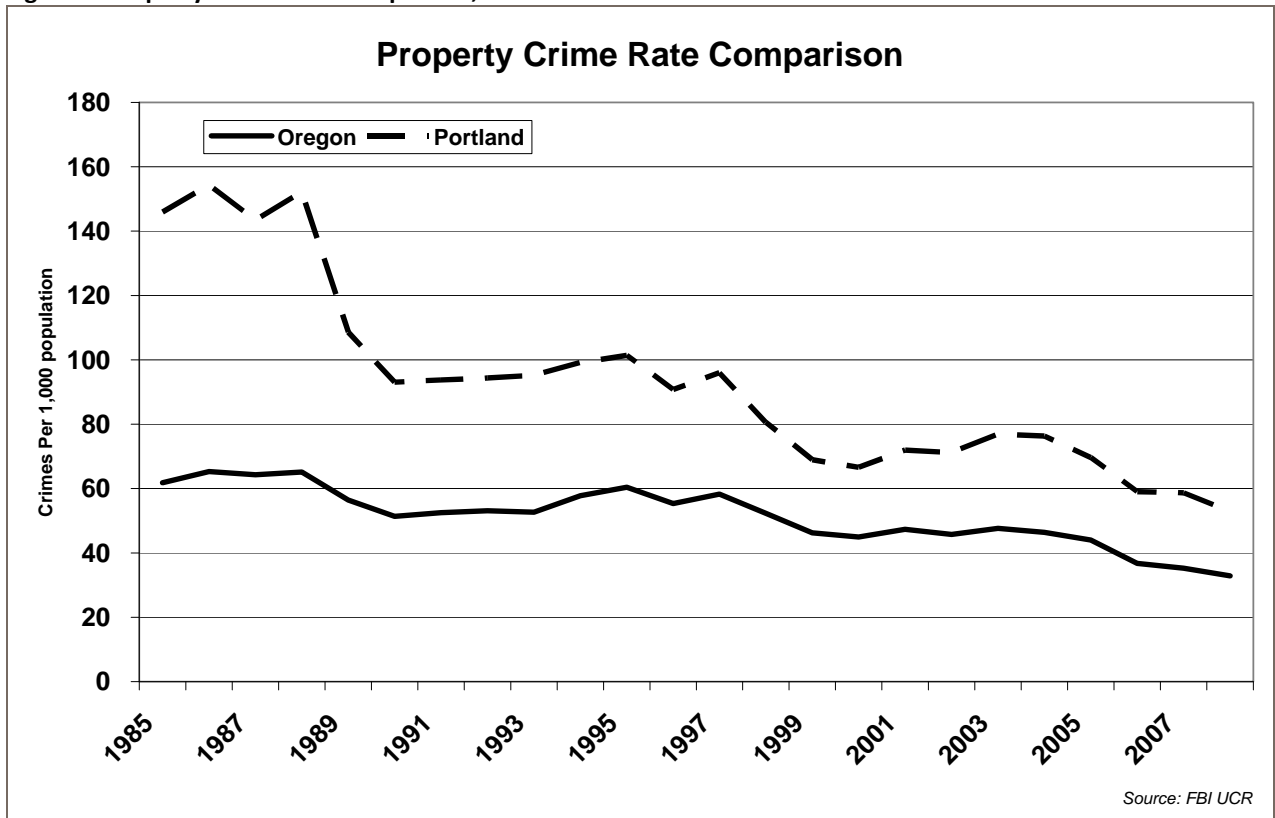


Figure 5: Property Crime Rate Comparison, OR & Portland



The 2009 UCR data provided by police agencies to the Oregon State Police indicates that crime is continuing to fall in the state. Here are the latest changes in index crimes for selected rural areas and cities in the state:

Table 1: Change in Index Crimes, 2008-2009

Change in Index Crimes from 2008 to 2009 (9 Largest Cities except for Salem)		
City	Violent Crime Change	Property Crime Change
Beaverton	-6%	-23%
Bend	-6%	-19%
Corvallis	0%	21%
Eugene	-5%	-12%
Gresham	-23%	2%
Hillsboro	-10%	-26%
Medford	-17%	0%
Portland	-10%	-9%
Springfield	-3%	-27%
9 Area Total	-10%	-11%

Source: Oregon Police LEDS

Table 2: Change in Index Crimes, Rural Cities

Change in Index Crimes from 2008 to 2009 (Selected Rural Cities)		
City	Violent Crime Change	Property Crime Change
Albany	6%	4%
Baker City	-75%	19%
Coos Bay	9%	-7%
Grants Pass	3%	-25%
Hermiston	0%	-8%
Klamath Falls	16%	23%
Ontario	-64%	-18%
Prineville	-48%	-10%
St Helens	-29%	-14%
The Dalles	-44%	12%
10 Area Total	-21%	-7%

Source: Oregon Police LEDS

The following illustrates one approach that has helped reduce Portland's crime rate:

**CITY OF PORTLAND'S SERVICE COORDINATION TEAM
PROGRAM SUMMARY: MARCH, 2010**

The Service Coordination Team (SCT) was established by the Portland Police Bureau in 2003 to address chronic public safety issues in Portland's Downtown/Old Town neighborhoods. The Bureau determined that the majority of crimes in these areas were being committed by a small concentration of long-time drug addicts who were committing drug and property crimes to feed their addictions. The SCT believed that if the drug addiction was addressed, the criminality associated with supporting it would decrease.

The goal of the SCT was to reduce the incidence of crime in the central city by offering treatment as an alternative to cycling habitual offenders through the criminal justice system without sanction and without addressing the underlying cause of their criminal behavior.

The program was designed to address this entrenched cycle of chronic criminality and drug addiction by combining tougher sanctions with assistance in accessing housing and treatment services.

A Chronic Offenders List was used to prioritize the population receiving services from the program. Criminals on the list are sanctioned with short periods of detention when arrested, but as an option to longer jail sentences are given immediate access to treatment and housing. Court oversight and sanctions provide the necessary tools to encourage and sustain the treatment alternative.

(continued next page...)

(...continued from previous page)

Many SCT clients have been arrested over 100 times and have been committing crimes and using drugs since as early as grade school. Most have had long periods of incarceration. This client population typically does not fare well in traditional treatment models and is considered one of the most difficult to serve. In addition to addiction and criminality, mental health issues are frequently present. The SCT treatment program is designed to address all three issues as a path to recovery – drug addiction, criminality and mental health.

This program is unique in that it brings all partners to the table to determine the best criminal justice and treatment options for each of the affected clients. SCT partners include: the Portland Police Bureau; Multnomah County Sheriff's Office, District Attorney's Office, Department of Community Justice, and Mental Health Department; Volunteers of America; Central City Concern; Portland Business Alliance Clean and Safe; Portland Patrol Incorporated; Project Respond and JOIN.

The program began in 2003 and has been fully funded with treatment and housing services since July, 2008. Since then, over 150 clients have received some level of service, from temporary housing to intensive six-eight month treatment. 84 have received drug treatment services and 18 of them have completed the entire treatment program, including wrap-around services for employment and permanent housing.

The SCT has a treatment completion rate of 21%. The nation average for treatment completion for cocaine addiction is 33%, with cocaine addiction being the lowest completion rate of all drug additions. Given that the SCT client population is one of the most difficult to treat – addicts who have had decades of homelessness and incarceration, the majority with mental health issues and most lacking education and employment skills – a 21% completion is remarkable.

Statistics show that even those who do not complete the treatment program have reduced their criminal behavior as a result of contact with program services. A recent Portland State University analysis shows that as clients increase their engagement in the program (housing and treatment) their criminality decreases. This is an indication that treatment completion should not be used as the only benchmark for program success, but should include each exposure, which research has tied to positive outcomes, creating a safer community, improved lives and a reduction in taxpayer resources.

The program has played a role in significantly reducing crime in the impacted neighborhoods. Since 2005, the impacted neighborhoods have experienced a 32% decrease in crime. The overall average arrest rate among the population has been reduced by 36% since 2006, with 63% of the offenders having had decreases in bookings.

Significant cost efficiencies are attributed to this program. While the specific savings are difficult to quantify, a recent federal study estimates that for every dollar spent on treatment, the public saves seven dollars in criminal justice costs, including jail beds, probation and parole, courts and legal fees. Using the arrest and incarceration records of the program's five most recent graduates, the average of all 18 graduates represent a collective total of 1440 arrests and 277 years of incarceration. Clearly, the criminal justice costs associated with processing and incarcerating these people are enormous, with the jail beds alone costing \$15,884,946.

Additional savings are in the reduction of stolen goods and insurance claims as well as the health and social cost savings of reducing criminal and addictive behavior in our communities. The PSU study conducted in-depth interviews with eleven of the program participants. Their findings shows that, on average, each of these clients had to steal property worth over \$100,000 a year in order to support their \$30,000 a year drug habit.

The Service Coordination Team has not only reduced crime and saved taxpayer resources, it has restored hope to lives previously shattered by drug addiction and incarceration. Program graduates are engaged in their community and committed to their recovery. They have formed an Alumni Association which sponsors activities to help the homeless and disadvantaged youth, allowing them to give back to the community.

VI. FACTORS CONTRIBUTING TO THE DECLINE IN CRIME

Although we know what factors contribute to crime and its reduction, criminologists and their modern statistical methods cannot tell us which of those factors is the most important (i.e., the "root cause" of crime).¹² Therefore, reasonable people will continue to disagree over root causes and the related policies.

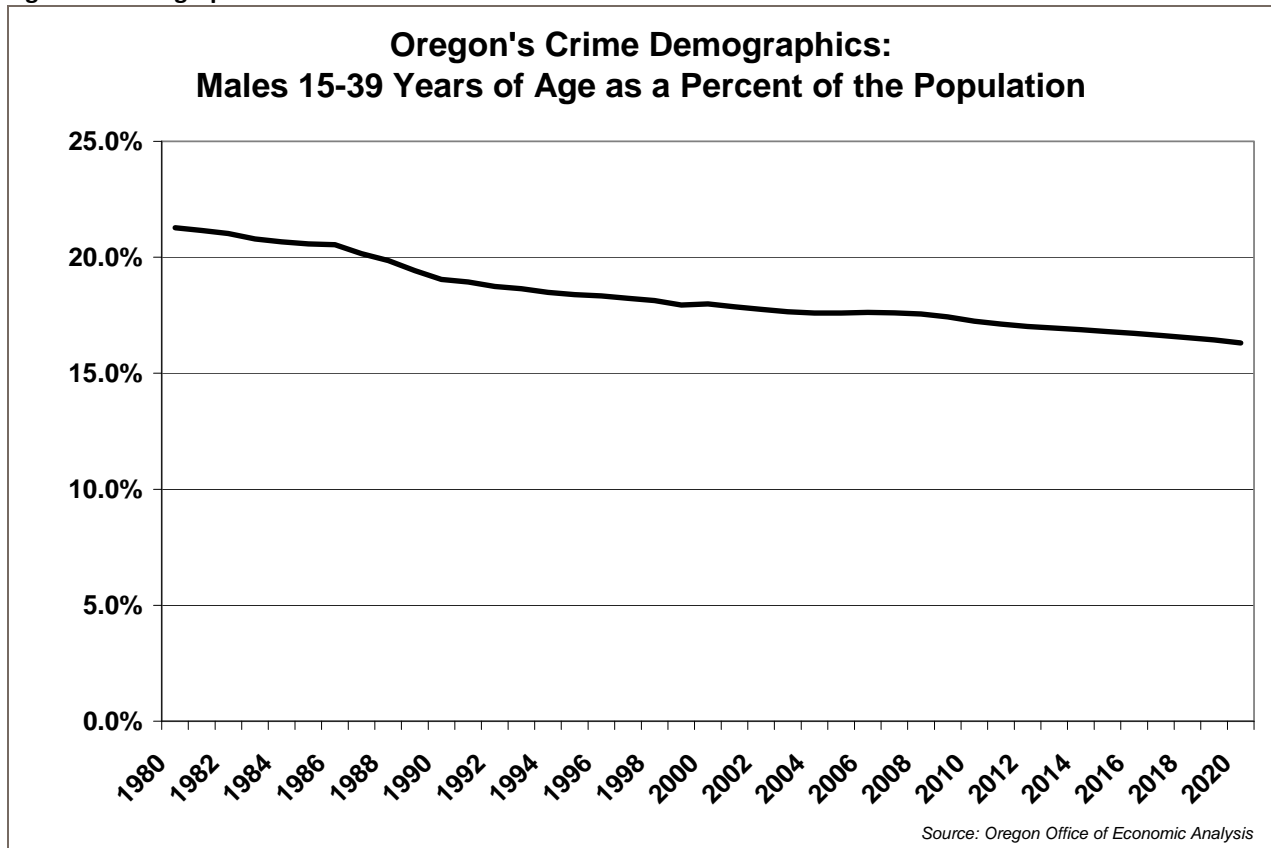
Our subcommittee believes that the increase in incarceration resulting from Ballot Measure 11 has had an effect in reducing crime in Oregon – at least initially. However, we are driven to propose changes in who we incarcerate and for how long because (a) the fiscal crisis facing the state, (b) the fact that our state's incarceration rate is approaching the national average and (c) recent persuasive research showing that incremental increases in the number and length of prison sentences are not cost effective.

First, let us examine the data.

Demographic Shift

- The percentage of males aged 15 to 39 has dropped from 22 percent in 1980 to 18 percent today. The 19 percent drop in this age cohort in Oregon is a significant contributor to reduced criminal activity.

Figure 6: Demographic Shift



¹² Zimring, F. E. (2006) *The Great American Crime Decline*. Oxford University Press.

Reduction in Meth Related Crime

Beginning in 2003, Governor Kulongoski pushed his Meth Task Force to “lead an effort to crush methamphetamine production, distribution, and use in Oregon”. The results have been dramatic. In 2005, the Oregon legislature made Oregon the only state that restricted access to pseudoephedrine so that a person must have a prescription to purchase cold or sinus remedies with this active ingredient. Meth lab seizures fell from 472 in 2004 to 10 in 2009.

More than 40 states have taken steps to address domestic methamphetamine production, but none as aggressive as Oregon. For example, a law passed by Kentucky in 2005 requiring customers to show photo identification to purchase cold medicine with pseudoephedrine showed initial positive results. Meth lab seizures dropped from 589 in 2005 to 328 in 2006. But meth producers began using straw buyers to avoid detection and lab seizures increased 41 percent from 2007 to 2008.

Coupled with the federal government’s lesser restrictions on pseudoephedrine, and the government of Mexico’s ban on the importation of pseudoephedrine, Oregon has achieved a major reduction in arrests for possession, distribution, and manufacture of meth. The six month rolling average number of arrests for meth possession, distribution, and manufacture in Oregon dropped from 956 arrests per month in March 2007 to 615 arrests per month in March 2010 (a 36 percent drop). The steepest drop in meth arrests have come following the pseudoephedrine restrictions and have remained level since July 2008.

Figure 7: Meth Lab Seizures

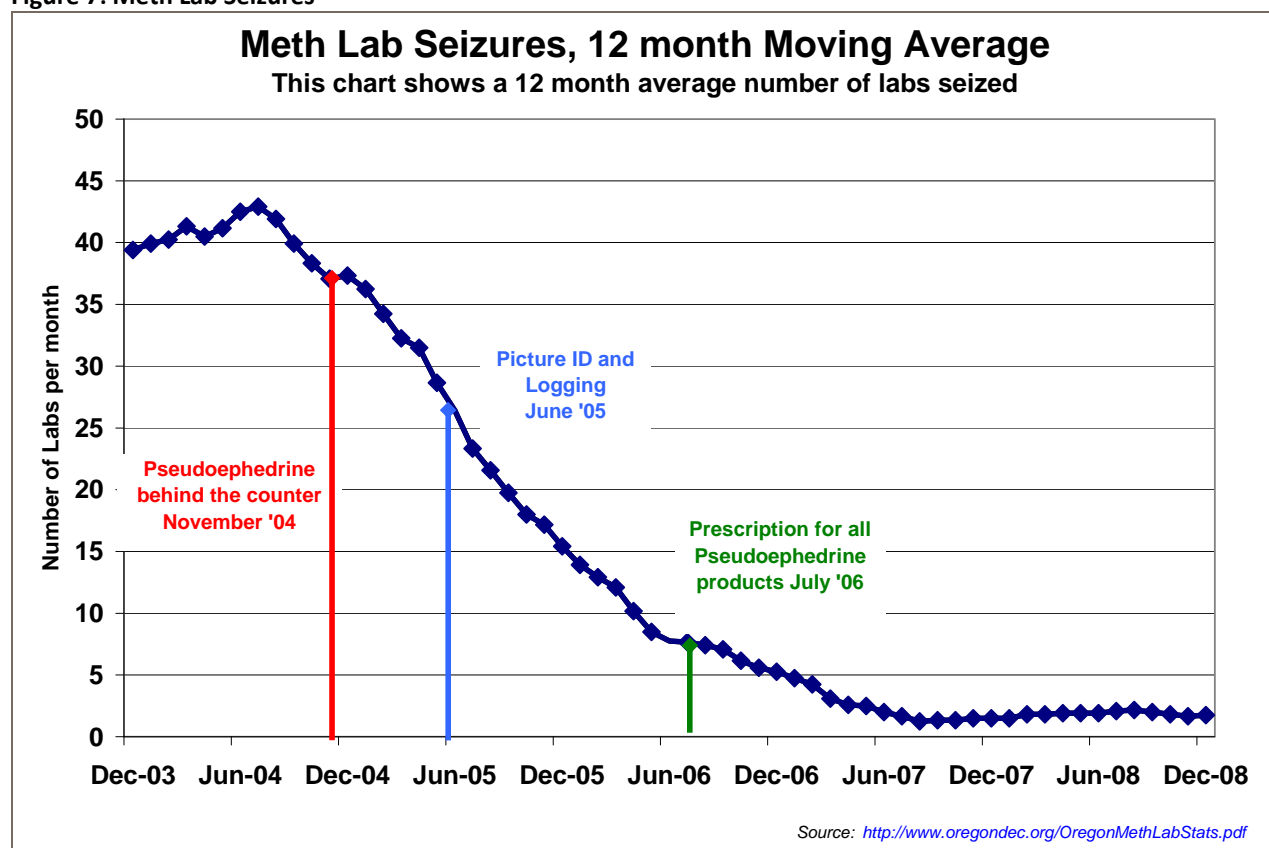
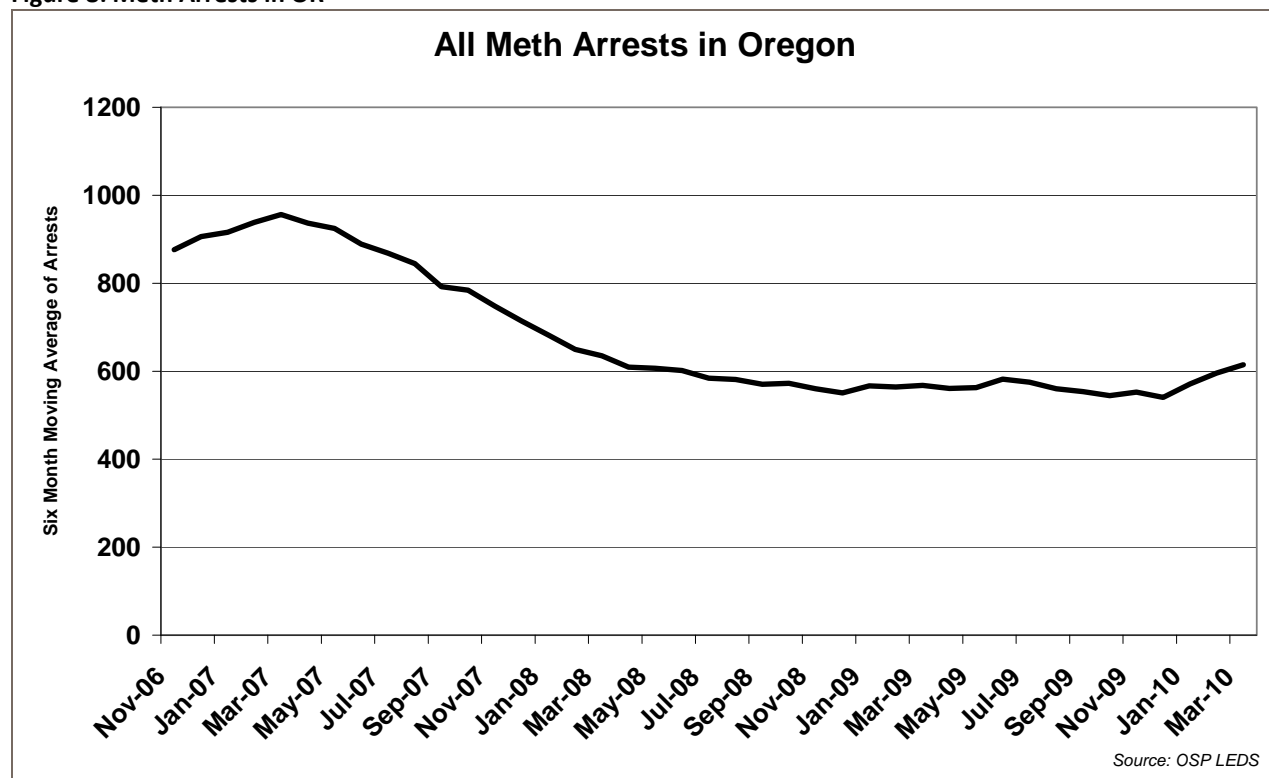


Figure 8: Meth Arrests in OR



Greater Reliance on Evidence-Based Practices in Community Corrections

Offenders who are sentenced to prison for 12 months or less serve their prison sentence in county custody. Most of these offenders are serving time after having been non-compliant with supervision and have had that supervision revoked. Historically, this group of offenders had the higher rates of recidivism than those on probation or those on post-prison supervision following a longer prison sentence. However, community corrections agencies have been working to incorporate practices supported by the effectiveness research over the past five years in managing these offenders. Since 2005, the recidivism rates for this group (and for probation) have been trending down for the first time. This is an excellent example of the effectiveness of Oregon’s requirement of using evidence-based practices.

The research on effectiveness directs corrections agencies to focus on those offenders assessed to be at the highest risk of recidivating, to measure and target individual risk factors, and to deliver programs that are designed specifically for offenders and that use social learning and cognitive/behavioral approaches. As correctional staff began to prioritize supervision and programs for those most likely to re-offend, the recidivism rates began dropping. In addition, correctional programs in the community are now being assessed regularly by the Department of Corrections and many have been redesigned to better correspond with the existing research, thus increasing their ability to impact recidivism as well.

Recidivism rates for the group that began supervision in the first six months of 2005, tracked for three years, were 37.8 percent for reconviction of a felony crime. Those rates have dropped to 34.5 percent for the latest group to have completed the three year time period and preliminary data suggest the rate will continue to drop for subsequent cohorts.

This 9 percent reduction in offenders who are reconvicted represents a substantial savings in prison costs. The average cost for every person who recidivates and returns to prison is \$74,156 (for 878 days served). The drop in recidivism from the group that started supervision the first half of 2005 to the group that

started supervision in the second half of 2006 (and ended their 3 years at the end of 2009) is equal to 82 fewer felony convictions. About 73 percent of those people (60 people) would probably have been sent to prison for an average of 878 days and a cost of \$4,449,360 in prison costs alone.

Some counties have shown marked improvement during this time. Counties with at least 30 people on local control PPS and with a drop in recidivism of 5 percent or more include:

Clackamas: from 38% to 22%

Douglas: from 39% to 28%

Jackson: from 50% to 28%

Marion: from 44% to 32%

Umatilla: from 44% to 15%

Washington: from 36% to 30%

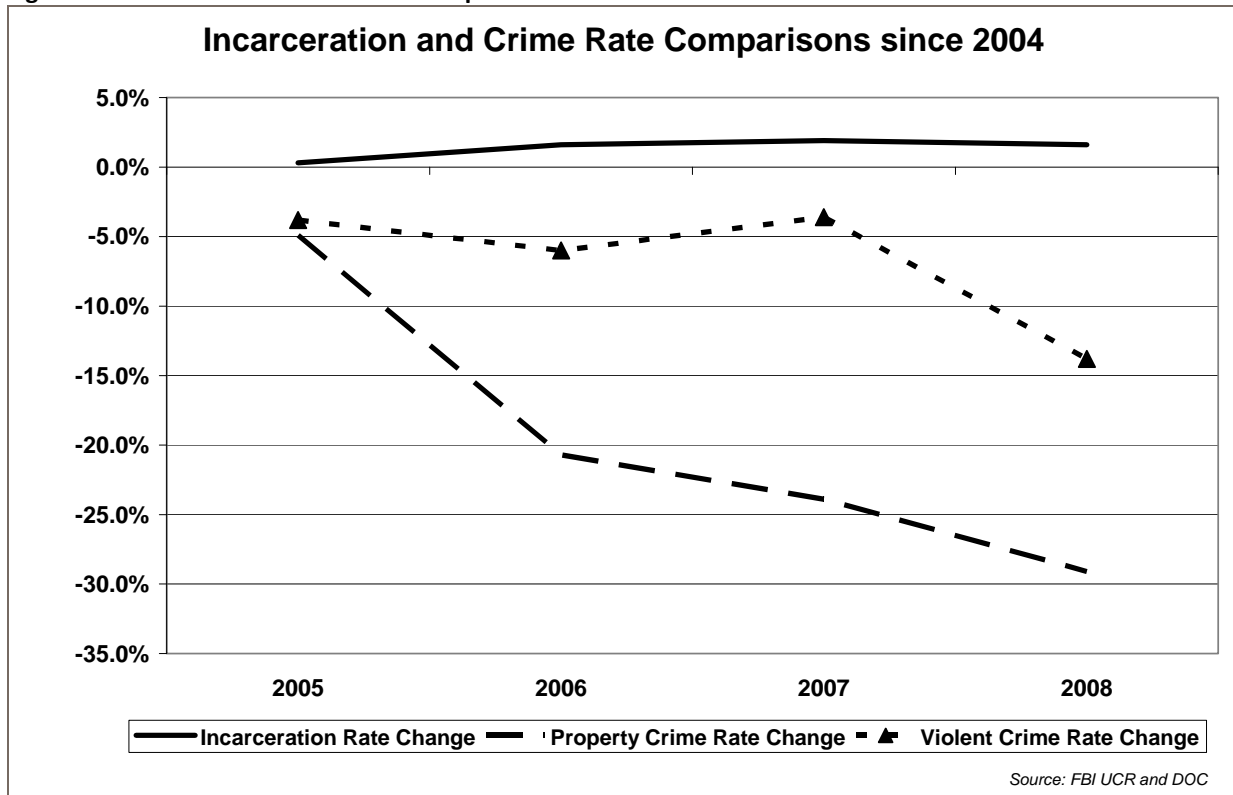
This local control population represents a small percent of the offenders under supervision, but the success here is especially notable because of the previous high recidivism. Community corrections agencies are showing similar success with offenders under probation.

Increase in Incarceration

The Oregon Criminal Justice Commission (OCJC) attempted to determine what impact the increase in incarceration rate has on the crime rate. Based on a research model developed by Dr. William Spellman, a 10 percent increase in the incarceration rate should lead to a 2 percent to 4 percent decrease in the crime rate. Based on that ratio, in theory, increased incarceration would have accounted for about a 15 percent reduction in the crime rate from 1995 to 2008. The total crime rate decrease was 46 percent, so roughly one-third of the decrease in crime would be explained by incarceration according to Spellman's theory. However, from 2004 to the present, Oregon's crime rates have dropped substantially with only marginal increases in the incarceration rate.¹³

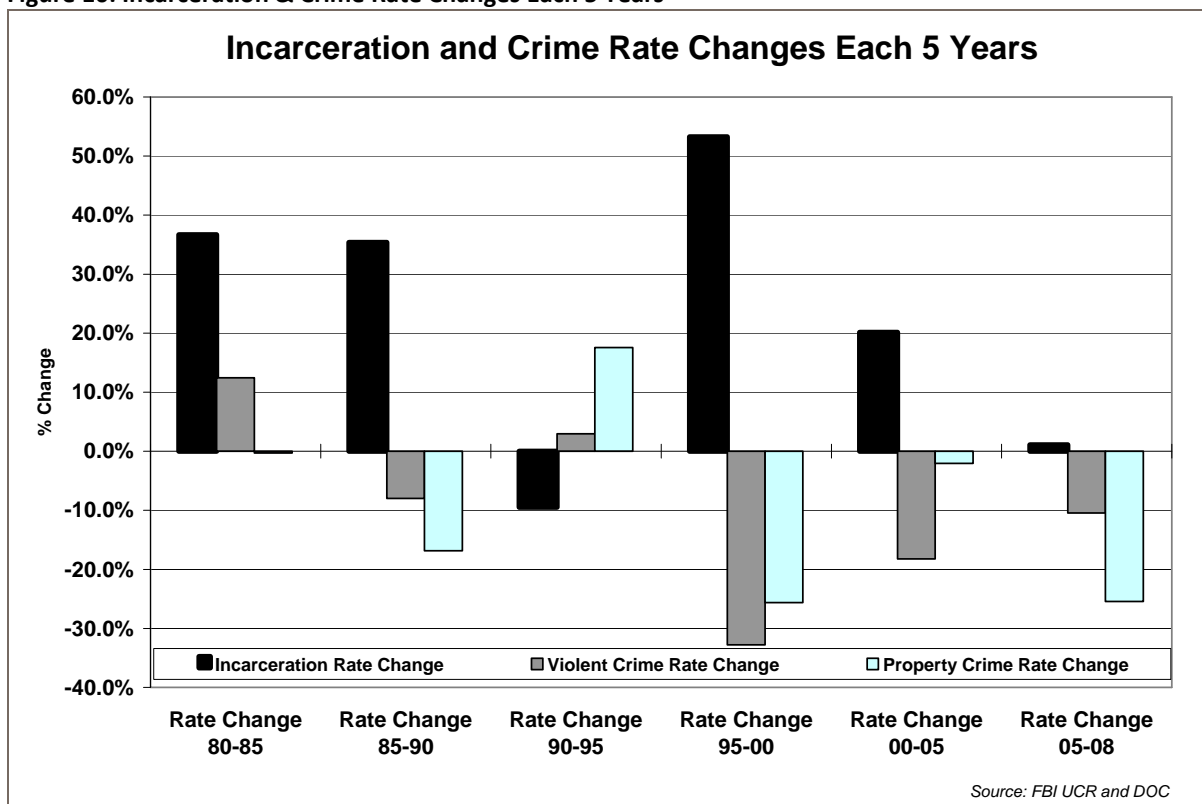
¹³ http://www.oregon.gov/CJC/docs/CrimeRates10_09Final.pdf

Figure 9: Incarceration & Crime Rate Comparisons



As the following chart illustrates, it is impossible to draw a simple cause and effect link between increase in incarceration rates and reduction in crime rates over the last thirty years.

Figure 10: Incarceration & Crime Rate Changes Each 5 Years



Finally, the OCJC staff tried to quantify the marginal return on investments in incarceration. According to this theory, Oregon is experiencing diminishing marginal returns in incarceration, dropping from \$2.78 returned for every \$1 invested in incarceration in 1994 to \$.091 returned on every \$1 invested in 2007. So, in theory and based on recent trends, future investments in incarceration are difficult to justify from a cost benefit perspective.

Table 3: Cost-Benefit of Incarceration

Year	Oregon	Washington		
	All	Violent	Property	Drug
1994	\$2.78	\$9.57	\$2.36	\$0.37
1995	\$2.42	\$8.20	\$2.40	\$0.37
1996	\$1.98	\$7.06	\$2.23	\$0.34
1997	\$1.81	\$6.58	\$2.22	\$0.36
1998	\$1.60	\$5.85	\$1.94	\$0.36
1999	\$1.31	\$5.37	\$1.74	\$0.32
2000	\$1.10	\$5.24	\$1.61	\$0.31
2001	\$1.11	\$4.87	\$1.46	\$0.28
2002	\$0.95	\$4.46	\$1.20	\$0.26
2003	\$1.01	\$4.82	\$1.26	\$0.29
2004	\$1.01	\$4.33	\$1.18	\$0.32
2005	\$0.93	\$4.35	\$1.10	\$0.35
2006	\$0.96	N/A	N/A	N/A
2007	\$0.91	N/A	N/A	N/A

Source: Criminal Justice Commission and Washington State Institute of Public Policy

Commentary

Various commentators have tried to explain the drop in crime. Recently, the Wall Street Journal editorialized that the traditional linkage between the increase in poverty and the increase in crime is not substantiated: It said that during 2008, “over seven million lost jobs... crime has plummeted to its lowest level since the early 1960’s.” The Journal attributed some of the drop in crime to the increase in incarceration rates and to intensive use of crime data in police practices such as “Compstat” in New York City and Los Angeles.¹⁴

In addition, several recent studies on public safety trends across the country cast doubt on previous theories of what causes crime rates to rise or fall. In “The Great American Crime Decline,” Professor Frank Zimring concludes that the usual suspects for explaining reductions in crime – a healthy economy, declines in the “at-risk” population (males ages 15-29), increases in police forces, rising rates of imprisonment – were all present in the United States during the Great American Crime Decline from 1990 to 2000 (and thereafter). The only problem for criminologists is that the same positive conditions were present during the rapid increase in crime in this country during the 1980s. Moreover, except for declines in the percentage of young adult males in the population, none of these positive trends were present in our neighboring country to the north during the equally significant “Great Canadian Crime Decline” in the 1990s!^{15, 16 17}

¹⁴ “A Crime Theory Demolished.” Opinion.” *Wall Street Journal*, 1/4/10.

[<http://online.wsj.com/article/SB10001424052748703580904574638024055735590.html>].

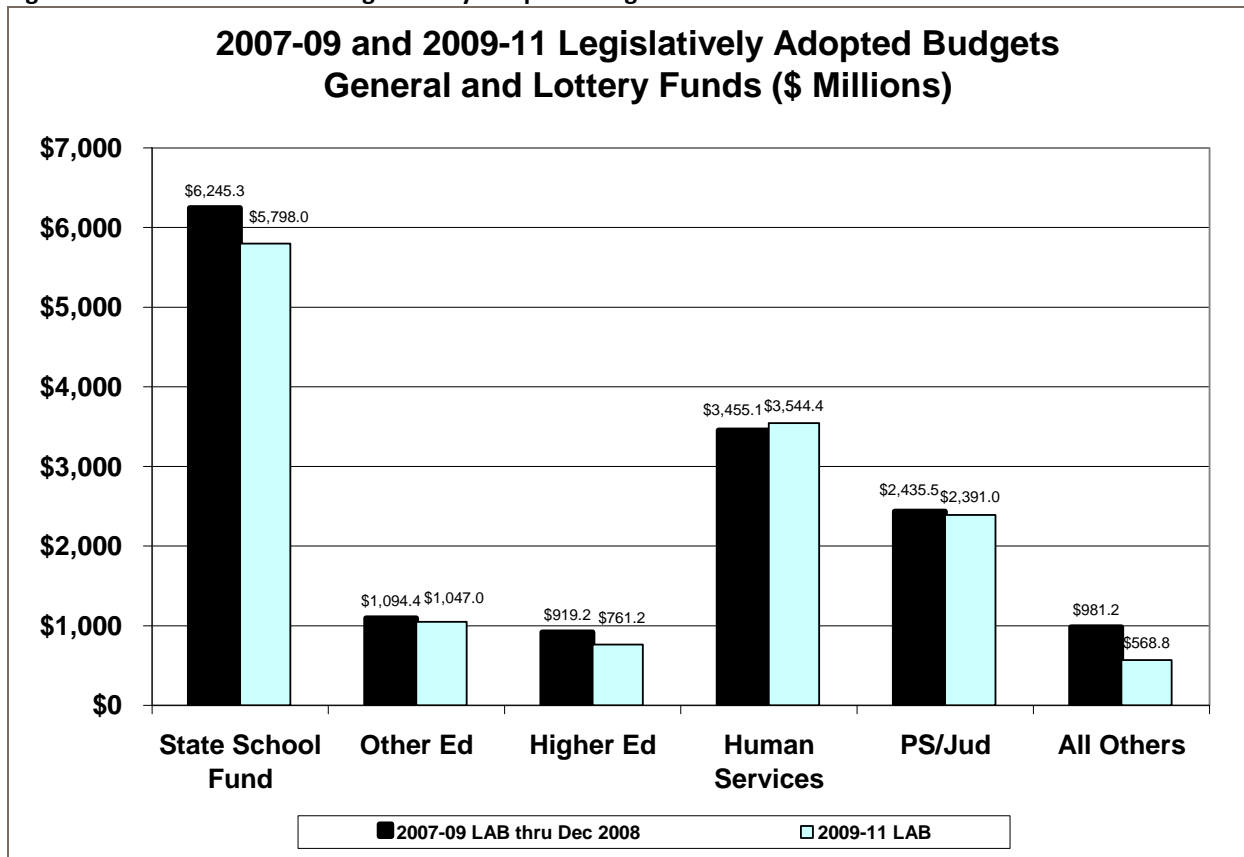
¹⁵ Zimring, F. E. (2007) *The Great American Crime Decline*. Oxford University Press, New York.

¹⁶ Donohue, J. J. “Book Review: The Great American Decline by Franklin E. Zimring.” *Journal of Criminology, Canadian Criminal Justice Association Online*. [<http://www.ccja-acjp.ca/en/cjcr200/cjcr278.html>].

VII. GROWTH OF PUBLIC SAFETY BUDGETS

- State general fund expenditures have increased from \$700 per household in 1985 to \$1426 per household in 2007 (adjusted for inflation) – a 104 percent increase.
- Since the 1985-87 biennium, the Department of Corrections (including prisons, treatment programs and community corrections) has increased expenditures by 209 percent, while Juvenile services has risen 63 percent, courts 50 percent and state police 5 percent (adjusted for inflation).
- The Department of Corrections now accounts for 53 percent of all public safety state spending.
- Inflation-adjusted criminal justice spending per household has more than doubled since 1985-87, mostly due to DOC (up 209 percent)
- For this analysis, “Courts” includes the criminal portion of Oregon Judicial Department, Public Defense and the District Attorney’s and their Deputies.

Figure 11: 2007-09 & 2009-11 Legislatively Adopted Budgets



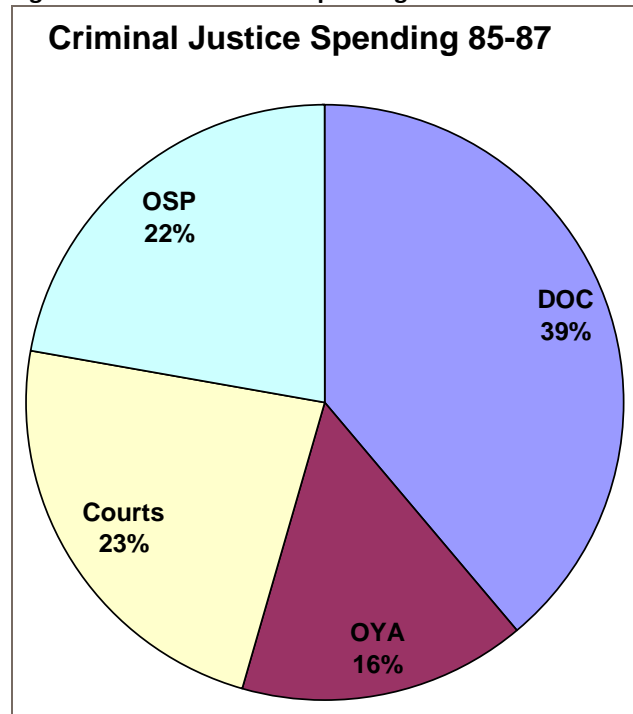
¹⁷ Clear, T.R. (2007) *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse*. Oxford University Press.

Table 4: General Fund Growth by Category

Inflation Adjusted per Household General Fund Spending			
	85-87	09-11	85-87 to 09-11 % Change
DOC	\$272	\$840	209%
OYA	\$109	\$177	63%
Courts	\$164	\$245	50%
OSP	\$155	\$163	5%
Total	\$700	\$1,426	104%

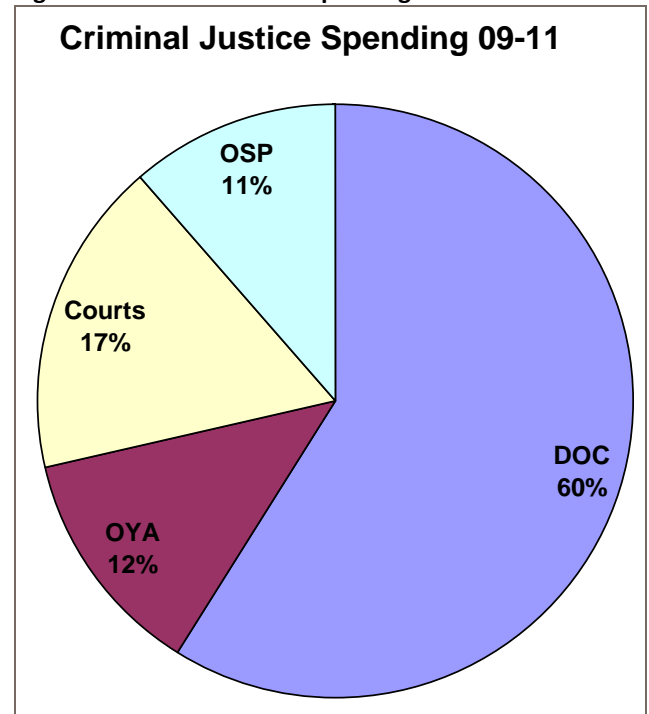
Source: Legislatively Adopted Budget

Figure 12: Criminal Justice Spending 85-87



Source: Legislatively Adopted Budgets & CJC

Figure 13: Criminal Justice Spending 09-11



Source: Legislatively Adopted Budgets & CJC

Notes: The 2009-11 Department of Corrections Budget 2009-2011 includes \$1.252 billion in general fund (GF). Of this GF appropriation, approximately 27 percent goes to two major areas outside of operating the prisons:

- County Community Corrections operations (\$214 million or 17 percent of DOC GF)
- Debt service for prison construction (\$130 million or 10 percent of DOC GF)
- The portion identified as OYA in the 1985-1987 biennium refers to Department of Human Services spending that is the equivalent to the Oregon Youth Authority spending after 1995.

VIII. COST DRIVERS

The three factors controlling the cost of the prison system are:

1. **Who enters the state prison system?**
2. **How long do they stay?**
3. **How much do we pay employees who provide supervision and services?**

All three factors have cost drivers associated with them.

1. Over the past twenty years, Oregon has more than doubled the number of offenders incarcerated in the state corrections system – largely through the adoption of mandatory minimum sentencing structures by the voters and the direct and indirect impact of the use of plea bargaining by prosecutors in using those sentencing structures. (See charts on page 26.)
2. The increased sentence length or its threat has increased the amount of time offenders spend in prison. However, the use of prosecutorial discretion (i.e. plea bargaining) has also reduced the impact those sentencing structures could have had on the corrections system. Oregon Judicial Department data shows that of the 30,854 cases terminated in 2009, only 1,760 were disposed of by court or jury trial.¹⁸ In other words, in only 6 percent of the cases did the judge decide the sentence after a trial. The vast majority of cases are disposed of by a plea agreement between the defendant and the prosecutor.

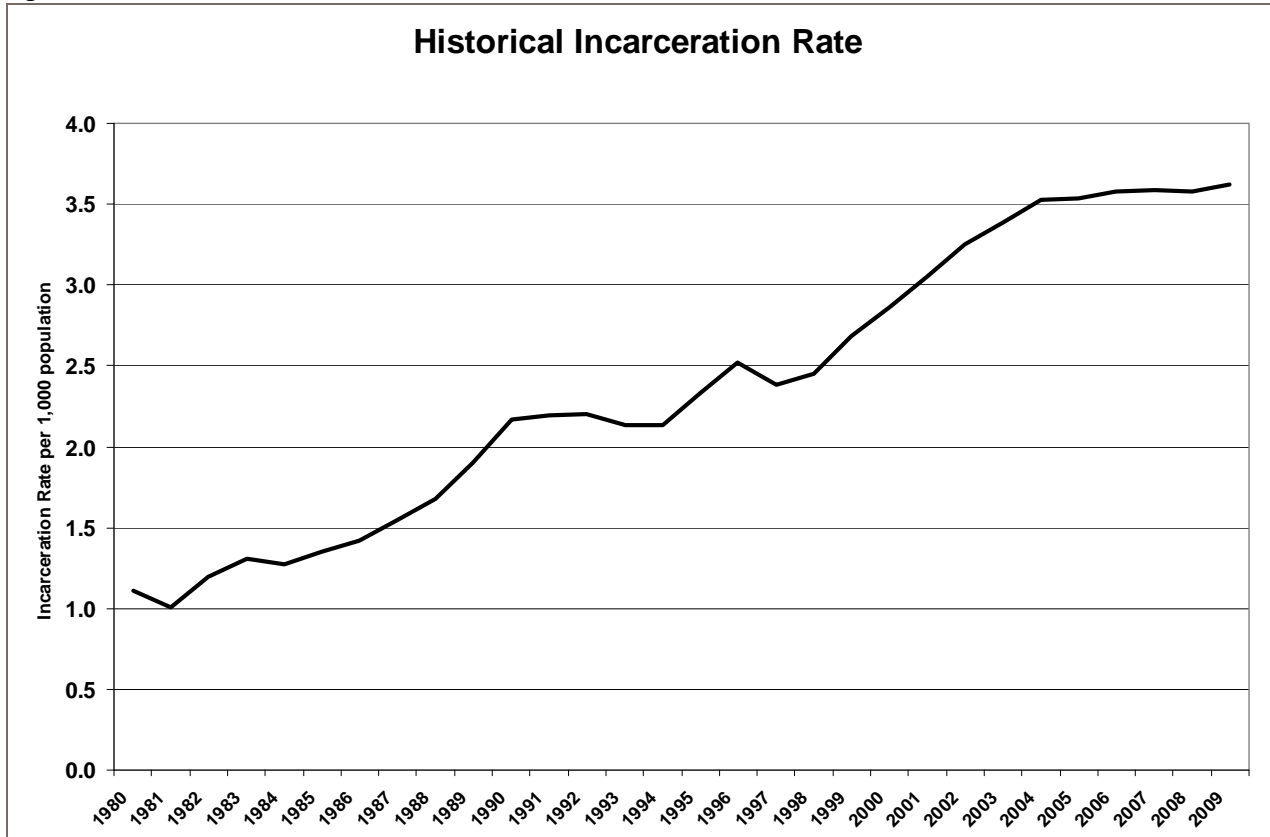
Both of these first two drivers, however, contribute to the increase in the number of prison beds required to carry out Oregon’s sentencing policies. Prison beds are the most expensive cost driver and the one receiving the bulk of the subcommittee’s attention. The subcommittee’s options focus on creating a more transparent, more predictable sentencing policy and uniform application of that policy.

3. The final cost driver is the level of pay and benefits (e.g. retirement, health) allocated to public employees. The subcommittee supports this issue being addressed on a statewide basis by the Reset Cabinet.

Other cost drivers include the overlapping and sometimes duplicative system of providing public safety services in Oregon. Some consolidation of various jails, community corrections agencies, law enforcement agencies, and local government tools could produce savings over the long run. The Judiciary is currently beginning a process to look at potential court and service consolidations across county lines. A separate study process including stakeholders should build on that work and develop a proposal for capturing potential savings. The State must look beyond current county and government structures in providing services to Oregon’s citizens.

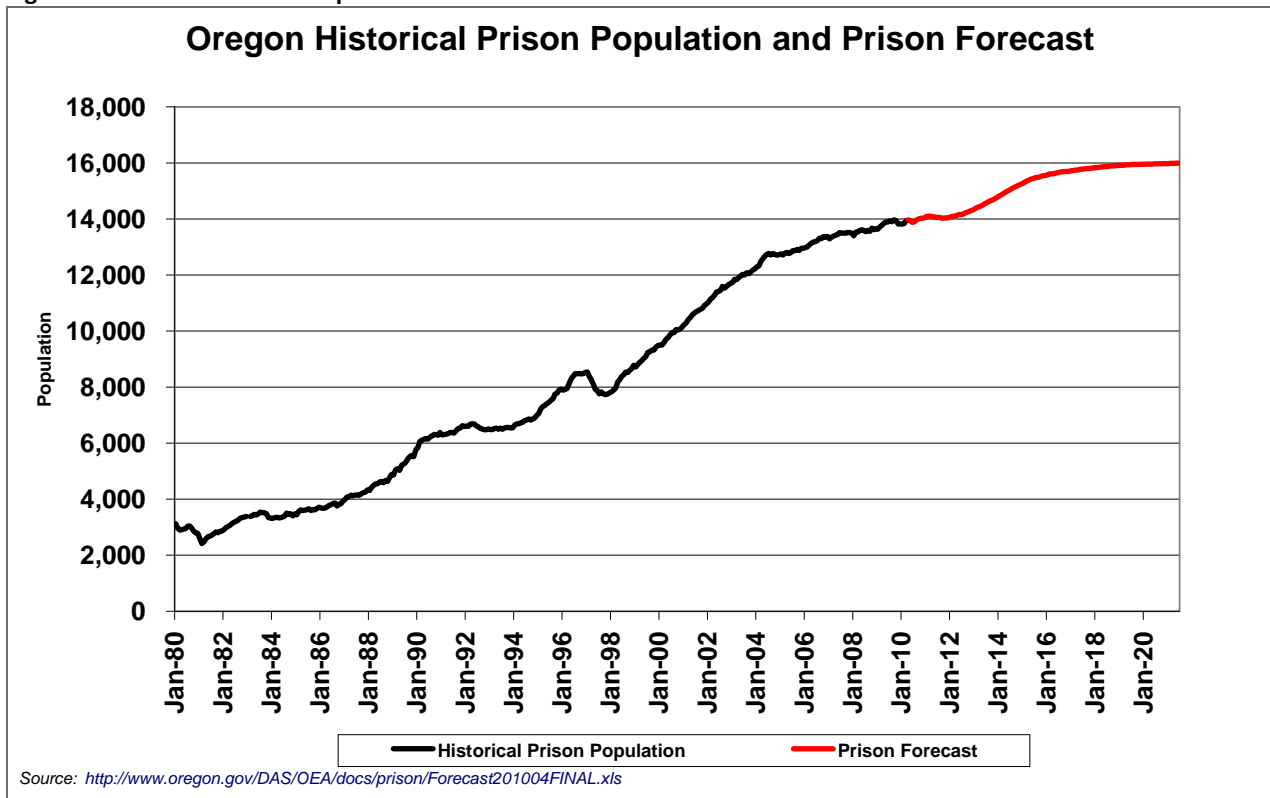
¹⁸ State Trial Courts. *Cases Tried Analysis, 2/12/09*.
[\[http://courts.oregon.gov/OJD/docs/OSCA/2009_Stats_Table_6.pdf\]](http://courts.oregon.gov/OJD/docs/OSCA/2009_Stats_Table_6.pdf).

Figure 14: Historical Incarceration Rate



Source: DOC

Figure 15: Historical Prison Population & Prison Forecast



Source: <http://www.oregon.gov/DAS/OEA/docs/prison/Forecast201004FINAL.xls>

IX. IMPACT OF MANDATORY MINIMUM SENTENCES ON OREGON'S PUBLIC SAFETY SYSTEM

Oregon went many years without expanding its state prison capacity. During this time the state continued to grow and crime rates rose as a percentage of population. Oregon lacked sufficient prison capacity to hold offenders accountable. In the mid 1980s, Oregon adopted sentencing guidelines to better match sentence length to the seriousness of crimes committed. These guidelines created uniformity in sentencing by requiring judges to work within certain ranges when sentencing. The guidelines were meant to be flexible and modified as additional incarceration space became available. Currently, twenty-one states and the federal government use sentencing guidelines. The other states still operate on the parole board system that was in place in Oregon prior to the guidelines.

Following the passage of guidelines, Oregon began building additional prison capacity. The guideline system was operational for five years when in November, 1994, the citizens passed Ballot Measure 11.

Ballot Measure 11 originally set mandatory minimum sentences for sixteen person crimes committed by persons 15 years and older. These statutory penalties eliminated sentencing guidelines control over which of these offenders went to prison and the length of their stay. Measure 11 has been amended by the legislature to include 23 crimes, with some of the less serious crimes eligible for a departure to a lesser "guidelines" sentence if certain statutory requirements are met.

Prior to the passage of Ballot Measure 11, almost all the months of prison imposed were covered by sentencing guidelines. However, by 2008, only 25 percent of the months of sentences imposed in Oregon were covered by guideline sentences. 64 percent of the sentence months imposed were on offenders indicted for Measure 11 crimes and either convicted of those crimes or to lesser offenses through plea bargaining. In 2008, only 29 percent of those offenders indicted for a Measure 11 crime were convicted of the most serious offense for which they were indicted.

This illustrates a basic fact: the negotiation and sentencing of those who commit Ballot Measure 11 offenses to lesser offenses drives

the major part of the prison forecast, not in total number of offenders, but in total prison bed days. This key disposition phase of negotiating the sentence is not guided by any written policy and is not informed by feedback about the different practices in each county and how they affect the state's public safety spending. There is no state-wide policy in place to guide the prioritization or use of the prison bed resource.

OREGON'S SENTENCING GUIDELINES SYSTEM

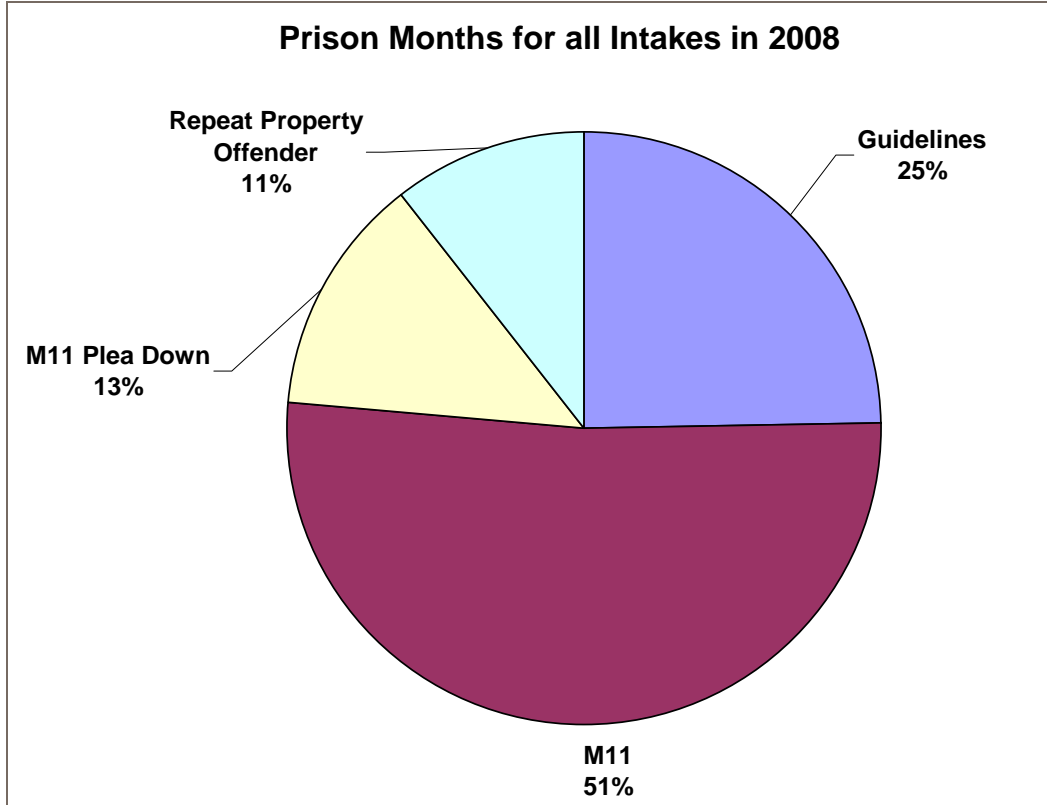
Sentencing guidelines were requested by the 1987 Legislature and implemented in November 1, 1989, following the adoption of the report of the Oregon Criminal Justice Council.

The primary objectives of the Oregon Sentencing guidelines were "to punish each offender appropriately, and to insure the security of the people in person and property, within the limits of correctional resources provided by the Legislative Assembly, local governments and the people."

(OAR 233-02-001 <http://www.oregon.gov/CJC/SG.shtml>)

Significantly, guidelines had to balance appropriate punishment of offenders against the available correctional resources and attempt to apportion incarceration among a variety of types and seriousness of offenders. Ballot measures subsequently imposed mandatory sentences for some offenses without regard to available resources or to the fairness of those sentences vis a vis other sentences being imposed. This creates tensions in the system as to resources allocation and overall system fairness. Since the historical guidelines were passed, Oregon has constructed over 9,000 additional beds, significantly expanding the State's incarceration resources.

Figure 16: Prison Months for all Intakes, 2008



Source: CJC

PROSECUTORIAL DISCRETION

Measure 11 did as much to change how certain offenders are convicted and sentenced as it did to change how long those offenders serve. Prior to Measure 11, almost all felons were sentenced according to statewide sentencing guidelines that outlined a presumptive sentence for each offender based upon the offender's criminal history and the aggravating and mitigating circumstances of each individual case. Measure 11 caused prosecutors to "charge bargain" to a degree that was unknown before its passage. In 2008, only 29% of those indicted by a grand jury for committing a Measure 11 crime were convicted of the most serious crime for which the grand jury returned a "true bill." In other words, the majority of offenders who committed Measure 11 offenses were not convicted of the most serious crime they had committed. Often, the offender was convicted of a "lesser included" crime that did not carry a mandatory minimum sentence.

This plea bargaining or charge bargaining allows the county prosecutor to decide which cases go to prison, and for how long to a degree that was unknown in Oregon before Measure 11. This charge bargaining is different in each county. For example, analysis of Oregon Judicial Information Network data reveals that from 2000-2007 only 16% of offenders prosecuted in Clatsop County were convicted of the most serious Measure 11 offense for which they were indicted. In Marion County, 54% were convicted of those same charges in the same time frame. An offender is more than three times as likely to be subject to the longest mandatory minimum sentence for which he or she is indicted in Marion County as in Clatsop County.

X. POTENTIAL FOR REINVESTMENTS

The subcommittee has reviewed a number of different strategies and investments used in Oregon and other states that address some of the foundational issues associated with criminal behavior. The national and state data suggest that longer-term investments in these strategies will also reduce crime and recidivism. For example, the effectiveness of Oregon's community-based sanctions was documented in a 2002 study.¹⁹

For purposes of this report we have identified several different approaches along with information from recent national and Oregon studies that support a longer-term investment in prevention and treatment.

The subcommittee also recognizes that given the current financial downturn it will be difficult to redirect any savings to a justice reinvestment effort. Nonetheless, even short-term adjustments in spending could lower the expense of incarceration, enhance the prevention, diversion or treatment effort, and maintain public safety. Cost effective options include:

- Community-based and problem oriented law enforcement strategies
- Alcohol and drug treatment
- Mental health treatment
- Secure and supervised housing
- Prevention services for youth
- Community-based placements for adult and juvenile offenders
- Electronic monitoring and enhanced home detention
- Crime prevention strategies

The relative effectiveness of these strategies has been well documented by the Washington State Institute for Public Policy. In 2006, the Institute issued a report entitled *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*.²⁰ The report compares the effectiveness of a variety of early intervention strategies in reducing crime.

¹⁹ *The Effectiveness of Community-Based Sanctions in Reducing Recidivism*. (September 5, 2002.) Oregon Department of Corrections, Community Corrections Commission.

[http://www.doc.state.or.us/DOC/TRANS/CC/docs/pdf/effectiveness_of_sanctions_version2.pdf].

²⁰ See: <http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf>.

NATIONAL STUDY ON ALCOHOL AND DRUG TREATMENT

*The effectiveness of alcohol and drug treatment in prisons and jails was recently studied in **Behind Bars II: Substance Abuse and America's Prison Population** by The National Center on Addiction and Substance Abuse at Columbia University: The report opens with the following statement:*

We in the United States, though only five percent of the world's population, consume two-thirds of the world's illegal drugs. We in the United States, though only five percent of the world's population, incarcerate 25 percent of the world's prisoners.

It is no coincidence that of the 2.3 million inmates in U.S. prisons, 65 percent--1.5 million--meet the DSM-IV medical criteria for alcohol or other drug abuse and addiction. Another 20 percent--458,000--... were under the influence of alcohol or other drugs at the time of their offense...

The report recommends the following:

- *Use appropriately trained health care professionals to screen, assess and treat substance-involved offenders using comprehensive, evidence-based approaches tailored to the needs of offenders.*
- *Provide appropriate care for co-occurring physical and mental health problems; offer and encourage participation in literacy, education, job training and parenting programs; and, increase the availability of religious, spiritual, and mutual support services.*
- *For inmates with substance use disorders, provide comprehensive pre-release planning to assure transition to a broad range of integrated reentry services.*
- *Expand the use of treatment-based alternatives to jail and prison--including drug courts and prosecutorial diversion programs--and post-release supervision for substance-involved offenders.*
- *Require that addiction treatment be provided in criminal justice settings, that it be medically managed and that pharmacological treatments be available.*
- *Require the accreditation of prison- and jail-based treatment programs and providers.*
- *Expand federal grants to states and localities for integrated evidence-based and promising practices.*

The full report can be found at:

<http://www.casacolumbia.org/articlefiles/575-report2010behindbars2.pdf>

See also "Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Criminogenic Needs" by Douglas B. Marlowe. Chapman Journal of Criminal Justice, Spring 2009.

<http://www.chapman.edu/law/students/CJCJ.asp>

Some of these recommendations can be addressed through options the subcommittee suggests in developing new partnerships with county based district attorney offices and community corrections agencies.

DRUG COURTS

The Edward Byrne Memorial Justice Assistance (JAG) Grant was the conduit for the state level “stimulus grants” awarded nationally in 2009. Oregon received over \$13 million dollars that are to be spent over a four year span. The Oregon Criminal Justice Commission advised Governor Kulongoski to use the funds to set up drug court style supervision for addicted non-violent property offenders who would be eligible for prison based upon their repeated criminal behavior.

Ten counties in Oregon have started these programs, building on Oregon’s long history of using drug courts for those who are diverted from a drug possession felony conviction if they successfully complete an intensive drug court program. Random Control Trials will test the efficacy of the program with this group of offenders. It is hoped that the program becomes a demonstrated alternative to incarcerating over 700 offenders a year by January 1, 2012 when Measure 57 will by law make the presumptive sentence prison for these offenders.

XI. SUSTAINABLE FUTURE BUDGETS

The Reset Update released by the Governor's office and the Reset Cabinet specifically identified the financial pressures on Oregon – and particularly the key services that Oregon funds with general fund revenues. The Reset Cabinet Update can be found at

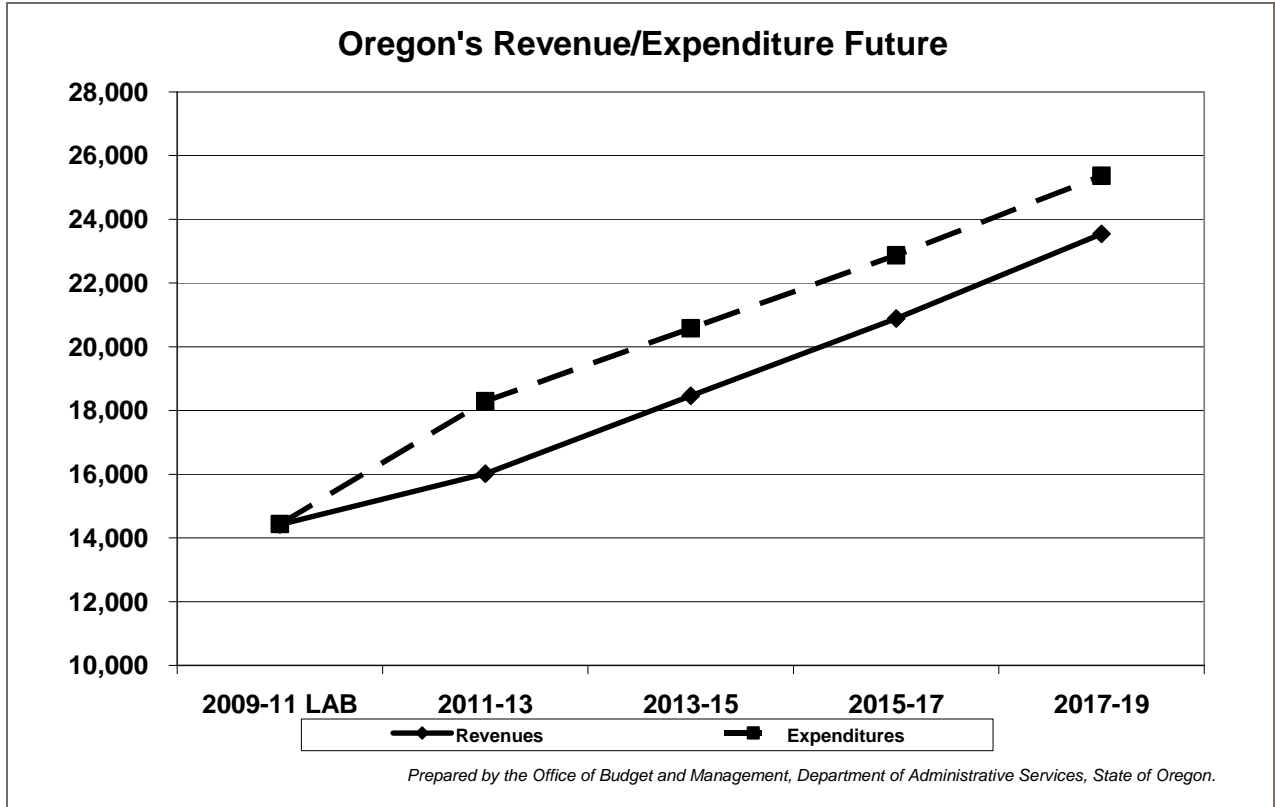
http://governor.oregon.gov/Gov/governor_reset_cabinet/reset_state_govt.shtml

To provide context for the options presented in this report we provide the following additional information:

- Current Biennium: Oregon is one of 10 states in “financial peril.”²¹
- The 2009 Legislature used \$1.8 billion in reductions, \$1.36 billion in one time only federal stimulus funds, and \$750 million in new tax revenue to balance current biennium budget. During the 2010 Special Session, the Legislature spent down reserves and fund accounts. The state's debt capacity is considered to be at its maximum level without impacting its credit rating.
- Projections for 2011-13 indicate that the State is facing a deficit of at least \$2.5 billion for the next biennium. (See chart below) If reductions in that amount were taken across the board, the general fund portion of the public safety part of the state deficit is 14 percent or approximately \$333 million. In addition, ten Oregon counties will face at least a 20 percent loss of revenue because of the termination of federal timber revenues. The subcommittee assumed no new State revenue sources in the foreseeable future.
- On May 25, 2010, Governor Kulongoski announced that projected revenue shortfalls of \$563 million (now estimated at \$577 million) would require a 9 percent across the board reduction for all government operations. For the Department of Corrections, that would result in a \$50 million reduction for the 2010-11 fiscal year. As this report was being finalized, Departments were preparing their suggested reductions for the Governor. Some Republican legislators were calling for a special legislative session to craft a legislative response that would protect K-12 education funding – and presumably result in greater cuts to public safety. As noted in this report, any major reduction in corrections funding are very difficult without statutory changes by the Legislature.

²¹ “Beyond California: States in Fiscal Peril.” (November 2009.) *The Pew Center on the States*.
[\[http://www.pewcenteronthestates.org/initiatives_detail.aspx?initiativeID=55888\]](http://www.pewcenteronthestates.org/initiatives_detail.aspx?initiativeID=55888).

Figure 17: OR's Revenue/Expenditure Future



XII. EXPERIENCE OF OTHER STATES AND COMMON THEMES

Overall Prison Population

Overall, the United States prison population increased by less than 1 percent last year, to an all time high of 1.6 million. Counting the number of people in jails, the United States had 2.3 million people behind bars – one out of every 133 residents. (NY Times news article; December 9) However, the United States which has less than 5 percent of the world’s population continues to have about 25 percent of the world’s prisoners.²²

This was a decline in growth of the prison population from the previous decade that saw an annual average of 6 percent increases. A professor at the University of Pennsylvania attributed the decline in growth to cost:

They [prisons] simply cost too much.” Both liberals and conservatives are increasingly searching for alternative sentencing programs, like treatment or monitoring... “It’s not ideological, it’s pragmatic... This is the first time we have alliances on the right and left on this issue, and it’s the money that has forced the issue.”²³ (A22)

The Pew Center on the States has quantified the cost.

State spending from general funds on corrections increased from \$10.6 billion in 1987 to more than \$44 billion in 2007, a 127% increase in inflation adjusted dollars. In the same period, adjusted spending on higher education increased only 21%.²⁴

Crime and Incarceration Rates

Oregon has reduced crime while increasing incarceration; other states have experienced similar reductions in crime, while also reducing incarceration rates. In particular, New York and New Jersey have experienced dramatic reductions in prison capacity (around 15 percent) and dramatic drops in crime (around 35 percent).

Figure 18: State Outcomes Vary on Crime & Incarceration, 1997-2007



²² "Prisons and Budgets." Editorial. New York Times. 03 Jan 2010, A20.

[<http://www.nytimes.com/2010/01/04/opinion/04mon3.html>].

²³ Ibid.

²⁴ Ibid.

However, in many states, including New York and New Jersey, sentencing policies and practices have historically incarcerated a greater number of property and drug offenders than has Oregon, allowing for corresponding greater reductions now. In other words, these states had “easier” policy changes to make.

Overall Progress

Several states have made remarkable progress in the past few years.²⁵

Many have used community corrections in a more aggressive fashion in developing statewide policies.²⁶

No two states are the same and it is difficult to make precise comparisons. That said, the following examples are instructive of policy changes states have made to meet both the needs of community safety and to better allocate their resources. They have used several different strategies - Reinvestments; Early Release and Increased Credits; Performance Incentive Funding - to approach the problem.

Reinvestment Strategies

Texas

When the Texas Legislature convened in 2007, elected officials faced a major dilemma: spend a half billion dollars to build and operate new prisons to accommodate the surging number of people expected to be incarcerated or explore options to control that growth. A bipartisan group of legislative leaders commissioned the Council of State Governments Justice Center (“Justice Center”) to conduct a comprehensive analysis of the state’s prison population. The data collected were used to shape a series of policies that avoided the need to build more prisons and allowed for the reinvestment of roughly half the funds earmarked for prison construction toward a range of strategies designed to increase public safety and reduce recidivism

- In 2007, the legislature rejected plans to spend \$523 million in additional prison construction and operations and instead, through its Justice Reinvestment Initiative, appropriated \$241 million to expand the capacity of substance abuse, mental health, and intermediate sanction facilities and programs that focused on people under supervision who would otherwise likely be revoked to prison.
- From January 2007 to December 2008, the Texas prison population increased by only 529 individuals; the projected increase for that period at the beginning of the 2007 legislative session was 5,141 individuals if the justice reinvestment strategies had not been implemented.
- Between 2006 and 2008, probation revocations to prison declined by 4 percent and parole revocations to prison plummeted 25 percent. During this same period, the parole board’s rate of approvals for supervised releases rose from 26 percent to 31 percent.
- The increased availability of treatment and intermediate sanction facilities has facilitated the reduction in revocations and the enhanced use of parole.

²⁵ Pew Center on the States’ Public Safety Performance Project. Getting in Sync: State-Local Fiscal Partnerships for Public Safety (Washington, DC: The Pew Charitable Trusts, Jul 2008).

[http://www.pewcenteronthestates.org/uploadedFiles/State-Local%20Fiscal%20Partnerships%20July%202008\(1\).pdf](http://www.pewcenteronthestates.org/uploadedFiles/State-Local%20Fiscal%20Partnerships%20July%202008(1).pdf).

²⁶ Note: Here is a framework that draws upon evidence-based practices.

<http://www.pewcenteronthestates.org/uploadedFiles/Executive%20Summary.pdf>
http://www.pewcenteronthestates.org/report_detail.aspx?id=47134

-
- Although the state’s nonpartisan Legislative Budget Board projected in 2007 - before the enactment of the Justice Reinvestment Initiative - that the prison population would grow by approximately 17,000 people over five years, it now projects minimal growth. No shortfall in capacity is predicted until 2013, when the system will need approximately 1,300 beds.²⁷

Kansas

Criminal justice policy in Kansas has long been regarded as “tough and smart.” It is tough because serious and violent offenders are held in prison for long terms. It is smart because policymakers have made research-driven decisions about which offenders can be safely and effectively supervised in community corrections programs. This combination has allowed Kansas to curb spending on prison construction while ensuring space is available to keep violent offenders behind bars.

Nonetheless, criminal justice policies enacted in 2006 which increased sentence length, along with other developments, were poised to place this balanced criminal justice policy framework under significant pressure. With the prison population projected to increase by 22 percent, policymakers were faced with the prospect of appropriating nearly \$500 million over ten years to build and operate approximately 1,292 additional prison beds. Kansas policymakers instead identified another path and applied a justice reinvestment strategy.

An analysis of the prison population identified high rates of failure on community supervision and low rates of in-prison program completion as key factors driving the projected growth. To reduce recidivism rates, state lawmakers enacted both a 60-day credit for people in prison who complete certain programs and a grant program for local community corrections agencies to increase success rates among those under supervision by 20 percent. The measures are expected to avert \$80 million in state spending over the next five years.

Policymakers reinvested \$7 million of the projected savings in additional treatment programs and efforts to improve community-based supervision, and are focusing these efforts on high-crime neighborhoods. State, county, city, and community leaders are collaborating on the New Communities Initiative, a major neighborhood reinvestment project.²⁸

Early Release and Increased Credits

Mississippi

In 2008, Mississippi rolled back the portion of a sentence that nonviolent offenders were required to serve from 85 percent to 25 percent. Through August, 2009, only 121 of the 3,076 released offenders were returned to custody. Officials attributed the low recidivism rate to the use of a new risk assessment tool.²⁹

Nevada

Three years ago, Nevada projected prison population growth of more than 60 percent. The 2007 Legislature voted to enact several policy measures that expanded program credits awarded for in-prison

²⁷ Justice Reinvestment. Justice Reinvestment in Texas: Assessing the Impact of the 2007 Justice Reinvestment Initiative (Council of State Governments’ Justice Center, Apr 2009). [www.justicereinvestment.org].

²⁸ Justice Reinvestment. Kansas (Council of State Governments’ Justice Center). [www.justicereinvestment.org].

²⁹ Pew Center on the States’ Public Safety Performance Project. Prison Count 2010: State Population Declines for the First Time in 38 Years. (Washington, DC: The Pew Charitable Trusts, Apr 2010). [http://www.pewcenteronthestates.org/uploadedFiles/Prison_Count_2010.pdf?n=880].

education and vocational and substance abuse treatment, increased the number of credits people in prison and on community supervision can earn for good time and compliance with conditions and reinstated a sentencing commission to review sentencing and corrections policies for effectiveness and efficiency.

There are numerous examples of other earned time policies at:

http://www.pewcenteronthestates.org/uploadedFiles/Earned_time_report_%20NCSL.pdf?n=6022.

Performance Incentive Funding

California

In October, 2009, California established a Community Corrections Performance Incentives Fund. The fund rewards counties that succeed in reducing the rate of adult probationers sent to prison with a portion of the incarceration costs avoided by the state—40 or 45 percent, depending on how the given county's probation failure rate compares to the overall rate statewide. The grants to the counties are to be used for evidence-based community corrections practices and programs, such as intensive probation supervision, risk and needs assessments, and intermediate sanctions.

The bill also includes a provision for performance measurement, requiring counties to use at least five percent of what is refunded to them to evaluate the effectiveness of their recidivism reduction programs. In addition, as part of the budget that passed in August, the state has directed \$45 million in federal stimulus funds to probation agencies in order to “prime the pump” for recidivism reduction efforts.³⁰

Illinois

In August, 2009, Illinois passed the Crime Reduction Act which directed state funds toward expanding local supervision of offenders who would otherwise be incarcerated by the state. Adult Redeploy Illinois is modeled after the state's juvenile justice Redeploy Illinois system, and requires counties participating to pledge a 25 percent reduction in the number of eligible non-violent offenders committed to state facilities.

A state oversight board developed a formula for allotting funds to local jurisdictions for evidence-based community corrections in lieu of incarceration. These funds will serve as incentives for counties to keep otherwise prison-bound offenders under their supervision and to increase the success rate of probationers and parolees overall. The bill also calls for the development of a performance measurement system for each county that uses key indicators (such as recidivism, rate of revocations, successful completion of substance abuse treatment programs, and payment of victim restitution) to annually evaluate its success.³¹

Arizona (2008) and Kansas (2007) have adopted similar performance incentives.

For more on State Local fiscal partnerships see:

[http://www.pewcenteronthestates.org/uploadedFiles/State-Local%20Fiscal%20Partnerships%20July%202008\(1\).pdf](http://www.pewcenteronthestates.org/uploadedFiles/State-Local%20Fiscal%20Partnerships%20July%202008(1).pdf)

³⁰ California Senate Bill 678, Ch. 608 (2009). [http://info.sen.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_678_bill_20091011_chaptered.pdf].

³¹ Crime Reduction Act. 730 ILCS 190 (2009).

[<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3156&ChapAct=730%26nbsp%3BILCS%26nbsp%3B190%2F&ChapterID=55&ChapterName=CORRECTIONS&ActName=Illinois+Crime+Reduction+Act+of+2009.&Print=True>].

South Carolina

In June, 2010, South Carolina passed a sentencing reform bill that is expected to save more than \$400 million over the next five years and increase the training available for non-violent offenders to enable them to successfully re-enter the community.

The Crime Reduction and Sentencing Reform Act of 2010, applies a tiered sentencing approach to assault and battery crimes, while increasing the penalties for some violent crimes.³²

"The whole idea about any criminal law is to keep us safe," said Rep. Keith Kelly, R-Woodruff, chairman of the House Criminal Law Subcommittee. "This bill ... is strong by keeping the violent offenders segregated from South Carolina families. At the same time, it's smart, because it's taking non-violent offenders out of the Department of Corrections and puts them on alternative sentencing -- GPS monitoring, for instance, that they pay for, not you or me."

Hawaii

HOPE (Hawaii's Opportunity Probation with Enforcement) Program was launched by Judge Steven Alm in 2004. In cooperation with probation officers, prosecutors, defense lawyers, and police agencies, Judge Alm streamlined the process of enforcing probation requirements, introducing random, rather than scheduled drug testing and immediate, rather than delayed hearings. HOPE uses the threat of short jail stays (typically starting at a few days, servable on weekends for employed probationers, for the first violation and increasing thereafter, eventually escalating to periods of months in residential treatment) as a disincentive for non-compliance. Treatment is mandated only for those who repeatedly violate probation rules; for other probationers with drug problems it is available, but not required.

In the Specialized Probation Unit, comparing six-month follow up data to three-month baseline data, probationers assigned to HOPE showed an 85 percent reduction in missed appointments and a 91 percent reduction in positive urinalyses. Also, arrest rates for comparison probationers were three times higher than HOPE Probationers and the probation revocation rate was significantly higher for the comparison group compared with HOPE probationers (31% v 9%).^{33,34}

Proposed National Legislation

This state activity has helped prompt potential national legislation. Senator Jim Webb of Virginia has introduced SB714, which would create a National Criminal Justice Commission. The legislation, introduced in March, 2009, was reported out of Committee on January 21, 2010. The legislation would create a "blue ribbon commission" charged with completing an 18 month "top to bottom" review of the country's entire criminal-justice system, ultimately providing Congress with specific, concrete recommendations for reform.

³² Crime Reduction and Sentencing Reform Act. R262, S1154 (2010). [http://www.scstatehouse.gov/sess118_2009-2010/bills/1154.htm].

³³ Hawken, Angela & Mark Kleiman. Research Brief: Evaluation of HOPE Probation (Jul 2008). [http://www.pewcenteronthestates.org/uploadedFiles/HOPE_Research_Brief.pdf].

³⁴ Buntin, John. "Hawaii's Probation Experiment." *Governing*. 31 Oct 2009. [<http://www.governing.com/article/swift-and-certain-hawaiis-probation-experiment>].

Common Themes: Experience of Other States

1. Numerous states face declining revenues and increased costs arising from perceived need for more prisons.
2. Many states reinvest in alcohol and drug programs, mental health assistance, housing, employment and intermediate sanctions and interventions designed to enable local communities to work successfully with offenders.
3. Many states reward prisoners for successful completion of prison programs aimed at reducing future criminal activity and improving the likelihood of success at release.
4. Some states develop revenue sharing or partnership agreements with local jurisdictions tied to better use of incarceration resources and reduced recidivism.
5. These states have largely avoided having to increase prison beds.
6. These efforts have been largely bi-partisan.
7. The changing revenue pictures require constant monitoring and readjustments.

XIII. “DO NOTHING” OPTIONS

The Subcommittee tried to explore what is likely to happen to public safety services in Oregon if these options are not implemented. It is a difficult, tricky question to address. The public may believe that “the cuts can be made elsewhere.” However, the Legislature will find that increasingly difficult to do.

The subcommittee approached that question in four ways:

1. What policy steps were tried during the last Legislative session?
2. What would be the impact on other public safety agencies if Corrections were held harmless and other agencies need to absorb an entire cross the board reduction?
3. What would be the immediate impact on Corrections if the agency absorbed a 14 percent reduction?
4. What would be the cost avoidance if policy changes could be made that would enable the State to maintain current prison capacity and avoid the projected 2,000 prison bed increase?

1. What was tried during the 2009 Legislative Session

The 2009 Legislature began to confront possible options. Instead of leaving the corrections bed forecast to grow uninterrupted by the economic recession and cutting other areas of public safety, the legislature chose to reduce the rate of future growth by phasing in Ballot Measure 57 and implementing an additional 10 percent earned time eligibility for some offenders.

The estimated 2009-11 biennial savings for these measures were:

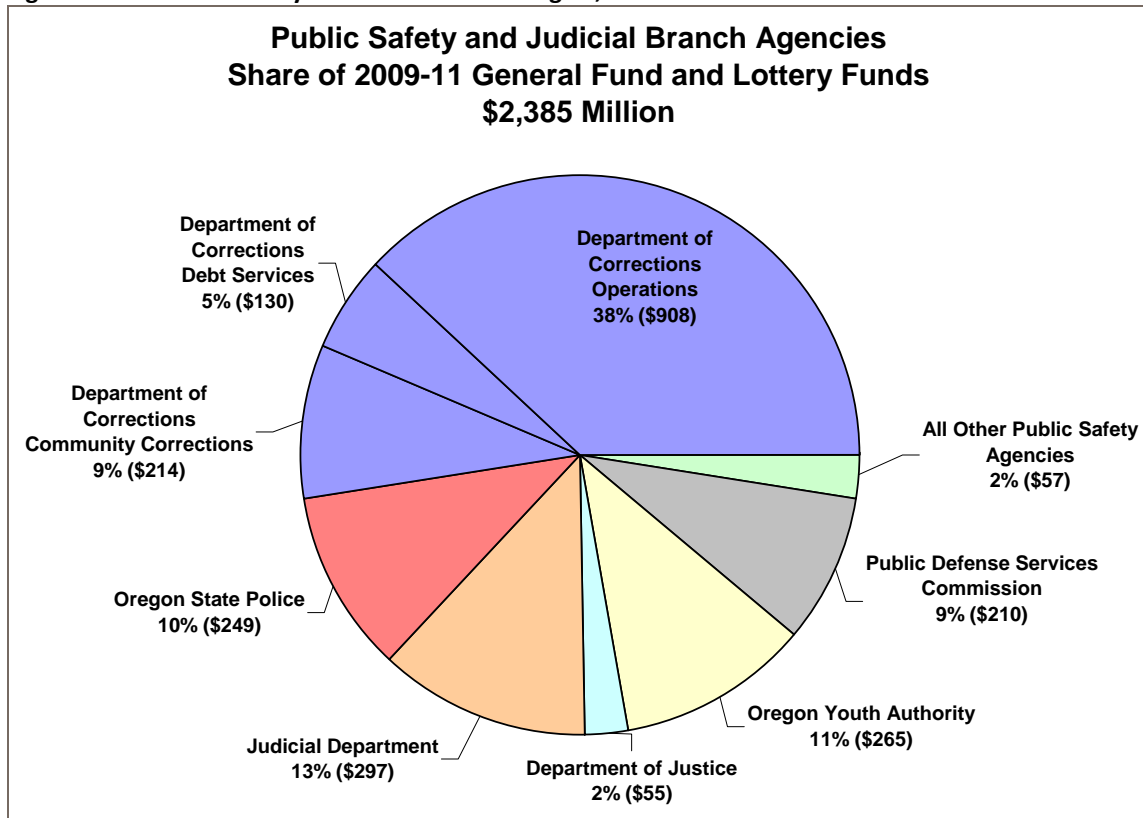
- Phase in Measure 57 \$25,500,000
- Increased Earned time \$6,000,000 (those savings were reduced by an estimated \$471,089 with the passage of SB1007 during the 2010 Special Session)

2. What is the impact on other public safety agencies if Corrections is held harmless?

The graphs below illustrate why two-thirds of Oregon’s legislators took the difficult step in 2009 of addressing the bed growth forecast for the Department of Corrections, and why the Governor and/or Legislature will need recommendations on how to take similarly difficult steps during the summer of 2010 and for the 2011-13 biennial budget.

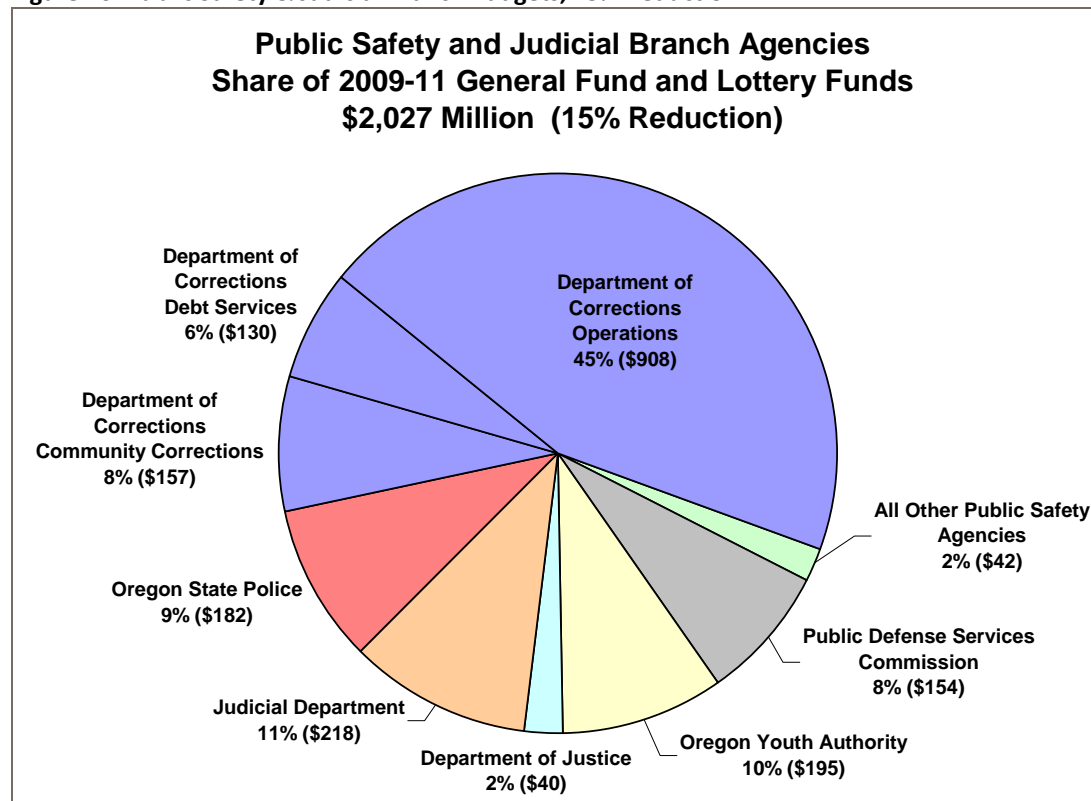
The first chart shows Oregon’s public safety budgets for 2009-2011 as of February 2010.

Figure 19: OR Public Safety & Judicial Branch Budgets, '09-11 as of Feb. 2010



The second chart shows how deep the legislature would need to cut grants to counties for jails and community supervision, Oregon State Police, Oregon Youth Authority, and the other public safety budgets to reach a 15 percent reduction in public safety budgets without reducing the Department of Corrections operational budget. To keep the comparison simple, this graph does not allow for any growth in the operation budget of corrections from this biennium to the next, despite projected growth.

Figure 20: Public Safety & Judicial Branch Budgets, 15% Reduction



The reductions that have to be made in other public safety areas are dramatic – 27 percent across the board. For example,

Community Corrections	\$214 million to \$157 million
Oregon State Police	\$249 million to \$182 million
Oregon Youth Authority	\$265 million to \$195 million

These scenarios, of course, assume Public Safety agencies receive a proportional reduction in revenues. If they are given lower reductions that translates into greater reductions in education, health and human services, and other State services.

3. What steps would Corrections have to take if given an across the board cut mandate?

The Department of Corrections would like have to request authority from the Legislature to release inmates early and close institutions that would no longer be needed to operate. Authority for these early releases could only come from the Legislature. Along with other steps, a variation of this scenario is likely to be presented to the Governor in the next few weeks as the “only option” to reduce spending on prisons in the next year.

4. What is the cost avoidance of not building the projected 2,000 additional prison beds?

Finally, the subcommittee suggests the State examine the cost of building and operating the 2,000 additional State prison beds that are currently forecast to be needed during the next ten years. At a minimum, the subcommittee’s options need to be seriously weighed to help the State avoid the cost of adding those 2,000 beds.

The current analysis indicates that to build and operate an additional 1,967 prison beds would cost the State the following over the next 10 years:

Total operations costs	\$407,309,347 (beds phased in over 10 years)
One time only start up costs	\$24,409,183
Debt Service next 10 years	\$148,001,586

After the ten years, the annual costs would continue at approximately \$165,731,642 for each biennium (\$127,307,927 operating and \$38,423,715 debt services) (These are the estimated 2019-21 costs. Inflation would increase those costs.) After June, 2021, the future debt services balance would be \$332,294,853.

These costs are all estimates based on current costs and do not factor in inflation. This construction plan would leave approximately 425 units built but unused and available for future expansion.

XIV. GENERAL PRIORITIZATION OF PUBLIC SAFETY FUNCTIONS

1. Because many of the public safety functions complement each other, the major priority is for rational balance among all of the functions. However, the functions must be geared towards a more effective overall system. It is not realistic to assume the State will simply stop doing certain public safety functions.
2. The major priority of the system must be to protect the public from truly dangerous offenders through the use of effective risk assessments, sentencing and incapacitation in prison.
3. Many of the subcommittee's specific options address the best practice policy steps that must be taken to achieve a more balanced and more rational public safety system.
4. Though often not included when public safety is discussed, reinvestments in juvenile, alcohol and drug, and mental health systems are likely to have a greater long term impact on improving public safety in the State than direct investments in the system itself.

XV. OPTIONS TO ACHIEVE A BALANCED PUBLIC SAFETY SYSTEM

Given the nature of the criminal justice system and Oregon’s complex sentencing structure, many of the options that are available for consideration, once implemented, could take a number of years to realize the full impacts on the prison population forecast and their full cost savings.

There are limited short-term solutions that do not involve the immediate release of offenders in a manner that is both politically, legally and operationally challenging. The subcommittee has put forward several long-term and short-term options that could address both the immediate and long-term cost of the prison system driven by inmate population. At the same time, the subcommittee has attempted to roughly estimate the potential financial impact on the state’s budget in keeping with the direction from the Governor’s executive order.

It goes without saying that some of these options are more challenging than others both from a political and operational standpoint – requiring both legislative action and an adjustment to the policy approaches that Oregon has used for the last two decades to address public safety issues. Some of these options are mutually exclusive while others could be adopted simultaneously. For purposes of the report, the options are treated in stand-alone fashion.

Long Term Options

- **MODERN SENTENCING GUIDELINES MODEL** Create a modern system of uniform, transparent, and proportional sentencing guideline practices that optimizes use of the most expensive resource – prison. Incorporate the intent of the mandatory minimum initiatives into a comprehensive guidelines structure. Increase sentences where appropriate for violent offenders posing ongoing risks to the general population.
 - ▶ Place construction and opening of new prison beds on indefinite hold.
 - ▶ Stabilize and potentially reduce use of prison beds as modern guidelines take effect.
 - ▶ Charge the Criminal Justice Commission/ Sentencing Guidelines Commission with managing guidelines to meet available prison bed capacity. This management authority is key to future sustainability and “truth in sentencing” system integrity.
 - ▶ As current mandatory minimums are folded into a broader modern sentencing guideline structure, maintain the automatic waiver of youth to adult court for offenses currently covered by mandatory minimum legislation.
- **FEDERAL EARNED TIME SYSTEM** Adopt the federal system of 15 percent earned credits for offenders including consideration of federal policies on the use of halfway house and electronic monitoring during the final year of sentencing on appropriately screened offenders.³⁵
- **SELECTIVELY ADJUST SPECIFIC MEASURE 11 SENTENCES** Instead of completely moving away from all mandatory minimum sentences, selectively adjust Ballot Measure 11 sentences to provide sufficient protection for the public, but lower the overall impact on prison beds. Examples of specific adjustments are modeled below.

³⁵ 18 USC 3624. 2009.

Short Term Options

- **CONTINUE BALLOT MEASURE 57 SUSPENSION**
As a temporary measure, **continue to suspend the implementation of Ballot Measure 57.** This is the simplest and most rational way to achieve needed short term cost savings.
- **ENHANCED HOME DETENTION AND SUPERVISION** As a temporary measure only, provide the DOC with the ability to **allow some offenders to serve the final year of their sentence under DOC custody and county supervision.** The change will need to define custody to include jail, electronic detention, halfway house placement, and day reporting.

Both Short Term and Long Term

- **INCENTIVES AND PERFORMANCE GOALS FOR COUNTIES** Increase system efficiency and reinforce use of evidence based practices. Set performance goals and create incentives for counties to improve effectiveness.
 - ▶ Continue to enhance the **effectiveness of local accountability measures implemented by community corrections agencies by providing financial incentives** for counties that reduce recidivism of offenders under their supervision. Develop standards to hold all offenders accountable for their acts and provide structured support to enable them to stop future criminal activity.
 - ▶ Consider **expansion of the impact of local control funding** by allowing counties the option of **keeping offenders sentenced to up to 24 months** in the local system of sanctions and supervision. Violators would be returned to DOC, if local sanctions including jail proved ineffective. Counties could use the local-control amount to underwrite jail operations of those offenders that require jail and manage non-violent offenders by using enhanced community supervision. This option would take advantage of county jail beds that have

RESTITUTION WORK IN OREGON

The Department of Justice has been working on the issue of restitution to victims of crime since 2002. As a result of this work, several statutory changes have been made including the passage of SB 617 in 2003 that fundamentally changed the way restitution is ordered in Oregon. Recent work has focused on honoring victims' constitutional right to prompt restitution. Because of the complicated way restitution is ordered, collected and disbursed in Oregon, it is a challenge to honor this right.

Attorney General John Kroger, in concert with his Victims' Rights Task Force, is looking for ways to significantly change the restitution system in Oregon. The Task Force and its Restitution Subcommittee are examining models from around the country including those from Colorado and Vermont. The Attorney General has made restitution reform a high priority and anticipates introducing reform legislation in the 2011 session.

EFFECTIVE APPROACHES ON RESTITUTION

These strategies are often recommended to improve the use of restitution as an effective tool for public safety:

- *Prioritize payment of restitution over fees and fines*
 - *Provide tools to probation/parole officers for improved collection*
 - *Dedicate a staff member in community corrections who works as a liaison for victims and who assists with restitution collection and follow up*
 - *Dedicate a staff member to work with low risk administrative caseload to set up system for collection of restitution*
 - *Design Department policy and value statement should reflect sensitivity to victim issues including payment of restitution*
 - *Review successful approaches from other jurisdictions*
-

already been built but where the county lacks the funding to run the jail. Incentives to counties must take into account the extent of current county use of evidence based practices and the risk of re-offense of the local control population.

- ▶ Provide **greater uniformity to charging and sentencing through the district attorney offices** by providing financial incentives for counties to offices that adopt effective charging guidelines and appropriately charge, convict and manage offenders within their community.

Policy and System Change Options

- **PRIORITIZE RESTITUTION FOR VICTIMS** Implement a better balance of the four State Constitutional principles by expanding provision of restitution to victims. Specifically, **prioritize the collection of restitution for victims from offenders.**
- **ENHANCE BOARD OF PAROLE AND POST PRISON SUPERVISION** Improve effectiveness of the **Board of Parole and Post Prison Supervision** by expanding Board to five members and narrowing its scope to focus on violent offenders and transferring much of the administrative functions to the Department of Corrections.

LOCAL USE OF JAIL BEDS / POTENTIAL COUNTY INCENTIVE

A good example of how the use of evidence based practices can impact outcomes and expenses comes from the county with the largest jail population – Multnomah. Multnomah County adopted the Effective Sanctioning Program (ESP) through the Department of Community Justice (DCJ) to maintain a swift and certain response to parole and probation violations while providing wise stewardship of all the County's resources.

Nationally, research has demonstrated that effectively managing offender behavior requires a mix of supervision, services, and sanctions (Corbett, 1998). While jail is at times the most appropriate sanction to ensure public safety, there are other non-custodial consequences that are often just as effective. DCJ piloted the ESP program in May of 2008 with one of the goals being a reduction in DCJ's average daily population in jail (ADP) by 75 beds. After the initial success of the pilot program, the goal for jail bed reduction increased to 150 beds in 2009 (representing a 26% reduction from baseline).

***DEVELOPING THE ESP PROGRAM:** The ESP program aligns supervision and sanctioning practices of Parole and Probation officers (PPOs), with DCJ's commitment to public safety and effective management of County resources. Beginning in late 2007, DCJ managers and PPO's reviewed current sanctioning practices, jail bed usage, and re-arrest rates for sanctioned offenders. These discussions informed the central programmatic components of ESP:*

- *Swift and certain response to violations*
- *Streamlining of program referral process*
- *Graduated response to violations*
- *Earlier Intervention for High Risk/Need offenders*
- *Use of non-custodial sanctions*
- *Shorter duration for custodial sanctions*
- *Regular review and reporting of sanction usage*

***ESP REDUCES JAIL BED USE:** Sanctions are a response to violation of conditions of supervision. Historically, the most common sanction used by PPO's has been jail (Vera, 2008). In an effort to implement evidence-based practices and manage budget reductions, DCJ focused its efforts on reducing the length of stay per custodial sanction, while maintaining a commitment to respond effectively to violations.*

(continued on next page...)

(...continued from previous page)

LOCAL USE OF JAIL BEDS / POTENTIAL COUNTY INCENTIVE

The number of jail sanctions in use has largely remained the same since the program began. However, the average length of stay has declined by 8.6 days. In the months following implementation of ESP, DCJ jail bed usage declined by about 150 jail beds per day. DCJ achieved this goal through a reduction in duration of custodial sanctions and not an overall reduction in the number of sanction events. This reduction in jail bed usage represents annual cost avoidance of several million dollars.

ESP PRESERVES PUBLIC SAFETY: *Custodial sanctions are the most expensive option available to PPO's and have little impact on preventing future criminal activity (Vera, 2008). ESP matches interventions with an offender's assessed risk level and violation behavior to reduce criminal behavior and subsequent violation of supervision conditions.*

ESP & RECIDIVISM: *In the months following implementation of ESP, the number of sanctioned offenders who were re-arrested for a felony offense did not increase. The percentage of sanctioned offenders who committed felonies decreased from 13% to 11% in the two years following ESP. Instead of jail, PPO's used community service, electronic monitoring and the Day Reporting Center to enforce accountability and reduce criminal activity. Use of noncustodial sanctions rose substantially above 2007 levels.*

SUSTAINING ORGANIZATIONAL CHANGE: *Effective Sanctioning Practices represent a significant commitment to organization change in DCJ. The effort would not have been possible without a commitment from DCJ staff, managers and agency partners to:*

- *Focus on tailoring the intervention to the offender and the violation*
- *Build support and capacity for using data and research to drive business practices*
- *Creatively respond to declining resources for custodial sanctions.*

See: Department of Community Justice, Adult Services Division. Multnomah County (Portland, OR). <http://www.co.multnomah.or.us/dcj/asd.shtml>.

Future System Changes

- **DEVELOP PROPOSAL TO CONSOLIDATE PUBLIC SAFETY FUNCTIONS** Appoint a Task Force with full stakeholder representation to develop a proposal to **consolidate a variety of public safety functions** currently provided largely by counties. Follow the example of the judiciary's examination of cross county court systems, and examine consolidation by regions of services for jails, community corrections agencies, prosecution, and law enforcement agencies. The scope, complexity and need for extensive stakeholder participation make detailed recommendations in this area beyond our scope. However, there is great potential to achieve savings and efficiencies by re-drawing century old boundaries to achieve savings in back-office functions and reducing redundant operations. This is an enormous task, but given our projected challenges, the State must be willing to rethink the structures of our service delivery system.

XVI. FOUR SPECIFIC OPTIONS

To demonstrate the impact of some of the options referenced above, the subcommittee has developed four specific options and the estimated financial impacts associated with these options. Each option describes a policy change, the budget impact, the impact on prison beds, and the steps needed to implement that option. They are included at this level of detail to give the reader an idea of the tradeoffs that exist in taking different approaches.

The Committee encourages the establishment of a continuing policy and leadership group to review these and other proposals in preparation for the 2011 Legislative Session. (See Recommendation #1 in Section XVII below.) The Options are:

Sentencing Changes

Rather than show a “new system of uniform, transparent, and proportional sentencing guideline practices” which would take more time and discussion than has been available, the subcommittee included the impact of making two changes in the current sentencing grids:

1. Make permanent the suspension of Repeat Property and Repeat Drug Manufacturing and Delivery Portion of Measure 57.
2. Measure 11 Changes to the three most common Measure 11 (M11) crimes Assault II, Robbery II and Sex Abuse I.

Earned Time Policy

Here are two ways to change Oregon’s earned time policies.

3. Do not Sunset the 30 percent Earned Time changes made in the 2010 Legislative session.
4. Federalize earned time to 15 percent and adopt federal policies for eligibility. Adopt federal earned time policy, including use of Halfway Houses and Home Detention.

These options illustrate the substantial savings and the variety of changes that are possible.

A note on Cost Estimates: Estimates of cost savings are difficult to make. Many competing factors can influence the cost including, actions taken by prosecutors and judges and changing demographics. The subcommittee used the current legislatively approved per-diem rate of the Department of Corrections for a prison-bed day from the 2009-11 legislatively approved budget, future biennia are adjusted for inflation. The \$84 per-diem rate includes DOC’s operational costs, but not debt service or state-wide service charges assigned to the agency, nor does it include any changes to community corrections. DOC used a \$39 per-diem rate for temporary and emergency beds in the last biennium, but the subcommittee assumed these beds would be of limited use and that permanent beds would eventually be required for the growing population. The subcommittee acknowledges these savings are estimates using generally accepted principles of forecasting and analysis.

Options for Sentencing Changes

1. Make Permanent the Suspension of the Repeat Property and Repeat Drug Manufacturing and Delivery Portion of Measure 57.

The Oregon legislature referred SB 1087, which became Measure 57, in February 2008. The measure was focused on reducing property crime by increasing the length of stay for repeat offenders and making addiction treatment available to those repeat offenders who needed it. In February 2008, the legislature's most up to date FBI UCR property crime index was the 2006 data that showed Oregon was ranked at 18th in property crime rate among the states. Since that time, the 2007, 2008 data showed a ten percent drop and preliminary 2009 data from the FBI show that property crime has dropped an additional ten percent in Oregon's four largest cities.

In February 2008, the impact of the international economic recession had not become apparent. When the Oregon legislature referred Measure 57 to the voters, the most recent economic forecast predicted biennial general fund revenues of 15.7 Billion Dollars for 2009-11. The most recent economic forecast released for June 2010 forecasts predicted biennial revenues of \$12.7 billion for the 2009-11 biennium.

As the recession's magnitude grew, the 2009 Legislature decided that fully implementing Measure 57, to fund incarcerating non-violent property and drug offenders, was not a prudent policy in light of the cuts that were necessary across the public safety system.

The recession made clear the opportunity cost of Measure 57 would mean deep cuts to Oregon State Police, the Oregon Youth Authority, and other essential public safety structures. Also, the funds to provide adequate addiction treatment in prison for these offenders were not available. Therefore, the 2009 Legislature voted, by a 2/3 majority, to suspend the portions of Measure 57 that impacted the increased incarceration of non-violent offenders and their addiction treatment.

While the repeat property offender portions of the law were suspended until January 1, 2012, those portions of Measure 57 that enhance penalties for those committing fraud on the elderly, delivery of a controlled substance to a minor or those who sell significant quantities of a controlled substance went into effect.

Economic indicators suggest that the State will not return to the revenues enjoyed in 2008 for some time. This, combined with the reduction in property crime Oregon has enjoyed without Measure 57, drive consideration of this option. The suspension would have the following savings in the Department of Corrections budget over the next decade.

Table 5: Permanent Suspension of RPO & Repeat Drug Portion of M57

Biennium	Estimated Savings (\$39/day)	Estimated Savings (\$84/day)	Bed Reduction
11-13	(\$2,199,990)	(\$4,737,664)	-17
13-15	(\$20,332,686)	(\$43,786,299)	-657
15-17	(\$30,076,259)	(\$64,769,017)	-886
17-19	(\$32,973,107)	(\$71,007,358)	-909
19-21	(\$35,469,176)	(\$76,382,625)	-924
Total Estimated Savings	(\$121,051,217)	(\$260,682,963)	N/A

This change would likely require a majority vote of the Legislature.

2. Limited Measure 11 Modifications

As originally passed by the voters, Measure 11 consisted of mandatory minimums for all offenders 15 years of age and older for certain person offenses. Over the fifteen years since its passage, the legislature has modified it three times using a 2/3 majority. The subcommittee believes the option of considering additional modifications to Measure 11 in light of the economic recession is warranted.

The legislature amended Measure 11 to allow an “opt out” of the mandatory minimum sentences in certain circumstances. In 1997, the Oregon legislature passed Senate Bill 1049, codified as ORS 137.712, allowing judges to evaluate the specific circumstances of a crime on a case by case basis and determine whether there exist “substantial and compelling” circumstances to justify the offender be sentenced according to the sentencing guidelines passed in 1989. Senate Bill 1049 applied to certain Assault in the Second Degree, Kidnapping in the Second Degree, and Robbery in the Second Degree sentences.

In 1999, the legislature again amended Measure 11, this time allowing certain Manslaughter in the Second Degree convictions to be reviewed on an individual basis by the sentencing judge. This “opt-out” focused on death of a child where the parents relied on spiritual treatment for the child’s recovery. When the Oregon Criminal Justice Commission staff reviewed 2007 convictions of Manslaughter in the second degree, this law was not applied to any cases.

Finally, in 2001 the legislature again modified Measure 11 and the “opt-out” statute. This modification applied to certain sex offenses covered by Measure 11, including: Rape in the Second Degree, Sodomy in the Second Degree, Unlawful Sexual Penetration in the Second Degree, and Sex Abuse in the First Degree. In 2007, there were 166 convictions for these four offenses, and in 16 cases the judge found the mandatory minimum was not justified due to “substantial and compelling reasons.”

Three of the crimes that have been the subject of the modifications above still account for over 50 percent of all mandatory minimum sentences in spite of the “opt out” provisions: Robbery in the Second Degree, Assault in the Second Degree, and Sex Abuse in the First Degree. Changes to these three crimes have the potential of saving many prison beds and millions of dollars per biennium. (See table below.) These amendments could be made in two ways: expanding the scope of ORS 137.712 for these crimes, or changing the definitions within each crime so that the mandatory minimum sentence is targeted only at the most egregious criminal behavior.

In the example given below, the subcommittee made the following assumptions:

- The Legislature amended three crimes by 2/3 majority and the law took effect on January 1, 2012.
- In applying those changes, courts increased to 25 percent the number of Sex Abuse in the First Degree cases that did not receiving the mandatory minimum sentence. Those cases that did not receive the mandatory sentence were sentenced consistently with those who currently are eligible for the “opt out” sentences created by the legislature
- In applying those changes, courts increased from 50 percent to 75 percent the number of cases that did not receive the mandatory minimum sentence for Assault in the Second Degree and Robbery in the Second Degree

The estimated savings are outlined below.

In addition to limiting the prison forecast, there is another reason these options should be considered. In State v. Rodriguez, 347 Or 46 (2009), the Oregon Supreme Court decided that applying the mandatory minimum sentence in that fact scenario violated the Oregon Constitution.

Table 6: Limited Measure 11 Modifications

Biennium	Estimated Savings (\$39/day)	Estimated Savings (\$84/day)	Bed Reduction
11-13	(\$295,274)	(\$635,870)	-3
13-15	(\$2,938,371)	(\$6,327,761)	-85
15-17	(\$9,672,316)	(\$20,829,266)	-274
17-19	(\$19,883,258)	(\$42,818,460)	-553
19-21	(\$26,472,051)	(\$57,007,380)	-693
Total Estimated Savings	(\$59,261,270)	(\$127,618,736)	N/A

Options for Earned Time

3. Defer Sunset to 30% Earned Time/ SB1007

In February 2010, the Oregon legislature passed SB 1007. This measure allows certain non-violent offenders to earn up to a 30 percent reduction in their prison sentence by complying with prison discipline rules and completing prison programs offered by the Department of Corrections. The measure currently applies to non-violent offenders who were sent to prison for crimes committed between July 1, 2011 and July 1, 2013. Senate Bill 1007's provisions about earned time will "sunset" in 2013, unless the legislature makes the law permanent. The legislature put this "sunset" provision in place because the legislature wished to study the administration and effect of increased earned time before making the law permanent. The Oregon Secretary of State will present an audit report on the use of earned time and its effects to the Oregon legislature in 2011.

This change would require a majority vote by the Legislature. Here are the projected savings:

Table 7: Defer Sunsets of 30% Earned Time

Biennium	Estimated Savings (\$39/day)	Estimated Savings (\$84/day)	Bed Reduction
11-13	\$0	\$0	0
13-15	(\$1,152,461)	(\$2,481,816)	-19
15-17	(\$6,620,293)	(\$14,256,756)	-190
17-19	(\$10,524,010)	(\$22,663,384)	-270
19-21	(\$11,914,504)	(\$25,657,802)	-296
Total Estimated Savings	(\$30,211,268)	(\$65,059,758)	N/A

4. Adopting the Federal System of Earned Time and Prerelease Custody.

According to 18 USC 3624 (b), all federal prisoners held by the Federal Bureau of Prisons offenders who are serving at least a year, but not serving a life sentence, are eligible for a 15 percent reduction in their prison sentence based upon offender's "satisfactory behavior." Prison officials consider educational advancement and compliance with institutional rules when determining if the offender earned this reduction.

Federal law also directs the Bureau of Prisons to use the last 12 months of the offender's sentence as a transition back into the community. 18 USC 3624(c) states:

(c) Prerelease Custody.—

(1) In general.— The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.

(2) Home confinement authority.— The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months.

Oregon Earned Time

By contrast, earned time in Oregon’s sentencing policy is much more complicated due to legislative and voter made changes over the last twenty years. Here are some of the different laws that govern how much of the sentence imposed in Oregon will be served:

- ORS 421.120 applies to sentence imposed prior to 1989 and allows a reduction of 33 percent
- ORS 421.121 applies to those who were sentenced in 1989 and after under the guidelines and capped the maximum reduction at 20 percent.
- Not all guidelines offenders are eligible for up to 20 percent reduction in sentence. The sentencing judge, according to ORS 137.750 may decide to eliminate the possibility of earned time.
- When the guidelines were implemented in 1989, the legislature exempted certain repeat offenders from eligibility for earned time under what is known as the “Denny Smith” law (ORS 137.635).
- Measure 11 eliminated earned time for offenders who are serving a mandatory minimum sentence.
- In 2009, the legislature passed HB 3508 allowing certain offenders to be eligible for a resentencing hearing at which a judge could increase the maximum earned time for certain guidelines offenders from 20 percent to 30 percent.
- In February of 2010, the legislature used SB 1007 to suspend the applicability of HB 3508, so that those who committed crimes after February 2010 are only eligible for the 20 percent maximum earned time. The legislature is studying the impact of HB 3508’s changes to earned time.
- SB 1007 says 30 percent earned time eligibility will become the governing law again from July 1, 2011 to July 1, 2013 for certain non-violent offenders.
- In 2003, the legislature created the “alternative incarceration program” with ORS 421.506. This program allowed an additional reduction in sentence if an offender graduated from an addictions treatment program.
- In February 2008, the legislature used HB 3638 to limit the amount of sentence reduction an offender could earn through graduation from the “alternative incarceration program”. See ORS 421.508. An offender may only earn an additional 20 percent reduction in sentence due to graduation from the program, and must serve at least a year of his or her sentence before being eligible for any reduction.

The Oregon system of “earned time” is complicated and unpredictable. It is difficult for judges and prosecutors to ascertain on behalf of a victim in court when an offender may be eligible for release. Some offenders are eligible for no earned time; some are eligible to reduce their sentence by 50 percent if they earn 30 percent earned time and complete the “alternative incarceration program.”

Instead of the current complicated set of laws, an option for the Oregon legislature is to adopt the federal system of 15 percent maximum earned time for all offenders serving a sentence of more than a year and less than a life sentence.

Transition to the Community

As part of the full federal system, the Subcommittee recommends that the Legislature consider adopting the federal “prerelease custody” system described in 18 USC 3624(c). Oregon law does not currently allow this transition to the community as a part of the prison sentence.

In the following estimate, the subcommittee assumed all inmates serving more than a year and less than a life sentence are eligible for 15 percent earned time and that, on average, every eligible offender would earn 80 percent of the time reduction for which they are eligible. Some would earn the full 15 percent and some would receive little or no earned time based on their behavior and conduct. Whether an offender’s behavior warranted this reduction would be in the discretion of the Department of Corrections according to its administrative rules.

The estimate also assumes Oregon adopt the federal system of using community correctional facilities, or halfway houses, and home detention to more smoothly transition offenders from prison to the community. In this estimate, the subcommittee assumed offenders who have committed a sex offense or an offense in Measure 11 are not eligible for this transition. Also, the subcommittee assumed 25 percent of the remaining offenders would be denied this privilege based upon their risk to recidivate and their behavior in prison.

The remaining offenders would be eligible to serve the lesser of 50 percent of their sentence or 12 months outside the prison. Electronic monitoring and urine analysis could assure corrections officials of the offender’s location and non-use of drugs or alcohol. The cost estimate used was \$60/day for the halfway house and \$10/day for the home detention for an average of \$35/day compared to \$84/day for prison. This change would require a majority vote of the Legislature.

Table 8: Adopt Federal System of Earned Time & Prerelease Custody

Biennium	Estimated Savings (\$39/day)	Estimated Savings (\$84/day)	Bed Reduction
11-13	\$68,759	(\$2,312,260)	3
13-15	\$156,911	(\$35,202,355)	-971
15-17	(\$3,203,853)	(\$64,630,688)	-1555
17-19	(\$13,771,385)	(\$95,990,602)	-1973
19-21	(\$22,979,074)	(\$121,085,584)	-2213
Total Estimated Savings	(\$39,728,642)	(\$319,221,489)	N/A

XVII. LEGISLATIVE AND POLITICAL STRATEGIES TO IMPROVE THE SYSTEM

The subcommittee recognizes that both the time frame of this effort, the requirements of the Governor's executive order and the nature of the issues have limited the level of detail contained in the four options presented. With that in mind, the subcommittee believes an immediate effort after the release of this report to further refine the details of these options and to prepare for the 2011 legislative session is necessary. In order to accomplish this further work, the subcommittee recommends broadening the discussion to include the legislative and judicial branches as well as further outreach to other public safety stakeholders. Therefore, the subcommittee recommends the following:

- **BI-PARTISAN LEADERSHIP TEAM** **A Bi-partisan Leadership Team** should be appointed to review this report, consider all options for the upcoming biennium and next ten years, ask for more detailed development and impact analysis of the options, and then determine how best to move the State towards financial stability and sound public safety practices. This team is essential because of the need for bi-partisan action and more detailed analysis of the available options:
 - ▶ Ideally, the Team would include top officials from the all three branches of state government.
 - ▶ The Team should be staffed to allow for greater stakeholder involvement and surveying than the reset process permitted.
 - ▶ The Team should consider more detailed analysis of these options, the latest financial forecasts, and public safety departments' budget reduction strategies that will be presented to the Governor this summer for 2010-11 and to the incoming Governor in advance of the legislative session.
 - ▶ The Team should brief the incoming Governor on his policy and budget options by late November, 2010.

- **BI-PARTISAN LEGISLATIVE PROPOSALS** Develop more detailed **bi-partisan legislative proposals** to create a comprehensive system of uniform, fair, sentencing guidelines, federal earned time credit standards and policies, and temporary authority in DOC to manage through the crisis using enhanced home-detention policies.

- **MAY, 2011 BALLOT MEASURE** As a potential fall-back plan, consider the **development of a May, 2011, ballot measure** addressing constitutional barriers to full sentencing guideline reform (e.g. Ballot Measure 11 and Ballot Measure 57) and the other options presented.

INITIATIVE PETITION 13

Initiative Petition 13 is likely to be on the ballot in November 2010. It sets a mandatory minimum sentence of 25 years for anyone 15 years of age or older convicted of forcible sex with an adult, or having sex with a child under 12 in two or more separate criminal episodes. It provides the same mandatory minimum sentence for anyone 15 years of age or older who induces a minor into photographing or videoing a display of nudity or sex in two or more separate criminal episodes. It also makes a person's 3rd DUll conviction a felony with a presumptive prison sentence of at least 13 months. Initial estimates are that the bill would require over 275 new prison beds in the 2011-13 biennium, and over 450 beds by 2013-2015.

-
- **COUNTY PARTNERSHIPS** Consider the development of legislative and budgetary proposals for **community corrections and district attorney partnership funding** with counties. Develop similar back-up plan to take to voters in May, 2011, as needed.

 - **FACTUAL MATERIALS** Provide factual assessment regarding impact of any ballot measures that impact sentencing guidelines and fiscal impacts in context of state projected deficit. For example, a proposed measure to provide mandatory minimums for certain sex offenses and DUII crimes is estimated to require an additional 275 prison beds in 2011-13. (See accompanying box.)

XVIII. SUMMARY

- 1. Oregon can improve outcomes and control costs without sacrificing results in public safety. Evidence-based practice work already being done within Oregon and other states show how that can happen.**
- 2. The obstacles are not the development of research based proposals, but the political perception of crime and the difficulties of building bipartisan efforts focused on cost saving efficiency steps most likely to achieve a reduction in crime.**
- 3. Moving from mandatory minimum sentencing and adopting a modern sentencing guideline system, driven by research, fairness, transparency, and predictability could have significant impacts on the cost and public safety for the next decade.**
- 4. Significant long term change in public safety will require 2/3 support from the Legislature or a vote of the people.**
- 5. In support of this change, the state can fashion new partnerships with financial incentives with the counties around the provision of community corrections and other local public safety services.**

XIX. SUBCOMMITTEE ROSTER AND PROCESS

Max Williams, Chair, Director Department of Corrections, representative Reset Cabinet

Joe O’Leary, Legal Counsel, Governor’s Office

Cameron Smith, Senior Policy Advisor, Governor’s Office

Craig Prins, Executive Director, Oregon Criminal Justice Commission

Michael Wilson, Economist, Oregon Criminal Justice Commission

Peter Ozanne, Executive Director, Multnomah County Local Public Safety Coordinating Council

Elyse Clawson, consultant, Executive Director, Crime and Justice Institute (non-voting)

Bill Farver, consultant, Crime and Justice Institute (non-voting)

The subcommittee met approximately twice monthly between October, 2009 and June, 2010. We received responses from over 200 stakeholders in a survey conducted in February and March and met with representatives of several stakeholders groups. To view survey instrument and summary results, visit <http://cjinstitute.org/projects/oregonreset>.

SURVEY HIGHLIGHTS

Highlights from the 205 respondents

- 29% of the respondents (64) were members of the Judiciary
- 42% ranking public safety the highest priority among all state services
- of the seven general public safety services, prisons was given a lower priority by 66% of the respondents)
- of the four foundational principles in the Oregon Constitution, protection of society was ranked first by 78%

The scale for most questions was from 1 (strongly disagree) to 7 (strongly agree).

For illustration only, the results below represent questions where the percentage of respondents agreeing (voting 5, 6 or 7) or disagreeing (1, 2, or 3) with a statement exceeded 60%. **Bold faced items had 80% agreement**

- 77% felt that alcohol and drug and mental health investments are more effective than incarceration in reducing recidivism and promoting individual reformation
- 76% felt that state and counties should make increased use of diversion/deferred prosecution and treatment for offenders who primary presenting issue is alcohol and drug use and/or mental illness
- 76% felt that released offenders should be given easier access to the Oregon Health Plan to obtain needed services for their recovery
- 76% felt the state should offer incentives to counties to use evidence based practices in community corrections
- 68% felt the state should not shift responsibility of managing local juvenile treatment facilities to the counties
- **81% felt the priority use of prison beds should be for violent offenders and person to person crimes, rather than property crimes**
- 68% felt the second priority for use of prison beds should be fore property offenders at high risk of reoffense based on a validated risk assessment
- 63% felt the use of probation coupled with intermediate sanctions and appropriate alcohol, drug and mental health treatment administered by local community corrections agencies, is generally an appropriate sentence for non-violent offenders and most repeat property offenders
- 63% felt that crimes involving no death, no serious physical injury, or no sexual contact of any kind with the victim should be removed from Ballot Measure 11 and dealt with under sentencing guidelines
- 72% felt that Ballot Measure 11 eliminated judicial discretion to apply the law to individual cases and that judges should decide the appropriate sentence in a specific case based upon a carefully structured and researched sentencing grid.
- 64% felt that the property offender statute should be rewritten so that a court considers the likelihood of an offender committing a new crime based on a risk assessment tool

-
- 69% felt that the state should implement the mandatory treatment aspects of Ballot Measure 57, but not the increased sentences
 - 66% felt that a Sentencing Review Commission should be empowered to recommend changes to the Legislature to the length of sentences for each crime
 - 74% felt that the state should provide incentives to county community corrections agencies to reduce the number of offenders sent to state prison
 - **85% felt the state should provide incentives to use work release**
 - 78% felt the state should provide incentives to use home detention and electronic monitoring
 - **86% felt the state should provide incentives to use alcohol and drug treatment and housing**
 - 79% felt the state should provide housing subsidies, halfway houses, and supportive employment
 - **86% felt that offenders should serve the final portion of their sentence in community based programs, addressing employment, housing and treatment issues.**
 - 67% felt that services for victims to enable them to move past victimization should be increased state wide
 - 64% felt that offender fees should first go to pay restitution for victims
 - 60% felt that Ballot Measure 11 should not be applied to juveniles.
 - **91% felt that juveniles should be under supervision and given appropriate treatment in their local community, when feasible. Services should include in patient and outpatient alcohol and drug treatment and sex offender treatment.**
 - 65% felt that expenditures within the public safety system are not fairly balanced and should be changed substantially
 - 62% felt that expenditures should be shifted away from corrections and into prevention and early intervention of crime with juveniles.
 - 63% felt that expenditures should be shifted away from corrections and into county based community corrections programs