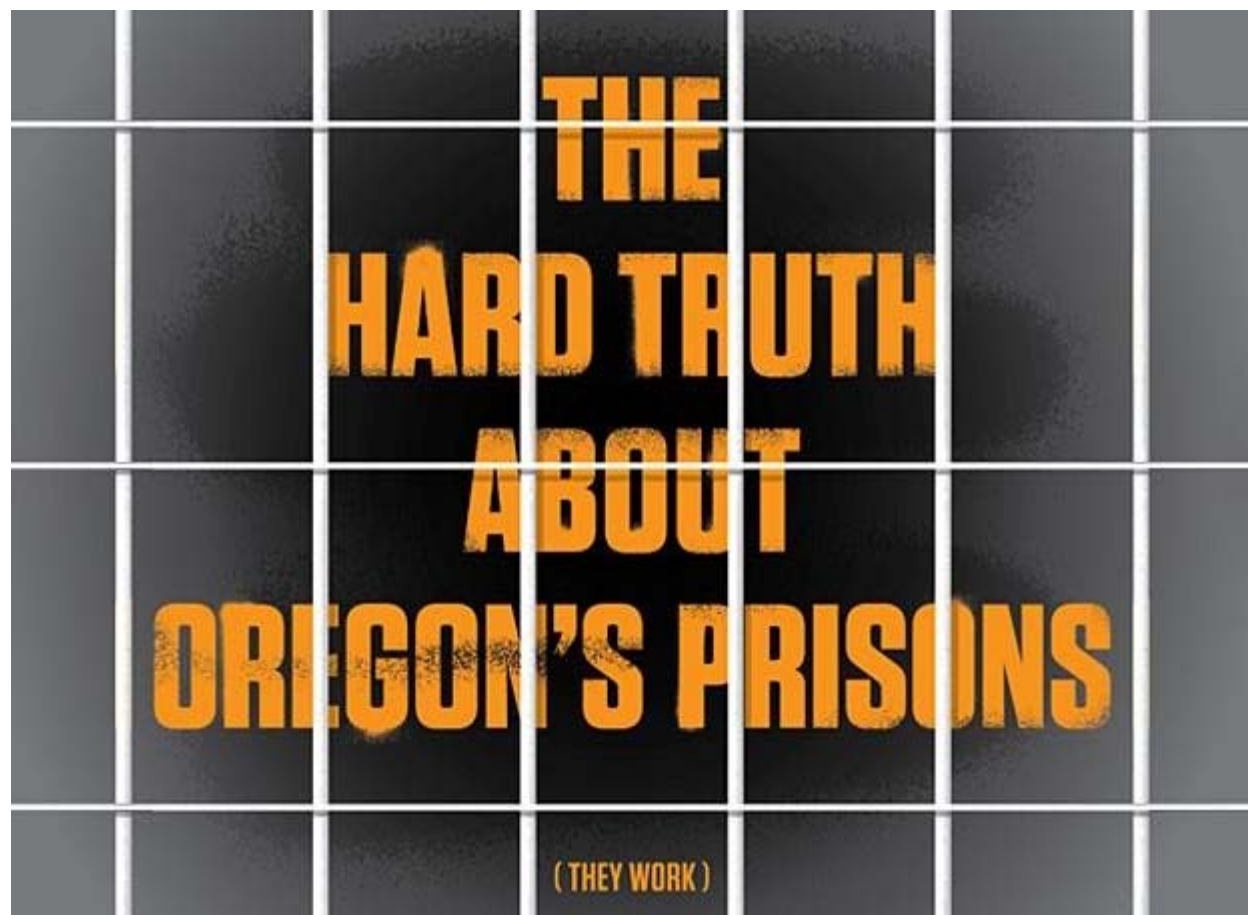


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The Hard Truth About Oregon's Prisons: They Work

So why does Gov. John Kitzhaber want to “reform” them?



Oregon has one of America's best prison systems.

Gov. John Kitzhaber knows that. After all, he helped build it.

When Kitzhaber was governor from 1995 to 2003, he spent hundreds of millions constructing new prisons.

He didn't like spending big money to warehouse society's problems. A former emergency-room doctor, Kitzhaber prefers low-cost prevention to high-cost treatment, often noting it costs \$10,000 a year to educate a child but more than \$30,000 to house a prisoner.

But when sentencing laws forced his hand, Kitzhaber built a prison system that has become the envy of other states. As Jody Sundt, an assistant professor of criminology at [Portland State University](#), puts it, "Oregon's correctional system is nationally recognized as a leader."

In a variety of ways, state and federal figures show, Oregon has one of the most effective corrections models anywhere. The system uses prison sparingly, locks up the right people and helps keep them from reoffending.

Yet now Kitzhaber is trying to undo that good work.

He says we can't afford the current system.

"The relentless growth in the **Department of Corrections** is one of the major reasons we cannot adequately invest in education," he told Oregonians in his Jan. 14 State of the State address.

Kitzhaber's commission on public safety proposed big changes to sentencing laws in an effort to stop that "relentless growth."

They would be the biggest reductions in sentencing in 20 years.

That approach is risky for a few reasons: First, polls show citizens fear crime and don't know it has declined.

Second, data from his own Department of Corrections show that Kitzhaber's assertions about the prison system's "relentless growth" are false.

And finally, according to critics, Kitzhaber's reform plan will tamper with an aspect of state government that functions unusually well.

"The Oregon public-safety system is doing exactly what it was designed to do," says Clackamas County District Attorney John Foote. "Over the past 25 years, it is the most successful part of state government."



THE REFORMER: Gov. John Kitzhaber says he can save \$600 million over 10 years by adopting smarter approaches to crime. “And the fact is that this \$600 million—if spent on public education—would keep hundreds of people out of the criminal-justice system in the first place,” he has told lawmakers.

IMAGE: WW Staff

In 2011, Kitzhaber returned to the governor’s office for a third term, determined to reshape Oregon.

When he looked at Oregon’s education system, the state’s biggest budget item, he saw too many dropouts and too few teachers. He vowed improvement.

When he examined Oregon’s approach to health care, the state’s second-biggest cost, he saw unnecessary procedures, too many ER visits and gold-plated hospital beds. So he launched aggressive reforms.

This year, he is taking aim at the state’s third-biggest cost, prisons.

Kitzhaber was unavailable for comment on this story, but he’s made plenty of public statements on the subject.

“If we are unwilling to act on this issue, we will, by default, be choosing prisons over schools and condemning untold numbers of today’s students to a future in our system of corrections rather than in our system of postsecondary education,” Kitzhaber told lawmakers in January.

And in February, he submitted to the Oregon Legislature a reform plan that would dramatically shift the Department of Corrections’ course and rein in its \$660 million annual budget. He has proposed to save \$60 million annually over the next 10 years.

He wants to prevent bad outcomes rather than paying more to fix them later.

Kitzhaber oversaw a massive increase in the prison population last time around. In 1994, the year he was first elected governor, voters approved Kevin Mannix's Measure 11, which established mandatory minimum sentences for violent crimes.

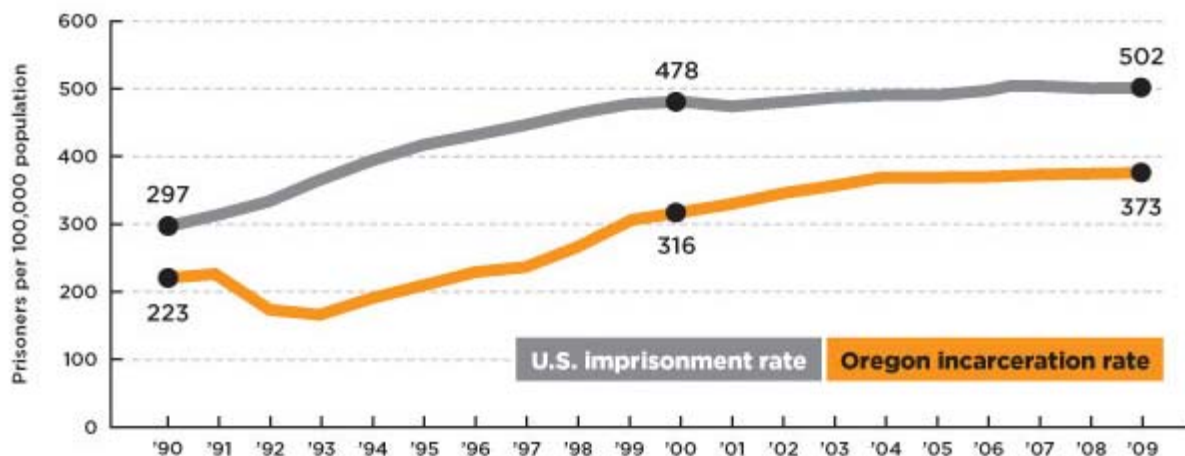
That fueled a rapid increase in the number of prisoners: Oregon state prisons, which hold all offenders sentenced to more than a year, saw their population increase by 85 percent from 1995 to 2005.

Kitzhaber's plan is to reduce sentences for three common Measure 11 crimes, promote alternatives to incarceration and effectively cap the number of inmates in Oregon's 14 prisons around the current number—14,308.

He has said Oregon is laboring under "the burden of an unsustainable system" that is increasingly imprisoning the wrong people.

Oregon's Incarceration Rate Is Low

Despite Measure 11's mandatory minimum sentences, Oregon incarcerates felons at about three-quarters of the national average, as it did in 1990, before voters approved Measure 11.



SOURCE: U.S. Bureau of Justice Statistics; Oregon Commission on Public Safety

From the beginning, critics hated Oregon's mandatory minimum sentences.

David Rogers, director of the Partnership for Safety and Justice, a Portland nonprofit opposed to Measure 11, says mandatory minimums are bad policy because they remove judicial discretion and brand convicted juveniles for life.

"Measure 11 is not getting the job done," Rogers says. "There are smarter approaches."

Proponents and opponents of Measure 11 will never agree. But here's what's indisputable: Despite Measure 11, Oregon's incarceration rate is modest.

The state ranks 33rd in incarceration, according to the federal Bureau of Justice Statistics, imprisoning 373 people per 100,000, just three-quarters of the national average.

"I think a lot of people are taken in by the propaganda, but Oregon is not the gulag," says Don Rees, chief deputy in the Multnomah County District Attorney's office. He serves on the prison population forecast committee.

Perhaps more important is who is doing time in Oregon prisons.

With a low rate of incarceration, it seems logical that Oregon is leaving bad guys on the streets.

In fact, statistics show our system does an outstanding job of putting away the criminals Oregonians want locked up.

A 2010 Bureau of Justice Statistics study shows Oregon has the highest rate of violent offenders behind bars of the 33 states that report such figures. That means we have the lowest rate of nonviolent offenders. As of March, fewer than 6 percent of Oregon inmates were doing time solely for drug offenses. Federal figures show we have the second-lowest incarceration rate for drug offenders in the country.

"It's almost impossible to get into prison in Oregon for drug possession," Rees says.

Kitzhaber wants Oregon to shift spending to addiction services and more effective alternatives to incarceration, and stop released convicts from returning to prison. Prosecutors agree with him.

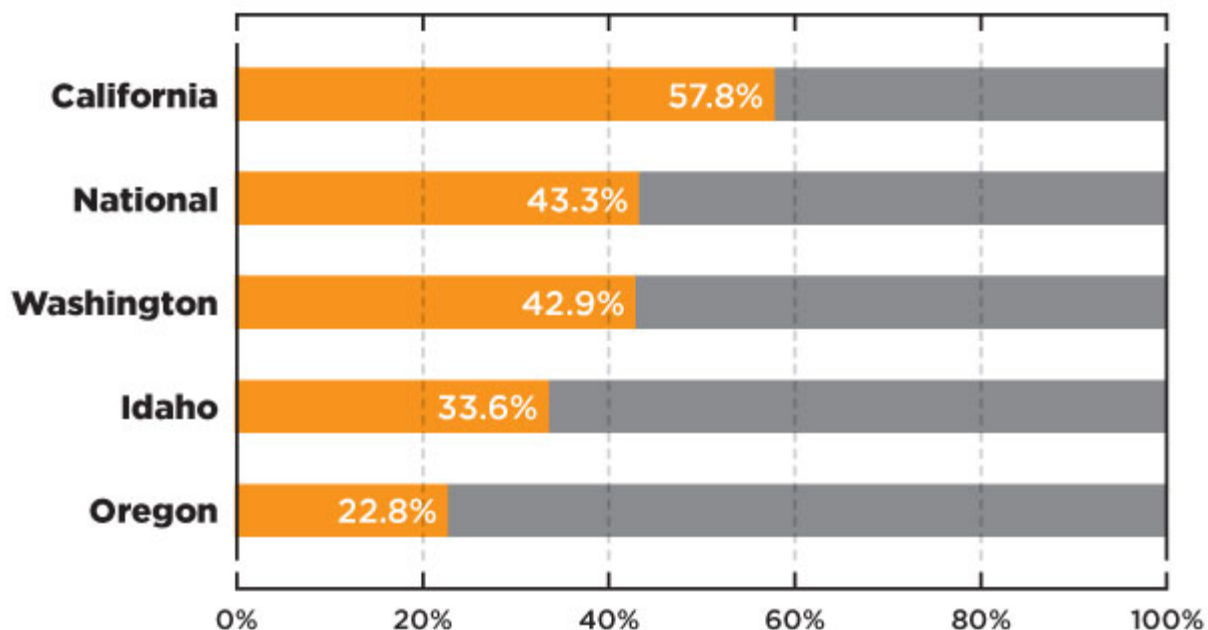
But Oregon already has the nation's lowest recidivism rate because of innovative post-prison supervision policies.

The national nonprofit organization that is leading prison reforms around the country—including in Oregon—acknowledges the state's success.

"Oregon is a state that is ahead of the pack," says Adam Gelb, director Pew's [Public Safety Performance Project](#). "But state leaders think there is room for significant improvement not just in sentencing and corrections policies but overall in how the state is attacking crime."

Recidivism: Oregon Is the Lowest

A 2011 study by the [Pew Center on the States](#) found Oregon has the lowest rate of recidivism—defined as a felony conviction within three years of leaving prison—in the country. Here's how Oregon compares to adjacent states and the national average:



SOURCE: Pew Center on the States

Six months after taking office for his third term, Kitzhaber named the 2011 Commission on Public Safety. His directive to the seven-person panel was pointed:

“As a result of the incarceration costs of our current sentencing policies, Oregon faces the untenable choice of having to fund its prisons or educate our children,” Kitzhaber wrote in the executive order creating the commission.

The commission, led by then-Oregon Supreme Court Chief Justice Paul De Muniz, included former Gov. Ted Kulongoski, four lawmakers and a Salem car dealer. A glaring omission on the panel—no cops or prosecutors.

Steve Doell, of the advocacy group [Crime Victims United](#), says that made no sense.

“How do you have a commission on a topic that is so important without having all the key stakeholders and their expertise at the table?” Doell asks.

The panel’s makeup also disappointed Foote, the Clackamas County district attorney.

Foote, 62, a politically savvy prosecutor, would have been an obvious choice for the commission. In 2008, he worked with anti-incarceration advocates to defeat an expansion of mandatory sentencing laws.

And Foote, the Clackamas County DA since 2000, had also served as deputy director and inspector general of the Department of Corrections from 1990 to 1995.

So he and other prosecutors watched Kitzhaber’s commission with keen interest. What they heard didn’t fit their experience.

Uninvited, Foote showed up in late 2011 to testify in front of the commission.

Although, like others who wanted to comment, he was granted only three minutes, he and prosecutors from Multnomah and Washington counties created enough political heat that Kitzhaber reconstituted his Commission on Public Safety in 2012.

This time, the panel included a defense attorney, Department of Corrections director Colette Peters, Marion County Sheriff Jason Myers—and Foote.

Kitzhaber, De Muniz and legislative leaders also invited the Washington D.C.-based Pew Center for the States to staff the commission.

Pew started a national Public Safety Performance Project in 2006, helping roll out reforms in higher-incarceration states such as Arkansas, South Carolina and Texas.

In commission meetings, Foote sparred with Pew staffers. Although Pew praised Oregon's past correctional performance, its analysts warned that Oregon's mix of prisoners and length of sentence were trending the wrong way—toward less-violent offenders and longer sentences.

Pew based its assertions on data from 2000 to 2010, despite the fact that conditions changed dramatically in 2005, when prison growth ground nearly to a halt.

“In the seven years since 2005, Oregon's prison population has expanded by 9 percent,” says an Oregon Office of Economic Analysis review of the prison population. “In the seven years prior, the population expanded by 67 percent.”

Foote disputed Pew's findings, using state figures to show the percentage of violent offenders has actually increased slightly since 2005, and the length of sentences has oscillated in a range but remains far less than the national average.

“For the past nine months, we have tried to quietly, but clearly, raise our concerns about the work that Pew has been doing, both behind the scenes and directly to Pew and others, with virtually no success,” Foote says.

Pew's Gelb says his analysts did not cherry-pick data.

“The commission got a very robust comprehensive and accurate portrait of where the system is and where it's headed without significant action by the legislature.”

When Pew claimed Oregon was locking up too many “low-risk” inmates, Foote pushed back hard.

He and other DAs checked a list of 850 inmates Pew said could safely be released from prison.

Pew's list included 57 people convicted of homicides, and dozens more convicted of rapes and especially violent crimes.



THE SKEPTIC: Clackamas County District Attorney John Foote doubted the Washington D.C.-based Pew Center on the States' assertions about whether its reform agenda fit Oregon's needs.

IMAGE: WW Staff

And many, such as James R. Tourdot, convicted of assault in the second degree in Multnomah County in 2011, seemed anything but "low risk."

On April 16, 2011, Tourdot, according to a prosecutor's summary, became enraged when a man named Curtis Threelegs pushed him out of a chair in a downtown Portland building.

"The defendant then broke his victim's orbital socket and ripped out his eye with his hand," the summary read. "Despite emergency treatment at OHSU, the eye could not be saved."

Tourdot was sentenced to 56 months in prison. Although he had a long record in Washington, California and Montana, the risk-assessment tool cited by Pew failed to take that into account.

After Foote made his case, media outlets jumped on the "low-risk" controversy.

At the next Commission on Public Safety meeting, Kitzhaber decried "the use of fear and emotion to drive public policy by anecdote," and batted down any implication he was soft on crime.

"I'm not interested in nor will I support any reform of the public-safety system that shortens sentences or provides for early release of violent offenders," Kitzhaber said Sept. 24.

Raphael says Kitzhaber wasn't advocating early release for prisoners already sentenced under Measure 11.

“The governor thinks we need to consider all constructive alternatives and find the most effective ways to redirect resources to investments that will prevent crime in the first place,” Raphael says.

Yet his commission eventually took a meat cleaver to Measure 11. The proposal it sent the Legislature would end mandatory minimum sentences for second-degree robbery, second-degree assault and first-degree sex abuse.

Collectively, figures show, those crimes account for more than 40 percent of Measure 11 convictions.

De Muniz, the former Supreme Court chief justice who chaired Kitzhaber’s public-safety panel, says it’s time to put sentencing back in judge’s hands.

“One way to bend the cost curve in corrections is to allow more judicial discretion so we can consider the character of the offense and the character of the offender,” De Muniz tells *WW*. “That doesn’t work with mandatory minimums.”

Rogers, of the [Partnership for Safety and Justice](#), calls the suggested sentencing changes “modest change that will leave the vast majority of Measure 11 intact.”

Chuck French, a former Multnomah County prosecutor now doing policy work for Metro-area district attorneys, disagrees.

“These three crimes are the No. 1, 3 and 4 most-charged Measure 11 offenses, and they make up 42 percent of all Measure 11 indictments,” French says. “It is statistically accurate to say this would gut Measure 11.”

Foote says Pew’s remedies are wrong for Oregon. “Many of the problems Pew wants to fix in other states are just not problems here,” Foote says.

Pew—after offering what was supposed to be objective analysis—is lobbying to get Oregon to approve the agenda it drafted for Kitzhaber.

Pew is deploying and paying for a dozen registered lobbyists—including well-known figures such as Greg Peden and brothers Kevin and Craig Campbell—to make the case for cutting Measure 11.

“They were supposed to be impartial staff for the public-safety commission,” French says. “But now we see they are advocates.”

Pew’s Gelb says his organization provided unbiased analysis but always planned to help implement the commission’s findings. He says there’s no conflict of interest. “We had a very clear agenda from the beginning,” Gelb says. “A better public safety return on Oregon’s corrections spending.”

In his third term, Kitzhaber has shown a mastery of power politics—he rolled his education reforms through the 2011 Legislature and skillfully punched a Nike tax bill through a special

legislative session in December.

Now, with the endorsement of an influential nonprofit, he has pushed a major revision of Measure 11 close to the brink of reality—lawmakers probably will vote next month—with little fanfare.

Even for a governor who last year bucked the Oregon Constitution with his refusal to allow death-row inmate Gary Haugen to be executed, rolling back sentencing is a big political gamble.

That's especially true when the data doesn't support such a move.

Former Labor Commissioner Jack Roberts, who followed the public-safety commission from afar, says making big changes to Measure 11 could have the unintended consequence of increasing the percentage of nonviolent offenders in prison and spurring an increase in mandatory sentencing.

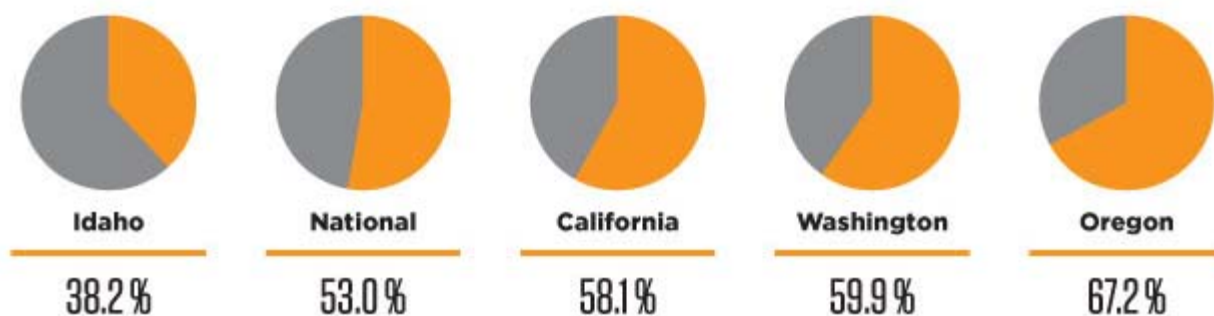
"First, the underlying premise here is wrong," Roberts says. "We have a system that works really well."

If lawmakers roll back Measure 11, Roberts says it could cause law-and-order advocates to put even tougher measures on the ballot, and next time put them in the constitution so lawmakers cannot change them.

"You don't save much money," Roberts says, "and you end up with a system that's less flexible and less effective."

Locking Up Violent Offenders: Oregon Is Best

A key measure of whether prisons are being used effectively is the percentage of violent vs. nonviolent offenders they hold. A 2010 U.S. Bureau of Justice Statistics study found Oregon incarcerates the highest percentage of violent offenders of the 33 states that keep such figures. Here's how Oregon compares to adjacent states and the national average:



SOURCE: U.S. Bureau of Justice Statistics

Where the Money Is

When Gov. John Kitzhaber says he wants prison reform, what he's really saying is, he wants to cut costs.

"Our prison forecast predicts the need to build 2,300 new beds over the next decade at a cost of \$600 million," Kitzhaber said in his Jan. 14 State of the State address. "Cost reduction is both needed and possible."

But the 10-year prison population forecast Kitzhaber is leaning on has a long history of overestimating growth.

"The track record is terrible," says Don Rees, chief deputy in the Multnomah County District Attorney's Office and a member of the committee that oversees the forecast.

From 1995 to 2002, for instance, the state produced 14 separate 10-year forecasts. Each significantly overstated growth. On average, the guesses were 15 percent high.

Colette Peters, whom Kitzhaber hired last year to run the Oregon Department of Corrections, tells *WW*, "We have an unsustainable trajectory of spending in corrections."

That is false.

Over the past decade, the state general fund increased 41 percent. The Department of Corrections budget went up 39 percent.

Peters expects an influx of 2,300 new inmates over the next decade, many of them nonviolent property-crime offenders convicted under 2008's Measure 57. But prosecutors say Measure 57 projections have been consistently high.

Figures show that Oregon's prison population has grown only 1.3 percent annually since 2005, when it effectively flatlined. As a result, Kitzhaber is calling for a reduction in the prison budget based on faulty forecasts and bad math.

If he nonetheless wants to reduce prison spending, however, he could address operating costs. That's one area where Oregon has lots of room for improvement.

Three reports in the past decade have found the state's per-prisoner spending is high.

A 2004 federal study found Oregon had the seventh-highest per-day cost in the country. A 2010 study by the American Correctional Association pegged our per-day costs at \$84.46, well above the national average of \$79.84 per day.

And a 2011 Legislative Fiscal Office report compared Oregon's prison-staffing costs with those in 11 other states. Again, Oregon was high.

Oregon's correctional officers with 10 years of seniority had a total compensation at roughly 119 percent of the averages of all 12 states, while beginning correctional officers received 124 percent, and registered nurses almost 130 percent, the study found.

Kitzhaber's spokesman, Tim Raphael, says reducing costs is important.

"Tackling and reducing the per-day cost of corrections has to be a priority. The commission made recommendations on this front, and the law enforcement community has emphasized this as well. But it's not the whole answer," Raphael says, adding Kitzhaber wants to target addiction, post-prison supervision and other community corrections programs to save money.

Raphael says the governor wants to invest in best practices and not just prisons. "Spending state revenue without targeting it for the best return on investment is unsustainable," he says. "Rising prison costs are squeezing out critical public investments in state police and community prevention programs we know work."

Don Loving, a spokesman for the American Federation of State, County and Municipal Employees, which represents correctional officers, says prison jobs are enormously stressful.

"I'm not going to apologize for what our members make," Loving says. "It's a fair wage for a very challenging job."

State Rep. Chris Garrett (D-Lake Oswego), who served on Kitzhaber's public-safety commission, says the panel limited its discussion of labor costs because state labor issues are not unique to the corrections system and have been the subject of more comprehensive policy discussions.

Sen. Doug Whitsett (R-Klamath Falls), a member of the Joint Ways and Means Committee on public safety, says the failure to tackle labor costs shows the safety commission's real agenda was Measure 11.

"They are trying to drive sentencing reform by saying we've got this Armageddon on costs," Whitsett says. "I don't believe it."

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