



## John S. Foote, District Attorney for Clackamas County

Clackamas County Courthouse, 807 Main Street, Room 7, Oregon City, Oregon 97045  
503 655-8431, FAX 503 650-8943, [www.co.clackamas.or.us/da/](http://www.co.clackamas.or.us/da/)

November 1, 2012

Governor's Public Safety Committee

Re: Our Policy Options

Dear Fellow Commissioners,

I would like to address some concerns I have to members of the Commission as we move toward the decision-making process. I also want to present to you again, on behalf of District Attorneys throughout the state, the concrete proposals I would like to be considered.

Unfortunately, I believe that the process we have engaged in, and some of the positions that have been taken during this process, have been misconstrued in the press. I think this is the result of the manner in which information has been provided to members of the Commission. Because data presented by the PEW group to the Commission and the recommendations of Commission members has not been distributed to all the members on the Commission prior to meetings, I for one have not been prepared to assess and discuss potential policy options. As a trial lawyer, and a prosecutor, this process has been completely at odds with our established norms of disclosure of evidence and positions to be taken in a judicial process. It is axiomatic in our profession that better decisions are produced by advance notice, and this has unfortunately not been the case in this process.

This has presented the unfortunate appearance that policies are being drafted and decisions are being made behind the scenes, and that these policies are best not examined closely by members of the Commission. I believe I can say without hesitation that this is the position of members of the Oregon District Attorney's Association. I am sure that you would all agree that this perception is unhealthy for the process. To make sure that this is not the case with my policy suggestions, I wanted to again distribute my proposals to all Commission members, well in advance of when we decide on these matters. These are largely the same proposals that I earlier presented to the Commissioners on October 10. I would also encourage other members to do the same with their proposals, so we all have the opportunity to consider them.

Here are the proposals that I would like to have discussed by the Commission:

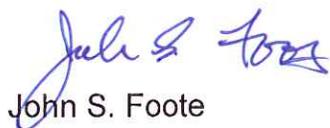
1. Expanded and enhanced re-entry programs for those released from prisons and county jails. National studies and studies conducted by our state Criminal Justice Commission (CJC) have demonstrated that recidivism can be reduced by almost 40% in certain categories of offenders if they undergo well-designed re-entry programs before and after their release from prisons and county jails. Furthermore, according to PEW, more than 2000 probationers and parolees were revoked last year. We believe that the Legislature should step up and fund these programs and all evidence-based programs that reduce criminal behavior that would not change otherwise with new independent funding. With 4000 inmates being released from state prisons each year and many thousands more released from county jails, re-entry programs that reach just a fraction of those offenders should stabilize our prison growth without any changes in sentencing policy.
2. Revised recidivism definition. Oregon needs a new definition of "recidivism" that more appropriately reflects what the average citizen would understand that term to mean. There are, unfortunately, many definitions of "recidivism" used around this nation and because of that it is impossible to accurately compare our system to others. Oregon's definition is certainly one of the loosest in the country. We need to adopt a new definition, or at least have multiple definitions that include convictions, arrests and return to institutions, in this state and elsewhere, that allow us to compare our system to others.
3. The establishment of a robust program to assess and inventory evidence-based programs in this state. We currently have no effective centralized program to assess the effectiveness of offender programming in this state.
4. Establish a system of prison use forecasting that actually allows policy-makers to make meaningful decisions. Prison forecasts have been misused by advocates of policy changes because they have been historically wrong and because they have not been clear about how much prison growth is tied to policies as opposed to simple population growth. It is encouraging that the latest forecast is moving in the direction of clarifying this point. We should establish clear mandates for the forecasters to require future forecasts to do so specifically, in addition to providing a margin of error in forecasts, since they have historically over-predicted prison growth.
5. Decrease prison costs. It is simply unacceptable to prohibit the Commission from considering Department of Corrections (DOC) costs per day, which are some of the highest in the country. The DOC should be allowed to manage prison cost savings, but should be given a target of cost reductions that they must meet.

6. Change laws to prevent prison sentences for certain crime. While the examination of “low risk” offenders in our prisons revealed that virtually all belong in prison, we believe that certain offenses could be excluded from prison sentences, in the interest of saving money, without adversely affecting public safety. The two that could be considered for changes are Felony Driving While Suspended and marijuana distribution in amounts below federal limits for “substantial quantities.”
  
7. Potential Expansion of 1049 Treatment in Measure 11: Oregon District Attorneys remain willing to consider very narrowly constructed sentencing changes to certain non-forcible second degree sex crimes and sex abuse 1 in Measure 11. However, any such reform must be just and rooted in the principles of proportional sentencing and truth in sentencing for violent crimes. Most recent prison forecasts have clearly established that Measure 11 is not contributing to future prison growth, so there is no urgency to address these potential changes. The fundamental purpose of our Commissions’ work is to reduce the costs of the system, including incarceration and there is no economic reason to alter Measure 11.

Oregon’s District Attorneys remain ready and eager to assist in our efforts to reduce costs and improve our criminal justice system. We will welcome the opportunity to work with the legislature and our law enforcement partners to improve an already successful system of which we can all be proud.

With the exception of the last point on this list, all of these proposals were discussed in greater detail in my October 10 letter. I hope that we can address all of these matters in our discussions.

Sincerely,



John S. Foote

JSK:kas