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Dear Fellow Commissioners,

RE: Policy Proposals

Let me start by stating again that anyone who considers the options I have listed below first review the various written documents I have previously provided to the Commission. They are available on the Clackamas County District Attorney's Office website under the tab "News." They put into context the suggestions I am going to make below.

PRISON FORECASTING:

First, I believe we need to more accurately describe the problem we are trying to fix. I have previously advocated for a more realistic view of our ability to accurately forecast prison populations ten years from now. The most recent forecast does a better job of distinguishing between prison population growth that is caused by sentencing policy and prison growth that is caused by the growth in Oregon's general population and, in particular, its "at risk" population. We now know that 62% of the projected growth in our prison population over the next ten years is going to be caused by the projected growth in the overall population in Oregon. It should be accompanied by growth in taxes to support it. In fact, the state economist has predicted that state general fund revenues will increase by 48.2% over the next ten years as compared to a predicted 16.2% increase in our prison population. That would seem to suggest the projected prison growth can be sustained financially. And it is important to remember that the state prison budget currently consumes less than 10% of the overall state general fund. We will never address our overall state budget problems on the backs of either DOC or our criminal justice system.

In addition, the most recent forecast shows that eliminating voter-initiated sentencing policies such as Measures 57 and 11 would provide only modest budgetary savings. Since approximately one-third of the projected prison growth is due to sentencing policy,

changing that policy would save only a fraction of the projected \$600 million that the Governor has stated we will need over the next ten years. In fact, even if these measures were eliminated completely and the will of the people ignored, we would only save about \$200 million over ten years. And that does not take into account the potential for increased crime and victimization costs that would far outweigh any savings.

The prison forecasting process should continue to be improved and fully insulated from any and all political pressure. We need the best and most accurate information upon which to base our decisions. And all future long-term forecasts should contain a "margin of error" which takes into consideration the history of long term prison forecasting in Oregon.

However, we also know that tax revenue is under continuous pressure. So, how can we try to responsibly address what does appear to be a projected growth in our prison population? Do we need to change voter-initiated and approved sentencing policy? I would propose that we do not. Let me make some specific proposals.

INCREASED FUNDING FOR EVIDENCE BASED PROGRAMS AND RE-ENTRY PROGRAMS WITHOUT CHANGING SENTENCING POLICY:

According to the information PEW has provided, more than 2,000 offenders are returned to prison each year because they failed on either probation, parole or post-prison supervision. What can we do about that? Do we need to change the rules that are sending them to prison? No. Oregon has been a leader in the growth of "evidence based" programs that we have been told repeatedly will change criminal behavior. And we have been told those programs are shrinking because of reduced funding. So, what if we simply renewed our commitment to fund them adequately? What if we had funding for programs both in the institutions and in the community? And what if we did not try to select, but we let the experts tell us which ones would work best? These programs should include robust funding for drug treatment (such as HOPE courts in the community) and a much stronger re-entry program for inmates released from prison. Let's fund these adequately and let them naturally reduce the number of probation, parole and post-prison revocations. We would only need to reduce that 2,000 number by 300-500 per year to begin to balance the intakes and releases from prison, thereby stabilizing our prison forecast. And we could do this without touching voter-initiated and approved sentencing.

EXPAND OUR DEFINITION OF RECIDIVISM:

We need to change our definition of recidivism to include three categories: arrests, convictions and returns to prison. As we have seen from the 2002 national study on recidivism that I previously provided you each of these definitions gives us information that can help us target our policies most effectively. And it will allow us to more fairly compare ourselves to how other states measure recidivism.

PRISON COSTS:

We have been instructed that we cannot consider the costs of incarcerating inmates. I would submit that if we are not allowed to consider this essential component, we will have one hand tied behind our back. So, at the risk of disobeying our instructions, I believe that prison costs must be on the table. However, as a former Deputy Director of the Oregon Department of Corrections and with great respect for the skill and expertise of the professionals who operate and oversee our prison system (which I believe is one of the very best in the country in terms of safety of staff and inmates and humane treatment of those incarcerated), I do not believe we should attempt to direct how this should be done. That must be left to the professionals and they must be given enough time to make this work. However, Oregon has one of the highest costs per day/per inmate in the country and in 2010 Oregon's costs increased by 16% (according to *The American Correctional Association* of which Oregon is a member) which leads the country by a wide margin.

I would initiate that discussion with the proposal that DOC must reduce its costs per day/per inmate by at least 10% over the next seven years.

AN INVENTORY OF ALL OF OREGON'S EVIDENCED BASED PROGRAMS WITH AN EMPHASIS ON RANDOMLY CONTROLLED TRIALS AS THE GOLD STANDARD FOR ALL TREATMENT EVALUATIONS:

I would request that an inventory of all of Oregon's current evidence-based programs be assembled by type, number and jurisdiction. For instance, many jurisdictions have drug courts. Where are they and how many participants are in each? In addition, this list should include the study or evaluation that is evidence that the program works, and this list should be updated annually.

As a part of this effort, I would advocate that each kind of program should be evaluated with the most rigorous studies (of which randomly controlled trials are the most rigorous). The reason for this should be obvious. If we are to rely on these programs to change recidivism in Oregon we must be confident that they are changing behavior that would not change otherwise. It is not enough that a program feels good or even that those in the program are successful. We should only be investing in programs that are changing behavior that would not change otherwise. I believe we often do not give enough credit to many of the people we deal with to change without a program. And if they can do that, we should not spend money on a program to do it. We should save that money for those who cannot change without the program.

The HOPE program in Hawaii illustrates this perfectly. HOPE has been evaluated with randomly controlled trials. The results were both stunning and extremely informative. With rigorous weekly drug testing and immediate short term consequences, according to this study, 51% of those in the program stopped using drugs with no positive tests and no treatment. Even more interestingly, another 40% actually stopped using drugs after as many as three positive tests and without any treatment. Treatment resources

saved for those who actually needed it and were not wasted on those who had a habit of using drugs, but not a true drug habit.

We need this kind of critical and rigorous approach to all our programs.

SMALLER SENTENCING REFORM;

I would suggest that we also consider two smaller reforms to our current sentencing policy that do not affect voter-initiated and approved sentencing laws. First, I would suggest that we modify the charge of Felony DWS to exclude the possibility of a prison sentence. When we reviewed the list of "low risk offenders" compiled by PEW we noticed that Oregon has a number of these kinds of defendants in prison. With our current budget challenges, we believe these can be handled locally. In the same spirit and after looking at the "low risk" list, we also would propose a modification of our current sentencing law on the definition of "substantial quantities" of marijuana. We believe it could be modified upwards to be more closely aligned with both Federal law and the rest of our current marijuana statutes. We are ready to engage you in this discussion in a reasonable way.

SUMMARY:

As you can see from our discussion above, we are serious in our attempts to address the problems that we are facing, without damaging our current system which we believe has been both moderate and extremely successful. I look forward to working with you on these issues.

Sincerely,



John S. Foote

cc Zoe Towns
 Gabrielle Priest
 Craig Prins