

MEMORANDUM

TO: Oregon Joint Committee on Public Safety

FROM: Public Safety Performance Project, The Pew Charitable Trusts

RE: Data response to ODAA letter of April 5th

DATE: April 24, 2013

This memo responds to a letter submitted to the Joint Committee on Public Safety on April 5th by the Oregon District Attorney's Association (ODAA).

The letter from ODAA makes several claims regarding the accuracy of the data analysis supporting the work of the Commission on Public Safety (Commission). These claims are not corroborated by the Commission record, or by state or national data. Responses to each claim are detailed below.

At the invitation of Oregon's state leadership (Governor Kitzhaber, Chief Justice Balmer, Senate President Courtney and then-Co-Speakers Arnie Roblan and Bruce Hanna), The Pew Charitable Trusts (Pew) is providing technical assistance to the state as part of the Justice Reinvestment Initiative, a collaboration between Pew and the U.S. Department of Justice. Begun in spring 2012, Pew's assistance is in support of the goal expressed by state leaders: to "develop and implement laws and policies that safely and effectively control the size and cost of our prison population..."ⁱ

Cost per day

ODAA claim: In presentations to the Commission, Pew did not use the same correctional cost metric as the one used in its *Time Served* report from May of 2012. Instead, Pew intentionally presented a lower cost-per-day "at face value" in order to obscure the high cost of corrections in Oregon.

Fact: As Pew presented to the Commission, there are various ways to measure the cost of corrections. One way to calculate the cost per inmate is to divide the total prison budget by the total number of inmates. This was explained to the Commission in the July 24 presentation and was also the method used in Pew's *Time Served* report. This measures something very different from what states often measure in their official "cost-per-day," which usually measures average daily operating costs.

In the case of Oregon, the DOC's "direct cost-per-day" is \$82. Both the DOC and the Oregon Legislative Fiscal Office use this "direct cost-per-day" in correctional budgeting as the average daily operating cost. Pew did not present this figure at face value but rather reported to the Commission that this "direct cost-per-day" includes expenses like personnel, food, materials, and operational programs but excludes significant expenses like construction and debt service. The Commission also explained what this data point does and does not include in its final report.

Nonviolent trends

ODAA claim: Pew inaccurately identified a trend in Oregon's inmate population towards a growing percentage of nonviolent offenders.

Fact: Oregon's prison population is growing and, according to state data, the prison population is shifting toward a higher concentration of nonviolent offenders and technical violators. Since 2000, the prison population has become more nonviolent. The share of non-person crimes among prison inmates rose 9 percent from 28.4 percent in 2000 to 31.0 percent in 2013 (2013 is the end date used in analysis presented in the ODAA's letter). From 2000 to 2013 the number of property offenders in prison grew 78 percent, compared to a 45 percent rise in the number of person offenders, indicating a shift in composition from person to property offenders. These numbers come directly from researchers at the DOC who shared them with both Pew and the ODAA.

Length of stay trends

ODAA claim: Pew inaccurately identified an increase in Oregon's length of stay for property offenders.

Fact: The length of stay in Oregon's prisons is at its highest point in a decade for all offender categories. According to Oregon DOC data, property offenders entering prison in 2000 served an average of 19.3 months, while those entering prison in 2011 served an average of 20.6 months.

The ODAA letter refers to Pew's *Time Served* report, which used inmate *release* information to *estimate* time served in prison across states from 2000 to 2009. But in the *Time Served* report and in the Commission meeting on June 29, 2012, it was clearly stated that estimating length of stay in Oregon using release data would not be as reliable as using the data for every offender *entering* prison.

When sentencing changes go into effect – and Oregon has passed a number of sentencing changes over the last five years – offenders released from prison no longer accurately reflect the mix of sentences imposed on offenders in the current sentencing environment. Admissions data captures every offender going to prison, including those with long sentences, while release data only captures offenders with shorter terms or long-term offenders sentenced in the past under different sentencing regimes. In many states, it is not possible to estimate length of stay for offenders entering prison, and this is why the national study necessarily relied upon release data. However, because of Oregon's determinate sentencing policies, length of stay can be estimated quite accurately as soon as a sentence is imposed. This allowed the Commission a more up-to-date, more detailed, and more accurate measurement of Oregon's length of stay, using data directly from the Oregon DOC.

According to the ODAA's own study on the implementation of Measure 57 (M57), M57's major impact is through lengthened prison terms for property offenders. Now that M57 is in full effect, Oregon can expect length of stay for property offenders to continue to grow.

Imprisonment rate

ODAA claim: Pew did not sufficiently emphasize to the Commission that Oregon's imprisonment rate is lower than many other states. The ODAA letter claims that Oregon's imprisonment rate has not grown as Pew presented but that it actually declined from 2004-2010.

Fact: As reported by Pew during Commission hearings and by the Commission in its final report, Oregon has historically had a comparably modest imprisonment rate (the number of people in prison compared to the state population). With the 29th highest imprisonment rate in the country, Oregon's rate continues to be below the national average; however, during the past decade it has grown at a rate nearly four times faster than the national average (from 2000 to 2010 Oregon's imprisonment rate grew 22 percent, compared to 5 percent for the nation).

The ODAA letter bases its claim on since-corrected data from the Bureau of Justice Statistics (BJS). In its 2010 report, BJS reported Oregon's imprisonment rate at 361 prisoners per 100,000 residents, but after Census figures were released and the resident population numbers were revised, BJS revised this to 385 (published in the 2011 report). Either way, the imprisonment rate would still have grown from the Commission's consistent baseline year of 2000. In the period identified in the ODAA letter – 2004-2010 – the imprisonment rate did not decline but, rather, grew by 5.5%.

Technical violators

ODAA claim: Pew failed to disclose Oregon's low rate of prison admissions accounted for by probation violations and recidivism.

Fact: As reported by Pew during Commission hearings and by the Commission in its final report, Oregon has achieved an impressive reduction in its recidivism rate and now boasts one of the lowest rates in the nation. Historically, Oregon has limited the revolving door of prison. But the data show that these admissions are increasing. Technical revocations of probation accounted for 15 percent of the 3,982 prison admissions in 2000 and 18 percent of the 4,839 prison admissions in 2011. That represents a growing slice of a growing pie. The length of stay for these technical violators of probation is also growing (up 20 percent since 2000), and this growth in admissions and length of stay is one driver of Oregon's overall prison growth.

The reference in the ODAA letter to a 3 percent rate of technical revocations is based on a 2011 study that looked only at post-prison supervision. As was pointed out by Pew in the Commission presentations, the majority of technical revocations in Oregon arise from probation rather than post-prison supervision.

The ODAA letter also claims that Pew was not forthcoming in its explanation of what it means to be a "technical violator" of probation. In fact, as was understood by the Commission, Pew was engaged in a live investigation of Oregon's state data, burrowing down into greater detail as the process progressed. At the very first mention of technical violator trends, Pew told the Commission to expect additional information on the subject. At the next two presentations, Pew walked the Commission through the Oregon DOC's definition of technical violators in prison: inmates who would not otherwise have been sent to prison had they not been on probation. This includes probationers revoked for noncriminal violations and also probationers revoked for new crimes that could not otherwise result in a prison sentence (misdemeanors, for example).

"Low risk" offenders

ODAA claim: The ODAA letter alludes to but does not detail alleged inaccuracies in Pew's presentations to the Commission on risk to recidivate.

Fact: As has already been stated by many Commissioners on the record during Commission hearings, and as was submitted in writing to the Commission record by Commission members Scott Taylor and Chris

Garrett and, finally, as was detailed in an editorial to the Oregonian by Commission chair Paul DeMuniz, the presentations to the Commission on risk to recidivate were entirely accurate. The October 9, 2012 letter from Chris Garrett summarizes this succinctly:

“Dear Fellow Commissioners,

I wanted to make a comment about the “low risk” controversy that has been the subject of statements from Commissioner Foote and the Oregon Anti-Crime Alliance, as well as Steve Duin’s column in The Oregonian last week.

I agree with Commissioner Foote that the question of whether risk analysis is appropriately used in sentencing, and, if so, whether the Public Safety Checklist is the appropriate tool to use, are legitimate and important issues for this Commission to consider. I look forward to continuing that discussion.

With regard to Pew's presentations that have referred to certain inmate populations as "low risk," I think the context and intent of Pew’s statements have become somewhat obscured. Contrary to the Duin column, I never understood Pew to be suggesting that any offender or category of offenders is “low risk” as a lay person might understand that term. It was clear to me at the time that Pew was merely informing the Commission of the fact that recent years have seen a higher percentage of people being admitted to prison who are at lower risk to reoffend according to a specific predictive tool. Neither Pew nor any member of the Commission, to my knowledge, has made any normative statement to the effect that these admittees should not be in prison. (In fact, I have heard Pew repeatedly disclaim, on the record, any such inference.) Rather, Pew was making a statistical observation to Commissioners who are sophisticated consumers of criminal justice data. What we do with that information is now to be discussed.

In short, I see nothing inaccurate or misleading in Pew's presentations to the Commission during this data-gathering phase of our work. I also agree with statements by Commissioners Foote, Withnell, and others that when it comes to presenting our analysis and recommendations to the public, we must be exceedingly careful in our use of language.”

ⁱ Available at http://www.oregon.gov/CJC/docs/2012cps_just_reinvst_ltr.pdf