



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

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September 21, 2012

The Honorable Justice Paul J. De Muniz  
2012 Commission on Public Safety  
Criminal Justice Commission  
885 Summer St NE  
Salem, OR 97301

Dear Justice De Muniz,

I am writing to respond to your op/ed piece in yesterday's *Oregonian*, which was your response to a previous editorial (by the editorial board) in the *Oregonian*. I know that everyone on the Commission is doing what they feel is right and I believe we must all be free to hold our own opinions. However, I feel it is necessary to clear up a few things for the record.

As you know, this issue arose because the PEW Foundation presented a power point slide to the Commission on June 29<sup>th</sup> which represented that last year 26% of all new inmates admitted to prison in Oregon's prisons were "low risk". We now have the list of those 850 "low risk" inmates and it is apparent, by any fair measurement, that was simply not true. And without our request for the names of these defendants we would still not know it was such a distorted representation. To date, no one has stepped forward to take responsibility for that clear misrepresentation of the facts

Second is the issue of "risk based" sentencing. In this area I believe we have an honest difference of opinion. In my view a risk based sentencing system is fundamentally misleading because a "risk" score paints a very simplistic and often misleading, picture of each defendant, particularly in serious cases. (This is particularly true when the Oregon definition of risk is "a new felony conviction within 3 years", a definition which excludes from consideration any criminal activity that does not result in a new felony conviction within those 3 years.) One only has to look at the list we provided to see many examples.

We believe that the first responsibility of sentencing has always been to dispense justice. That inherently includes a proportional sentence (particularly in felony cases). A risk score in those cases is simply misleading and unhelpful. In fact, the true value of the list our organization prepared is to demonstrate just how effective our justice system has actually been in sending the appropriate offenders to prison without the use of a clearly flawed risk assessment tool.

Finally, Oregon's criminal justice system is a shining example for the rest of the country. Even the PEW Foundation has repeatedly acknowledged this fact. Without fanfare or self-promotion, over the last two decades Oregon has developed the most progressive and effective criminal justice system in the country. It is a system that targets violent offenders for incarceration, attempts to supervise non-violent offenders in the community, requires the use of evidence-based practices by law, and civilly disenfranchises no one. Seemingly unnoticed by the leaders of this state, Oregon has already achieved "sentencing reform" in a way that other states in this nation have not even begun to approach. It has been troubling and painful to watch our leadership mischaracterize our system as broken and unsustainable.

September 20, 2012

I have attached to this letter data from both the Oregon Department of Corrections and the federal Bureau of Justice Statistics (BJS) that illustrate that, contrary to PEW's assertions, Oregon's prisons are filled with violent criminals. Oregon leads the country in the percentage of prison inmates incarcerated for violent crime (67.2%), according to statistics from BJS.<sup>1</sup> And, according to the Oregon Department of Corrections, over the past seven years the percentage of inmates in Oregon serving time for person crimes has actually risen (currently 69.5%). In fact, contrary to the assertion that non-violent offenders constitute an increasing proportion of Oregon prison inmates, the exact opposite is actually true. The percentage of non-violent offenders in our prisons has decreased in the last five years from 31.1% of inmates to 29.8% today.

When it comes to property crime, Oregon is also a leading example of how to use prison resources wisely. Oregon ranks in the bottom half of the states in the percentage of inmates incarcerated for property crime (17.9%), according to BJS.<sup>1</sup> And the percentage of property crime inmates in Oregon is actually decreasing in recent years (currently 17.2%), according to Oregon DOC.

Let me conclude by repeating what I said in our last Commission meeting. Oregon has been enormously successful in reducing crime while severely limiting our use of prison beds. Oregon ranks 33<sup>rd</sup> out of the 50 states in our incarceration rate. Nationally, 40% of convicted felons are sentenced to prison.<sup>2</sup> In Oregon, the figure is 25%. The rest are given an opportunity to remain in the community under supervision. And despite this extremely modest use of prison as a punishment, Oregon has led the country (since Measure 11 passed in 1994) in our decrease in violent crime.

Let's not try and fix something that is not broken. Instead, I hope we can work together to make our highly successful system even more effective. Prosecutors stand ready to work with you to make that happen.

Sincerely,



John S. Foote

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2 Attachments

cc: Fellow Commission Members  
Steven R. Powers, Office of the Governor

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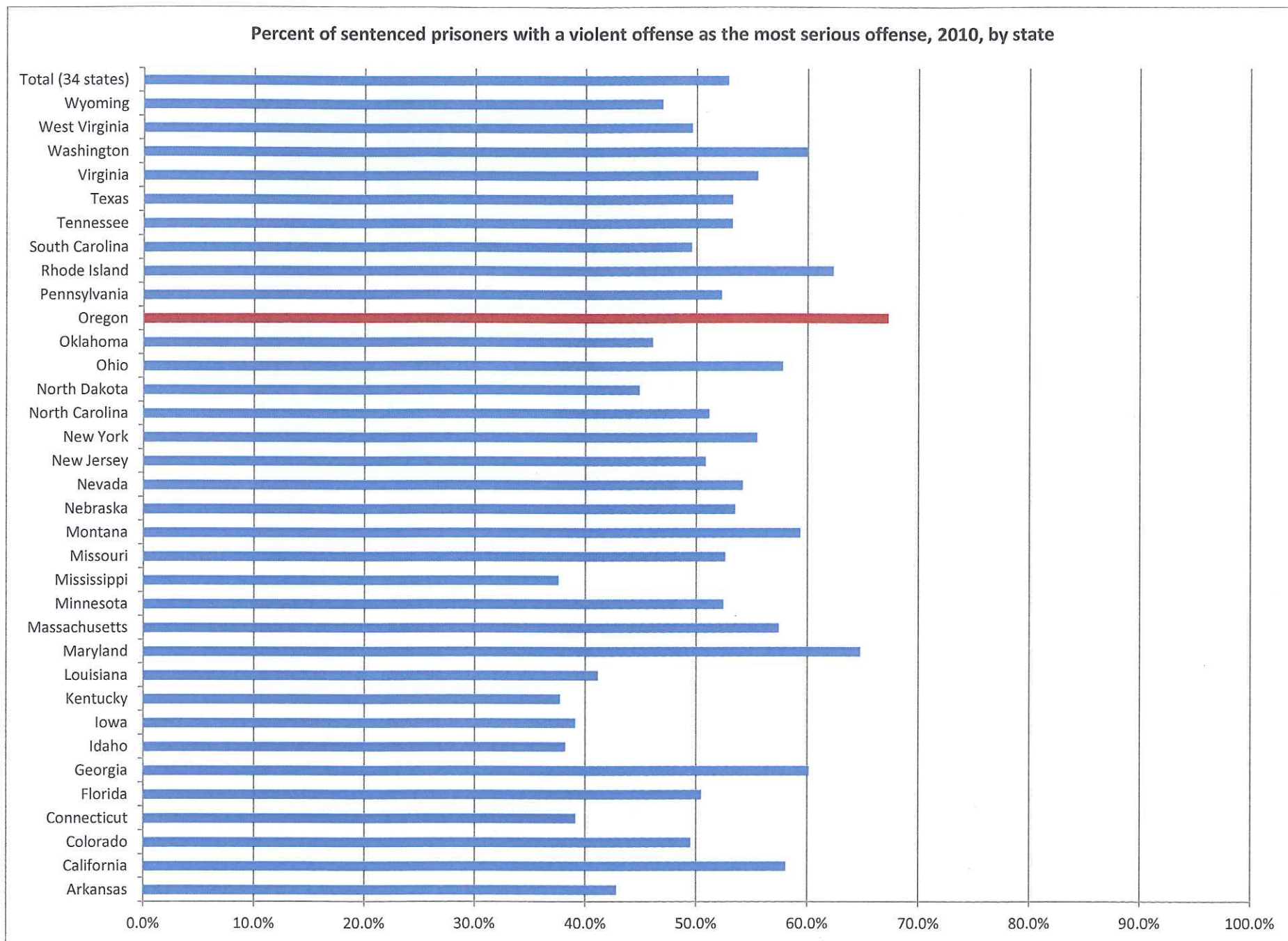
<sup>1</sup> Of the 34 states ranked by BJS

<sup>2</sup> From a 2006 BJS study



BUREAU OF JUSTICE STATISTICS

NATIONAL CORRECTIONS REPORTING PROGRAM – 2010 BY STATE\*



## BUREAU OF JUSTICE STATISTICS

## NATIONAL CORRECTIONS REPORTING PROGRAM – 2010 BY STATE\*

Offense distribution of imprisoned inmates on December 31, 2010, by state/a,b

		Number of inmates with sentence > 1 year	
State	Offense	Num	%
Oregon	Violent	9,828	67.2%
Maryland	Violent	14,543	64.8%
Rhode Island	Violent	1,324	62.3%
Georgia	Violent	31,861	60.2%
Washington	Violent	9,928	59.9%
Montana	Violent	1,464	59.4%
California	Violent	95,401	58.1%
Ohio	Violent	26,240	57.8%
Massachusetts	Violent	6,026	57.5%
Virginia	Violent	20,411	55.5%
New York	Violent	30,992	55.5%
Nevada	Violent	6,687	54.2%
Nebraska	Violent	2,386	53.5%
Texas	Violent	77,300	53.2%
Tennessee	Violent	14,956	53.2%
Missouri	Violent	16,052	52.6%
Minnesota	Violent	4,790	52.5%
Pennsylvania	Violent	26,255	52.3%
North Carolina	Violent	18,063	51.2%
New Jersey	Violent	12,996	50.9%
Florida	Violent	49,970	50.5%
West Virginia	Violent	3,287	49.6%
South Carolina	Violent	11,145	49.6%
Colorado	Violent	10,338	49.5%
Wyoming	Violent	984	46.9%
Oklahoma	Violent	11,537	46.1%
North Dakota	Violent	634	44.9%
Arkansas	Violent	7,416	42.8%
Louisiana	Violent	16,102	41.1%
Connecticut	Violent	4,677	39.1%
Iowa	Violent	3,472	39.1%
Idaho	Violent	2,749	38.2%
Kentucky	Violent	7,595	37.7%
Mississippi	Violent	7,726	37.6%

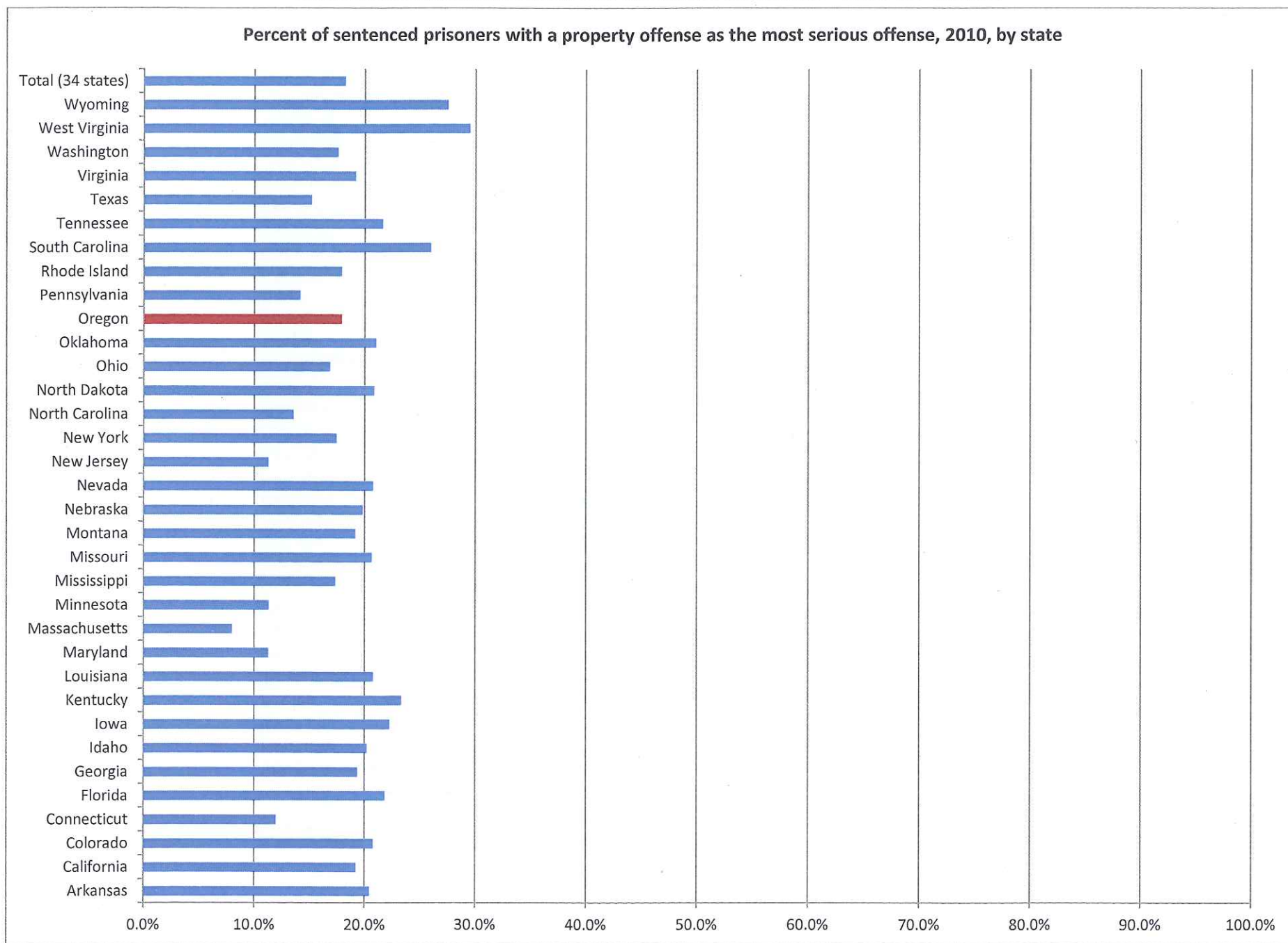
a/Total includes cases with missing offenses.

b/Offense is the most serious offense, based on the longest sentence imposed. Only the most serious offense is reported.

Source: BJS, National Corrections Reporting Program NCRP-D, 2010.



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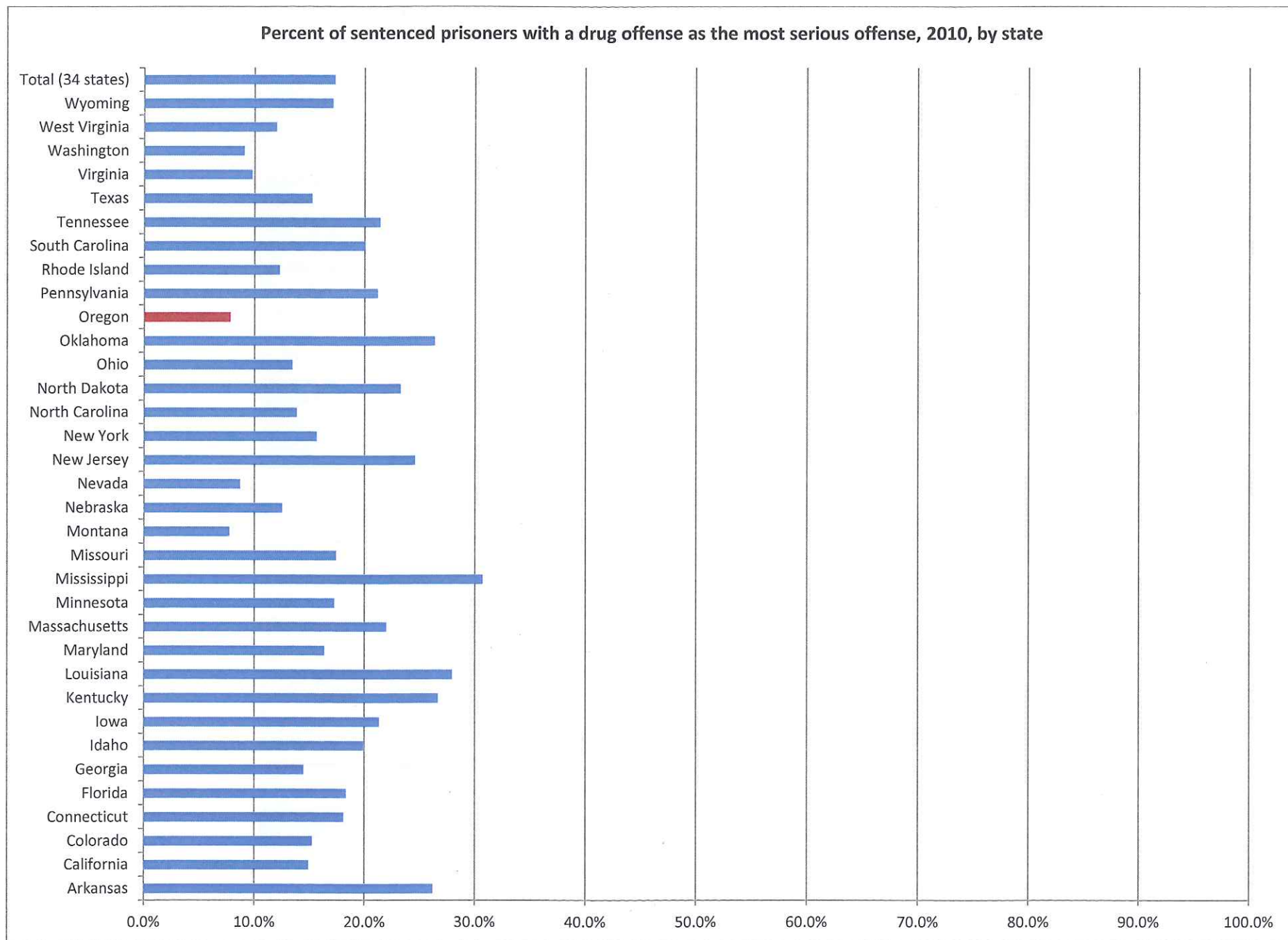
		Number of inmates with sentence > 1 year	
State	Offense	Num	%
West Virginia	Property	1,954	29.5%
Wyoming	Property	577	27.5%
South Carolina	Property	5,840	26.0%
Kentucky	Property	4,702	23.4%
Iowa	Property	1,978	22.3%
Florida	Property	21,616	21.8%
Tennessee	Property	6,079	21.6%
Oklahoma	Property	5,269	21.0%
North Dakota	Property	295	20.9%
Louisiana	Property	8,138	20.8%
Colorado	Property	4,339	20.8%
Nevada	Property	2,561	20.8%
Missouri	Property	6,302	20.7%
Arkansas	Property	3,547	20.5%
Georgia	Property	1,455	20.2%
Nebraska	Property	885	19.9%
Georgia	Property	10,269	19.4%
California	Property	31,588	19.2%
Montana	Property	473	19.2%
Virginia	Property	7,050	19.2%
Rhode Island	Property	381	17.9%
Oregon	Property	2,619	17.9%
Washington	Property	2,913	17.6%
New York	Property	9,757	17.5%
Mississippi	Property	3,572	17.4%
Ohio	Property	7,660	16.9%
Texas	Property	22,064	15.2%
Pennsylvania	Property	7,114	14.2%
North Carolina	Property	4,788	13.6%
Connecticut	Property	1,433	12.0%
Minnesota	Property	1,035	11.3%
Maryland	Property	2,538	11.3%
New Jersey	Property	2,885	11.3%
Massachusetts	Property	841	8.0%

a/Total includes cases with missing offenses.

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Source: BJS, National Corrections Reporting Program NCRP-D, 2010.

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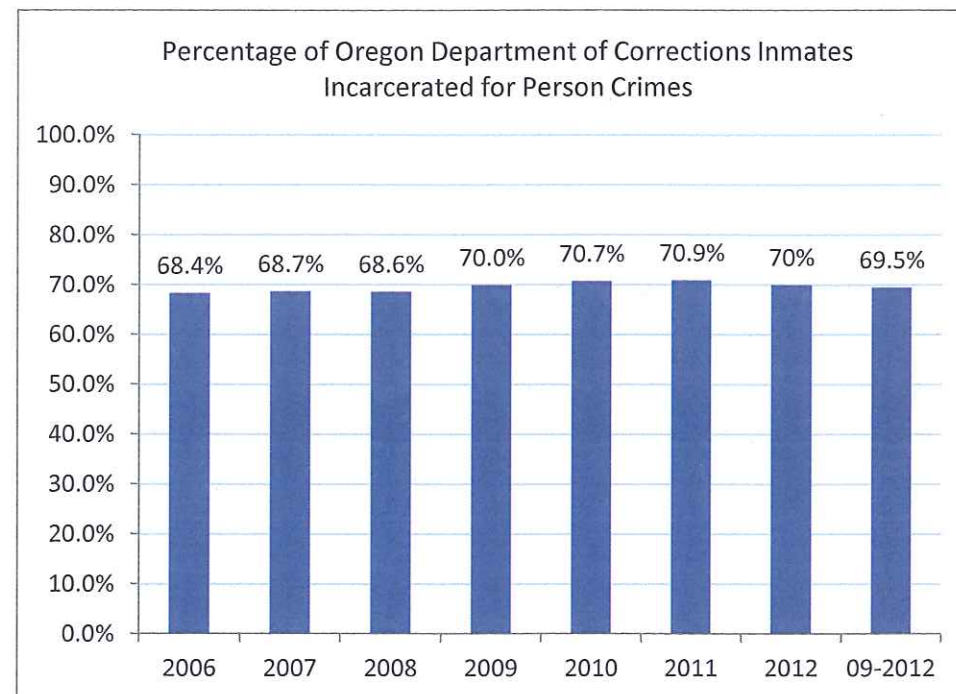
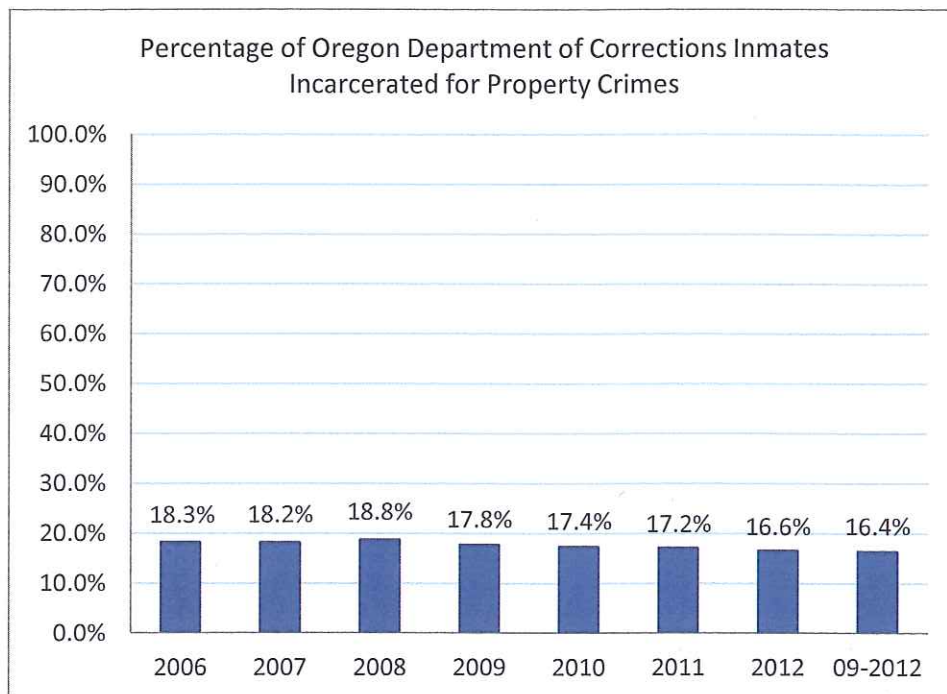
State	Offense	Number of inmates with sentence > 1 year	
		Numt	%
Mississippi	Drug	6,316	30.7%
Louisiana	Drug	10,946	28.0%
Kentucky	Drug	5,372	26.7%
Oklahoma	Drug	6,602	26.4%
Arkansas	Drug	4,542	26.2%
New Jersey	Drug	6,283	24.6%
North Dakota	Drug	329	23.3%
Massachusetts	Drug	2,306	22.0%
Tennessee	Drug	6,017	21.4%
Iowa	Drug	1,895	21.3%
Pennsylvania	Drug	10,641	21.2%
South Carolina	Drug	4,509	20.1%
Georgia	Drug	1,433	19.9%
Florida	Drug	18,154	18.3%
Connecticut	Drug	2,164	18.1%
Missouri	Drug	5,314	17.4%
Minnesota	Drug	1,577	17.3%
Wyoming	Drug	359	17.1%
Maryland	Drug	3,672	16.4%
New York	Drug	8,748	15.7%
Colorado	Drug	3,188	15.3%
Texas	Drug	22,105	15.2%
California	Drug	24,520	14.9%
Georgia	Drug	7,672	14.5%
North Carolina	Drug	4,886	13.8%
Ohio	Drug	6,105	13.4%
Nebraska	Drug	559	12.5%
Rhode Island	Drug	261	12.3%
West Virginia	Drug	795	12.0%
Virginia	Drug	3,598	9.8%
Washington	Drug	1,503	9.1%
Nevada	Drug	1,076	8.7%
Oregon	Drug	1,143	7.8%
Montana	Drug	191	7.7%

a/Total includes cases with missing offenses.

b/Offense is the most serious offense, based on the longest sentence imposed. Only the most serious offense is reported.

Source: BJS, National Corrections Reporting Program NCRP-D, 2010.





1) Oregon Department of Corrections. *Historical Documents*. 20 Sept 2012. <[http://www.oregon.gov/DOC/RESRCH/pages/inmate\\_population.aspx](http://www.oregon.gov/DOC/RESRCH/pages/inmate_population.aspx)>