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October 1, 2012

Dear Fellow Commissioners:

Re: PEW's Continued use of "low risk" in its Presentations

Please find enclosed a copy of the PowerPoint slides we received at our last meeting. I am enclosing them because I want to raise what I feel is an important issue regarding their content.

As you know well, there has been considerable controversy surrounding the use of the Oregon Public Safety Checklist to define inmates in Oregon as "low risk" for the purposes of sentencing policy. Yet despite that well-earned criticism and without any public discussion or explanation, the PEW is continuing to use the Checklist to promote the idea that many

Oregon inmates are "low risk." Most surprising and disturbing is PEW's continued use of the slide that purports to show that last year 26% of Oregon's admittees to prison were "low risk" (see Page 5 of their presentation on September 24, 2012).

Apparently, PEW does not feel compelled to explain their failure to warn the Commission of the contents of their PowerPoint slide. However, without a full explanation, it appears that PEW intended to paint a false and misleading portrait of Oregon's admissions to prison. It seems more than evident that the use of this "low risk" data was designed to demonstrate that up to one fourth of Oregon prison inmates could be safely released into the community, where they could be successfully monitored by probation or parole officers. A simple glance at the list of "low risk" inmates will dispel that notion.

Looking back to the time when this original slide was presented to us on June 29, 2012, it is hard to understand how this information could have been prepared for the Commission without any review of its contents. Unfortunately, we are left to only speculate. Either PEW failed to check this information themselves or they knew about it and failed to report that information to us. Neither choice is reassuring. Failing to know what inmates were on that list or, alternately, failing to inform the Commission about who was on the list calls either the credibility or the competence of PEW into question.

I would ask that before our Commission accepts any further information from PEW about "low risk" inmates, that PEW explain their actions. Otherwise, any information about "low risk" inmates in this process is simply not trustworthy.

That still leaves the question of whether or not the Oregon Public Safety Checklist is a reliable tool for sentencing policy. The list of inmates that has been produced raises real questions about its usefulness in this regard. First, even its proponents admit that as an actuarial tool it carries an error rate of between 20% and 30%. This is simply too large for our comfort and its imprecision is so clearly illustrated by the list of low risk defendants. Second, as we have already noted, there is much criminal history information that is automatically excluded from consideration. The Checklist is designed to be immediately accessible and easy to assemble, but that is not necessarily helpful in a sentencing context.

Perhaps the most troubling aspect of the Oregon Public Safety Checklist is the fact that all its design flaws work only in one direction – to erroneously reduce the apparent risk profile of offenders. Unlike the inevitable statistical errors inherent in any predictive model, which tend to be randomly distributed, errors produced by the exclusion of relevant criminal history in the Public Safety Checklist can only make offenders appear less of a risk to public safety than they actually are. The list prepared by the Oregon District Attorneys amply demonstrates this point. Using a predictive sentencing tool with a significant error rate to begin with is a questionable practice. Using a tool with a significant error rate whose errors only make dangerous criminals appear to be low risk offenders probably constitutes malpractice.

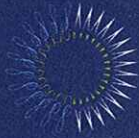
Finally, when one reads the list of "low risk" defendants, it is unsettling to consider how anyone with 20 or 30 prior criminal convictions could be described as "low risk", much less anyone who has committed a serious violent felony. The risk scores of many of the defendants on the list seem completely out of place. That should be a clear warning sign of how misleading this risk tool can be in the sentencing context.

Traditionally, we have based our sentencing system on the principles of proportional sentences based upon the facts of each case (both mitigating and aggravating facts) and each individual's criminal history. I would advocate this is still the most accurate and fair method of sentencing. It has stood the test of time. Oregon's sentencing system is the envy of the rest of the country.

Sincerely,

A handwritten signature in blue ink, appearing to read "John S. Foote", with a stylized flourish at the end.

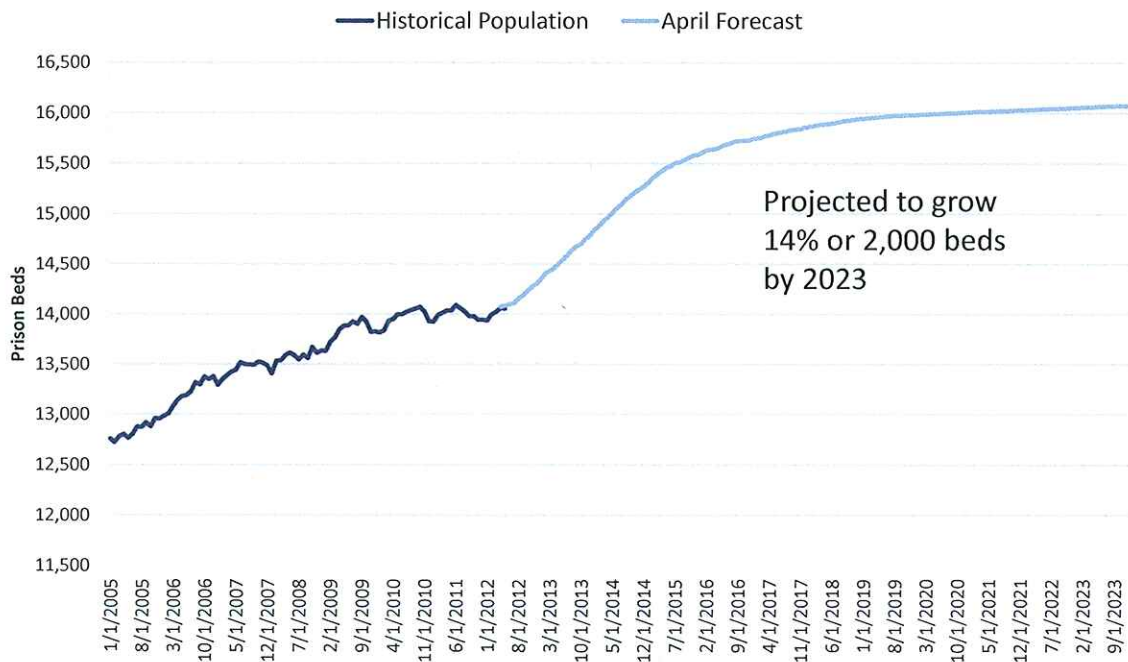
John S. Foote



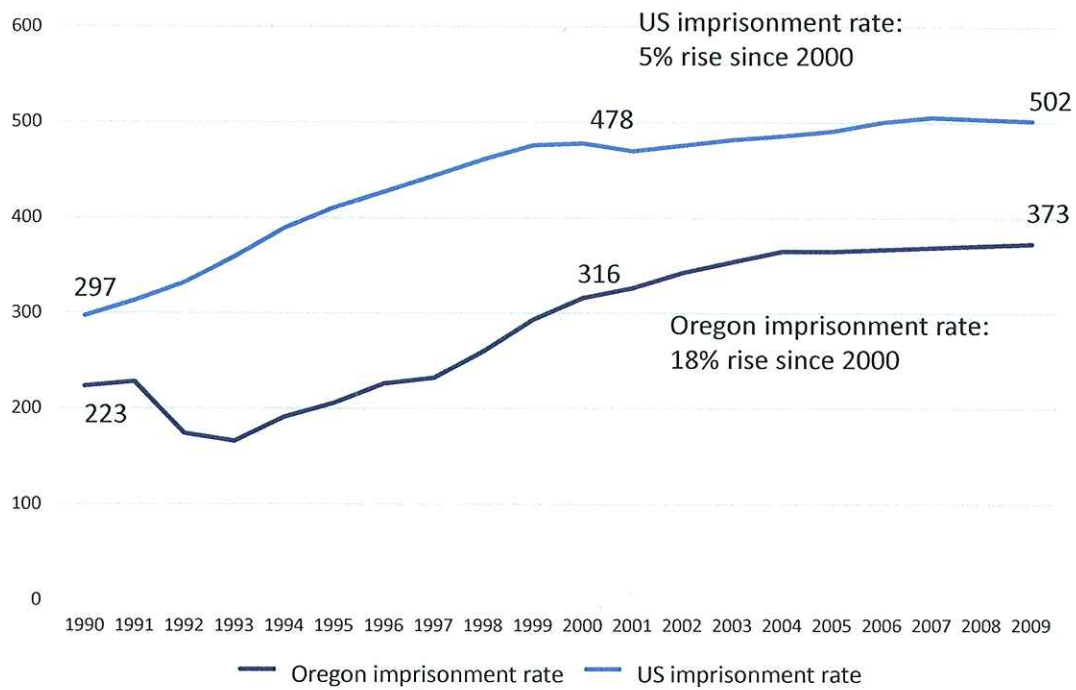
THE
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Oregon Intro to Policy Development
September 24, 2012

April 2012 Prison Population Forecast



Oregon's Imprisonment Rate Grew Faster in the 2000s Than the U.S. Rate



www.pewstates.org

Source: Bureau of Justice Statistics

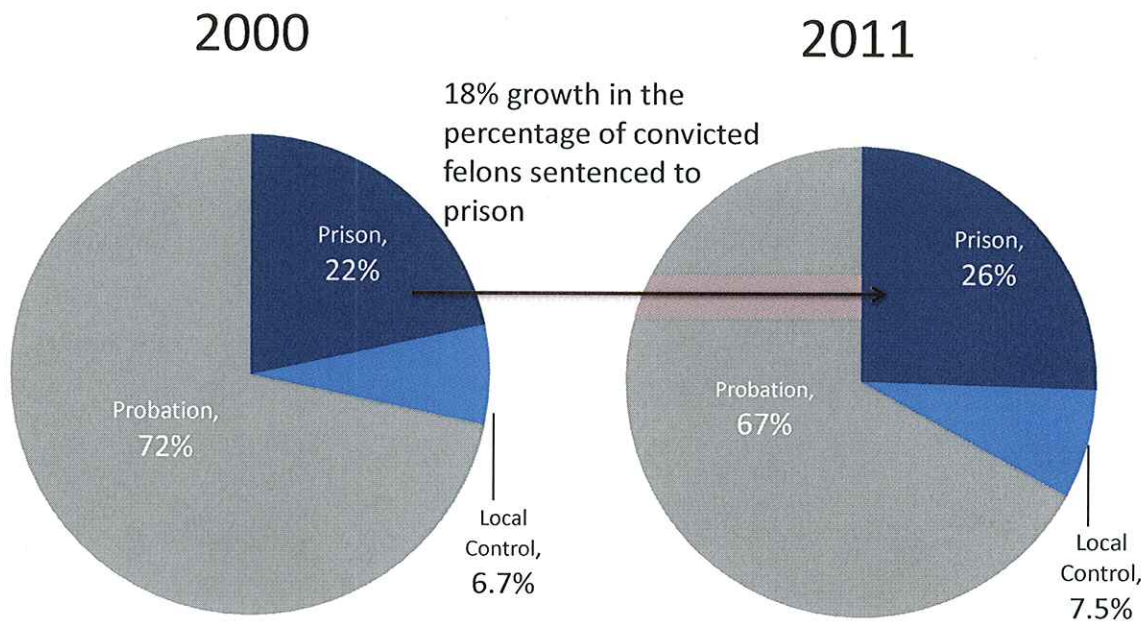
Oregon Prison Growth Drivers



- Increases in Admissions
- Increases in Length of Stay

www.pewstates.org

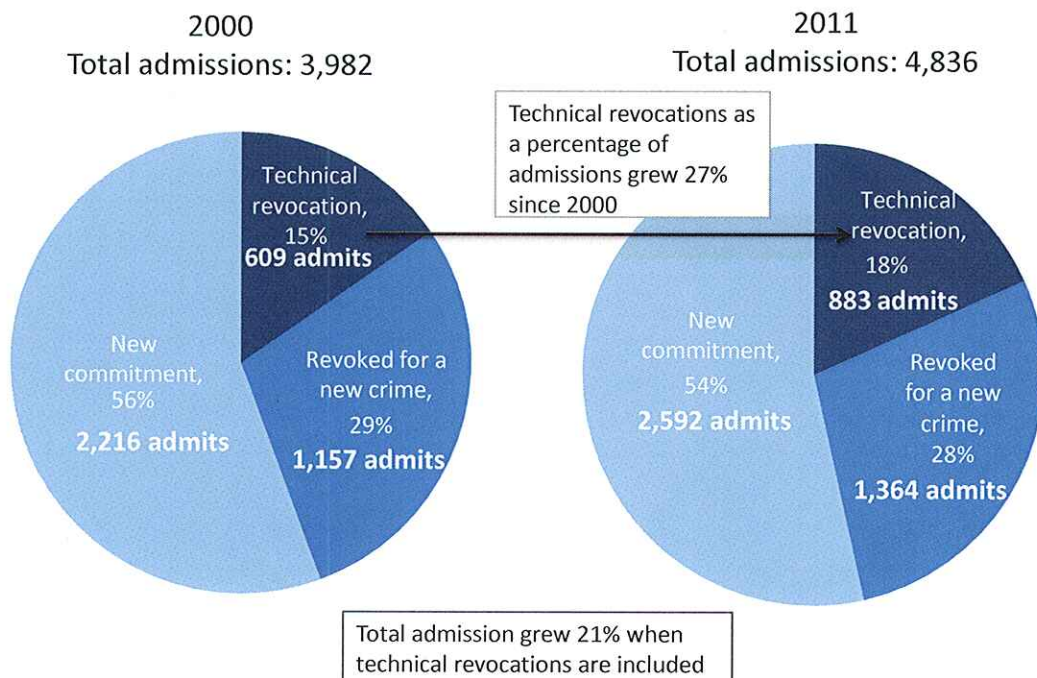
An Increasing Percentage of Convicted Felons Are Being Sentenced to Prison



www.pewstates.org

Source: Oregon Dept of Corrections

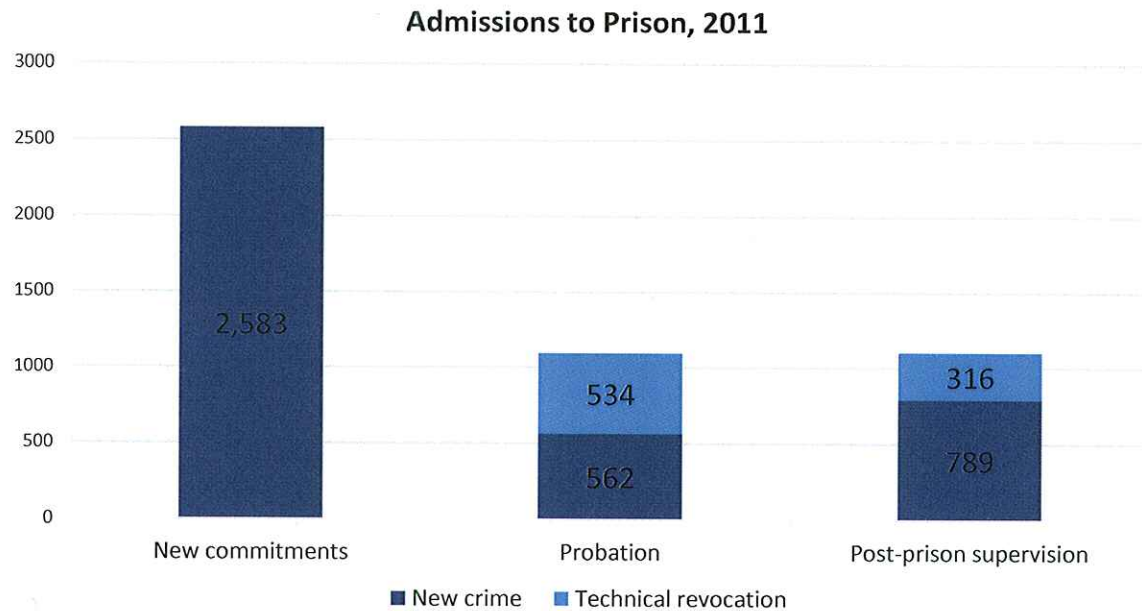
Admissions: Nearly Half the Prison Intakes in 2011 Failed on Supervision, Including 18% Admitted for Technical Violations



www.pewstates.org

Source: Oregon Dept of Corrections

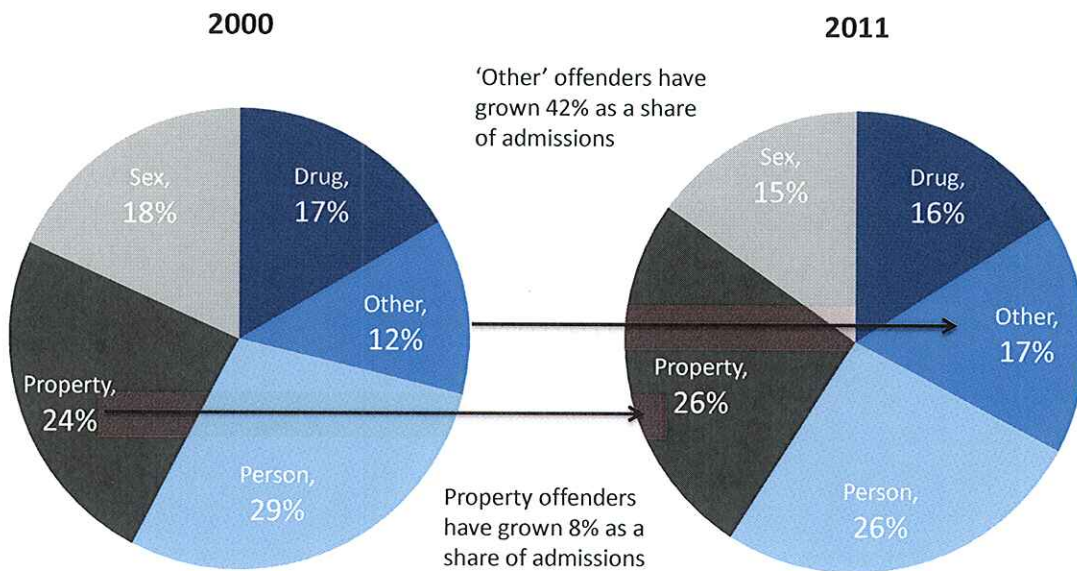
Admissions: Nearly Half the 2011 Probation Revocations Admissions Were Technical Violations



www.pewstates.org

Source: Oregon Dept of Corrections

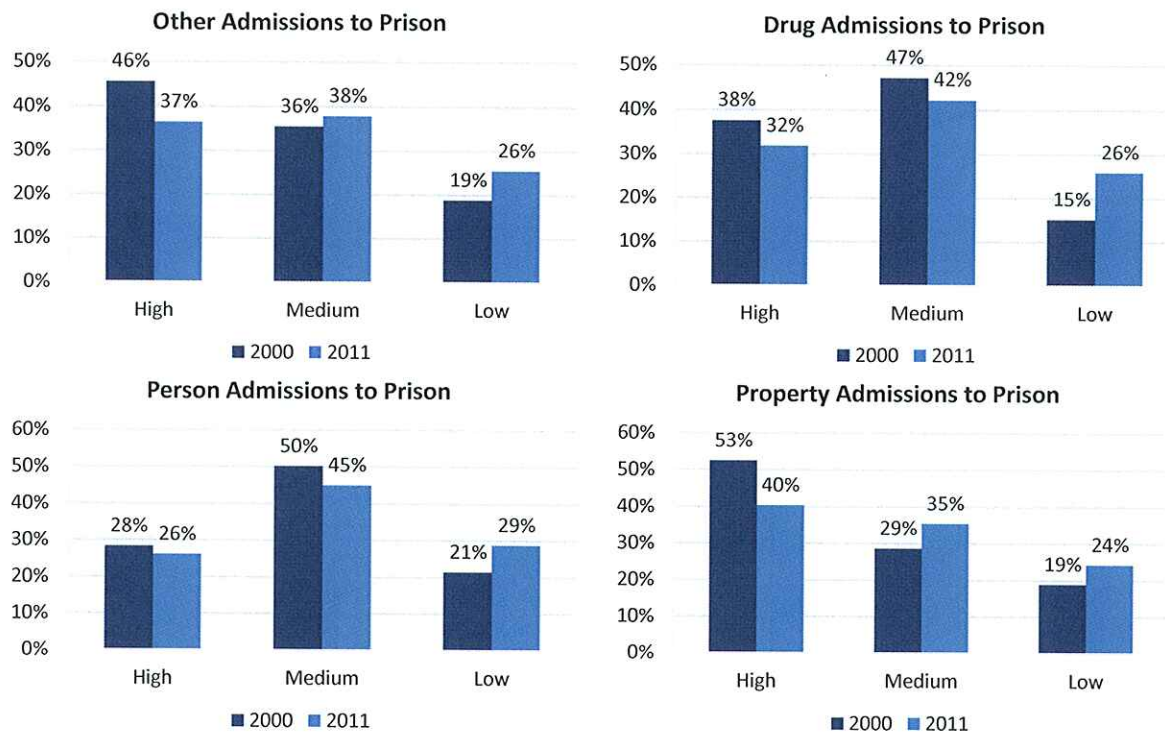
Admissions: Property and "Other" Crimes have Grown as Share of Prison Admissions



www.pewstates.org

Source: Oregon Dept of Corrections

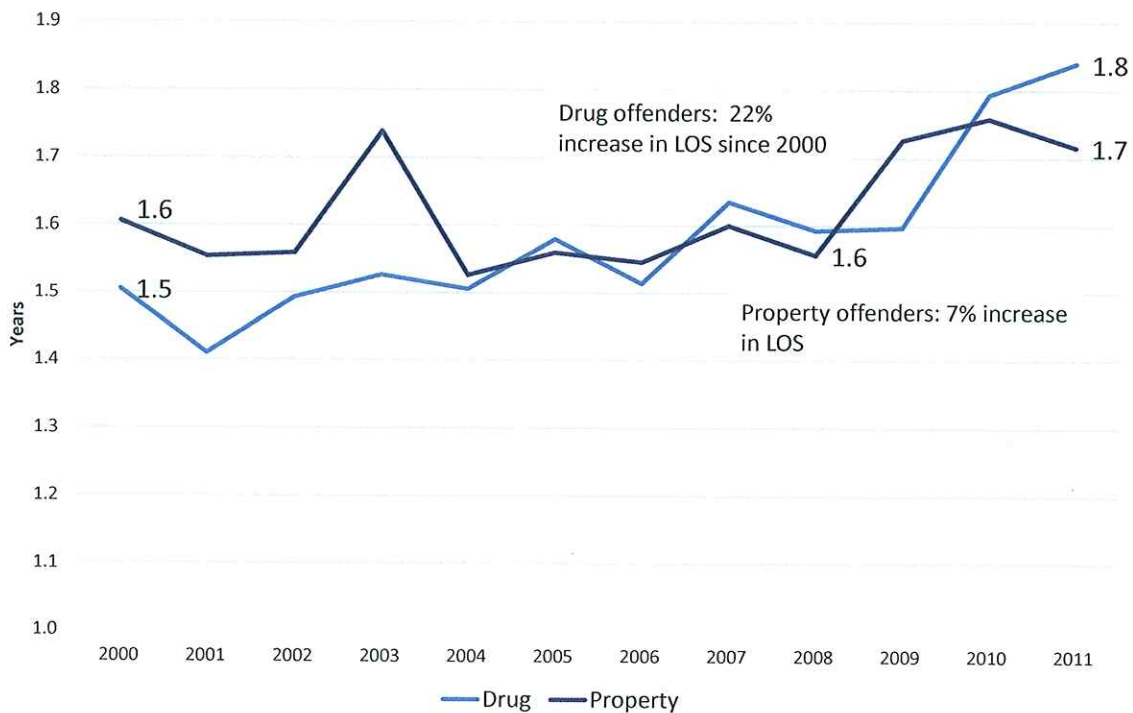
Prison Admissions: Increase in Low Risk Offenders Across All Crime Types



www.pewstates.org

Source: Oregon Dept of Corrections, Oregon Criminal Justice Commission

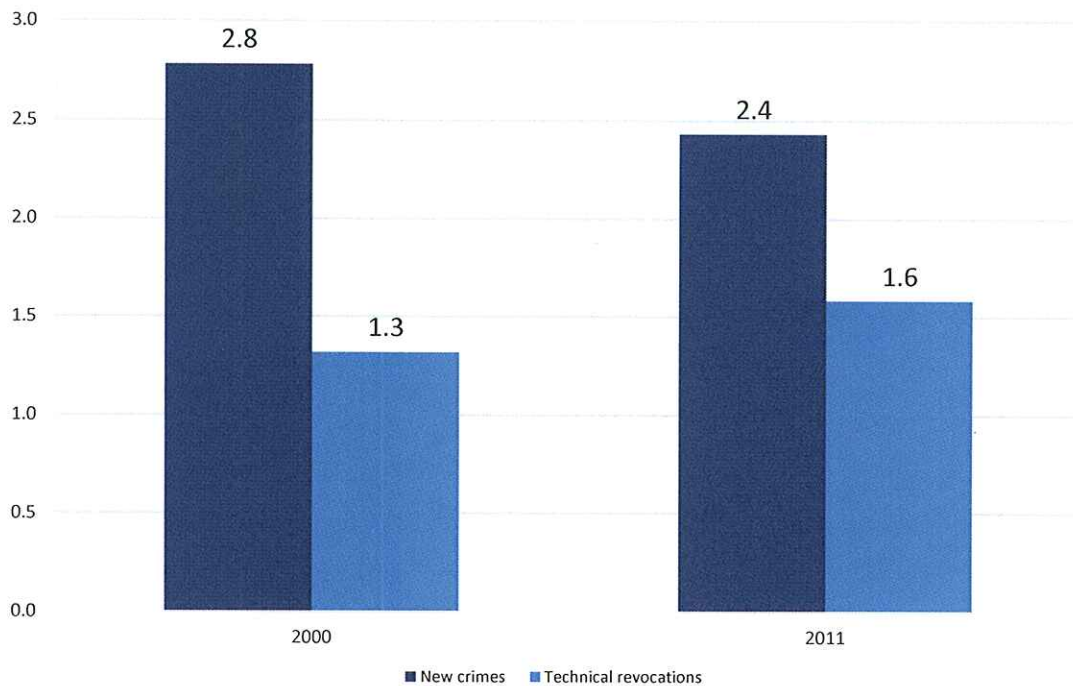
Length of Stay: Property, Drug Crimes Increased Since 2000



www.pewstates.org

Source: Oregon Dept of Corrections

Length of Stay: 20% Rise for Technical Violations of Probation Since 2000



www.pewstates.org

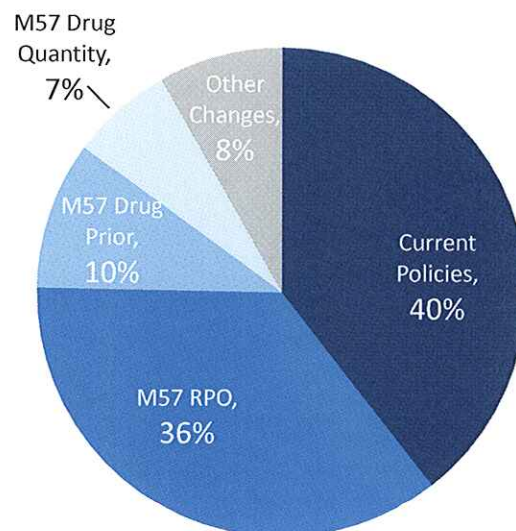
Source: Oregon Dept of Corrections

2,000 more beds in 10 Years



- 40% of growth will be from the continuation of current policy and population trends
- 36% will be increasing incarceration of property offenders based on M57
- 17% will be increasing incarceration of drug offenders based on M57
- 8% from other policy changes

Growth in Prison Population



www.pewstates.org

Source: Oregon Office of Economic Analysis

- An increasing share of convicted felons are sentenced to prison (up 18% from 2000 to 2011)
- By several measures, the offenders admitted to prison in 2011 were less serious than those admitted in 2000
 - More technical revocations (up 27%)
 - More property (up 8%) and other (up 42%) offenses
 - More low risk offenders (up 38%)
- Offenders are staying in prison longer in 2011 than at any other point in the last decade
 - LOS for drug offenses up 22% since 2000
 - LOS for technical violations of probation up 20% since 2000
- The growth from M11 has leveled off in the last 5 years, but is a major contributor to the prison population due to lengthy sentences

Key Findings in Oregon's Use of Evidence-Based Practices

- Oregon led the country in its early embrace of evidence based practices, illustrated by SB 267
- However, there are still significant opportunities to improve
 - Gaps in the use of risk and needs assessment
 - Gaps in earned compliance credits for inmates and absence of earned compliance credits for probationers
 - Statutory requirement for structured sanctions easy to waive
- The most pressing threat to recidivism reduction in OR's community corrections programs is the shortfall of local sanctions and services

Office of the Governor State of Oregon



EXECUTIVE ORDER NO. 12-08

PAGE THREE

5. Using Article I, section 15, of the Oregon Constitution, and the other principles identified in the Commission's December 30, 2011, report the Commission shall identify fiscally responsible and sustainable, evidence-based policies and practices that will control corrections growth, hold offenders accountable, and protect public safety.
 - a. The Commission may recommend any structural changes, sentencing changes, or allocation of funding changes that will control corrections growth, hold offenders accountable, and protect public safety necessary to implement these policies and practices.
 - b. In developing its recommendations, the Commission may form workgroups.
6. The Commission shall produce a written report of recommendations to the Governor before 2013. The recommendations may include draft legislation for the Legislative Assembly to consider during its 2013 session.

Findings point to five types of policy options to consider

Sentencing

- Expand alternatives to incarceration
- Focus prison space on serious violent offenders through sentencing and earned time policies

Corrections

- Strengthen community supervision
- Establish sustainable funding in community corrections
- Establish DOC/Parole transition authority

- Expand specialty courts
- Expand residential and nonresidential treatment and supervision options
- Create an evidence-based diversion program

- Examine sentencing drivers
 - Examine offenses driving admissions
 - Examine offenses driving length of stay
- Incentivize good behavior through earned time

- Ensure risk/needs evaluations are used across supervision
- Ensure all violations of supervision are responded to with swift, certain and proportional sanctions
- Incentivize good behavior through earned discharge
- Expand availability of local sanctions and services

- Ensure local sanctions and services meet cost benefit metrics
- Performance incentive funding

- Parole for terminally ill or permanently incapacitated inmates
- DOC transition authority

Incarceration and Recidivism

- Research indicates that increased incarceration contributed measurably (up to 30%) to the decreased crime in the 1990s
- There are limitations for incarceration as a recidivism reduction tool

- Daniel S. Nagin et al, “Imprisonment and Reoffending,” in *Crime and Justice: A Review of Research* (2008): Systematic review of the effect of reoffending for both custodial vs non-custodial sanctions, and length of custodial sanctions
 - Custodial vs. non-custodial sanctions: Five RCTs point towards a criminogenic effect of custodial sentences, 11 “matching” studies also point towards criminogenic effect
 - Length of custodial sanction: Three matching studies showed no effect of longer sentences on recidivism

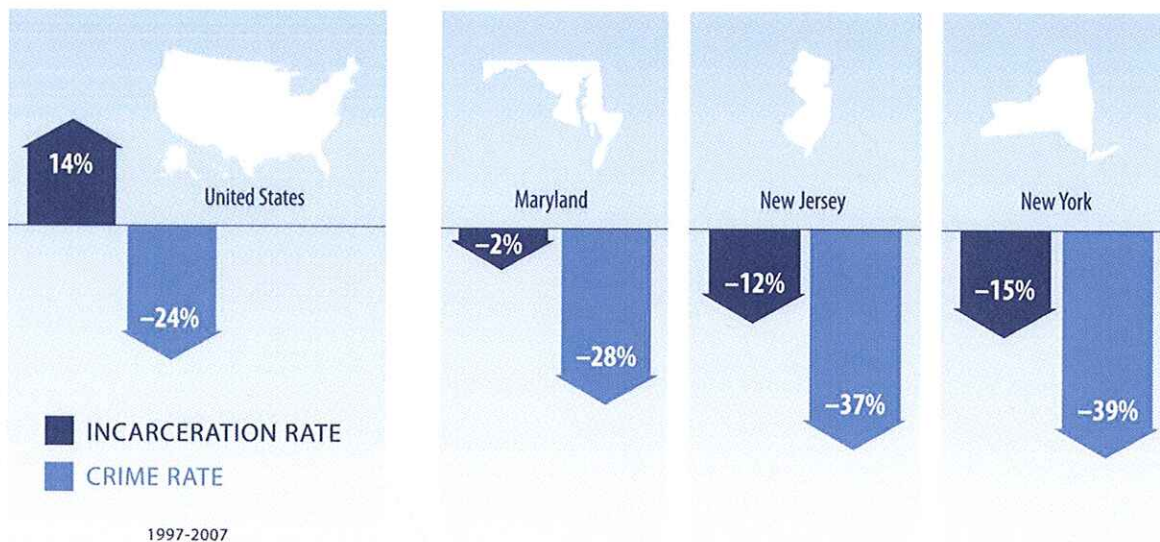
Length of Stay for Drug Crimes

“There would be little lost by halving the average sentence length for easy-to-replace functionaries within the drug distribution system (lookouts, typical retail sellers, hired hands, etc).”

– Keith Humphries and Jonathan Caulkins

- Abrams, Working Paper (2010): IV using public defender to separate out variation in sentence length
 - Findings: For sentences under two years, increasing sentence slightly has a positive effect, but no or negative effect on recidivism for sentences longer than two years
- Ilyana Kuziemko, National Bureau of Economic Research Working Paper (2007): Natural experiment when Georgia eliminated parole for violent offenders
 - Findings: Longer incarceration spells reduced recidivism because offenders aged out of criminal behavior; effect diminishes over time
 - However this effect was less strong than the positive effect of allowing offenders to earn time off their sentences, which resulted in greater program participation and lower recidivism after release

States can have less crime and less incarceration





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