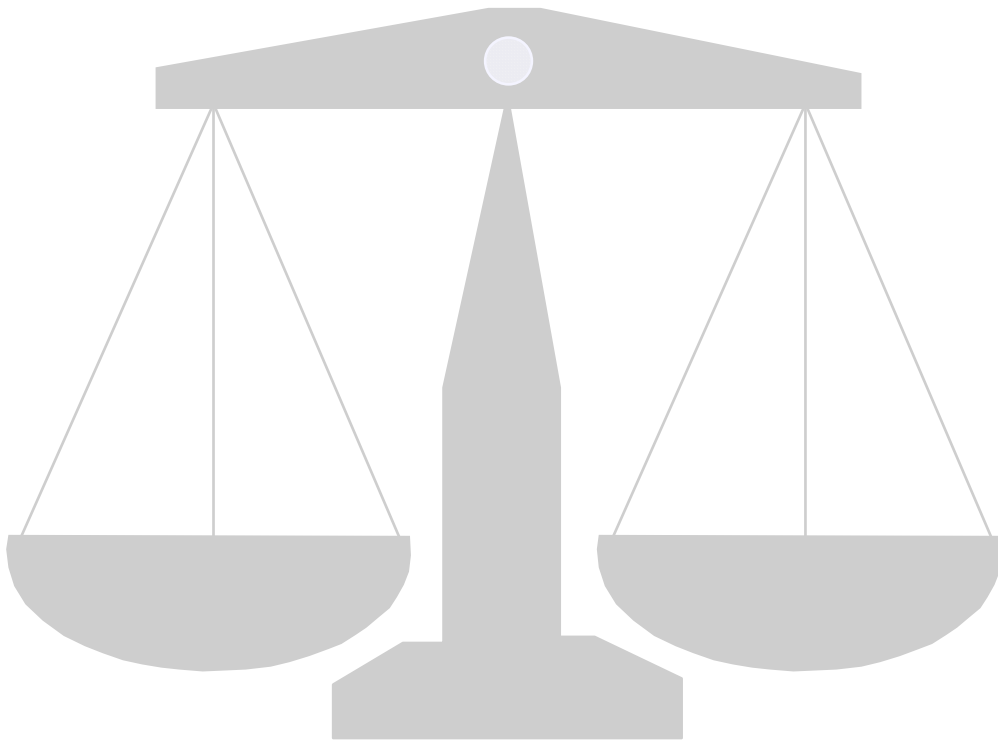


**REPORT TO THE GOVERNOR AND  
THE LEGISLATURE**

**PUBLIC SAFETY PLAN**



**CRIMINAL JUSTICE COMMISSION**

**March 2001**

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# EXECUTIVE SUMMARY

## **COMMISSION ROLE**

The Oregon Criminal Justice Commission was created in 1995 to serve as a policy development and planning forum to increase the efficiency and effectiveness of Oregon's criminal justice system. The Commission is charged with developing a state criminal justice policy and long-range public safety plan for the state. Under ORS 137.656, the Commission was directed to make recommendations to the Governor and Legislature in several areas dealing with criminal justice facilities, programs, measures of effectiveness and crime prevention.

During its work to fulfill these roles, the Commission realized a need to define and describe the criminal justice system as it currently exists. For purposes of the Commission's plan, the criminal justice system includes all activities and agencies pertaining to crime. This includes the adult and juvenile justice systems, public and private entities, and activities relating to crime prevention through sentence disposition whether provided voluntarily, contractually or by court order.<sup>1</sup>

The following document is intended to fulfill two functions. First, to provide a profile of Oregon's criminal justice system. Second, to provide specific recommendations to the Governor and Legislature on immediate actions to take or issues to consider for achieving public safety goals. This report focuses its efforts on the adult system due to substantial revision of the juvenile justice system in 1995.

## **SUMMARY OF OREGON'S CRIMINAL JUSTICE SYSTEM**

Oregon's criminal justice "system" is a complex conglomerate involving hundreds of agencies, including private agencies as well as the federal, state, county, city and district governments. The system often involves multiple agencies within each level of government, with multiple elected and appointed officials each having their own budget and policy priorities.

The guiding principles of Oregon's criminal law are found in Article I, Section 15 of Oregon's Constitution. That section was amended in 1996 to read:

"Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation."

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<sup>1</sup> ORS 137.651

Other fundamental Constitutional provisions are found within Article I, Oregon's Bill of Rights.<sup>2</sup>

### **Crime in Oregon**

- A crime is an act defined by the Legislature that can result in incarceration. Crimes are divided into misdemeanors, less serious offenses punishable by a maximum of one year in jail, and felonies, more serious offenses allowing punishment of more than one year in prison. Most felonies however, do not result in a prison sentence.
- Oregonians reported 434,738 crimes to police in 1999. The number of reported crimes increased between 1988 and 1997, but decreased in 1998 and 1999. Oregon's crime rate (reflecting the number of reported crimes adjusted for population) in 1999 was Oregon's lowest in that period.
- Property crimes (such as theft) comprised 52.2 percent of reported crime in 1999. Behavioral crimes (such as drug or drunk driving offenses) comprised 37.4 percent, and crimes against persons (such as assault) comprised 10.4 percent.

### **Investigation**

- Crimes are reported to a police agency, which can investigate the crime. Approximately 200 agencies provide law enforcement services in Oregon.
- Law enforcement functions constitute about 43 percent of all criminal justice expenditures in Oregon.
- Local governments (cities and counties) provide most of the law enforcement services in Oregon, and 81 percent of law enforcement funding.
- The state and federal governments provide additional law enforcement services, and also provide important support services such as crime lab and medical examiner functions.
- Oregon has an increasing number of police officers per capita, but those officers are not evenly distributed throughout the state.
- The number of arrests in Oregon decreased in the last two years, after nine consecutive years of increases.

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<sup>2</sup> See Appendix 6 for selected provisions of Article I, Oregon Constitution.

- Law enforcement agencies clear an average of 42 percent of Oregon's reported crimes in the same year the crime is reported.
- Oregon is undertaking a substantial effort to upgrade police officer training.
- Concerns over the differential treatment of minority populations continue to be an issue in law enforcement, but agencies are increasingly active in addressing those concerns.

### **Pre-Trial**

- In 2000, there were 195,000 bookings into Oregon's 31 county jails. The vast majority of people accused of committing a crime are eligible to be released from jail prior to trial.
- Some people accused of crimes are released by judicial officers with conditions designed to assure public safety and future court appearances by the accused.
- Other accused persons or sentenced offenders are released by the jail in response to population limits in the jail (matrix releases).
- Lack of supervision and other controls on either released group can lead to additional offenses and failure to appear in court.

### **Adjudication**

- Within the legal process, judges, prosecutors and defense attorneys work to establish the guilt or innocence of accused persons and determine the sentence to be imposed upon conviction. Judges impose sentences for persons found guilty after a plea or by a judge or jury after trial.
- The adjudication process comprises about 23 percent of criminal justice expenditures, and is an area where the state has a significant funding role. The state provides about 71 percent of the funding for this stage of the criminal justice system.
- The court process relies heavily on informal or innovative dispositions to handle the volume of criminal cases. These dispositions include plea negotiations and the diversion of offenders to specialized courts. The latter are primarily first-time offenders who can avoid a conviction if they meet certain conditions.

## **Sentencing/Post-Adjudication**

- Sentences consist primarily of incarceration, fines and penalties and community supervision of convicted offenders.
- Corrections activities comprise about 34 percent of all criminal justice expenditures, and are funded in equal portions by the state and counties.
- Oregon has multiple laws governing sentencing. In recent years, these laws have resulted in more frequent use of incarceration as a consequence for criminal behavior.
- Oregon state prisons currently hold 9,945 offenders (not including juveniles held in youthful offender correctional facilities). Persons convicted of violent crimes comprise an increasing proportion of Oregon's prison population.
- Oregon's county jails can hold approximately 6,900 persons. Jail populations consist of sentenced misdemeanants and felons, as well as persons being held in jail prior to trial or for violating conditions of their supervision.
- About 29,000 felons are being supervised in the community on probation, parole or post-prison supervision. Counties are responsible for this function, using state funding.
- About 30 percent of felons released from state prisons are convicted of a new felony within three years of starting community supervision. About 24 percent of persons on probation are convicted of a new felony within three years of admission to probation. Those who do commit new offenses most likely commit drug offenses or the same type of crime as their previous conviction.
- Criminal appeals are funded almost exclusively by the state.

### **PURPOSE OF THE REPORT**

The purpose of this report is to provide the reader with a foundation for understanding the criminal justice system in order to plan and coordinate future activities in a manner that efficiently utilizes available resources.

The Executive Summary describes the role of the Criminal Justice Commission and provides a summary of a criminal case as it moves through the criminal justice system. Recommendations for creating a coordinated criminal justice

system that encompasses public safety, offender accountability, crime reduction and prevention and offender rehabilitation follow this summary.

Chapter One describes each phase in the criminal justice system in further detail, identifying agencies involved from arrest through adjudication. Chapter Two discusses the operation of Sentencing Guidelines and their application to felony sentencing. Chapter Three addresses current institutional facilities and their alternatives, as well as treatment programs and their ability to affect future criminal conduct.

The first two appendices to the Report provide definitions to the terms specifically discussed within the context of the criminal justice system and further information on the agencies involved with that system. Information on Oregon's juvenile justice system is provided in Appendices 3 and 4. Appendix 5 contains the sentencing guidelines grid that shows presumptive felony sentences. Appendix 6 contains portions of the Oregon Constitution relating to the criminal justice system.

## **RECOMMENDATIONS OF THE COMMISSION**

1. **Oregon should develop availability of offender-based data in order to track an offender through the criminal justice system and to facilitate data-driven pre-trial release, sentencing and correctional supervision decisions.**
  - Not having this data available hinders a systemic review of the criminal justice system, and impedes development of a long-range plan.
  - This type of data would assist the Criminal Justice Commission in fulfilling its statutory duty to analyze sentencing practices and would aid in studying racial disparity.
  - The Criminal Justice Commission intends to work through the Criminal Justice Information Standards program (CJIS) to determine the requirements for effective offender-based data.
  - The legislature should also prioritize support for the state's public safety data warehouse (PSDW), and uniform sentencing judgment projects as steps in a long-range data management plan that will improve public safety. Together, these projects will produce important data, reduce redundant data entry and encourage cooperation and coordination in other areas.
  - To encourage effective and efficient use of the PSDW, the legislature must ensure that each agency is maintaining the data it will share with the PSDW and that each agency is anticipating the data it wants to obtain from the PSDW so that its design can accommodate and respond to agency needs.
  
2. **The legislature should support the recommendations made by the Governor's Mental Health Alignment Work Group (Connections to Criminal Justice Systems, Final Report of January 2001)**
  - Oregon jails have become a repository for the mentally ill who are consuming inordinate resources due to a lack of alternatives for dealing with this population. Many of these are lower-level offenders committing minor misdemeanors rather than serious offenses.
  - The Criminal Justice Commission supports the recommendations made by the Governor's Mental Health Alignment Work Group, calling for training for law enforcement officers to recognize and deal appropriately with mentally ill persons, development of alternative methods of management in lieu of custody, implementation of appropriate voluntary diversion programs, identification and sharing of jail custody rosters with the county mental health authority and development of mental health and housing services for an offender prior to custodial release.

- Federal funding exists to establish 100 mental health courts nationwide and may be available as partial support for the recommendations contained within the Task Force report.
  - The legislature should encourage Local Public Safety Coordinating Councils in each county to assume a leadership role in implementing these recommendations, with assistance from the Criminal Justice Commission.
- 3. Alcohol and drug treatment plans and services should be better coordinated to increase their effectiveness.**

- Local Public Safety Coordinating Councils should take a leadership role in coordinating community corrections drug and alcohol treatment plans with other treatment plans prepared by county mental health authorities. Coordinating these treatment plans would create a more integrated and seamless system of care.
- The state Office of Alcohol and Drug Abuse Programs (OADAP) and community corrections representatives should develop common standards based on a "best practices" approach that could be supported throughout community treatment systems.
- The Commission believes additional investments in alcohol and drug treatment can reduce future criminal conduct, but has not had sufficient time or program evaluation data to make specific recommendations at this time. Drug and alcohol dependence among criminal offenders, however, may be as high as 80 percent of that population. Lack of treatment results in continued recycling of those offenders through the system.

- 4. All legislation affecting criminal justice agencies should be reviewed for its impact on the entire system and include clear goals, to allow measuring whether those goals are being met.**

- Legislative efforts can either facilitate greater cooperation or factionalize actions in the criminal justice system, since most criminal justice legislation has an impact on more than one agency.
- The legislature should ensure its budget and policy decisions are supported throughout the system, not just in individual state or local agencies.
- Failure to review all legislation for unintended effects in both the federal and state systems (including city and county components, such as prosecutors, sheriffs and municipal law enforcement systems) is a piecemeal approach that hinders creation of a balanced system and cooperation between agencies.
- The process should include all potentially affected agencies.
- All legislation affecting the criminal justice system should establish the goals of that legislation and require measurements of effectiveness in

meeting those goals. Continued funding should be tied to meeting measurements of effectiveness, including offender recidivism.

**5. The legislature should support funding to identify and eliminate racial disparity by funding the modest recommendations made by the Asset Forfeiture Oversight Advisory Committee in its 1999 report to the legislature and supported by the Governor.**

- A criminal justice system cannot be truly effective unless its policies and punishments are administered fairly and without regard to race or ethnic background.
- The recommendations of the Committee called for a minimal investment over the next biennium that would continue efforts to identify and address racial disparity. Funding was designed to support:
  - Training, education and community outreach efforts;
  - A survey and representative sampling of traffic stops;
  - Continued data collection on the number and nature of complaints made to law enforcement agencies to allow long-term tracking of the level of complaints alleging disparate treatment of minorities; and
  - Funding for facilitation and staffing.
- While the importance of meaningful data collection cannot be minimized, all of the Committee recommendations are necessary to ensuring that criminal justice is administered in a racially neutral manner.
- Government agencies must ensure they have credible accountability processes to address complaints of disparate treatment within the criminal justice system

**6. Oregon should resume completion of an annual victimization survey.**

- Victimization surveys provide important data on the amount and type of crime not reported to police as well as the reasons for victim non-reporting.
- Victimization surveys are the only way to obtain this data.
- Victimization information is necessary to provide a complete picture of crime in Oregon.

**7. The legislature should support the Governor's Budget for the Criminal Justice Commission to enable it to fulfill its statutory functions.**

- The Commission serves as a critical resource for information about the criminal justice system to criminal justice practitioners, policy-makers and the public. It also functions as an impartial forum for statewide planning and for development of a vision for the future of Oregon's criminal justice system.

- Local Public Safety Coordinating Councils have proven valuable in improving coordination between counties and state government. The state needs to build on and support existing community planning efforts in Oregon communities by supporting LPSCC committees.
- The Commission has recommended specific new roles for LPSCCs in improving alcohol and drug treatment planning and in the delivery of mental health services to offenders.
- The Governor's Budget approved an additional staff person at the Criminal Justice Commission to support public safety planning, in part by working with Local Public Safety Planning Coordinating Councils (LPSCC) throughout the state. This position would assist LPSCCs in meeting those responsibilities.

## INVENTORY OF OREGON'S CRIMINAL JUSTICE SYSTEM

From the time a crime is reported to the time when an individual has been arrested and the case resolved, many agencies at all levels of government have been involved with the offender both directly and indirectly. Elected and appointed officials within the city, county, state and federal government all make policy and budget decisions affecting the criminal justice system. Law enforcement personnel at the city, county, state or federal levels will investigate, arrest and prosecute violations of the law. Upon conviction, an offender will be sentenced under federal or state law and ordered to serve a sentence that may implicate further action by state, federal or county corrections personnel.

The interplay between individuals moving through the system and policy and budget considerations affecting each agency in the state and federal system form the complex universe that is the criminal justice system. The entities involved in this process are described more fully in Appendix 2.

### **JURISDICTION**

Criminal conduct may violate state law, federal law or both. While certain offenses are exclusively within federal jurisdiction, other offenses are subject to concurrent state and federal jurisdiction. The most common crimes of concurrent jurisdiction, in descending order of frequency, are: drug crimes, robbery of federally-insured financial institutions, interstate thefts, possession of firearms by felons and violations of state law occurring on federal property or Indian reservations. Although municipal courts and justice courts have concurrent jurisdiction over certain state criminal offenses, this report does not address their functions or the use of administrative sanctions.

One significant difference between the federal and state system is the imposition of longer sentences in federal court for certain crimes such as narcotics offenses. While comparatively few cases of concurrent jurisdiction are prosecuted in federal court, the length of sentence there reflects not only state and federal policy decisions, but also the increased use of mandatory minimum sentences, the unavailability of parole in the federal system, and the type of cases prosecuted.

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| <p>While Congress has created over 3,000 federal criminal offenses, the vast majority of federal prosecutions rely on only a handful of criminal statutes. In 1999, about half of the Oregon federal criminal docket involved immigration offenses (35%) and drug offenses (14%). Other categories of federal offenses include robbery (10%), larceny (6.5%), firearms (11%) or fraud offenses (9.5%).</p> |
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## **WHAT IS A CRIME?**

A crime is an act defined by ordinance or statute for which a sentence of incarceration in jail or prison may be imposed. The legislature has the authority to determine what conduct should be classified as criminal under Oregon law and whether that conduct should be treated as a misdemeanor or a felony. Oregon statutes define a felony as a crime, "so designated in any statute of this state or if a person convicted under a statute of this state may be sentenced to a maximum term of imprisonment of more than one year."<sup>3</sup> Conversely, a misdemeanor is a crime, "so designated in any statute of this state or if a person convicted thereof may be sentenced to a maximum term of imprisonment of not more than one year."<sup>4</sup> This section identifies some of the policy and fiscal implications of classifying criminal conduct as a felony.

While felony sentences of more than one year of imprisonment are typically served in a state prison facility, felony sentences of 12 months or less are served in local jail facilities due to the passage of 1995 SB 1145, which shifted state and local responsibilities for supervision of felons.<sup>5</sup> Misdemeanor sentences that include incarceration are served in the county jail.

Both felonies and misdemeanors are divided into four classes: A, B, C and unclassified, with Class A crimes being the most serious among those categories. Table 1 reflects the maximum imprisonment and fine under each offense.

**TABLE 1: Maximum Imprisonment and Fines<sup>6</sup>**

| <b><i>Felony Offenses</i></b> |              |           | <b><i>Misdemeanor Offenses</i></b> |              |          |
|-------------------------------|--------------|-----------|------------------------------------|--------------|----------|
|                               | Max Sentence | Max Fine  |                                    | Max Sentence | Max Fine |
| A                             | 20 years     | \$300,000 | A                                  | 1 year       | \$5,000  |
| B                             | 10 years     | 200,000   | B                                  | 6 months     | 2,000    |
| C                             | 5 years      | 100,000   | C                                  | 30 days      | 1,000    |

Certain individual crimes, such as burglary, theft and arson, are classified by degrees of severity, and are assigned different felony categories to reflect that severity. As an example, Burglary in the First Degree is a Class "A" felony requiring entry into a dwelling (generally a residence), while Burglary in the Second Degree, a Class "C" felony, requires entry into a building that is not a

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<sup>3</sup> ORS 161.525.

<sup>4</sup> ORS 161.545.

<sup>5</sup> See pgs. 28 and 39-40 for a more complete discussion of the enactment and effect of SB 1145.

<sup>6</sup> ORS Chapter 161.

dwelling (such as a business). In general, the greater the risk of harm to a person, the more serious the crime classification.

Aside from broad principles to guide them, policy makers have few objective criteria to use in determining whether to create a new crime and whether to classify it as a felony or a misdemeanor. The decision involves several considerations including the adequacy of existing civil remedies, the perception of harm to individual victims and/or the community, whether government should regulate the conduct involved, the priority given to that conduct by criminal justice agencies and the funding source for activities related to that crime.

Information on the following page highlights some of the policy and fiscal implications of classifying a crime as a felony.

### **Recent Legal and Policy Changes Affecting How Crimes Are Defined**

Under ORS 161.566, the city or county prosecuting attorney (or the court itself in certain instances) may elect to treat any misdemeanor, other than those set forth at ORS 811.540 or ORS 813.010, as a violation rather than a crime, provided that the election is made by the time of the defendant's first court appearance. This provision was enacted as a cost-saving measure due to the fact that violations are not punishable by incarceration nor do defendants charged with a violation have the right to court-appointed counsel or a jury trial. The burden of proof required for a guilty finding also differs depending on whether a violation or crime is charged. Violations need only be proven by a preponderance of the evidence. Criminal convictions require a finding of proof beyond a reasonable doubt. In a recent case, *State v. Jeremy Day, et.al.*, a Multnomah County Circuit Court judge ruled that if a defendant has been arrested (rather than cited and released) and later charged with a violation, the state must prove guilt beyond a reasonable doubt but need not provide for a jury trial or court appointed counsel. It remains to be seen whether this standard will be adopted statewide.

### The Impact of Creating a Felony

- **Shift to state-paid resources.** Resources allocated to adjudication and punishment of felonies are more likely to be paid for (either partly or wholly) by the State, rather than local governments. Local governments still pay most costs related to investigation and prosecution of crimes and for housing suspected or convicted felons in jail. The state pays most costs for legal defense, adjudication, prison costs and community supervision of felons in the community.
- **Increased resource allocation.** Because felony status generally denotes more serious conduct and is designated a higher priority in the community, felony crimes generally receive more resources at all levels of the criminal justice system. This can mean receiving a higher priority for resources or that resources that are more expensive will be applied. Overall, felony crimes receive a high priority by law enforcement and are more likely to be prosecuted. Persons arrested or convicted of felonies are more likely to stay in jail before trial, are subject to longer or increased sanctions if convicted and are likely to be supervised more closely in the community. Felony cases generally cost more to investigate and adjudicate.
- **Loss of certain rights and privileges.** A felony conviction triggers state and federal laws prohibiting possession of firearms and other specified weapons. ORS 166.270 prohibits convicted felons from possessing firearms and certain knives and other weapons. This prohibition is a 15-year ban for first-time felons and otherwise is a life-long ban. In addition, a felony conviction also means a temporary loss of voting privileges, a bar from holding a public office and a ban from serving as a juror. Some of these prohibitions occur only during imprisonment while others continue during supervision or beyond. Some felony convictions can lead to revocation of state-regulated professional licenses or certificates (for lawyers, medical professionals, police officers, teachers, etc.) and other limitations on professional activities.
- **Longer and more severe sanctions.** Felony sentences are governed by determinate sentencing laws that generally set sentences below the statutory maximum. Misdemeanor sentences are governed only by the statutory maximum sentence, as well as local policies and resource limitations. Under current law and practice, most felonies are punished more severely than most misdemeanors.
- **Increased use of resources for community supervision.** As presently configured, supervision and program services are more readily available for felony offenders than for misdemeanants. Supervision levels, however, are set using a classification system that considers risk factors in addition to the felony classification.
- **Emphasizes community disapproval.** Designating an offense as a felony tells the community that the criminalized conduct is serious and will be dealt with in a fashion qualitatively different than less important offenses classified as misdemeanors.
- **Increases stigmatization of the offender.** Designation as a felon traditionally carries a badge of shame to most members of a law-abiding society. To the smaller criminal segment of society however, a felony conviction may have the unintended consequence of serving as a badge of honor.

## **CONSTITUTIONAL PRINCIPLES OF THE CRIMINAL JUSTICE SYSTEM**

The principles of Oregon's criminal justice system are set forth in the Oregon Constitution at Article I, Section 15. That section, which was revised in 1996, states that "Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation." The other major constitutional provisions relating to the criminal justice system are found in Oregon's Bill of Rights in Article I.<sup>7</sup>

### **CRIME REPORTING**

The primary system of reporting crimes in Oregon occurs through the 9-1-1 system. A citizen dialing 9-1-1 anywhere in Oregon is connected to a Public Safety Answering Point (PSAP) and can report an incident requiring police, fire department or ambulance response. Crimes reported to 9-1-1 are prioritized by the urgency of the call. Services might be dispatched from a separate facility.

Data on reported crimes, arrests and victimization surveys are the main sources of data for comparative purposes. In Oregon, statistics on the number and type of crimes reported are provided by law enforcement agencies to the Law Enforcement Data System (LEDS), a division within the Oregon State Police. LEDS publishes an annual report on reported crimes and arrests, and provides quarterly updates. These reports are the primary source for media reports that crime is "up" or "down," and are based on changes in the number of crimes reported or arrests made from the previous reporting period.

Typically, data on reported crime can be checked to some extent by comparing that data with victimization surveys and noting discrepancies between the two. Victimization surveys select a population sample and ask whether the respondent has been a victim of crime during a specified period of time, and if so, what type. Based on an examination of federal victimization surveys, we know that a significant number of crimes are unreported. The most common of these are sexual crimes, crimes against children and crimes committed by domestic partners. Victimization surveys provide important information on the racial breakdown of victims, determine whether the crime was reported to police and if not, the reasons for non-reporting.

While the federal government conducts an annual victimization survey, the sample is not large enough to generalize as to rates of victimization in Oregon. Oregon has not conducted victimization surveys since 1994, which hinders a comprehensive view of criminal conduct in Oregon.

The number of crimes is used to measure total incidence of crime and to gauge its effect on the capacity of the criminal justice system. Reported crimes are measured by type (such as person or property crime), category (such as assault

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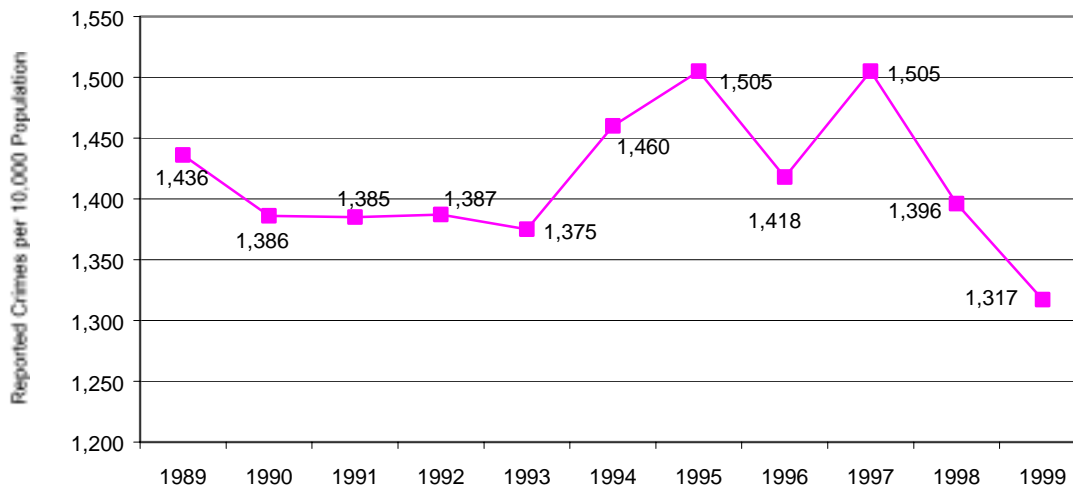
<sup>7</sup> See Appendix 6, containing relevant portions of The Oregon Constitution, Article I, The Bill of Rights.

or burglary) and whether the crime is an "index crime."<sup>8</sup> The most frequently reported crimes are non-person offenses. In general, these include behavioral, drug or property crimes and constitute misdemeanors rather than felonies.

The crime rate calculation takes the number of reported crimes and incorporates population changes, establishing a more consistent measure of changes over time. Comparing data from the total number of crimes and crime rates can lead to differing impressions of the incidence of crime. For example, the crime *rate* can decrease even if the number of crimes increases, if the population grows faster than the number of crimes committed. Additionally, differences in state-by-state comparison and federal-state comparison may exist under either method, due in part, to differences in crime classification between states.

Some jurisdictions track each offender as they move through the system in what is known as an offender-based system. Under other systems, data about an individual is entered into agency-specific files not accessible to non-agency personnel. Oregon does not currently use an offender-based system, which severely hinders a systemic analysis of the criminal justice system. Without an offender-based system it is difficult to trace an individual through different agencies and data systems in order to identify what happened to that person as he or she progresses through the criminal justice system.

**TABLE 2: Reported Crimes in Oregon per 10,000 Population<sup>9</sup>**



<sup>8</sup> Crime types are broad categories (e.g., person or property crimes). Crime categories are more specific groupings within a crime type (e.g., all assaults or all robberies). Index crimes are types of conduct defined by the federal government to allow cross-jurisdiction comparison. A single index crime can include multiple state offenses (e.g., "aggravated assault" includes some Assault 1, 2 and 3).

## **INVESTIGATION**

Once a crime is reported, it is reviewed by a law enforcement agency. An officer can be dispatched to respond to the report immediately or information can be taken over the phone for later response. In some instances, the caller may be asked to file a written report. If an officer responds, the officer can arrest a suspect if there is factual probable cause, issue a citation to appear in court in lieu of arrest, take no action or make a report to use as the basis of further investigation.

Law enforcement investigation services are provided by agencies at the district, city, county, state and federal level. Federal agencies investigate and enforce federal criminal law, although Oregon law allows them to be deputized to enforce state criminal laws.

Approximately 200 government agencies provide law enforcement services in Oregon. This total includes 137 city police departments, 36 county sheriff's offices, the Oregon State Police, several federal agencies, the Port of Portland, Portland Public Schools, three Native American tribes and several railroads.

Cities provide the majority of direct law enforcement services, mostly through small police departments. Forty-one percent of Oregon's city police departments have fewer than 10 sworn officers. Only six departments in Oregon have more than 150 sworn officers. Smaller police departments typically provide only patrol and investigation services; larger departments provide specialized services including forensic analysis, crime analysis, 9-1-1 services and SWAT teams, narcotics units and other services. City police and county sheriffs enforce city and county ordinances as well as state laws.

### **County Sheriffs**

The county sheriff is an elected position in each county and serves as the "chief executive officer and conservator of the peace in the county."<sup>10</sup> The sheriff also provides direct public safety services and serves as the officer of the circuit and county courts. The county sheriff performs various civil and criminal law duties as established by statute.

Criminal law responsibilities include providing patrol and investigation services, court security, operating county jails and transporting convicted felons and persons committed to state mental institutions to the appropriate state facilities. In some counties, the sheriff administers pre-trial release programs under the direction of the court and manages parole and probation supervision.

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<sup>9</sup> 1989-99 Report of Criminal Offenses and Arrests, Law Enforcement Data System, Oregon State Police. Consists of all crimes including person, property, and behavioral crime rather than just "index" crimes.

<sup>10</sup> ORS 206.010-.210. Oregon Constitution, Article VI, §6, and §8 provide that a sheriff shall be elected in each county for a term of four years and perform duties prescribed by law.

Some municipalities have enhanced law enforcement activities by establishing their own law enforcement agencies. This does not relieve the sheriff of the responsibility for public safety in that community. Other communities enhance services by contracting with the sheriff.

Table 3 shows the statewide average of state and local law enforcement officers per 1,000 population over the last 10 years.

**TABLE 3: State and Local Law Enforcement Officers in Oregon<sup>11</sup>**

| <b>Year</b> | <b>Total Officers</b> | <b>Officers per 1000</b> | <b>Year</b> | <b>Total Officers</b> | <b>Officers per 1000</b> |
|-------------|-----------------------|--------------------------|-------------|-----------------------|--------------------------|
|             |                       |                          |             |                       |                          |
| 1989        | 4606                  | 1.6                      | 1995        | 5218                  | 1.7                      |
| 1990        | 4705                  | 1.6                      | 1996        | 5290                  | 1.7                      |
| 1991        | 4712                  | 1.6                      | 1997        | 5361                  | 1.7                      |
| 1992        | 4727                  | 1.6                      | 1998        | 5455                  | 1.7                      |
| 1993        | 4834                  | 1.6                      | 1999        | 5609                  | 1.7                      |
| 1994        | 5084                  | 1.6                      |             |                       |                          |

As shown in Table 4, these figures vary considerably from county to county. The figures do not take into account the geographical size of each county, a factor that can affect officer response time, the community's crime rate or other factors that would establish a uniform level of law enforcement services.

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<sup>11</sup> Report of Criminal Offenses and Arrests 1999. Law Enforcement Data System, Oregon State Police.

**TABLE 4: State and Local Law Enforcement Officers by County<sup>12</sup>**

| <b>COUNTY</b> | <b>OFFICERS PER 1000</b> | <b>COUNTY</b> | <b>OFFICERS PER 1000</b> |
|---------------|--------------------------|---------------|--------------------------|
| Baker         | 2.9                      | Lake          | 2.0                      |
| Benton        | 1.5                      | Lane          | 1.3                      |
| Clackamas     | 1.2                      | Lincoln       | 2.3                      |
| Clatsop       | 2.6                      | Linn          | 1.6                      |
| Columbia      | 1.6                      | Malheur       | 2.0                      |
| Coos          | 1.7                      | Marion        | 1.5                      |
| Crook         | 1.8                      | Morrow        | 2.5                      |
| Curry         | 2.1                      | Multnomah     | 2.1                      |
| Deschutes     | 1.9                      | Polk          | 1.5                      |
| Douglas       | 1.7                      | Sherman       | 2.6                      |
| Gilliam       | 5.7                      | Tillamook     | 2.3                      |
| Grant         | 2.5                      | Umatilla      | 2.2                      |
| Harney        | 2.4                      | Union         | 1.7                      |
| Hood River    | 1.9                      | Wallowa       | 2.8                      |
| Jackson       | 1.5                      | Wasco         | 2.5                      |
| Jefferson     | 2.1                      | Washington    | 1.3                      |
| Josephine     | 1.4                      | Wheeler       | 3.1                      |
| Klamath       | 1.6                      | Yamhill       | 1.5                      |

### **Oregon State Police**

The Oregon State Police (OSP) provide direct public safety services, state and interstate traffic patrols and law enforcement support services such as medical examiner services, crime lab services, identification services, public safety training and the Law Enforcement Data System (LEDS).

An executive order directs OSP to establish local cooperative policing strategies in every Oregon community. As a result, OSP participates with other law enforcement agencies, including private security agencies and law enforcement agencies at all levels of government. The local plans allow for collective planning for using all law enforcement resources within a community, and emphasize local flexibility to respond to local needs and conditions.

Table 5 summarizes the number of crimes reported annually to state and local law enforcement agencies. It contains the number of arrests made and the number of cases cleared by arrest or decision not to proceed.<sup>13</sup> Oregon law

<sup>12</sup> Ibid.

<sup>13</sup> A case may be "cleared" by arrest, citation, referral to juvenile court, dismissal or a decision not to proceed made by the complainant, prosecutor or court. Cases that are not "cleared" within the year they are reported are not counted in the data for subsequent years creating an inaccurate representation of the true total of cleared cases. The average clearance rate for the period from 1986 to 1996 was 42.3%.

enforcement agencies cleared an average of 42 percent of reported crimes in the same year in which the crime was reported.

**TABLE 5: Clearance Rate of Reported Crimes<sup>14</sup>**

| Year | Offenses | Arrests | Cleared |
|------|----------|---------|---------|
| 1988 | 400,814  | 129,305 | 157,306 |
| 1989 | 400,679  | 147,610 | 175,931 |
| 1990 | 394,203  | 149,163 | 172,635 |
| 1991 | 405,649  | 150,062 | 182,067 |
| 1992 | 413,163  | 151,235 | 180,845 |
| 1993 | 417,830  | 154,016 | 186,523 |
| 1994 | 450,023  | 160,118 | 189,767 |
| 1995 | 471,515  | 170,307 | 188,684 |
| 1996 | 450,945  | 175,318 | 191,142 |
| 1997 | 482,941  | 178,945 | 183,737 |
| 1998 | 455,979  | 171,588 | 179,212 |
| 1999 | 434,738  | 165,981 | N/A     |

### Federal Agencies

Federal data provide one look at the proportion of total government expenditures spent on public safety functions, how that varies among levels of government and what services each level of government funds.

In 1996, the state provided 43 percent of total public safety expenditures, counties 32 percent and cities 26 percent. Most city expenditures (93%) went for police services. County expenditures on the justice system were split between corrections (46%), police services (36%) and judicial/legal (18%). The state expenditures on the justice system were split between corrections (49%), judicial/legal (31%) and police services (20%).<sup>15</sup> While figures from local governments are not available, 14.4 percent of the Governor's Recommended Budget for the 2001-03 biennium is allocated to justice system agencies.<sup>16</sup>

**TABLE 6: Federal Officers Assigned to Oregon<sup>17</sup>**

|      | Number of Officers |                               |       | Officers per 100,000 population |                               |       |
|------|--------------------|-------------------------------|-------|---------------------------------|-------------------------------|-------|
|      | Total              | Police/Criminal Investigation | Other | Total                           | Police/Criminal Investigation | Other |
| 1996 | 649                | 346                           | 303   | 20                              | 11                            | 9     |
| 1998 | 637                | 358                           | 279   | 19                              | 11                            | 8     |

<sup>14</sup> LEDS Annual Reports 1996-99.

<sup>15</sup> Ann L. Pastore and Kathleen Maguire, eds., *Sourcebook of Criminal Justice Statistics, 1999*. U.S. Department of Justice, Bureau of Justice Statistics. Washington, DC: USGPO, 2000

<sup>16</sup> Legislative Fiscal Office Budget Overview, January, 2001.

<sup>17</sup> *Sourcebook of Criminal Justice Statistics, 1999*.

## **Recent Legal and Policy Changes Affecting Criminal Investigation**

### HB 2433

Passed in 1997, HB 2433 expands the authority of police officers to stop persons they suspect are about to commit a crime and to search detained persons or seek consent to search. Due to concerns about racial profiling, HB 2433 requires data to be collected from law enforcement agencies on these activities. In 1999, the Asset Forfeiture Oversight Advisory Committee presented a report to the Legislative Assembly summarizing the data-gathering effort and recommending the following future efforts:

- There should be additional training, education and community outreach to facilitate the reporting and resolution of complaints;
- A survey of police officers and traffic stops should be undertaken to determine officers' knowledge of stop authority, to evaluate field practices, and to determine the need for additional training;
- Present complaint collection efforts and public perception surveys should continue for at least two years and should be expanded to include the Asian community;
- The current work group should be provided with resources for additional facilitation and staffing.

Consistent with these recommendations, law enforcement agencies have trained all police on the scope and limitation of authority granted under HB 2433. In addition, the training incorporated clear expectations that enforcement decisions are not to be made on the basis of race. All Oregon police agencies have adopted a non-discrimination policy that was reaffirmed through publicized resolutions. Many Oregon law enforcement agencies voluntarily continue to work toward implementation of traffic stop data collection without additional funding.

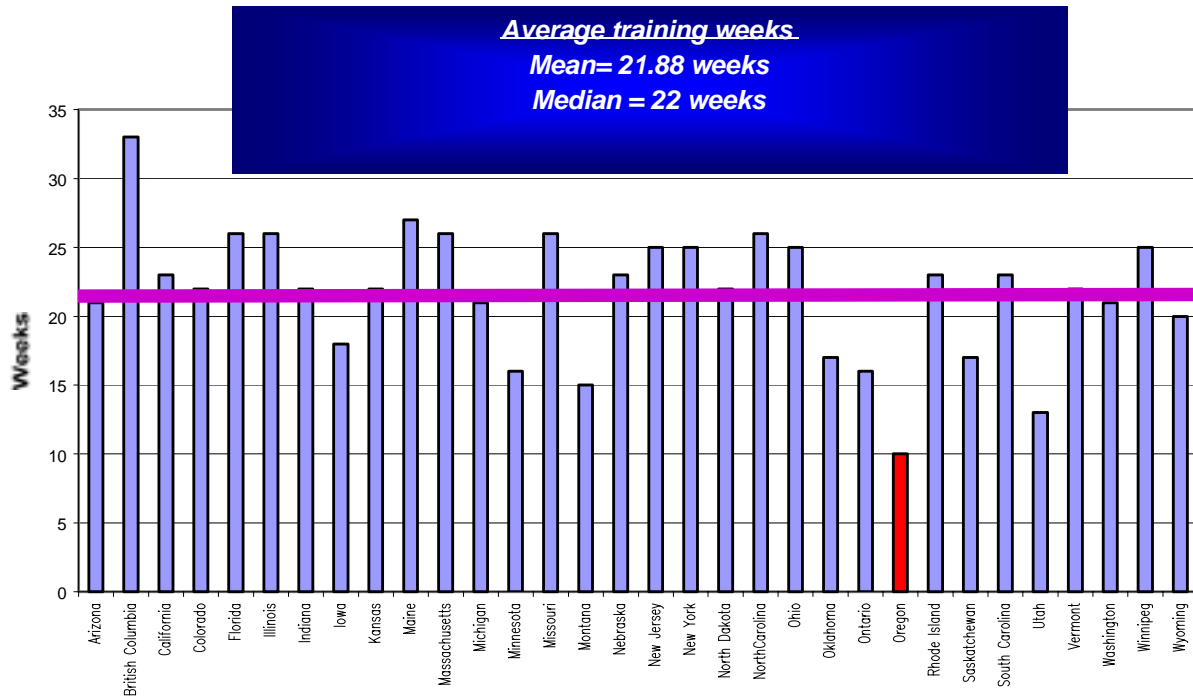
### **Police Officer Training**

The Department of Public Safety Standards and Training Board (DPSST) establishes the minimum training standards for all law enforcement and corrections personnel in the state of Oregon. DPSST provides training consisting of both classroom and field work. While larger Oregon counties or cities may provide additional training, all personnel must pass DPSST's minimum standards coursework. The Department must certify additional programs.

As part of their training, each officer completes coursework designed to help them to identify and investigate crimes motivated by race, sexual orientation,

marital status and beliefs and memberships.<sup>18</sup> The Department is also responsible for developing and implementing a long-range crime prevention plan designed to reduce crime and delinquency.<sup>19</sup> Table 7 compares the length of police officer training among several states and provinces. At less than 10 weeks, officer training in Oregon is less than one-half the average of states and provinces responding to the survey.

**Table 7: Police Officer Training in Selected Jurisdictions<sup>20</sup>**



**PRE-TRIAL PROCESS**

Once sufficient information is obtained and probable cause exists to believe that a specific person has committed a crime, enforcement officers can make an arrest or take other actions that signal involvement by the criminal justice system. In the alternative, a criminal act committed in the presence of an officer constitutes grounds for an officer to make an immediate arrest.<sup>21</sup>

Most suspects arrested and taken into custody are eligible for release under specified conditions. A judge or a release assistance officer makes release decisions. While little statewide data exists on most pre-trial processes, the

<sup>18</sup> ORS 181.642.

<sup>19</sup> ORS 181.755.

<sup>20</sup> International Association of Chiefs of Police, October 2000.

<sup>21</sup> ORS 133.310.

majority of those accused of a crime remain in the community pending adjudication.

Many of the decisions that are made in the pre-trial arena involve subjective and discretionary evaluations. The investigating officer exercises the discretion inherent in his or her position simply by making a determination on whether to arrest or cite in lieu of arrest.<sup>22</sup> If the individual is taken into custody, pre-trial release decisions will have to be made pending adjudication of the case. While each county has approached the subject of pre-trial release in an individual fashion, several legal constraints limit the discretion of decisionmakers.

The 8<sup>th</sup> Amendment to the United States Constitution<sup>23</sup>, Article I, Section 14 of the Oregon Constitution<sup>24</sup> and ORS 135.230 through ORS 135.295 provide the basic framework for pre-trial release in Oregon. Three types of release are authorized by statute: release on personal recognizance, conditional or third-party release and security release. In all three types of release, the detained person agrees in writing under a release agreement to abide by certain conditions of release and to appear at all scheduled court appearances.

ORS 135.245(1) mandates that a person in custody shall have “the immediate right to security release or shall be taken before a magistrate without undue delay.” Undue delay is described in ORS 135.010 and requires that an arrested person be arraigned by a judicial officer within 36 hours of being taken into custody, excluding holidays and weekends when the limit is 96 hours. Except for no-bail and no-release offenses discussed below, all defendants are entitled to be considered for pretrial release. ORS 135.240 (2)(a) states that “when a defendant is charged with murder, aggravated murder or treason, release shall be denied when the proof is evident or the presumption strong that the person is guilty.” In addition, defendants accused of violating the conditions of probation or post-prison supervision and those being held under out of state fugitive complaints are also routinely considered not eligible for release.

Recent legislation has made pre-trial release less available for persons accused of committing Measure 11 crimes, some domestic violence crimes and driving under the influence of intoxicants. Article I, Section 43 of the Oregon Constitution, known as the Victim's Bill of Rights, provides that some violent felonies shall not be bailable when the court determines that there is probable cause to believe that the defendant committed the crime and the court finds by clear and convincing evidence that there is a danger of injury to the victim or the public if the defendant is released.

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<sup>22</sup> ORS 133.055 (where offense is a misdemeanor and there is no outstanding warrant).

<sup>23</sup> “...Excessive bail shall not be required.”

<sup>24</sup> “Offences (sic), except murder, and treason, shall be bailable by sufficient sureties. Murder or treason, shall not be bailable, when the proof is evident, or the presumption strong that the defendant is guilty.”

The least restrictive form of pre-trial release is called Release on Own Recognizance (ROR). A person released on ROR has given the release assistance staff sufficient verifiable information about their ties to the community, and a criminal history check has revealed no outstanding warrants or unresolved criminal matters. The person is then released by the release assistance staff or by the arraigning judicial officer after signing an agreement to appear at all future court appearances.

The next level of release is called Conditional Release (CR). Conditional release is available for persons whose criminal history and ties to the community do not allow ROR, but who do not pose an immediate threat to the community if released under certain restrictions and conditions. For example, a person released might be required to agree not to enter bars or taverns, to agree not to contact victims of the alleged crime and to contact the release officer every three days to confirm that they are in fact, still in the community.

Oregon no longer uses a bail bondsman system for those unable to meet the criteria for ROR or CR and instead uses a security release system. Under this system, the court sets bail for the charged offenses. The accused has the right to post a security equal to 10 percent of that amount with the understanding that failure to appear in court at a scheduled appearance may result in bail forfeiture. Upon a finding of guilt against the accused, the amount posted as security can be applied to fines, restitution, court costs and court-appointed attorney fees. For those who fail to appear at future court appearances as promised, in addition to revoking the release agreement or ordering forfeiture of the security deposit, the District Attorney may prosecute for the crime of failure to appear.

## **Recent Legal and Policy Changes**

### Matrix Release

Even with the development of pretrial release programs throughout the state and the requirement that most persons held in custody have a presumptive right to release under the least restrictive conditions, jail overcrowding has been a continuing problem in many counties since the late 1970's. Beginning in the 1970's, several Oregon counties found themselves under Federal court-ordered jail capacity restrictions. County expenses incurred for violating federal restrictions or negotiating a consent decree to settle overcrowding allegations can be considerable. In 1981, after a consent decree was negotiated, Multnomah County was required to compensate inmates prevailing on their claim of overcrowded jails \$300,000. In response, the Legislative Assembly in 1989 enacted procedures for setting the capacity of correctional facilities and the action to be taken when capacity is reached.<sup>25</sup>

If a county court or board has adopted a jail capacity limit and the limit is exceeded, the county sheriff may release individuals in custody in accordance

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<sup>25</sup> ORS 169.042-.046.

with the plan established under ORS 169.042 after notifying certain officials. These releases are commonly called “matrix releases” because the sheriff develops a system of releasing the least dangerous persons based on a numerical score derived from each inmate's current charge, criminal history and associated risk factors. The score places the inmates in a rank order of release. As releases need to be made, the sheriff determines who should be released by using the scores created by the matrix.

## **ADJUDICATION**

The final disposition of a criminal case occurs in one of two ways. A defendant may enter a plea of guilty after culmination of the plea bargaining process or may proceed to trial. The United States Constitution, the Oregon Constitution and ORS 136.290 grant the defendant the right to a speedy trial before a jury of his or her peers. In Oregon, a defendant in custody has the right to a trial within 60 days from the date of arrest. Three separate parties participate in the adjudication phase of a criminal prosecution: the prosecution, defense and judiciary. This section describes the roles of each and the process by which an individual is adjudicated.

Within Oregon, there is a state court system as well as a municipal court system and a justice court system. The state court system is comprised of a seven-member Supreme Court, a 10-member Court of Appeals, a one-judge Tax Court and 163 Circuit Court judges in 26 judicial districts.<sup>26</sup> Misdemeanor and felony cases (excluding violations) account for approximately 15.8 percent of all cases filed in the state court system.

Municipal courts and justice courts handle traffic offenses and some misdemeanors but do not have jurisdiction over felonies. At the outset of a case, a defendant in justice court has an absolute right to have the case transferred to the circuit court sitting in the county in which the crime is alleged to have occurred.<sup>27</sup> Due to a lack of uniformity in reporting standards among the various counties, reliable data as to the number and types of cases tried in justice courts is not available at this time.

Until recently, only circuit courts could hear felony cases. As a result, circuit court dockets were consistently backlogged. After several years of study and planning, district and circuit courts were consolidated in January 1998. Table 8 details the number of criminal cases filed and the number of judges per county in 1999. Table 9 compares the number of misdemeanor and felony cases filed between 1996-1999.

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<sup>26</sup> Oregon Judicial Department.

<sup>27</sup> ORS 51.050.

**TABLE 8: Number of Criminal Cases Filed in Oregon Courts, 1999<sup>28</sup>**

| COUNTY     | MIS  | FELONY | JUDGES | COUNTY     | MIS    | FELONY | JUDGES |
|------------|------|--------|--------|------------|--------|--------|--------|
| Baker      | 41   | 214    | 1      | Lake       | 304    | 120    | 1      |
| Benton     | 1086 | 627    | 3      | Lane       | 3153   | 4158   | 15     |
| Clackamas  | 4359 | 2552   | 10     | Lincoln    | 1417   | 516    | 3      |
| Clatsop    | 803  | 1698   | 2      | Linn       | 1436   | 1165   | 5      |
| Columbia   | 389  | 349    | 3      | Malheur    | 833    | 439    | 2      |
| Coos       | 1779 | 770    | 4      | Marion     | 5620   | 2459   | 13     |
| Crook      | 664  | 248    | 1      | Morrow     | 45     | 104    | 1      |
| Curry      | 735  | 277    | 2      | Multnomah  | 13,922 | 8559   | 37     |
| Deschutes  | 3277 | 1312   | 6      | Polk       | 904    | 519    | 3      |
| Douglas    | 1109 | 1378   | 5      | Sherman    | 85     | 41     | *      |
| Gilliam    | 11   | 32     | *      | Tillamook  | 606    | 312    | 2      |
| Grant      | 51   | 77     | ½      | Umatilla   | 1315   | 1047   | 3      |
| Harney     | 30   | 83     | ½      | Union      | 638    | 261    | 1      |
| Hood River | 759  | 212    | 2      | Wallowa    | 109    | 41     | 1      |
| Jackson    | 4010 | 1837   | 7      | Wasco      | 829    | 394    | 2      |
| Jefferson  | 768  | 296    | 2      | Washington | 6400   | 3925   | 13     |
| Josephine  | 1770 | 1007   | 4      | Wheeler    | 4      | 11     | *      |
| Klamath    | 2450 | 923    | 5      | Yamhill    | 1102   | 797    | 3      |

\*Counties without an appointed judge utilize judges from other counties within their judicial district. A single judge divides his time between Grant and Harney counties.

The district attorney is a state official elected in each county to prosecute state violations and state crimes in each county. The state Attorney General also has limited authority to prosecute crimes involving election law violations, organized crime, public corruption, or other criminal cases as specifically directed by the Governor. Criminal caseloads among counties vary widely, making county-to-county comparisons difficult. Gilliam County, for example, reported a total of 241 crimes in 1999, while Multnomah County reported 108,890 crimes during the same period.<sup>29</sup>

<sup>28</sup> Statistical Report Relating to the Circuit Courts of the State of Oregon, Second Half 1999. Compiled by the Office of the State Court Administrator as determined by the number of accusatory instruments filed not including infractions or violations.

<sup>29</sup> Report of Criminal Offenses & Arrests 1999. Law Enforcement Data System, Oregon State Police.

**TABLE 9: Criminal Cases Filed 1996-1999**

| <b>Year</b> | <b>Misdemeanors</b> | <b>Felonies</b> |
|-------------|---------------------|-----------------|
| 1996        | 64,384              | 30,797          |
| 1997        | 65,332              | 33,719          |
| 1998        | 64,677              | 39,589          |
| 1999        | 62,833              | 37,470          |

Both the United States Constitution and Oregon Constitution recognize the right of those charged with a crime to be represented by legal counsel.<sup>30</sup> As such, the court must provide the offender with the option of being represented by court appointed counsel if he or she is indigent.

ORS 151.430-.495 describes the State Indigent Defense Program at the trial court level in the state courts. The Office of the State Court Administrator is charged with administering the program through its Indigent Defense Services Division. Indigent Defense Services provide counsel in each of the 26 judicial districts, either by contracting for the service with groups of attorneys or individual attorneys, or by panels of attorneys who are assigned cases by each court on a case-by-case basis. The State Court Administrator (SCA) also is required to establish professional standards that all attorneys accepting appointments to represent the indigent accused must meet, as well as other policies for the program. The provision and funding of appointed counsel in justice and municipal trial courts are the responsibility of counties and cities, respectively.

The role of the court is to provide a structured, impartial forum in which the parties to a criminal case can present the facts of the case and argue the law. In cases where the parties have agreed to waive the right to a jury, the court also serves as the fact finder and final arbiter of guilt or innocence. In the course of the trial itself, the court will enforce rules of courtroom conduct, holding the power of contempt as a sanction if needed, and impose the sentence in all but death penalty cases.

As dockets have increased in size while the number of judges, prosecutors and defense counsel have remained relatively stable, it has become necessary for several counties to develop innovative programs and specialized dockets in order to keep up with the demand for judicial time. These special dockets emphasize treatment over incarceration and are usually designed to accommodate the first-

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<sup>30</sup> Sixth Amendment to the U.S. Constitution; Article I § 11, Oregon Constitution.

time non-violent offender. The areas that have seen the most success include DUII diversion and drug dockets.

An example of a special docket is Project S.T.O.P. (Sanction-Treatment-Opportunity-Progress), a drug diversion program specifically designed for those charged with possession of a controlled substance in an amount attributable to personal use. Project S.T.O.P. combines the efforts of drug court and drug treatment programs using proven methods to reduce drug abuse. Use of the program has resulted in lower recidivism rates and a more effective allocation of limited resources. The program was first established in Multnomah County. Similar programs currently exist or are in the process of being implemented in Clackamas, Crook, Douglas, Lane, Josephine, Jefferson, Klamath, Malheur and Yamhill Counties. Multnomah County has approximately 600 clients in Project S.T.O.P. at any given time, and processes approximately 750 clients per year. One deputy district attorney and one public defender handle these 600 cases. Had these cases remained on the general trial docket, they would have had a significant impact on an already crowded court system.

Mental health courts are modeled after drug courts, and may be capable of diverting mentally ill persons from the justice system while still providing for public safety.

Once a person is convicted of a felony, the court may order a pre-sentence investigation prior to sentencing as an aid in determining an appropriate sentence. The pre-sentence investigation (PSI) is created after an interview with the convicted person and contains a criminal history of the defendant, an abbreviated social history with details on prior treatment episodes and family support, and a discussion of aggravating or mitigating factors applicable to the current offense. The state or the defense attorney may object to the inclusion of inaccurate information contained within the report.

The number of PSI's conducted has fallen dramatically in recent years, attributable to reduced funding and increased use of determinate (fixed) sentences.

### **POST ADJUDICATION AGENCY INVOLVEMENT**

This section describes the respective roles of the Department of Corrections and community corrections after imposition of sentence. It also identifies recent statutory changes affecting the performance of those roles. *Chapter II, Sentencing in Oregon*, summarizes the application of the sentencing guidelines as they apply to felony convictions in Oregon.

Once a person has been convicted of a crime, a judge imposes a sentence. The sentence imposed can include incarceration, a term of community supervision

(probation or post-prison supervision), limitations on an offender's conduct and financial obligations such as fines, court assessments and restitution.

Sentenced felons receive a sentence of probation or prison as determined by the sentencing guidelines or specific mandatory minimum sentencing laws. Sentenced misdemeanants are typically placed on probation and are subject to the imposition of other obligations that can include imposition of a county jail sentence of up to one year, financial obligations, completion of an appropriate treatment program and community service.

Both convicted felons and misdemeanants may receive a sentence of probation. While probationary sentences need not include the imposition of jail time as a condition of probation, the sentencing judge has the discretion to do so. Some felony probation sentences include a jail term as a condition of probation. Probationary sentences that include incarceration are served "locally" (jail, work release or other facilities) and are supervised by a county probation officer.

Probation may be either supervised or unsupervised (court probation). Supervised probation allows the offender to remain in the community, while being supervised in the performance of court-ordered obligations. Each county maintains a community corrections office, funded as a partnership between the state and county, to supervise offenders on felony probation. The emphasis of community corrections is on addressing behavioral problems of the offender and making reparations to the community and the victim through service to the community.

Depending on the size and local priorities of each county, offices may be divided into divisions specifically designed to supervise offenders with particular behavioral problems. Probation costs are significantly lower than the cost of incarceration and afford the community corrections officer the ability to fashion a supervision program tailored to address individualized behavioral problems. Structured sanctions are an administrative process where offenders, with prior consent, allow the imposition of sanctions without court intervention for failing to abide by the requirements of supervision.

Prison sentences for convicted felons are followed by a period of community supervision called post-prison supervision (PPS). While prison sentences formerly denoted incarceration in a state corrections facility, SB 1145 now provides that prison sentences of 12 months or less be served under local county control.<sup>31</sup>

Prison sentences of more than one year are served in state facilities. Oregon currently houses offenders in 13 state prisons and administers correctional programs. Inmates are provided with cognitive skills training, educational programming, alcohol and drug treatment and job training classes to enable

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<sup>31</sup> See Recent Legal and Policy Changes, p. 28.

inmates to become productive citizens upon release. Oregon has a low recidivism rate compared with other states: more than two-thirds of its former inmates are not convicted of a new felony within three years of release from prison.<sup>32</sup> Due to a forecast that predicts the prison population will increase by approximately 33 percent by 2006, the state has embarked on a prison construction program that will provide four new facilities and expand several existing facilities within the next decade.

## **Criminal Appeals**

While the subject of appellate practice is beyond the scope of this Commission, ORS Chapter 138 provides the statutory procedures for criminal appeals, specifying the legal grounds for appeal.

At the appellate level, legal representation of the indigent criminal appellant falls to the Office of the State Public Defender.<sup>33</sup> The Attorney General's office represents the state. The State Public Defender is charged with the responsibility of representing persons who are in the custody of the Oregon Department of Corrections in a proceeding before any court, including the Supreme Court.<sup>34</sup> Exceptions to this representation are habeas corpus proceedings, matters originating from the juvenile code, persons who have waived the right to counsel under ORS 135.045 and those found financially ineligible under ORS 135.050. In addition, the State Public Defender may declare an ethical conflict of interest and decline to accept appointment to an appellant. When the State Public Defender has declared a conflict of interest or is statutorily barred from representing an appellant, the case is referred to the State Indigent Defense Program, which provides alternate counsel, provided that the appellant meets financial eligibility requirements.

## **Recent Legal and Policy Changes**

### Community Corrections (SB 1145)<sup>35</sup>

In 1995, the Oregon Legislature passed the Community Corrections Partnership Act, commonly referred to as SB 1145. The primary goal of the Act was to upgrade the means by which PPS and probation supervision services were delivered. Secondary provisions of the bill included: advising the courts and supervising pre-trial release programs; supervising day reporting programs; locating, certifying and in some cases implementing mental health programs, drug and alcohol treatment programs, and victim programs.

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<sup>32</sup> DOC Research & Evaluation Unit.

<sup>33</sup> ORS 151.210-290.

<sup>34</sup> ORS 151.250.

<sup>35</sup> The material in this section was compiled from a presentation made by Steve Liday, President, at the Oregon Community Corrections Directors Association to the Oregon Criminal Justice Commission on April 11, 1996.

Supervision of offenders in the community offers several advantages over incarceration. First, it is considerably less expensive than incarceration. Second, it affords an opportunity for long-term behavior modification. By employing a graduated, sure and swift continuum of punishments, the community corrections officer is able to reward positive conduct and quickly punish improper activity.

Before SB 1145, there were three types of state and county operation of community programs: Option 1 – County staff supervise offenders and operate programs; Option 2 – State staff supervise offenders and the county operates programs and Option 3 – State runs all aspects of community programs. Prior to SB 1145, only 12 counties utilized Option 1<sup>36</sup>. Since the passage of SB 1145, all counties are, or soon will be, operating exclusively under Option 1.

The number of people in Oregon under some form of felony supervision in the community (probation, parole or PPS) has remained fairly constant in recent years at approximately 29,000.<sup>37</sup>

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<sup>36</sup> Scott Taylor, Assistant Director for Community Corrections, Department of Corrections, testifying before the Oregon Criminal Justice Commission on May 9, 1992.

<sup>37</sup> DOC Evaluation & Research.

## SENTENCING IN OREGON

### **IMPLEMENTATION OF THE SENTENCING GUIDELINES**

Sentencing laws and policies have undergone dramatic and repeated changes in the last 12 years. This chapter begins with a brief history of the changes leading to the drafting and implementation of the sentencing guidelines in 1989. In the early 1980's, Oregon's criminal justice system was universally recognized as being in a crisis. No new prisons had been built for 20 years and the state faced lawsuits based on overcrowding. Voters had repeatedly rejected prison-funding measures. At the same time, Oregon's economy was in the midst of a severe recession.

Given dramatic overcrowding in Oregon prisons, release decisions were made primarily on the basis of least dangerousness to the community, rather than whether the offender had served the sentence. During this period, it was not uncommon for an offender to be sentenced to a term of incarceration not to exceed five years only to be released within 30 days. By 1986, felons sentenced to state prisons served an average of 24 percent of the imposed sentence, and sentencing felons to local jails became a common practice to ensure longer incarceration for certain offenses.

Oregon's answer to this crisis came in two forms – increased appropriations to build additional minimum and medium-security facilities and a new felony sentencing structure. After more than two years collaboration between policy makers and practitioners from around the state, the following goals were identified:

1. Truth in sentencing. Sentences imposed in court should more closely reflect the actual time served;
2. Penalties must reflect resources available. Penalties that won't be imposed shouldn't be given;
3. Consistent punishment. Similar offenders who commit similar crimes should receive similar sentences; and,
4. Proportionate Sentencing Policies. Sentences should increase in severity with the seriousness of the crime and the offender's criminal history.

The adoption and implementation on November 1, 1989 of the felony sentencing guidelines moved Oregon from an indeterminate sentencing scheme to determinate sentencing. Under the indeterminate sentence scheme, an offender in Oregon was sentenced to a term of incarceration not to exceed the maximum sentence set by statute for that particular crime. Once incarcerated, the Parole

Board established the actual time served after reviewing an inmate's progress and assessing such characteristics as dangerousness, community threat and offender rehabilitation.

Adopting a determinate, or structured, sentencing scheme indicated a major shift away from the problems Oregon experienced under the indeterminate sentencing scheme, particularly early release of the offender and the lack of "truth in sentencing." Parole, which had served as the mechanism to release offenders before their sentences had expired, was abolished. Oregon law now requires that those sentenced to prison serve at least 80 percent of their sentence, unless eligible for reductions under Oregon's boot camp laws and rules. In contrast, the Parole Board reduced 65 percent of the mandatory minimum sentences imposed by sentencing judges on offenders committed to state prisons under the former indeterminate sentencing rules.

While the sentencing guidelines abolished the Parole Board's ability to shorten or extend prison sentences, they maintained the requirement that offenders be supervised upon their release from prison. The length of supervision is also established by the sentencing guidelines. County supervisory authorities establish the intensity level of supervision after scoring the offender's risk factors. Should the offender fail to meet the standards of the program or reoffend, a range of graduated punishments are available. The Parole Board, the local supervisory authority or a judge determines these punishments depending on the status of the offender.

Sentencing guidelines are administrative rules adopted by the Criminal Justice Commission and ratified by the legislature by statute. The guidelines establish most felony sentences, and are most easily understood by viewing the guideline's grid<sup>38</sup>. The grid uses the vertical axis to rank all felony crimes into 11 crime seriousness categories. The horizontal axis establishes nine criminal history categories. An offender's sentence is established by locating the gridblock at the intersection of the offender's crime seriousness ranking and criminal history category and using that sentence as the "presumptive" sentence.

In some instances, the presumptive sentence can be modified (a "departure") if the judge finds substantial and compelling reasons that justify increasing or decreasing the presumptive sentence.<sup>39</sup> Guidelines rules establish the maximum departure available. Fifty-three of the 99 gridblocks call for a presumptive prison sentence imposed primarily for violent felony crimes or those with prior person felony convictions. The remaining 46 gridblocks establish a presumptive probation sentence. Approximately 74 percent of sentenced felons received probation in 1998.

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<sup>38</sup> See Appendix 5.

<sup>39</sup> ORS 137.671.

An increasing number of felons are receiving prison sentences. Between 1986 and 1994, the proportion of offenders receiving prison sentences increased from 18 percent of felony convictions to 22 percent. By 1998, this percentage had increased to approximately 26 percent due in part to the passage of other sentencing laws. The 1998 figure includes some prison sentences served in local facilities under SB 1145.

### **REPORTING REQUIREMENT**

The Criminal Justice Commission has been collecting reports of sentences imposed by criminal court judges since 1989. County reporting to the Commission is mandated by ORS 137.010. The information collected by the Commission includes information on the crime of conviction, prior convictions, offender demographics and data on the sentence imposed. The sentencing reports are used to analyze felony sentencing trends.

### **RECENT STATUTORY CHANGES IN SENTENCING**

#### **Ballot Measure 11 (1994)<sup>40</sup>**

Measure 11 requires mandatory minimum prison sentences of 70-300 months for specified violent felonies, regardless of prior criminal history. It also requires juveniles age 15 and older to be prosecuted as adults for Measure 11 offenses and prohibits earned time credits or other sentence reduction. The following crimes are sentenced under Measure 11:

|  |                           |
|--|---------------------------|
| Arson I                                      | Rape I & II               |
| Assault I & II                               | Sexual Penetration I & II |
| Attempt. Aggravated Murder/Aggravated Murder | Sexual Abuse I            |
| Conspiracy to Commit Aggravated Murder       | Sodomy I & II             |
| Manslaughter I & II                          | Use Child Display Sex Act |
| Compelling Prostitution                      | Robbery I & II            |
| Murder/Attempt Murder/Conspiracy to Murder   | Kidnapping I & II         |

ORS 137.712 allows the sentencing court to impose a lesser sentence for those convicted of Manslaughter II, Assault II, Kidnapping II or Robbery II if the facts of the crime meets certain criteria and substantial and compelling reasons exist to depart.

#### **Repeat Property Offenders<sup>41</sup>**

The Repeat Property Offender Bill (HB 3488), enacted into law in 1996, provides for 13- and 19-month presumptive prison sentences for persons convicted of residential burglary, vehicle theft, theft or identity theft who have prior convictions

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<sup>40</sup>ORS 137.700.

<sup>41</sup>ORS 137.717.

for specified property offenses. These sentences supercede the presumptive sentences established by the sentencing guidelines.

### **Ballot Measure 17 (1994)**

This measure, found at Article I, Section 41 of the Oregon Constitution, requires state inmates to be engaged in work, education or treatment 40 hours per week.

### **Ballot Measure 67 (1998)**

Oregon voters approved changes in criminal law to protect persons using marijuana for medical purposes. The measure creates a registry card system allowing medical use for certain medical conditions upon a recommendation from an attending physician. It creates an “exception” from certain criminal laws for persons having a registry card, and authorizes an affirmative defense and “choice of evils” defense for persons not having a card.

## **CURRENT ISSUES IN SENTENCING**

### **Racial Disparity<sup>42</sup>**

The Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System was created in 1992 to examine problems facing minorities. The final report of the Task Force, published in 1996, revealed that Oregon's system of justice needed to reform minority treatment in the justice system and the way minorities perceived that the system discriminated against them. Among the findings, the Task Force concluded that minorities were:

- More likely to be arrested,
- Less likely to be released on bail,
- More likely to be charged with a crime,
- Less likely to be put on probation,
- More likely to be incarcerated.

Since that time, the Implementation Committee has published annual progress reports between 1996 and 1999 and worked steadily to educate the public and those actively involved in the criminal justice system and to encourage implementation of earlier recommendations.

Most recently, the Multnomah County Public Safety Coordinating Council's Workgroup on Over-Representation of Racial and Ethnic Minorities presented a draft of its first report.<sup>43</sup> In preparing that report and its recommendations, the Coordinating Council looked at the key decision points in the criminal justice

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<sup>42</sup> *A Commitment to Fairness*, Progress Report of the Oregon Supreme Court Implementation Committee, January 1996.

<sup>43</sup> *Ensuring Equitable Treatment in the Criminal Justice System: Addressing Over-Representation of Racial and Ethnic Minorities: An Assessment and Action Plan*. Draft Report, October 2000

system such as arrest, pre-trial release, charging decisions and prosecution rates and sentencing. The Council concluded that:

- Over-representation of minorities permeates most crime categories
- Rates of prosecution were fairly consistent across racial groups
- People of color often received harsher sentences
- African Americans were more often assessed at high risk to reoffend

The Workgroup also determined that data necessary for assessment in certain areas was either not available or was inadequate and that over-representation was far too complex to address in one report. The Council created a Task Force to identify short term, intermediate, and long-term strategies to reduce over-representation and establish a permanent data collection process.

## PUBLIC SAFETY PARAMETERS

### CAPACITY, UTILIZATION AND TYPE OF STATE & LOCAL FACILITIES

This section provides information on state and county facilities designed to house the offender in both a pre-trial setting as well as after adjudication. It contains information on the type of available space, the number of individuals serving sentences for felonies, and individuals serving sentences under SB 1145, HB 3488 and BM 11 in Oregon's state and local facilities. Population projections running through 2009 are included as well as a population breakdown of Oregon's correctional inmates by race, gender and level of security housing. Information on the average length of sentence and length of stay is also provided.

#### **Oregon's State Correctional System**

The Department of Corrections discontinued use of the terms "Design Capacity" and "Extended Capacity" in 1995 and adopted the term "Operational Capacity" to describe long-term prison capacity. Operational capacity is used to describe the number of inmates that a facility can accommodate based on a facility's staff, programs and services. This action was taken to simplify discussions of system capacity by eliminating three separate sets of capacity numbers as part of the Department's Long-Range Prison Construction Plan. The long range Prison Construction Master Plan provides for the elimination of temporary beds during the 2001-2003 biennium.

Oregon classifies inmates according to the predicted risks they present for both the institution and the public. Minimum custody inmates present the least risk. Maximum custody inmates present an extreme risk to the safe and orderly operation of the institution and are housed separately from the general population. Oregon has six minimum custody institutions and six medium custody institutions including the Oregon Correctional Intake Center for all inmates entering Department of Corrections prisons. The Oregon State Penitentiary houses Oregon's maximum-security inmates at the present time, although the risk allocation among institutions may change in the future. As of August 2000, the population of Oregon's prisons totaled 9,945. Of that population, 35.8 percent were classified minimum risk, 48.1 percent were considered medium risk, 9.1 percent were classified as "close" (a category between high and medium risk) and 2.1 percent were classified high risk.<sup>44</sup>

Tables 10 and 11 set forth the operational capacity of Oregon's system between the years 1980 and 2000 and show the increase in populations for minimum, medium and high-risk offenders by gender. Table 12 compares the combined

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<sup>44</sup> DOC Evaluation & Research Unit. 4.8% were unclassified or pending at the time of study.

operational capacity of Oregon's institutions with the actual inmate population for the same period.

Between 1980 and 2000, the total operational capacity for men increased by 161 percent. By security classification, minimum risk populations increased by 88 percent, medium risk classifications increased by 185 percent and maximum-security classifications increased by 166 percent. Female populations showed an increase in total operational capacity of 173 percent. By security classification, medium risk classifications increased by 24 percent. Maximum-security classifications stayed the same during that period.

**TABLE 10: Operational Capacity of Oregon Prisons-Male Inmates<sup>45</sup>**

| <i>Year</i> | <i>Minimum</i> | <i>Medium</i> | <i>Maximum</i> | <i>Total Capacity</i> |
|-------------|----------------|---------------|----------------|-----------------------|
| 1980        | 820            | 2,466         | 240            | 3,526                 |
| 1990        | 1,435          | 4,066         | 339            | 5,840                 |
| 2000        | 1,545          | 7,035         | 639            | 9,219                 |

**TABLE 11: Operational Capacity of Oregon Prisons-Female Inmates**

| <i>Year</i> | <i>Minimum</i> | <i>Medium</i> | <i>Maximum</i> | <i>Total Capacity</i> |
|-------------|----------------|---------------|----------------|-----------------------|
| 1980        | -0-            | 150           | 4              | 154                   |
| 1990        | 289            | 198           | 4              | 487                   |
| 2000        | 231            | 186           | 4              | 421                   |

**TABLE 12: Operational Capacity of Oregon Prisons compared to Inmate Population<sup>46</sup>**

| <i>Year</i> | <i>Operational Capacity</i> | <i>Inmate Population</i> |
|-------------|-----------------------------|--------------------------|
| 1980        | 3,680                       | 3,120                    |
| 1990        | 6,327                       | 5,841                    |
| 2000        | 9,640                       | 9,945                    |

### **Offender Demographics**

An increasing proportion of Oregon's prison population is comprised of people convicted of person crimes. The proportion of drug offenders in the prison population also has increased, while the proportion of property offenders has declined.

<sup>45</sup> Department of Corrections.

<sup>46</sup> Combined Population for male and female inmates. Department of Corrections.

In 1987, approximately 54 percent of the prison population consisted of those convicted of person crimes while 37 percent had been convicted of property crimes and four percent were serving sentences on drug offenses. (Table 13). By 1992, those serving sentences for person crimes had increased to 62 percent of the population and property offender populations had decreased to 23 percent of the population. Felons serving time for drug offenses increased to nine percent of the prison population. Figures from 1999 show that those serving sentences for person felonies have increased and now comprise 74 percent of the population. Prison sentences for drug convictions have remained relatively stable and now constitute eight percent of the total prison population, while property offenses show a continued decrease and now comprise 14 percent of the population.

**TABLE 13: Prison Population by Type of Offense<sup>47</sup>**

| <i>Year</i> | <i>Person</i> | <i>Property</i> | <i>Drugs</i> | <i>Other<sup>48</sup></i> |
|-------------|---------------|-----------------|--------------|---------------------------|
| 1987        | 2156          | 1478            | 162          | 205                       |
| 1992        | 4129          | 1503            | 568          | 403                       |
| 1999        | 6405          | 1221            | 684          | 342                       |

In 1986, prior to the implementation of the sentencing guidelines, the average prison sentence for property felonies was 84.5 months. Of that sentence, approximately 20.4 percent or 15.5 months were actually served. In 1994, the average sentence for the same crimes was 11 months and in 1998, that figure was 17 months. For person felonies, the average sentence in 1984 was 130 months with 29.7 percent (34.1 months) actually served. The average sentence increased to 49 months in 1995 and increased again to 51 months in 1998. The average sentence for behavioral crimes in 1986 was approximately 60 months with an average of 19.1 percent served (10 months).

Of those incarcerated in 1994 and 1998, the maximum allowable sentence reduction was a 20 percent reduction for good time credit. Additionally, a small number of sentence reductions occurred due to participation and successful completion of prison boot camp programming.

Table 14 compares the increase in Oregon population by race and ethnicity from 1991-1999, to corresponding increases in Oregon's prison population.

<sup>47</sup> DOC Research & Evaluation Unit.

<sup>48</sup> Includes driving, escape, and firearm convictions.

**TABLE 14: Inmate Population by Race and Ethnicity<sup>49</sup>**

| <i>Race</i>   | 1991           |                   | 1994           |                   | 1997           |                   | 1999           |                   |
|---------------|----------------|-------------------|----------------|-------------------|----------------|-------------------|----------------|-------------------|
|               | <i>Gen Pop</i> | <i>Inmate Pop</i> | <i>Gen Pop</i> | <i>Inmate Pop</i> | <i>Gen Pop</i> | <i>Inmate Pop</i> | <i>Gen Pop</i> | <i>Inmate Pop</i> |
| Asian         | 2.6            | 0.5               | 2.8            | 1.2               | 3.1            | 1.0               | 3.3            | 1.1               |
| African Amer. | 1.7            | 13.1              | 1.7            | 12.4              | 1.8            | 12.5              | 1.9            | 12.1              |
| Hispanic      | 4.2            | 8.2               | 4.9            | 10.4              | 5.8            | 10.6              | 5.9            | 10.2              |
| Nat. Amer.    | 1.4            | 2.4               | 1.4            | 1.8               | 1.4            | 2.1               | 1.4            | 2.4               |
| Caucasian     | 90.1           | 75.8              | 89.1           | 74.1              | 87.9           | 73.8              | 87.6           | 74.2              |
| Total         | 100%           | 100%              | 100%           | 100%              | 100%           | 100%              | 100%           | 100%              |

**Recent Prison Population Trends**

Most of the growth in Oregon’s prison population has been due to sentencing policy changes. These changes are measured in several ways.

The largest group is the Base population. These are offenders sentenced under sentencing guidelines, not sentenced under more recent sentencing laws (including Measure 11, Repeat Property Offenders, felony DUI or SB 1145). Base population intakes stabilized in 1999 after three years of growth.

The number of prison inmates sentenced for Measure 11 or Measure 11-related crimes (attempts or one degree below Measure 11 offenses) is projected to increase from 3,039 (July 2000) to approximately 7,246 by 2010.<sup>50</sup> Table 15 compares the current and projected Base and Measure 11 populations.<sup>51</sup>

**TABLE 15: Population Intakes**

| <i>Date</i> | <i>Base Pop.</i> | <i>Measure 11 Pop.</i> |
|-------------|------------------|------------------------|
| 7-00        | 6258             | 3039                   |
| 7-02        | 6212             | 4244                   |
| 7-04        | 6175             | 5115                   |
| 7-06        | 6327             | 5877                   |
| 7-08        | 6478             | 6613                   |
| 7-10        | 6630             | 7246                   |

<sup>49</sup> DOC Research & Evaluation Unit.

<sup>50</sup> Oregon Corrections Population Forecast, Prepared by the Department of Administrative Services (DAS), October 2000.

<sup>51</sup> Oregon Corrections Population Forecast, DAS, October 2000.

## Repeat Property Offenders

ORS 137.717, establishing prison sentences for Repeat Property Offenders, took effect July 1, 1997. In July 2000, there were 605 inmates serving sentences as Repeat Property Offenders. This population is projected to increase to 783 by July 2010. Most of the increase in 2000 was due to identity theft convictions.<sup>52</sup>

## Demographic Projections

Information provided by DOC shows the state correctional population at 10,264 as of August 2000. The Department of Administrative Services (DAS) projects a 14 percent increase to 11,701 by July 2003 under current sentencing laws. The population forecast for January 2010 is 14,956, a 46 percent increase from the July 2000 numbers. DAS projections attribute half of the growth either directly or indirectly to Measure 11.

**Table 16: Prison Population Forecast**<sup>53</sup>

|           |        |
|-----------|--------|
| July 2001 | 10,757 |
| July 2003 | 11,701 |
| July 2005 | 12,684 |
| July 2007 | 13,666 |
| July 2009 | 14,565 |
| July 2010 | 14,956 |

## Jail Capacity and Type

<sup>54</sup>

Prior to 1997, individuals in county jails included pre-trial detainees ineligible for release, sentenced misdemeanants and felons, and persons on community supervision receiving brief jail sanctions for non-complying behavior. Since SB 1145 took effect in January 1997, county jail populations also include felony offenders receiving a prison sentence of 12 months or less for a new felony conviction or after having their community supervision revoked. These offenders are known as Local Control inmates.

Oregon's 36 counties have 31 jails, designed to hold approximately 6,900 inmates. In addition to jail space, 14 counties have either separate facilities or special sections within their jail that allow offenders to leave the facility during the day for employment and/or treatment while returning at night to serve their sentence. Typically, such facilities are known as work centers or restitution centers, although some include specified duties that distinguish them from other

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<sup>52</sup> Ibid. at footnote 14.

<sup>53</sup> Oregon Corrections Population Forecast, DAS, October 2000.

<sup>54</sup> The information provided in this section was gathered, in part, from responses to a recent jail survey initiated by the Commission and gathered with the assistance of the Oregon State Sheriff's Association.

centers and are known as work camps or forest camps. Oregon counties currently have approximately 1,250 work-release beds, although 150 beds are not utilized due to inadequate funding. In some instances, counties share jails or work centers. The cost of incarceration per day varies greatly from county to county, however the average cost per day per inmate is approximately \$68.00<sup>55</sup> reflecting in part, a cost differential between urban and rural counties.

Many of Oregon's jails offer programming or treatment to sentenced offenders. These programs include alcohol and drug treatment, cognitive restructuring, GED classes and domestic violence classes. Based on self-reports, few counties are tracking the effectiveness of such programming at the present time.

### **Local Control Inmates (SB 1145)**

The Department of Corrections provides funding to counties for supervision and incarceration of the SB 1145 population. The current Local Control population is 1,792 as of July 1, 2000. That population is forecast to increase two percent by July 2001 (to 1,844) and to increase by a total of 11 percent by July 2003 (to 1,990). By January 2010, the forecast for local control inmates is projected to reach a 26.6 percent increase (to 2,268) over the July 1, 2000 population.<sup>56</sup> Local control inmates do not include misdemeanants serving time in county jails.

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<sup>55</sup> Jail Managers' Survey, Criminal Justice Commission and Oregon Sheriff's Association, 2000.

<sup>56</sup> Oregon Corrections Population Forecast, DAS, October 2000.

## IMPLEMENTATION OF COMMUNITY CORRECTIONS

This section details the history of community corrections since 1977 and provides information on the statutory changes affecting the purposes and goals since that time. It identifies the types of programming available to those under community corrections supervision and the sanctions imposed on non-compliant offenders. Data on the numbers of individuals supervised under community corrections is included and broken into categories showing the numbers of sentenced felons on parole, probation and post-prison supervision (PPS). It also provides information on future alternatives to jail and prison that are in the early implementation stages. Finally, this section presents information from community corrections and those agencies that interact with community corrections identifying problematic gaps in the delivery of services. Information assessing the effectiveness of programming is contained in Chapter III, *Methods of Assessing the Effectiveness of Correctional Programs*.

Community corrections is a county function funded by the state. It includes supervising people placed on probation for less serious felonies and supervising people released from state prison on parole or PPS for more serious felonies. Approximately 29,000 felons are on some type of community supervision. Table 17 details the number of individuals on felony probation, parole and PPS between 1995 and 2000.<sup>57</sup>

**TABLE 17: Felony Offenders on Community Supervision<sup>58</sup>**

| <b>YEAR</b> | <b>PROBATION*</b> |               |              | <b>PAROLE**</b> |               |              |
|-------------|-------------------|---------------|--------------|-----------------|---------------|--------------|
|             | <b>MALE</b>       | <b>FEMALE</b> | <b>TOTAL</b> | <b>MALE</b>     | <b>FEMALE</b> | <b>TOTAL</b> |
| 1995        | 14,743            | 4088          | 18,831       | 7931            | 1021          | 8952         |
| 1996        | 14,226            | 4503          | 18,729       | 8868            | 1187          | 10,055       |
| 1997        | 14,284            | 4467          | 18,751       | 9737            | 1210          | 10,947       |
| 1998        | 13,501            | 4540          | 18,041       | 8863            | 1112          | 9975         |
| 1999        | 13,886            | 4758          | 18,644       | 9731            | 1327          | 11,058       |
| 2000        | 13,575            | 4881          | 18,456       | 9188            | 1318          | 10,506       |

\*Excludes unsupervised offenders, abscond and escape status, and immigration

\*\* Includes those on parole and post prison supervision.

DAS projections forecast a 7.5 percent increase in the probation caseload and a 28.7 percent increase in the parole/PPS caseload between 2000 and 2010.

An additional 12,000 people convicted of misdemeanors receive formal probation supervision by counties. The state does not provide any funding for this population.

<sup>57</sup> DOC Research & Evaluation Unit.

<sup>58</sup> DOC Research & Evaluation Unit.

Under 1997 SB 1145, each county in Oregon is responsible for the management of all probation, parole, PPS and Local Control offenders.<sup>59</sup>

Oregon also tracks whether persons on felony supervision commit new offenses, called recidivism. Oregon defines recidivism as conviction for a new felony offense within three years of starting supervision. In Oregon, approximately 69 percent of those on supervision do not recidivate.

### **History<sup>60</sup>**

In 1976, the Governor's Task Force on Corrections proposed a new system of community-based corrections based on a Minnesota model. It recommended legislation creating a partnership between the state and the counties to provide supervision and sanctioning of offenders. Based on this recommendation, the 1977 Legislature passed the Community Corrections Act. The act funded existing community programs and developed alternatives to prison incarceration targeting Class C felony offenders. The act also gave counties the option of managing all, part, or none of the services for offenders under supervision.

The original Community Corrections Act has been the subject of many debates over its 23-year history. A variety of changes have been proposed, ranging from abolishing the act to mandating county participation. The most recent reform occurred in the 1995 legislative session with the passage of SB 1145. SB 1145 allows each county to design and deliver a continuum of sanctions and services to fit community needs, using state funding. Locally appointed supervisory authorities control offenders serving SB 1145 sentences through incarceration and community sanction alternatives. The hallmarks of SB 1145 are:

- The counties, in partnership with the state, provide incarceration, supervision, sanctions and services for offenders with felony sentences of 12 months or less and those on felony probation, parole or PPS.
- State funds are allocated for projects to construct, renovate, acquire or remodel local correctional facilities. The new beds are reserved for offenders who will remain in the community rather than being sentenced or returned to Department of Corrections prisons.
- Local public safety coordinating councils are formed in each county to develop and recommend plans for use of state resources to serve adult offenders and to serve as planning and implementation forums for the coordination of local criminal justice policies.

Unlike other responsibilities shifted from state to local jurisdictions, the state has generally increased financial support to the community corrections program. In addition, the Governor has appointed a statewide advisory body to recommend policy changes to the Department of Corrections.

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<sup>59</sup> ORS 423.549.

<sup>60</sup> Department of Corrections. See, <http://www.doc.state.or.us>.

## **Community Corrections Policy and Practice**

The guiding policy of community corrections practice is to hold the offender accountable for his or her criminal behavior while protecting the community from future crimes. Community corrections maintains responsibility for supervising those offenders under its control, sanctioning non-compliant behavior and providing services to effect behavioral change. Sanctions developed by local community corrections may include electronic monitoring, community work crews, day reporting centers, residential work centers and intensive supervision programs that help the probation/parole officer hold the offender accountable for his or her behavior. Development of other services such as alcohol and drug treatment, sex offender treatment, cognitive programs, education, anger management, batterer's intervention treatment, employment and mental health services to meet the requirements of the court or Board of Parole and Post-Prison Supervision (Parole Board) are also the responsibility of community corrections.

Probation and parole officers concentrate their greatest efforts on the 21 percent of offenders considered to be at high risk for reoffending. Typically, these offenders have served prior prison terms, have four or more previous felony convictions and often have serious substance abuse problems that contribute to their criminal behavior. Offenders considered the highest risk are given the greatest amount of attention, especially if their behavior and compliance with the orders of the court or Parole Board is less than desired.

Contact with a probation and parole officer may include home visits, office visits, employment checks and checks with other agencies, including law enforcement and social service agencies. Contact is progressively less frequent as risk decreases. Each offender is subject to an array of sanctions and services to help hold him or her accountable while reducing the likelihood that he or she will commit more crimes.

Additionally, offenders are subject to searches, unannounced home visits, random urine testing for drug use and polygraph testing to monitor compliance with conditions of supervision.

In addition to the various sanctions and services available, the probation or parole officer can respond quickly to violators through the use of structured sanctions. The structured sanctions system allows the officer to hold the offender accountable for violations in a consistent manner through imposition of a swift sanction commensurate with that behavior through an administrative – rather than judicial -- process. Offenders may be sanctioned by time in the county jail, ordered to complete a sanction program or in limited instances, be ordered to return to prison.

In October 2000, 51 percent of those on community corrections supervision were considered low to medium risk and 21 percent were considered high-risk offenders. Approximately 28 percent were unclassified or limited risk offenders.<sup>61</sup>

Each county determines the array of sanctions and services that best meet the needs of its offender population. This discretion results in a variety of program availability from county to county. The type of programs offered in Oregon along with the number of treatment slots within the state include:<sup>62</sup>

- **Outpatient and Residential Substance Abuse Treatment** - Group and/or individual treatment to address alcohol and drug issues (2,321 treatment slots). Some treatment may be very intensive, meeting on a daily basis in a residential setting and lasting from 30 to 180 days. Other treatment is conducted outside the facility on a weekly basis.
- **Drug Court** – Court-supervised diversion that includes chemical dependency programming and regular appearance before the referring court (1,295 treatment slots).
- **Mental Health Treatment** - Includes general counseling, evaluations, services for mentally and emotionally disturbed individuals and other seriously mentally ill offenders (788 treatment slots).
- **Anger Management** - A program delivered in a group setting that teaches methods to control anger productively (140 treatment slots).
- **Cognitive Restructuring** - A program that addresses flaws in how an offender thinks to assist in interrupting criminal thinking patterns (358 treatment slots).
- **Domestic Violence** - Supervision and treatment of offenders to address battering behavior through a deferred sentencing program (1,190 treatment slots).
- **Sex Offender Treatment** - Group and individual treatment, often in relapse prevention, to assist in providing behavior control to sex offenders (1,405 treatment slots). Treatment is generally long in duration.
- **Employment** - Assist offenders in obtaining and keeping jobs (325 slots).
- **Education** - Assist offenders in obtaining basic education or GED (255 slots).
- **Crisis and Transition Housing** - Individual and group housing primarily for parolees released from prison or temporarily experiencing instability in living arrangements (205 beds).
- **Transition Services** - Pre-release services to connect the offender with housing, treatment, employment and other services before release from prison to reduce the likelihood of failure.

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<sup>61</sup> DOC Research & Evaluation Unit. October 2000.

<sup>62</sup> Department of Corrections. See, <http://www.doc.state.or.us>.

## **Gaps in Service**

Probation and parole officers supervise those on both felony and misdemeanor probation and felons exiting our prisons under parole or post prison supervision. A combination of programming, supervision, and sanctions are used to protect the public and direct the offender away from criminal activities. The ability to supervise effectively is directly related to the caseload of each officer, program availability and the ability to impose swift sanctions commensurate with the offending behavior. The following gaps in programs and resources have been identified as hindering the ability to effect positive and long-lasting change.

### **Programs and Resources**

- A paucity of service options for mentally ill persons results in their over-representation within the criminal justice system and creates serious challenges for community corrections.
- A severe lack of viable housing options for offenders released from state prisons and county jails creates a climate in which positive behavioral change is extremely difficult. This is particularly true for mentally ill offenders, female offenders with children, sex offenders and offenders needing drug- and alcohol-free housing.
- An absence of sex offender treatment in prison and lack of community-based residential treatment upon release.
- A need for improved coordination of case management activities and resource sharing within the criminal justice system and with the entire spectrum of social service agencies.
- The need for increased treatment, programming and sanctioning resources sufficient to allow on-demand referral and placement options by probation and parole officers.
- The need for enhanced resources and improved coordination for families with members accessing services in multiple systems (e.g. SCF, community corrections and juvenile departments) are needed to address multi-generational criminogenic factors.
- Additional funding for supervision of misdemeanants. This population has increased by over 69 percent within the last three years.

### **Attitudes and Belief Systems**

While community corrections programs are administered at the county level, each county decides whether to offer programs designed and implemented by county personnel, or whether to contract with outside treatment providers. Collaboration and coordination efforts between community corrections and outside agencies vary from county to county. In counties where communication and coordination is not optimal, several issues have emerged as contributing factors to the deterioration of these relationships and include:

- Conflicting opinions between treatment providers and probation officers regarding confidentiality of treatment information. Community corrections wants access to treatment information while providers feel obligated to uphold patient confidentiality unless the client consents to disclosure.
- Ingrained and conflicting stereotypes among some treatment staff and community corrections officers. Summarized in its extreme, treatment professionals only enable criminal activity without accountability while community corrections officers only are interested in incarcerating offenders without regard to resolving behavior that underlies crimes.
- Varying support for treatment among community corrections staff.
- Limited understanding of effective treatment strategies.
- Limited availability of local sanctions to enforce offender accountability.

## **ALTERNATIVES TO THE USE OF JAIL AND PRISON**

This section explores the use of programs that serve as alternatives to incarceration in both pre-trial and post adjudication settings and includes a general listing of community corrections programs.

### **Pre-Trial Alternatives to Incarceration**

The information contained in this section comes from a recent survey completed of jail managers and from an interim work group reviewing pre-trial practices. The jail survey revealed that approximately 21,000 individuals were released from county jails due to overcrowding in 1999. These releases were based on formal population limits established by federal court order or county ordinance, or informal limits.

Releases due to overcrowding are referred to as "matrix releases" and can include releases of individuals awaiting adjudication, sentenced offenders or people serving sanctions for violating community supervision conditions. Individuals released due to overcrowding are not required to post bail and do not sign release agreements specifying when they must return to court. Although there is no reliable data on the number of individuals that are "matrix released" and fail to return for future court appearances, in Lane County that figure has reached as high as 84 percent. This differs significantly from the failure to appear rate for those released under release agreements with the court, the majority of whom do return to court at the time of their next appearance.

The Pre-Trial work group is currently gathering data from a survey that will include the following:

- Who performs pre-trial services in each county;
- What kind of services are offered;
- The amount of funding necessary to insure that pre-trial detainees are interviewed for pre-trial release in a timely manner.

Upon completion of the, the work group will make recommendations on who should administer pre-trial services and what additional resources are necessary. Pre-trial release decisions can also be aided by the use of data warehouse information which, if available, would allow a comparison of the performance of offenders with similar variables such as criminal history, pending charge and different types of pre-trial supervision.

### **Post Adjudication Alternatives to Incarceration<sup>63</sup>**

At the time of sentencing, an adjudicated felon may be placed on probation or sentenced to a term of imprisonment followed by a term of post-prison supervision (PPS) to be served in the community. For those receiving

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<sup>63</sup> Department of Corrections. See, <http://www.doc.state.or.us>.

probationary sentences, judicial decisions must be made on imposing jail sentences that may or may not be reduced depending on the local population or whether to allow the offender to remain in the community while serving the sentence under alternative programs. While alternatives to incarceration will vary from county to county, the programs below serve as an alternative to in-custody jail sentences. When an alternative sentence is given, it is often coupled with the requirement that the offender complete programming addressing his or her particular treatment needs.

The use of alternative sentences is determined on a case-by-case basis and reflects both policy decisions on the use of limited jail space, as well as how best to treat the offender while maintaining public safety. Those in programs may reflect a mix of individuals receiving alternative sentences as well as offenders serving sanctions for probation/parole and PPS violations or revocations. The following programs are administered by community corrections.

- **Work Center-** Houses offenders in a structured setting, allowing them to leave the premises for work or other approved activities such as drug treatment. The program provides control of offenders who are required to pay victim restitution and other costs from wages they earn while working in the community.
- **Electronic Monitoring** - Offender spends most of the time at home with a small transmitter attached to wrist or ankle. A very specific schedule is required and a computer alerts officers whenever the offender is not where they are supposed to be.
- **House Arrest** - Offender spends most of the time at home without electronic monitoring. A specific schedule is required and verification occurs by telephone.
- **Day Reporting** - Requires offender to report to a central location every day where they file a written daily schedule showing how each hour of the day will be spent - at work, in treatment and so forth. The offender must obey a curfew, perform community work service and submit to random drug testing. Day reporting often includes programs such as alcohol/drug groups, employment readiness and education.
- **Intensive & Special Supervision** - Offender may be seen up to five times per week, be on curfew, have frequent employment checks, submit to drug testing and be subject to unannounced visits at home by probation officer.
- **Community Service** - Offenders are assigned to work for government or private nonprofit agencies - some chop wood, clear trails, weed or maintain parks, paint buildings, collect roadside trash or other types of manual labor.
- **Community Work Crew** - Similar to community service, but offenders work in supervised crews.

## **Future Alternative to the Use of Jail & Prison Facilities**

### **Integrated Family and Drug Courts**

In 1992, Oregon's Future of the Courts Committee developed a vision for Oregon's court system in the year 2020. The resulting report, *Justice 2020: The New Oregon Trail*, determined that Oregon's courts would be increasingly called upon to resolve the "instability of the American family," and the "epidemic of drugs and alcohol" which "lurk behind many of the cases that have flooded the court dockets and have begun to dominate the entire justice system."<sup>64</sup>

Since that time, the Judicial Department has developed a model for establishing specialized courts that would address these social problems while alleviating the growing burden these cases place on our court system. The Judicial Department anticipates implementing the integrated courts in several stages with full implementation completed by 2006. It is hoped that when these courts are fully functioning, they will combine judicial authority, intensive case management and substance abuse treatment to ensure offender accountability while effectively addressing substance abuse problems. At the present time, nine Oregon counties have developed Drug Courts that handle adult offenders, juvenile offenders or both. Of those nine, six are developing pilot programs that address both substance abuse issues along with mental health problems.<sup>65</sup>

### **Restorative Justice Programs**

Restorative Justice refers to an alternative method of dealing with those who violate laws and community standards. Although there are many forms of restorative justice, at its most basic, restorative justice attempts to bring the victim and the offender together in active involvement in the justice process to determine a mutually agreeable sanction for the offender's behavior through the use of a third-party mediator. The principles within this type of program emphasize the following values:

- The victim and community should have active involvement in the justice process;
- Offenders must be held accountable for their acts;
- Victim-offender dialogue can promote a strong sense of community;
- Cooperative communication and negotiation provide opportunities for empathy development in the offender and a sense of belonging in the community.

While there are many Restorative Justice programs throughout Oregon, those programs are aimed primarily at non-criminal conflicts. At the present time, Josephine County's Pilot Transition Program is the only DOC program for felons

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<sup>64</sup> *Justice 2020: The New Oregon Trail*.

<sup>65</sup> *Ibid.*

leaving Oregon's prisons utilizing principles of restorative justice. Some counties have developed their own programs that work with offenders returning to those communities from local jail facilities.

## **APPROPRIATE USE OF EXISTING PROGRAMS AND FACILITIES AND THE NEED FOR ADDITIONAL OR DIFFERENT PROGRAMS OR FACILITIES**

A determination of whether we are using our jails and prisons appropriately requires us to look at the purpose of those institutions and what we hope to achieve through incarceration. Are there people in our institutions who should not be inside? Are there others who should? Are our communities becoming safer places to live? What kind of justice system are citizens willing to pay for?

While a complete examination of the "appropriate" use of our institutions is beyond the scope of this report, this section examines how Oregon currently uses its institutions and the areas where we fall short of meeting our goals or addressing the evolution of our criminal justice system. In addressing the need for additional or different facilities, this report relies extensively on the collective experience of the administrators of our system who must balance daily population changes with the legal restrictions imposed on capacity. It also incorporates information from a survey of jail managers developed in cooperation with the Oregon State Sheriffs Association.

### **Use Of Oregon Jails and Prisons**

#### **Department of Corrections Policy and Practice<sup>66</sup>**

The Department of Corrections utilizes an innovative approach in corrections policy and practice developed as a response to the growing correctional population. As part of this program, DOC opened three additional facilities in the northern and eastern parts of the state and established a central intake unit to assess each offender for mental and physical health needs, barriers to employment, and indicators of potentially aggressive behavior. Oregon developed an automated assessment program based on one used in Washington and expanded its use to fit Oregon's correctional system. DOC estimates that each assessment is delivered at a cost of less than 20 percent of standard market pricing for similar assessments.

The purpose of this assessment is to identify the behaviors and deficiencies contributing to criminal conduct and to develop a plan that provides the inmate with the skills and treatment necessary for successful re-entry into the community. The goal is to move the offender towards pro-social behavior that emphasizes accountability and public safety.

Correctional programs in the institutions address basic educational deficiencies, alcohol and drug abuse and anti-social cognitive thinking patterns. Programs dealing with successful reintegration into the community are at the forefront of

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<sup>66</sup> Department of Corrections. See, <http://www.doc.state.or.us>.

current correctional efforts as a means to reinforce the effects of correctional programming outside the institution.

## **County Corrections**

The Sheriff of each county runs Oregon's jails.<sup>67</sup> Although the Sheriff of each county maintains responsibility for medical care and mental health of those under their control, each county or county commissioner is subject to legal liability for improper care. Since incarceration in county jails is much shorter than prison incarceration, the ability to offer effective programming that can be completed during that time is lessened. As a necessary consequence, jail programming is offered less frequently than prison programming and is dependent on county population, funding, jail space and need.

Jail managers' responses as to whether additional programs or facilities were necessary were illuminating. The majority of jail managers surveyed expressed the need for additional or different facilities that would deal with the growing number of inmates with mental illness. Additionally, many jail managers wanted additional alcohol and drug treatment programs as well as additional beds in existing programs to assist inmates in their transition back into the community.

SB 1145 has also had an impact on jail populations. When judges, sheriffs and county commissioners were interviewed as part of required performance reviews in the last biennium, the following comments were echoed by many as difficult areas that need to be addressed. Although some were directly related to the implementation of SB 1145, some were more general expressions of recurrent problems faced by county facilities.

- High-risk and "hardened" offenders that would have formerly served their sentences in prison are now serving time in local custody creating management problems. Many respondents expressed a need for a segregation unit to deal with these offenders or the ability to send those offenders back to prison;
- The lack of programming at the county level means that many offenders are now leaving the system without programming ;
- Some counties are unhappy with the funding formula used for reimbursement and believe they should be reimbursed for the actual costs of housing SB 1145 offenders;
- The added responsibility of housing the SB 1145 population reduces custodial options for misdemeanants;
- There is a need for funding for misdemeanors as the county does not contribute county general fund dollars to the adult community corrections programs.

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<sup>67</sup> ORS 169.320.

## **THE NEED FOR ADDITIONAL OR DIFFERENT FACILITIES OR PROGRAMS**

"People with mental disabilities and drug problems end up in jail because there are not enough treatment facilities to house them. The inmates are not properly treated so the problems continue."<sup>68</sup>

"Desperate need for alternatives to housing those with mental health issues."<sup>69</sup>

"There are insufficient funds available for drug and alcohol treatment."<sup>70</sup>

"Probably the most significant need is for housing for offenders released from prison. We are aware of only one so-called halfway house in Oregon that can regularly accept inmates released from prison. This facility is in Lane County and is not available to inmates released to other counties. We believe that unstable housing for newly released inmates significantly reduces inmates' chances of success and places the community at risk for criminal activity. Funds should be provided to allow for the development of halfway houses for all types of offenders throughout the state."<sup>71</sup>

"We need a jail. What we are using was built in 1956 and has no room for females or treatment. Judges know we don't have the bed space so they don't sentence the way they want to."<sup>72</sup>

"We need a program to assist inmates who transition back into the community (job placement, housing, transportation etc.)."<sup>73</sup>

Those who enforce our laws and run our jails deal with a population that changes frequently. In fact, this group may be the first to experience the practical effect of shifting demographics in the offender population. Their experience suggests that our criminal system has several facility and programming needs not being met. While these may occur less frequently in counties with smaller populations, these difficulties have evolved partly as a result of changes in offender population and partly as a result of the actions of other agencies. Changes in funding create a ripple that is felt throughout the criminal justice system.

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<sup>68</sup> Jim Tomlinson on behalf of the Oregon Association Chiefs of Police.

<sup>69</sup> Excerpt from Jail Survey, Curt Gilbert, Yamhill County.

<sup>70</sup> Excerpt from Jail Survey, Greg Brown, Deschutes County.

<sup>71</sup> Oregon Board of Parole and Post Prison Supervision, August 2000.

<sup>72</sup> Excerpt from Jail Survey, Rod Clark, Crook County.

<sup>73</sup> Excerpt from Jail Survey, Dana Wright, Union County.

## Addressing the Mentally Ill Offender

"This facility is becoming more a hospital and psychiatric ward than a jail."<sup>74</sup>

"Perhaps the cruelest impact of the absence of resources beyond our control is the plight of the severely mentally ill offender who must wait many weeks with compelled medication while space opens up in the Oregon State Hospital to handle a 'treat until fit' or aid and assist evaluation."<sup>75</sup>

"Mental health agencies in particular are stretched far too thin to meet the needs of the probation population."<sup>76</sup>

The major findings of a recent mental health survey of the Marion County jail<sup>77</sup> comparing 142 inmates with varying degrees of mental health disorders with a comparison group of 142 randomly selected inmates disclosed that:

- 68 percent had a diagnosis of chronic mental illness;
- 61 percent had a diagnosis of substance abuse;
- 30 percent had a dual diagnosis of both substance abuse and mental illness;
- 77 percent were receiving psychotropic medication;
- Of those receiving medication, 52 percent received anti-depressants; 29 percent received anti-anxiety medications and 25 percent received tranquilizing agents;
- Offenders reported they were refused services for "not being mentally ill enough."
- Many are not able to fill prescriptions because the Oregon Health Plan does not go into effect until 30 days after release;
- During the 30 day period of the study, this group constituted 25-30 percent of the average daily jail population;
- The referred inmates spent an average of four months in jail compared to an average of three months for the control group;
- There was no statistical difference between the referred inmates and the control group regarding violent offenses;

The Mental Health Alignment Work Group was recently created under the Governor's Oregon Strategy for Social Support. The group has been charged with identifying gaps and redundancies in mental health services and recommending how Oregon might align existing programs and policies into a

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<sup>74</sup> Excerpt from Jail Survey, Ron Setelia, Coos County.

<sup>75</sup> Oregon Circuit Judges Association, July 2000.

<sup>76</sup> Ibid.

<sup>77</sup> Hartshorn, Elizabeth, Benitz, Deanine, McKenna, Rick, *Mental Health Needs Assessment*, Prepared for Marion County Sheriff's Office, September 2000.

statewide system for children and adults. In a draft of their final report, the task force recommended changes to improve the current system. The report also addresses the use of juvenile and adult corrections as default mental health treatment systems.

### **Need for Effective Re-Entry Services** <sup>78</sup>

Approximately 300 inmates per month complete their prison sentences and are returned to their communities. The highest failure rate occurs within the first year of release from prison. In keeping with the department's mission of "holding offenders accountable for their actions and reducing the risk of future criminal behavior," the department has embarked on a project to increase the rate of successful offender transition into the community from state institutions and local jails.

In June 1999 a steering committee was formed and charged with providing direction for the project. In keeping with the department's commitment to partnerships, the steering committee comprised DOC employees from each division as well as members from county community corrections offices, the Parole Board, sheriffs, victims' advocates and other state and local agencies with a stake in the outcome of this project.

Historically, most state corrections personnel viewed transition as the period immediately preceding an inmate's release from prison. The steering committee adopted a definition that begins transition immediately upon prison entry and continues beyond release to the community. This redefined transition period prepares the offender for success by mitigating identified risk factors associated with criminal behavior and strengthens community safety by enhanced supervision and services.

This project includes development of a plan to initiate and implement consistent transition-related activities throughout the DOC, Parole Board and other community, state and non-profit organizations. Planning efforts have identified several key issues or components that are necessary for successful transition to occur. The planning effort is a collaborative and coordinated effort by a variety of stakeholders.

The department has several transition programs already in existence within a variety of institutions and counties. These programs provide a solid foundation for developing the plan for this transition project.

The Department of Corrections and Josephine County Community Corrections have designed a pilot project that combines community justice principles with prison release. The project, Josephine County Community Justice Pilot Program, is scheduled to operate for a 12-month period between March 2000 and

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<sup>78</sup> Department of Corrections, <http://www.doc.state.or.us>.

February 2001. An evaluation of the project will be completed in April 2001 to determine the program's effectiveness. To qualify for participation in the project, inmates must be within 90 days of prison release, be scheduled to return to Josephine County upon release and be classified as minimum security risk offenders. Inmates meeting these criteria will be transferred to Santiam Correctional Institution to participate in the project. All inmates transferred to the program are housed in the same dormitory and are assigned the same institution counselor and parole officer.

Participants in the project are referred for basic programming such as cognitive skills, alcohol and drug treatment and work programs. A nine-hour core of community justice classes, victim empathy, communication and family relationships and a process group supplements the standard programs. In addition to programming, each inmate meets with the officer who will be supervising them in the community to complete a viable release plan.

Upon release from prison, inmates in the program spend the first 90 days under strict supervision in the community. In addition to any other conditions of supervision or programming, the offenders are required to attend and complete a victim empathy class and victims impact panel. Offenders are transferred to a general supervision caseload at the end of the 90-day period.

### **Meeting Identified Substance Abuse Treatment & Maintenance Needs**

There is a well-documented connection between criminal behavior and substance abuse. There is additional evidence that substance abuse treatment programs, both alone and in combination with other programs, (particularly cognitive skill building programs) produce positive changes and reduce future criminal activity. Effective reduction of alcohol and drug abuse requires a comprehensive process that encompasses prevention, treatment and maintenance. At the present time, Oregon does not have enough drug and alcohol beds and treatment slots or alcohol- and drug-free housing for offenders in the treatment and maintenance phases of these programs.

Currently, the Office of Alcohol and Drug Abuse Programs (OADAP) estimates that there are approximately 17,199 treatment slots available to both criminal justice clients (excluding state prisoners) and the general public. The estimated need (the number of individuals with identified problems) for such programs is calculated to be approximately 376,536 in the state of Oregon<sup>79</sup> (8.8% of the population of 3,316,154). The demand (those projected to utilize such programs) for services is estimated to be approximately 27,000. These numbers do not differentiate between the general population and the criminal offender population, which is generally believed to have higher rate of substance abuse problems than the general public. OADAP estimates that 80 percent of corrections inmates have addiction issues. In particular, utilization of the Oregon Health Plan

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<sup>79</sup> Feyerherm, William DR., 1999 Oregon Household Needs Survey, Prepared for OADAP.

covering treatment is often difficult if not impossible to obtain even after incarceration for relatively short time periods.

Offenders transitioning from state and county correctional facilities require a continuum of services for follow up treatment in the community that builds on the particular treatment program completed at the institution. Presently, few communities are able to provide the range of services needed to effect treatment continuity. As a result, offenders are sometimes placed in treatment that inadequately supports prior treatment and which can be, in some instances, in conflict with previous efforts.

Of great concern to those working with offenders is the growing unmet need for integrated treatment approaches for co-occurring substance abuse and mental health disorders.

## **METHODS OF ASSESSING THE EFFECTIVENESS OF CORRECTIONAL PROGRAMS, DEVICES AND SANCTIONS IN REDUCING & DETERRING FUTURE CRIMINAL CONDUCT**

This section examines the methods currently used to assess the effectiveness of correctional programming on reducing future criminal conduct in the offender both at the state and county level. It provides information on the recidivism rates of offenders on probation, parole and PPS as well as information on new crimes committed by those who recidivate. It also examines the results of those findings and in the absence of state findings, presents significant data from other jurisdictions. In Oregon, DOC administers prison programming. While each individual county administers community corrections programs, DOC maintains responsibility for a statewide evaluation and information system to monitor the effectiveness of the services provided.<sup>80</sup>

HB 2229 was enacted by the Legislature in 1997. The law gave specific direction to certain state agencies to support evaluation of the effectiveness of correctional programs based on a program's ability to reduce future criminal conduct:

- The Criminal Justice Commission was directed to make recommendations regarding methods of assessing the effectiveness of juvenile and adult correctional programs and the effect of devices and sanctions in reducing future criminal conduct by juvenile and adult offenders.
- The State Police Criminal Justice Information Standards (CJIS) program must ensure that in developing new information systems, state criminal justice agencies can retrieve data to support evaluation of criminal justice programs including the ability of programs to reduce future criminal conduct.
- The Oregon Youth Authority (OYA) must require measurable outcomes for service providers based primarily on the reduction of future criminal or antisocial conduct. Parties to these contracts must compile, manage, and exchange data to facilitate this measurement.
- DOC must track offenders and permit analysis of correlations between sanctions, supervision, services and programs and future criminal conduct on a statewide basis. Recipients of grants must participate in data collection and sharing to evaluate the effect of community corrections programs on future criminal conduct.
- OYA and DOC must share data to enable tracking of offenders who later enter the adult system and to assess the effect of juvenile corrections on future criminal conduct.

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<sup>80</sup> ORS 423.555.

## **Outcome Measurement**

Measuring the effectiveness of programs in institutional and community corrections settings presents several unique problems. At the state institutional level, each individual is prescribed a treatment plan shortly after intake. Since the majority of treatment plans include more than one type of program, correlating recidivism with completion of a particular program is extremely difficult. Additionally, since the validity of the data is necessarily dependent on the ability to compare offenders receiving treatment against those not receiving treatment, (the "control group") the likelihood exists that we may not be able to develop statistically adequate control groups by which to evaluate program effectiveness. Our best indicators of performance effectiveness may be the recidivism rates of offenders completing certain "clusters" of programs.

Measuring effectiveness of community corrections programs poses similar difficulties. The majority of offenders on PPS or parole have completed some programming while in prison. Studying the effect of community corrections programming on those offenders will, therefore, have to consider not only the effect of prior treatment, but also the effect of institutionalization. Studies would also have to assess the effect of criminal background on treatment effectiveness, accounting for the different criminal histories of those on probation and those on PPS or parole. Measuring the effectiveness of programming on probationers might address both concerns.

Finally, some experts suggest that measuring the effectiveness of programming may require a necessary broadening of that term beyond recidivism and positive case closures. As inmates meet basic literacy goals and master vocational skills necessary for increased rates of employment, we may need to reconsider that effect on the development of healthy familial relationships and decreased rates of incarceration among the children of offenders.

## **Current Measurements of Effectiveness**

### **Evaluation of Community Corrections Programs: Statewide Standards for Measuring Performance on Community Corrections**

ORS 423.540 directs annual performance reviews as part of each county's compliance with the intergovernmental agreement under ORS 423.550-.560. In assessing compliance, DOC looks at the following factors:

- Whether the required appointments of LPSSC and the Supervisory Authority have been met;
- Whether an approved Community Corrections Plan is on file with DOC;
- Whether a current Community Corrections budget is on file with DOC and funds are being expended consistent with the Community Corrections Plan;
- The range of offender supervision services and sanctions;

- Whether staff training is provided for in the plan and used by the staff;
- Compliance with DOC administrative rules referred to in the Intergovernmental Agreement;
- Outcome measurement;
- Whether assessments and classifications are performed consistent with the Oregon Case Management System (OCMS) and kept current ;
- Local Custody Processes; and
- Data Integrity.

### **The Department of Corrections**

DOC currently uses several standards to measure performance under community corrections programs including recidivism rates, positive case closures, reduction of high risk offenders on abscond status and the percent of restitution and fines collected for victims. The performance goals in these areas are:

- Lowered rates of recidivism
- Increased positive case closures
- Reduction of high risk offenders that abscond
- Increased collection of restitution and compensatory fines

Recidivism is measured by felony convictions within three years following release from prison or within three years from admission to probation. Positive case closures are determined by the number of cases converted to unsupervised probation from active supervision and supervision terminations prior to the maximum allowable expiration date.

The statewide average of 1995-96 rates of recidivism, positive case closures and abscond rates are used as a baseline by which to compare current rates with benchmarks established by Oregon Shines in its goals for 2000 and 2010 where applicable. Gathering and reporting of restitution as an outcome measurement is currently under development.

The baseline standard of offenders convicted of any felony within three years of release on parole or PPS is the statewide average for FY 1995-96 at 30.8 percent. The baseline standard for those admitted to probation during the same time is 22.5 percent. Additional recidivism rates for those on probation, PPS and parole are provided below. The trend in both groups is relatively stable, with performance just above the baseline standard. The figures below represent the most recent recidivism rates among those supervision groups.<sup>81</sup>

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<sup>81</sup> DOC Research & Evaluation Unit.

**Offenders on PPS/Parole (combined)**

- 29.6% combined recidivism rate at 3 years
- 29.3 rate for female offenders
- 30.4 rate for Caucasian
- 37.5 rate for African American
- 16.7 rate for Hispanics
- 38.3 rate for other Non-Whites combined
- 9.1 rate for those convicted of sexual offenses

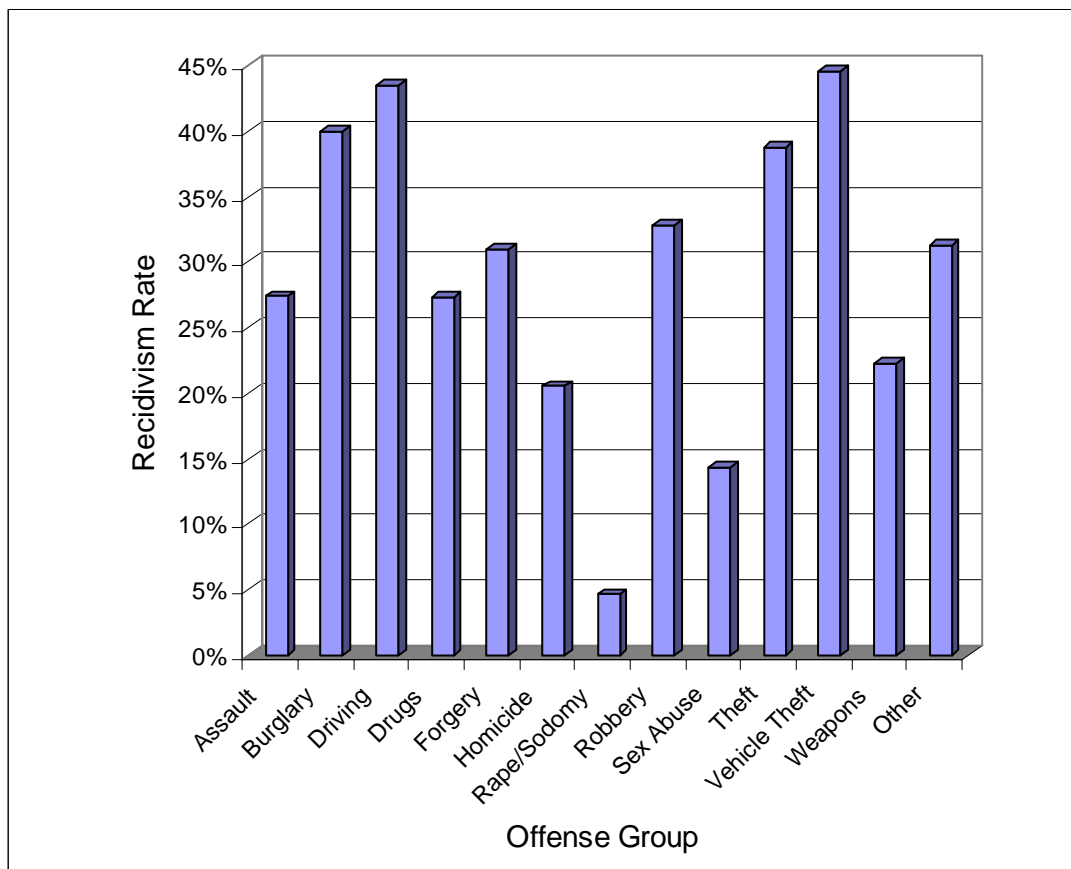
**Offenders on Probation**

- 23.9% combined recidivism rate at 3 years
- 20.8 rate for female offenders
- 24.4 rate for Caucasian
- 31.0 rate for African American men
- 15.8 rate for Hispanics
- 24.0 rate for other Non-Whites combined
- 9.6 rate for sexual offenders

**Who's Reoffending and How**

Certain convictions are associated with a greater likelihood of recidivism. Figure 1 depicts the recidivism rates of those on PPS and parole by type of offense. Additionally, recidivating offenders are more likely to commit certain crimes upon re-offense. Table 18 shows the new offense correlated with prior conviction.

**FIGURE 1: Recidivism Rate and Prior Conviction**



**TABLE 18: Recidivism By New Crime of Conviction**

| Original Offense Group | Number Convicted | Assault % | Burg % | Driving % | Drugs % | Forg % | Homi-Cide % | Rape Sodomy % | Rob. % | Sex Abuse % | Theft % | Veh Theft % | Weapon % | Other % | Total % |
|------------------------|------------------|-----------|--------|-----------|---------|--------|-------------|---------------|--------|-------------|---------|-------------|----------|---------|---------|
| Assault                | 81               | 17.3      | 3.7    | 13.6      | 28.4    | 2.5    | 0.0         | 2.5           | 7.4    | 1.2         | 3.7     | 3.7         | 11.1     | 4.9     | 100     |
| Burglary               | 167              | 3.6       | 25.7   | 4.7       | 27.4    | 3.6    | 0.6         | 0.6           | 2.4    | 0.6         | 7.1     | 11.9        | 3.6      | 8.3     | 100     |
| Driving                | 182              | 1.1       | 1.1    | 66.5      | 12.1    | 0.0    | 0.0         | 0.5           | 0.5    | 0.0         | 1.6     | 2.2         | 5.5      | 8.8     | 100     |
| Drugs                  | 568              | 1.8       | 1.4    | 2.6       | 73.0    | 1.7    | 0.2         | 0.5           | 2.5    | 0.4         | 3.3     | 2.1         | 6.5      | 4.0     | 100     |
| Forgery                | 47               | 0.0       | 0.0    | 2.1       | 34.0    | 19.1   | 0.0         | 0.0           | 2.1    | 2.1         | 10.6    | 8.5         | 2.1      | 19.1    | 100     |
| Homicide               | 9                | 33.3      | 0.0    | 11.1      | 33.3    | 0.0    | 0.0         | 11.1          | 0.0    | 0.0         | 0.0     | 0.0         | 0.0      | 11.1    | 100     |
| Rap/Sod                | 18               | 0.0       | 5.6    | 5.6       | 11.1    | 0.0    | 0.0         | 33.3          | 0.0    | 5.6         | 11.1    | 5.6         | 5.6      | 16.7    | 100     |
| Robbery                | 68               | 2.9       | 5.9    | 7.4       | 32.4    | 1.5    | 2.9         | 0.0           | 17.6   | 0.0         | 5.9     | 10.3        | 2.9      | 10.3    | 100     |
| Sex Abu                | 18               | 0.0       | 11.1   | 22.2      | 16.7    | 11.1   | 0.0         | 5.5           | 0.0    | 22.2        | 5.6     | 0.0         | 5.6      | 0.0     | 100     |
| Theft                  | 234              | 3.0       | 8.1    | 5.6       | 23.1    | 7.7    | 0.0         | 0.9           | 1.3    | 0.0         | 27.8    | 8.1         | 6.4      | 8.1     | 100     |
| Veh Theft              | 158              | 1.9       | 7.0    | 7.6       | 35.4    | 1.9    | 0.6         | 0.0           | 0.6    | 0.6         | 6.3     | 27.2        | 3.2      | 7.6     | 100     |
| Weapons                | 38               | 5.3       | 13.2   | 18.4      | 18.4    | 0.0    | 0.0         | 2.6           | 0.0    | 2.6         | 5.3     | 2.6         | 15.8     | 15.8    | 100     |
| Other                  | 89               | 7.9       | 2.2    | 5.6       | 34.8    | 1.1    | 0.0         | 2.2           | 3.4    | 0.0         | 3.4     | 12.4        | 3.4      | 23.6    | 100     |
| All                    | 1677             | 3.3       | 6.0    | 12.1      | 41.7    | 3.1    | 0.3         | 1.2           | 2.7    | 0.7         | 7.7     | 7.4         | 5.7      | 8.0     | 100     |

**Abscond Status**

The baseline standard with which high-risk offenders on abscond status are compared is the statewide average of high-risk offenders going on abscond status in FY 1995-96 or 15.6 percent. The most recent measurement of performance outcome from the second reporting period of 1999, is 15 percent with a downward trend over the last three biannual reporting periods.

**Positive Case Closures**

The rate of positive case closures is measured by the total number of positive case closures divided by the total case closures during a six-month period. The baseline standard for those on probation calculated by the FY 1995-96 rate is 62.7 percent. The current positive case closure rate for offenders on probation is 61.5 percent. The baseline standard for those on parole/PPS, calculated for FY 1995-96, is 41.8 percent. The current positive case closure rate for offenders on parole/PPS is 55.3 percent.

## Oregon Evaluation Studies

### S.T.O.P.

The S.T.O.P. (Sanction, Treatment, Opportunity, and Progress) Drug Diversion Treatment Program was implemented in Multnomah County in 1991 to deal with the burgeoning drug court caseload and to encourage treatment for those with first offense drug charges. The treatment program involved a multi-phase, multi-aspect, 12-month treatment program utilizing frequent drug testing, use of a single treatment provider to ensure consistency and a strong involvement by the court to enforce attendance in the program.

Results of a study by Michael Finigan<sup>82</sup> tracking this program provide information on the number of arrests and convictions over a two-year period. This study focused on new arrests rather than new convictions as an outcome measurement since adjudication outcomes may be dependent on variables not related to treatment such as plea bargaining, prior warrant issues and failure to appear for a next scheduled court appearance. Rates of arrest and conviction show that program participants and those completing the program both had significantly lower rates of arrests and convictions than those eligible but not receiving treatment.

- S.T.O.P. graduates had 76 percent fewer new arrests than those who were eligible for the program but did not participate over a two year period;
- S.T.O.P. graduates had 80 percent fewer serious felony arrests than those who did not participate in the program over a two year program
- S.T.O.P. graduates had a 74 percent lower conviction rate than those not participating in the program;
- S.T.O.P. graduates had an 85 percent lower drug related arrest rate and a 30 percent lower property crime arrest rate than those not participating in the program;
- S.T.O.P. graduates had a 73 percent lower arrest rate for serious person felonies than non-participants.

Results of the study concluded that for every dollar spent on those in the program, \$2.50 in costs was avoided by the taxpayer. Calculations using a broader scale of avoided costs (including victimization and theft costs) bring the benefit of costs avoided to \$10.00 saved for each dollar spent.

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<sup>82</sup> Finigan, Michael, Ph.D., 1998, January. *An Outcome Program Evaluation of the Multnomah County S.T.O.P. Drug Diversion Program*, Northwest Professional Consortium, West Linn, Oregon. Prepared for Multnomah County Department of Corrections

## DOC Substance Abuse Studies

In a study reviewing the arrest and conviction rates of 781 high-addiction, high-criminality assessed inmates completing Cornerstone, Powder River, Turning Point (both men's and women's programs) and Parole Transition Programs between 1993-1999, the following outcomes were reported:

- A 38-63% reduction in the arrest rate after 2-3 years;
- A 49-78% reduction in the conviction rate after 2-3 years

In a 1990 DOC Study reported by Gary Field in *From the Institution to the Community*, the DOC followed inmates participating in a thorough transition program which included a 3-6 month day-treatment plan prior to release followed by intensive community treatment and supervision. Although the programs in the study differed in terms of design and the group served, each emphasized preparation for community supervision and treatment. Outcomes showed that arrest rates dropped 54 percent and conviction rates dropped by 65 percent in the year following treatment.<sup>83</sup>

### Selected Evaluation Studies Outside Oregon

A recent Florida study compared graduates and non-graduates of drug court intervention programs in two counties during a 30-month follow up period. Within that time 63-86 percent of the non-graduates had been rearrested, while the re-arrest rate for graduates of the program was 26-48 percent.<sup>84</sup>

In a Federal Bureau of Prisons study<sup>85</sup> looking at the effectiveness of residential drug abuse treatment six months after release, those receiving treatment were 73 percent less likely to be rearrested than those receiving no treatment. During the same time period, those receiving treatment were 44 percent less likely to show evidence of post release alcohol and drug use. The residential treatment program in the study provided treatment of up to 1000 hours in a segregated (from the general prison population) treatment community. The program focused on individual responsibility and changing future behavior.<sup>86</sup>

In 1997, The National Opinion Research Center at the University of Chicago conducted a congressionally mandated 5-year study, in conjunction with the Research Triangle Institute.<sup>87</sup> The study compared behaviors and characteristics in equivalent time periods before and after drug and alcohol treatment. The information was gathered from 4,411 subjects across the county and included

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<sup>83</sup> Field, Gary, *From the Institution to the Community*, Corrections Today, October 1998.

<sup>84</sup> Peters, Roger H & Murrin, Mary R., *Effectiveness of Treatment-Based Drug Courts in Reducing Criminal Recidivism, Criminal Justice and Behavior*, 20(1): 72-96, February 2000.

<sup>85</sup> CESAR, Vol. 7, Issue 10, March 9, 1998.

<sup>86</sup> *Triad Drug Treatment Evaluation Six Month Report Executive Summary*, Federal Bureau of Prisons, U.S. Dept. of Justice, February 1998.

<sup>87</sup> NTIES study at <http://www.health.org/nties97/crime.htm>

minorities, pregnant and at-risk women, public housing and welfare recipients, youth and those involved in the criminal justice system. Treatment had lasting benefits with significant reductions in drug and alcohol use reported a full year after treatment. Highlights of the study showed that:

- Arrest rates decreased by 64%;
- Self reported criminal activity declined by an even greater percentage;
- Assaultive behavior declined by 78%;
- The incidence of mental health problems declined by 35%;
- Treatment significantly reduced risky sexual behaviors;

### **Future Outcome Measurement**

DOC has several programs currently being evaluated or with plans for evaluation in the near future. Those currently being evaluated include Deschutes County Pilot Transition Project, Community Alcohol & Drug Treatment Effectiveness, and The Reach-In Pilot Program of Josephine County in conjunction with Oregon State Correctional Institute.

The Oregon Office of Alcohol and Drug Abuse Programs is currently conducting a longitudinal outcome study that will provide information on individuals that have participated and completed treatment. Approximately 50 percent of those participating will have come from probation and parole.

Several counties utilizing various treatment programs are also beginning to look more closely at developing research models that can evaluate program effectiveness given the wide range of variables and the complexity involved in such an evaluation.

## **REDUCING THE RISK OF FUTURE CRIMINAL CONDUCT**

Efforts to increase public safety must necessarily include efforts to prevent criminal behavior in individuals before it begins. Those efforts must address not only pre-natal exposure to substances that affect a child's development, but poor parenting skills that expose children to violence and substance abuse. This section summarizes some of the methods currently aimed at reducing risk as reported in "Oregon FY 2000, Strategy to Control Drugs and Violent Crime."

The Oregon Youth Risk Behavior Study is administered every two years to students between grades 9 and 12. Participation is voluntary. Results of that study show that:

- 28% had used alcohol by age 13;
- 24% were offered drugs in the past year;
- 8% had used methamphetamine one or more times;
- 18% had been sexually abused
- 0.8% had carried a gun onto school property in the last 30 days;

Currently, OADAP has teams assisting over 60 communities in the use of a risk assessment matrix which measures the risks and protective factors in each community to enable the county to develop a county risk profile. Profiles have been established in 36 counties.<sup>88</sup>

The Oregon National Guard, local law enforcement agencies and the Oregon Department of Education (ODE) offer prevention programs. Programs offered by the National Guard include parent-training workshops, mentor programs, Youth Challenge, Guard Adventure and STARBASE. Law enforcement efforts include DARE (Drug Abuse Resistance Education), Gang Resistance Training and using of officers in schools that develop programs to reduce crime and work with at-risk students. The Oregon Department of Education (ODE) administers six curriculum programs, provides teen court models and diversion programs and participates in community involvement and planning.

Additionally, OADAP works in conjunction with ODE and the Oregon Health Division to provide workshops for parents on Preparing For the Drug-Free Years and in teen leadership institute camps. Efforts by the ODE include zero-tolerance activities, community education and direct student services supported by federal grant funds. Under the terms of that grant, a portion of the funds must be used to assist high-risk youth.

Columbia River Correctional Institution works with offenders and their families in the Family Learning Center. The program promotes responsible parenting and attempts to improve an offender's ability to become a positive, functioning member of the family. Since children of offenders are often considered high risk

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<sup>88</sup> *Oregon FY 2000, Strategy to Control Drugs and Violent Crime.*

for many reasons, it is hoped that intervention will decrease that risk and provide offenders with the skills to change negative parenting behaviors. Data is currently being collected to assess the effect of this program on recidivism. Completion is expected within two years.

## APPENDIX 1

### GLOSSARY

**Benchmarks.** Measurements of success used by the Oregon Progress Board to track the state's progress toward specific goals. In the public safety area, the key benchmarks are the reported crime rate (for all types of crimes) and the juvenile arrest rate. Additional benchmarks include reduction of the felony recidivism rate, reduction of students reporting carrying a weapon, increasing the percentage of communities having cooperative policing plans and increasing the percentage of communities having emergency response plans in place.

**Booking.** The processing of an arrested person, usually in a jail. Includes fingerprinting and photographing. An individual may be booked and released back into the community or booked and held in the facility pending a first appearance before the judge or magistrate.

**Community Corrections.** Supervision of those on probation, parole and post-prison supervision in the community. General term for supervision of offenders not in prison or jail. Counties are responsible for community corrections services.

**Community Service.** Work an offender is ordered to perform as part of a criminal sentence.

**Crime.** An act that is punishable by incarceration in jail or prison.

**Crime Rate.** Measures the number of reported crimes relative to population. Provides information on the relative risk of becoming a victim of crime.

**Criminal Justice System.** Generally refers to police, sheriff, jails, community corrections, prisons, courts, prosecutors, and defense attorneys. For purposes of the Criminal Justice Commission, it also includes the juvenile justice system, crime victims and private entities providing services.

**Delinquency.** An act committed by a person less than 18 years of age which, if committed by an adult, would be a crime.

**District Attorney.** An elected state official, charged with determining criminal charges and proving those charges in state court.

**Diversion.** Directing a case away from court by imposing conditions such as treatment or restitution. If the conditions are successfully met, the charges are dismissed. If the diversion conditions are not met, the offender returns to court.

**Electronic Monitoring.** A form of house arrest used to provide supervision of offenders without requiring personal contact.

**Felony.** A crime punishable by incarceration of more than one year and/or the imposition of a fine.

**Incarceration.** A generic term for serving a sentence in a jail or prison.

**Index Crime.** Types of criminal conduct defined by the federal government to allow comparisons of crime among jurisdictions. Index crimes include property offenses (such as theft) and person crimes. The definition of index crimes do not match identically with definition

**Indigent Defense.** Legal counsel appointed by the courts to represent criminal defendants who are determined financially unable to hire a private attorney. Oregon statutes and the federal and Oregon Constitutions mandate such provision of state paid counsel. Indigent defense is administered by the Indigent Defense Services Division of the Office of the State Court Administrator for state court cases and by counties and cities for justice and municipal court cases.

**Jail.** A county incarceration facility used to hold individuals prior to adjudication or offenders serving sentences for conviction of a misdemeanor or felony with less than one year to serve. Also holds offenders who have violated the conditions of community supervision.

**Juvenile Detention Facilities.** County equipped, maintained and staffed facilities suitable for the confinement of juveniles pursuant to juvenile commitment or order.

**Juvenile Justice System.** Public and private agencies that address delinquent acts by minors. Includes state and county courts, detention and corrections facilities, community supervision and treatment providers.

**Mandatory Minimum Sentence.** Sentencing laws requiring judges to impose specific sentences upon conviction for certain crimes. Oregon law requires mandatory prison sentences for certain person felonies, and mandatory jail sentences for certain misdemeanors such as Assaulting a Public Safety Officer or Driving Under the Influence of Intoxicants.

**Matrix Release.** Use of a formula to determine release from jail to meet population caps imposed by policy, ordinance or court order. A combination of factors, including the seriousness of the offense, prior crimes, danger to the

community, time remaining on sentence and likelihood of making future court appearances are considered prior as part of this decision.

**Misdemeanor.** A crime punishable by less than one year incarceration and/or the imposition of a fine or other penalties.

**Oregon State Police.** A state agency providing direct public safety services, state and interstate traffic patrols and law enforcement support services such as medical examiner services, crime lab services, the identification services section, public safety training and the Law Enforcement Data System.

**Parole.** Community supervision following release from prison. Parole was abolished in Oregon in 1989 and replaced with post-prison supervision (PPS). Felons sentenced prior to 1989 are still subject to parole upon release.

**Police Chief.** Individual appointed as the chief law enforcement officer inside city limits by the city manager or city council.

**Police Departments, City.** Responsible for law enforcement inside the city limits.

**Post-Prison Supervision.** Community supervision following release from prison or local control for felony sentences imposed after November 1, 1989. The state Board of Parole and Post-Prison Supervision or a local supervisory authority can set PPS conditions.

**Probation.** Community supervision for offenders not sentenced to prison. Conditions of probation can include a jail sentence, various kinds of treatment, payment of restitution, community service or other required activities. Probation may place limits on certain activities.

**Prison.** A state correctional institution housing felony offenders receiving a sentence of more than one year. Prisons are classified in part, by the level of security provided. The state operates minimum, medium and maximum-security prisons.

**Recidivism.** A measurement of future criminal conduct by the offender with varying meanings. The standard definition used by the Department of Corrections measures recidivism by whether an offender is convicted of a felony within three years of release from incarceration to parole/PPS or admission to probation.

**Restitution.** Payments from the offender to the crime victim to compensate for costs incurred by the victim. Can include counseling costs, medical costs, property damage or other costs related to the offense.

**Revocation.** Action by a judge to sanction an offender for commission of a new crime or for violating conditions of probation, parole or post-prison supervision. Terminates probation, parole or post prison supervision.

**Sanction.** A consequence or punishment for offenders under community supervision. Sanctions can include incarceration, additional fines, community service or the imposition of modified terms of probation, parole or post-prison supervision.

**Sentence.** The legal judgment issued by a judge or magistrate that establishes the punishment for a crime. Components of a sentence can include incarceration, community supervision, restitution, fines and treatment.

**Sentencing Guidelines.** Sentencing laws adopted in Oregon for felonies committed on or after November 1, 1989. The guidelines were designed to end early parole release, increase sentence consistency and prioritize criminal justice resources.

**Sheriff.** Chief executive officer and conservator of the peace elected in each county. The sheriff provides law enforcement services and operates the jail, as well as providing court security and other non-criminal functions. Responsible for law enforcement outside incorporated city limits or by contract with smaller cities. Maintains law enforcement jurisdiction within cities.

**Status Offense.** An act committed by a juvenile that, if committed by an adult, would not constitute a crime. Examples include truancy, running away or curfew violations.

**Truth in Sentencing.** A criminal justice policy to ensure that the time served in prison closely resembles the sentence imposed by the judge. Under sentencing guidelines, a prison sentence can be reduced by a maximum of 20 percent. Completion of boot camp may result in a greater sentence reduction. Offenders sentenced under Measure 11 are not eligible for institutional sentence reductions and serve 100 percent of the sentence.

**Youth Correctional Facility.** Facilities used for the confinement of youthful offenders sentenced to the custody of the Youth Authority. Includes MacLaren Youth Correctional Facility, Hillcrest Youth Correctional Facility, regional youth correctional facilities, accountability camps and work-study camps.

**Youthful Offender.** A person who has been found to be within the jurisdiction of the juvenile court for an act committed by the person the person was at least 13 years of age and under 18 years of age.

## APPENDIX 2

### **AGENCIES & ORGANIZATIONS AFFECTING PUBLIC SAFETY**

Many agencies at all levels of government perform activities that affect public safety, policy and funding. This section attempts to identify those agencies and their general roles. Most state public safety agencies operating in Oregon have headquarters in Salem, and can be contacted by phone. Brief descriptions of agency activities are available in the Oregon Blue Book, published every two years and available from the Oregon Secretary of State or in schools and libraries. Many agencies also have individual websites, accessible through the State of Oregon website at <http://www.state.or.us>. Most federal public safety agencies operating in Oregon have state headquarters in Portland.

#### **FEDERAL AGENCIES**

**U.S. Department of Justice (U.S. Attorney – Criminal Division).**<sup>89</sup> The United States Attorneys, working under the direction of the Attorney General, conduct most of the trial work in which the United States is a party, including both civil and criminal trials. Federal prosecutors are far outnumbered by state prosecutors. In Oregon, the U.S. Attorney's Office has 32 prosecutors in three offices. By contrast, there are more than 300 deputy district attorneys in Oregon's 36 counties. Less than one percent of the criminal offenses prosecuted in Oregon are handled by federal prosecutors.

**Federal Bureau of Investigation (FBI).**<sup>90</sup> The FBI's mission is to uphold the law through the investigation of violations of federal criminal law; to protect the United States from foreign intelligence and terrorist activities; to provide leadership and law enforcement assistance to federal, state, local and international agencies; and to perform these responsibilities in a manner that is responsive to the needs of the public and is faithful to the Constitution of the United States.

The FBI is the principal investigative arm of the U.S. Department of Justice. Information obtained through a FBI investigation is presented to the appropriate U.S. Attorney or DOJ official, who decides if prosecution, or other action, is warranted. The Bureau also is authorized to investigate matters where prosecution is not contemplated such as background security checks on nominees for sensitive government positions. The FBI also is authorized to provide other law enforcement agencies with cooperative services, such as fingerprint identification, laboratory examinations, police training, Uniform Crime Reporting (UCR) and the National Crime Information Center (NCIC).

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<sup>89</sup> US Attorney's website at <http://www.usdoj.gov/criminal/criminal-home>

<sup>90</sup> FBI website at <http://www.fbi.gov/over/mission>

**United States Marshal's Service.**<sup>91</sup> The mission of the United States Marshals Service is to protect the Federal courts and ensure the effective operation of the judicial system. In meeting this mission, the Marshals Service is responsible for providing protection for the federal judiciary, transporting federal prisoners, protecting federal witnesses and managing assets seized from criminal enterprises. The Marshals Service arrests 55 percent of all federal fugitives. This number is more than all other federal agencies combined.

**Drug Enforcement Administration (DEA).**<sup>92</sup> The mission of the Drug Enforcement Administration is to enforce federal controlled substances laws and regulations and to bring to the criminal and civil justice system of the United States or any other competent jurisdiction, those organizations, and principal members of organizations, involved in the growing, manufacture or distribution of controlled substances appearing in or destined for illicit traffic in the United States. The DEA is also responsible for recommending and supporting non-enforcement programs aimed at reducing the availability of illicit controlled substances on the domestic and international markets. DEA is the lead agency responsible for the development of overall Federal drug enforcement strategy, programs, planning, and evaluation. On a local level, in addition to many other duties, DEA implements the Domestic Cannabis Eradication/Suppression Program and assists the regional drug task forces.

**Immigration and Naturalization Service (INS).**<sup>93</sup> The Immigration and Naturalization Service reports to the Attorney General. Their operations include both enforcement and examination programs. The purpose and mission of the Immigration and Naturalization Service is divided into four major areas of responsibility.

- Facilitating the entry of person legally admissible as visitors or as immigrants to the United States;
- Granting benefits under the Immigration and Nationality Act, as amended, including providing assistance to those seeking permanent resident status or naturalization;
- Preventing unlawful entry, employment, or receipt of benefits by those who are not entitled to the; and
- Apprehending or removing those aliens who enter or remain illegally in the United States and/or whose stay is not in the public interest.

**The Bureau of Alcohol, Tobacco and Firearms (ATF).**<sup>94</sup> The Bureau of Alcohol, Tobacco and Firearms has unique responsibilities dedicated to reducing violent crime, collecting revenue, and protecting the public. ATF enforces

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<sup>91</sup> US Marshals' website at <http://www.usdoj.gov/marshals>

<sup>92</sup> DEA website at <http://www.usdoj.gov/dea/agency/mission>

<sup>93</sup> INS website at <http://www.ins.usdoj.gov/insideins/245>

<sup>94</sup> ATF website at <http://www.atf.treas.gov/about/mission>

Federal laws and regulation relating to alcohol, tobacco, firearms, explosives and arson by working to:

- Suppress and prevent crime and violence through enforcement, regulation and community outreach;
- Ensure fair and proper revenue collection;
- Provide fair and effective industry regulation;
- Support and assist Federal, State, local and international law enforcement; and
- Provide innovative training programs in support of criminal and regulatory enforcement functions.

**United States Customs Service.**<sup>95</sup> The mission of the United States Customs Service is to ensure that all goods and persons entering and exiting the United States do so in accordance with all United States laws and regulations. The Customs Service works on a local level through an investigation field office. These Special Agent in Charge (SAC) Offices are responsible for administration and management of all enforcement activities within the geographic boundaries of the Office.

**United States Secret Service.**<sup>96</sup> The primary duty of the Secret Service is to protect the President of the United States, along with a host of other dignitaries. This is done through a combined effort of the Service with assistance from military, federal, state, county and local law enforcement organizations. In addition to their duties relating to dignitary protection, the Secret Service is responsible for enforcing laws relating to counterfeiting of United States currency and other financial crimes.

**Other Agencies.** The federal government also plays an increasing role in criminal justice research and funding. **The National Institute of Justice** and its sub-agencies (Bureau of Justice Assistance, Bureau of Justice Statistics and Office of Juvenile Justice and Delinquency Prevention) provide research and funding assistance to state and local agencies. Other federal agencies also have crime-related funding and research. Some of the ongoing or temporary funding streams include:

- Byrne Memorial Grants- money to address drug and violent crime issues pursuant to a state strategy.
- COPS The federal government pays a portion of the salary of newly-hired police officers. The hiring agency assumes full responsibility for the salary and must continue the position after the three-year supplement period.
- Juvenile Accountability Incentive Block Grant- grants established in 1997 to fund arrest, prosecution, detention and other non-prevention juvenile justice activities.

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<sup>95</sup> Customs Service website at <http://www.customs.treas.gov/about/mission>

<sup>96</sup> Secret Service website at <http://www.ustreas.gov/usss/protection/special-agent>

- Local Law Enforcement Block Grants- funds to state and local law enforcement to reduce crime and improve public safety
- National Criminal History Improvement Project- funds to improve criminal history data.
- Violence Against Women Act grants- funds to improve apprehension, prosecution and adjudication of offenders and improve victim services.
- Victims of Crime Act grants, funds to provide compensation to victims and fund victim assistance services.
- Victims of Crime Act grants- funds to provide compensation to victims and fund victim assistance services.
- State Criminal Alien Assistance Program- The State and 13 counties received almost \$8 million in federal FY 1998 funds to partly reimburse expenses of housing undocumented criminal aliens.

## **STATE AGENCIES & DEPARTMENTS**

**Alcohol and Drug Abuse Programs, Office of.** The Office of Alcohol and Drug Abuse Programs (OADAP) is charged with assisting Oregon residents in preventing or overcoming the harmful effects of alcohol and drug abuse. OADAP is also responsible for supporting other state agencies in their efforts to serve individuals affected by alcohol and drug use. OADAP sustains and regulates over 200 publicly funded programs. These programs together with private programs approved by the office provide over 700 alcohol and drug abuse related services in the State of Oregon. These services include emergency detoxification, intensive residential treatment, conventional residential treatment, intensive outpatient treatment, (including methadone maintenance) and early intervention programs serving over 100,000 Oregonians each biennium. OADAP also collects data on clients at admission and discharge from treatment through an ongoing data system.

**Attorney General, Office of The.** The Attorney General is a statewide elected official who heads the Department of Justice. The department's criminal justice functions are listed in Justice, Department of.

**Commission on Children and Families, Oregon.** Establishes policies for services to children and families. OCCF conducts comprehensive planning, works with county planning bodies and administers several prevention-related programs.

**Children's Trust Fund, Board of Trustees.** Administers trust funds for programs to prevent child abuse.

**Corrections, Department of.** The mission of the Oregon Department of Corrections (DOC) is to promote public safety by holding offenders accountable for their actions, and reducing the risk of future criminal behavior." The department has custody of offenders sentenced to prison for more than 12

months. Oregon currently houses offenders in 13 state prisons. Some inmates are housed in out-of-state rental beds to prevent overcrowding. Due to a forecast that predicts the prison population will increase by approximately 33 percent by 2006, the state has plans to build four new facilities and expand several existing facilities by 2009.

DOC provides administrative oversight and funding for the community corrections activities of Oregon's 36 counties, but as of January 1, 1997, Oregon counties manage their own offenders who are subject to jail, parole, post-prison supervision and/or probation. The department continues to provide interstate compact administration and jail inspections. The department also provides central information and data services regarding felons statewide and is responsible for evaluating the performance of community corrections. The total legislatively approved budget for the 1997-1999 Biennium was \$728.2 million.

The Oregon Department of Corrections provides inmates with the cognitive, behavioral and job skills they need to become productive citizens. Oregon has one of the lowest recidivism rates in the nation: more than two-thirds of its former offenders remain out of prison for more than three years.<sup>97</sup>

Formerly a division of the Human Resources Department, DOC became a separate department in 1987 and operates under ORS chapter 423.

**Criminal Justice Commission.** A seven-member policy and planning body charged with providing a forum to increase the efficiency and effectiveness of state and local criminal justice systems and developing a comprehensive, long-range public safety plan. The Commission provides a policy and planning forum, develops state criminal justice policy and long-range plans, and administers high-risk juvenile crime prevention grants. It acts as statistical clearinghouse, analyzes felony-sentencing data and prepares fiscal impact estimates for crime-related legislation. The Commission also adopts changes to sentencing guidelines rules.

**Dispute Resolution Commission.** A seven-member commission appointed by the Governor. Provides assistance and some funding to operate dispute resolution programs in communities. Dispute resolution programs include victim-offender mediation programs and conflict resolution programs in schools.

**District Attorney, Office of the.** The Oregon Constitution establishes the role of Oregon's district attorneys as law officers of the State, and of the counties within their districts. District attorneys are elected officials in each county who serve four-year terms, and their actual duties are established by the legislature.

The main functions of the district attorney are the prosecution of crimes, non-criminal violations, juvenile delinquency acts and the enforcement of child

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<sup>97</sup> For further information see, <http://www.doc.state.or.us>

support orders. Responsibilities include appearing in all courts in their respective counties. District attorneys also advise police officers, review or write search warrant affidavits and applications for court orders, coordinate grand jury proceedings, advise grand jurors and present indictments to them, issue subpoenas in criminal actions, initiate contempt actions to enforce court orders and appearance of witnesses, appear in expungement proceedings and proceedings to reinstate gun possession rights of convicted felons, and appear at “second look” sentencing and dispositional hearings. District attorneys make criminal charging decisions, appear at motion hearings, represent the state in jury and court trials, and negotiate disposition of cases through plea agreements. In addition, district attorneys and medical examiners investigate all unattended deaths in their respective jurisdictions.

District attorneys are also involved in broader criminal justice issues. For example, they are members and participants on local public safety coordinating councils and local multi-disciplinary child abuse teams. They also serve their communities in various participation and leadership roles on boards, committees, and commissions relating to drug and alcohol abuse, family violence, juvenile delinquency, community education and prevention programs, teen pregnancy programs, tobacco prevention coalitions, and drug court programs.

District attorneys have a multitude of duties outside the criminal justice system. Some examples include bringing actions to enjoin a nuisance; to establish paternity; to forfeit property; to collect some costs of local government. They also represent the state in juvenile dependency actions, they advise county officers and employees, and they prepare ballot titles for initiative measures.

The overall district attorney budget for all services for fiscal year 1997-98 totaled \$46,886,613. Salaries for district attorneys are paid primarily with state funding, but most costs associated with the operation of district attorneys’ offices are paid with county funds.

**Education, Department of.** The State Board of Education adopts standards for public schools and as such, is a policymaking body. The Superintendent of Public Instruction and his deputies exercise a general administrative authority, including provision of technical assistance to school officers and public schools and to the Board. The Office of Student Services manages programs involving drug and alcohol prevention, alternative education, teen parents, counseling and peer mediation and health education grants. The Department manages the juvenile corrections education programs at Hillcrest and MacLaren and four juvenile work-study camps,<sup>98</sup> and provides personnel and business support services to those programs.

**Environmental Quality, Department of.** The Oregon Department of Environmental Quality (DEQ) is a regulatory agency responsible for protecting

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<sup>98</sup> See, <http://www.ode.state.or.us>.

the quality of Oregon's environment. As part of its duties, DEQ administers the Illegal Drug Lab Clean-up Fund with revenue generated by monies received from civil drug forfeiture proceedings.<sup>99</sup>

**Governor's Office.** Provides policy leadership, submits state agency budget requests to Legislature for funding.

**Higher Education, Oregon State System of.** The Oregon State Board of Higher Education, the statutory governing board of the seven-campus Oregon State System of Higher Education, is composed of 11 members appointed by the Governor and confirmed by the Oregon State Senate. Provides teaching and research in criminology, justice administration, violence prevention and other crime-related fields.

**Human Resources, Department of.**

- Office of Alcohol and Drug Abuse Programs-see separate listing.
- Office of Services to Children and Families - provides services to abused and neglected children and their families.
- Health Division - administers tobacco prevention programs and medical marijuana registry system.
- Mental Health and Developmental Disability Services Division. Operates institutions for mentally ill criminal offenders and provides treatment services in corrections facilities.
- Senior and Disabled Services Division. Elder Abuse/Protective Services.

**Judicial Department.**

- Office of the State Court Administrator The State Court Administrator (SCA) is a statutory position created by the 1971 legislature. The SCA supports the Chief Justice of the Oregon Supreme Court in exercising administrative authority and supervision over Oregon's trial and appellate courts, and in establishing statewide administrative policies and procedures. The SCA supervises the Judicial Department's central budget, personnel, legal, audit, education, court research and services programs, and information technology resources. In addition, the SCA has responsibility for the management of the appellate court records office, court publications, the Supreme Court Library, interpreter and shorthand reporter certification programs, the state Citizen Review Board program and the state indigent defense program.
- State Court System During the 1999-2001 biennium, the Oregon Court system was comprised of the seven member Oregon Supreme Court, ten member Oregon Court of Appeals, the Oregon Tax Court and 163 circuit court judges. Each member of the Supreme Court, Court of Appeals, and Tax Court is elected statewide to a six year term. Each member of the Circuit

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<sup>99</sup> For further information see, <http://www.deq.state.or.us>.

Courts is elected in the district in which the judge serves to a six-year term. The Chief Justice of the Supreme Court is charged by statute as being the chief administrative officer of the state court system.

- Citizen Review Boards Citizen Review Boards (CRB) were created by the 1985 legislature to conduct six-month reviews of the case plans for children in substitute care. The CRB program is managed by Juvenile Court Programs Division of the Office of the State Court Administrator. The Division recruits and trains citizen volunteers across Oregon to review case plans of all children and youth in out-of-home care in the custody of the State Office for Services to Children and Families (SCF) and the Oregon Youth Authority (OYA). The program has statutory responsibility to make recommendations on services, policies, procedures and laws impacting the substitute care system.
- Indigent Defense Services The Indigent Defense Services Division of the Office of the State Court Administrator is responsible for the management and administration of the Indigent Defense Program, Indigent Defense Account, and the Indigence Verification Program. (ORS 151.430 - ORS 151.595).

Oregon's Indigent Defense Program is required to provide counsel to represent persons in the state courts at public expense for certain types of court proceedings; e.g., persons who are determined financially unable to hire an attorney who are charged with crimes or who have been brought before the court for civil commitment, abuse and neglect (parents and children), probation violation, juvenile delinquency, and post-conviction relief and habeas corpus proceedings and appeals. Compensation for the attorneys and other service providers is paid from the State Court Indigent Defense Account. (ORS 151.465).

In addition to managing the administration of the Indigent Defense Account, the Indigent Defense Services Division is responsible for the management of the Indigence Verification Program. This program is charged with verifying the financial status of persons who are applying for a court-appointed attorney. The verification staff checks the information provided by applicants for accuracy and makes a recommendation to the court whether the person should receive counsel at state-expense.

The Indigent Defense Services Division is responsible for \$107 million expended during the 1997-99 biennium for indigent defense in the state. During FY 1998, the Indigent Defense Program provided representation in 147,037 cases statewide.<sup>100</sup>

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<sup>100</sup> 83,772 cases of the total 147,037 indigent defense cases for FY 1998 were criminal cases. Oregon Judicial Department.

**Justice, Department of.** The Oregon Department of Justice (DOJ) is responsible for general counsel and supervision of all civil actions and legal proceedings in which the state is a party or has an interest. The Department, through the Attorney General, also has full charge and control of all the state's legal business that requires the services of an attorney or legal counsel.

The Department of Justice plays critical and central roles in many levels of Oregon's public safety system. DOJ investigates organized crime, fraud committed by Medicaid providers and abuse/neglect cases arising in long term care facilities and consumer complaints. The Department also investigates alleged violations of any criminal law at the request of District Attorneys or other law enforcement agencies and investigates violation of the election laws at the request of the Secretary of State.

In addition to working its own cases, DOJ serves as a resource for other state and local law enforcement. For example, the Criminal Intelligence Unit and High Intensity Drug Trafficking Area units compile, analyze, and disseminate intelligence information about criminal activity in general, and about drug trafficking in particular. Investigators with special training financial investigations assist law enforcement agencies lacking such expertise. DOJ attorney and investigators regularly train investigators and prosecutors employed by other agencies. DOJ assists in providing compensation to victims of crime through Victim/Witness Assistance Programs available in 35 counties and administers the federal Victims of Crime Act<sup>101</sup> grant funds.

DOJ appears in state and federal courts to uphold criminal convictions and inmate challenges to their convictions and conditions of confinement. DOJ also serves as legal counsel for state criminal justice agencies.

**Legislative Assembly.** The Oregon Legislature approves the state budget, which funds a variety of public safety services through state and local agencies, and provides policy direction through statutory changes.

**Liquor Control Commission.** In 1933 the Legislature passed the Liquor Control Act establishing the Oregon Liquor Control Commission and giving it the power to regulate and license all people who manufacture, sell or serve alcohol as well as the exclusive right to sell all packaged hard liquor. The Liquor Commission is also mandated by the Liquor Control Act to promote temperance and encourage the use of lighter beverages.

The OLCC regulates alcohol sales and enforces related laws and rules, works to prevent underage drinking and provides funding for specific alcohol-related programs and general governmental funding.

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<sup>101</sup> 42 USCA §10602(b) (2000 Cumulative Annual Pocket Part).

**Military Department.** Oregon's National Guard provides assistance during emergencies, provides support to some drug enforcement efforts and operates programs working with at-risk youth.

**Parole and Post-Prison Supervision, Board of.** A three-member board appointed by the Governor and confirmed by the Senate. The Board's mission is to work in-partnership with the Department of Corrections and local supervisory authorities to protect the public and reduce the risk of repeat criminal behavior. The Board sets prison release and parole discharge dates for offenders whose crimes were committed prior to sentencing guidelines (November 1989). The board is responsible for approving the release plans and ordering conditions of release for all offenders released from prison. Currently, the board issues an average of 325 parole orders for offenders being released from prison each month. The board is also responsible for issuing arrest warrants for offenders who have absconded from supervision and for determining when a violation of the condition of supervision merits a return to custody and for how long. The agency's major focus is gradually shifting from determining when inmates are released from prison to approving release plans, imposing conditions of community supervision and determining the appropriateness of remaining in the community if a violation of conditions occurs. A strong emphasis is placed on imposing supervision conditions tailored to protect the public and meet offender needs, followed by swift action when offender behavior indicates a risk to the community. The board works directly with community corrections directors, supervising officers and staff on a daily basis to determine the conditions of supervision, the need and availability of specific types of treatment in the community, appropriate housing, and responses to violations of the conditions of supervision.

**Police, Oregon State.** A statewide law enforcement agency that also provides other law enforcement related services. Provides highway patrol, investigation and enforcement services. Administers federal criminal justice grants, provides crime lab services, operates law enforcement data and identification systems. As of October 2000, OSP had 1,543 full time employees, including 921 sworn officers<sup>102</sup>.

The Operations Bureau of the OSP has administrative responsibility for the field operations of the four enforcement divisions. The enforcement divisions are the Patrol Services Division, Fish and Wildlife Division, Criminal Investigation Services Division, and the Gaming Enforcement Division.

The Patrol Division performs traffic functions, assists local law enforcement and responds to reports of criminal activity. The Division also provides cadets for patrol of state parks. There are 542 full time sworn personnel assigned to the

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<sup>102</sup> Testimony of LeRon Howland, Superintendent of Oregon State Police, to the Oregon Criminal Justice Commission on March 14, 1996.

Division. The field force consists of 460 patrol troopers divided among 22 offices, 15 outposts, and resident troopers operating out of their homes or local public safety agencies.

The Fish and Wildlife Division enforces fish and wildlife laws for recreational and commercial activities, and enforces livestock and environmental laws. The Division has 129 full time sworn employees.

The Criminal Investigation Services Division employs 126 full time personnel and provides statewide investigative services in the areas of major crimes, child abuse, drug abuse, crimes in state prisons and gang enforcement. The Division also provides investigative services to district attorneys.

The Gaming Enforcement Division provides security and investigative services for the purpose of maintaining the integrity of the State Lottery and tribal gaming centers. There are 44 full time sworn employees assigned to the Division.

The Intergovernmental Services Bureau of the OSP was created in 1993 when several different agencies were merged with OSP. The Bureau has administrative responsibility for six divisions of the Department. The Criminal Justice Services Division, the Law Enforcement Data System Division, the Emergency Management Division, the State Medical Examiner Division, the Forensic Services Division, and the State Fire Marshal Division.

The Criminal Justices Services Division develops the state's strategy on drugs and violent crime which is used to distribute federal Byrne Grant funds and administers other federal grants relating to criminal justice and public safety.

The Law Enforcement Data System Division receives and compiles data on reported crimes and arrests. That data is used in state and is also delivered to federal sources for national compilation. LEADS also provides a statewide communication network by which warrants for arrests, stalking protective orders, sex offender registration and other information can be accessed by law enforcement agencies.

The Emergency Management Division coordinates Oregon's 9-1-1 system, the statewide search and rescue operations, and provides planning and coordination services to prepare for a response to disasters and other emergencies.

The State Medical Examiner Division is responsible for conducting or coordinating death investigations in cases where death was caused by homicide, suicide, unknown or suspicious circumstances, unlawful drug use, or while in a corrections facility or police custody or other instances designated by statute. Five full-time pathologists work with 250 physician medical examiners and 700 deputy medical examiners throughout the state to carry out these duties.

The Forensic Services Division provides crime lab services to law enforcement agencies, and if ordered by the court, to criminal defendants. It conducts criminal history checks for authorized state agencies and administers the open criminal history records programs, which allows the public to obtain criminal history checks disclosing whether convictions or arrests of a person has occurred within the last year. The Division receives about 2,500 to 3,000 requests per month.

The State Fire Marshal Division provides fire and life safety services, public education, non-retail flammable fuel dispensing regulation, maintains the Community Right-to-Know program and operates the Regional HazMat Response Teams. All of these programs are designed to protect the lives and property of citizens from fire and hazardous materials.

The Information and Special Services Bureau has administrative responsibility for the Training Division, the Information and Communication Management Division, and the Special Services Section.

The Training Division recruits, selects, and retains an effective sworn workforce and provides training and education to both sworn and non-sworn employees. The Division also promotes workforce development and maintains training records on all of the Department's employees.

The Information and Communications Management Division provides design, acquisition, installation, operations, and maintenance of OSP's statewide telecommunications and information management system. Key to the Department's field operations, are the dispatch and communication functions provided by the regional dispatch centers. These services are provided 24 hours per day on a statewide basis. The Division is also home to the Criminal Justice Information Standards program which assists in planning and coordinating state public safety data systems designed to integrate data and technology among state public safety agencies.

The Special Services Section provides internal communication services to Department employees, external communication and education for the public and the media, legislative liaison, directed and requested management reviews, and public safety planning and research.

**Psychiatric Security Review Board.** A seven-member body appointed by the Governor with jurisdiction over persons found "guilty except for insanity" under Oregon criminal law.

**Public Defender, Office of the State.** Established to file criminal appeals for indigent persons in state appeals courts, the Public Defender's office strives to assist the legal community in providing quality defense to promote justice, maintain fairness and provide due process of law for those accused of crime. In FY 1998 the State Public Defender's Office handled approximately 2000 cases

ranging from aggravated murder to probation violations. The office operates on an annual budget of \$2.25 million. The State Public Defender's Office, located in Salem, represents the defendant in the majority of criminal appeals. Currently the State Public Defender's Office consists of 23 attorneys and 13 non-attorney support staff.

**Public Safety Standards and Training, Board and Department on.** The Department of Public Safety Standards and Training (DPSST) is a full spectrum public safety training agency responsible for the standards, certification, accreditation and training of public safety personnel in law enforcement, corrections, parole and probation, 9-1-1 dispatch and telecommunications, fire fighting and private security. DPSST also licenses polygraph examiners and provides other specialized training to public safety personnel. DPSST was created through legislative action in 1997. The Department works with the Board on Public Safety Standards and Training (BPSST), made up of 23 members appointed by the governor who represent the constituents served by DPSST. The Board sets policy and minimum standards as well as advising the Director, the Governor, and the Legislature of the needs of Oregon's public safety community. To assist the Board, five discipline specific advisory committees are used to address individual issues and facilitate communication between the Board, DPSST and its constituents. DPSST's constituency base includes over 32,000 public safety personnel and private security providers. DPSST is a partner in a six-state consortium that administers the Western Community Police Center. The Center is funded by a federal grant through the federal COPS office. The program enables WCPC to develop and deliver a variety of community-oriented policing training and resources to criminal justice officers and community organization through the western states. DPSST also administers two grants providing specialized training in Anti-Terrorism and Traffic Safety & Standardized Field Sobriety Testing.

**Transportation, Department of.** Direct public safety-related services include providing driver license and driving record information to police officers, conducting administrative hearings to suspend or revoke driver licenses resulting from law violations, providing staff for the Governor's Advisory Committee on DUI and various transportation safety activities and programs.

**Youth Authority, Oregon.** The state juvenile corrections agency. Senate Bill 1, which was passed by the Oregon Legislature and signed by the Governor in 1995, established the Oregon Youth Authority (OYA) as an independent department on January 1, 1996. Formerly, the Children's Services Division of the Department of Human Resources provided services to youth offenders. The OYA provides a continuum of services to protect the public and reduce juvenile crime through OYA programs and partnerships with local communities and counties. OYA operates and regulates juvenile correctional facilities, shelter care, and

foster care facilities. Supervises youth on parole or probation for juvenile offenses.<sup>103</sup>

## **STATE ADVISORY POLICY BODIES**

**Asset Forfeiture Oversight Advisory Committee.** A 12-member body appointed by executive and legislative officials to monitor the number and nature of drug-related forfeitures and make recommendations on legal changes.

**Board of Public Safety Standards and Training.** The 23-member policy body for the Department of Public Safety Standards and Training.

**Children and Families, State Commission on.** Policy body for the Oregon Commission on Children and Families.

**Children's Trust Fund, Board of Trustees.** Administers trust monies to fund programs to prevent child abuse.

**Drug and Violent Crime Advisory Board.** Appointed by the Governor to advise on uses for federal Byrne Grant Funds. See Oregon State Police.

**DUII, Governor's Advisory Committee on.** Develops administrative and legislative recommendations to reduce driving under the influence of intoxicants and conducts public education efforts.

**Juvenile Justice Advisory Committee.** An advisory body to the Juvenile Prevention Advisory Committee, appointed by the Governor to recommend uses of federal juvenile crime prevention funds. Required by federal law.

**Liquor Control Commission, Oregon.** Policy making body for the Oregon Liquor Control Commission.

**Public Safety Policy and Planning Council.** A group of local, state and federal criminal justice officials that advises the governor on criminal justice issues.

**State Criminal Justice Advisory Committee.** An advisory body to the Chief Justice of the Oregon Supreme Court, comprised of judges, district attorneys and defense attorneys, court administrators, and representatives of the Department of Justice, State Public Defender's Office and Oregon State Bar.

## **Other Associations and Policy or Advisory Bodies**

Contact phone numbers for some city and county agencies can be found in the Oregon Blue Book, and also in local phone books. Website addresses for Oregon cities and counties also can be accessed through the State of Oregon

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<sup>103</sup> For further information see, <http://www.oja.state.or.us>

website, located at [www.state.or.us](http://www.state.or.us). Cities and counties are represented at the state level through the League of Oregon Cities and Association of Oregon Counties, located in Salem. Their websites, and many direct links to cities and counties, also are available through the state website.

**Association of Oregon Counties.** The Association of Oregon Counties is an association of all 36 Oregon counties. The purpose of the organization is to provide for the interchange of ideas among members, to formulate and promote legislation beneficial to the citizens of each county, to cooperate with other organizations to improve financial and administrative capability of local government and to provide particular services to the citizens within counties.

**Board of County Commissioners or County Court.** The governing body in Oregon counties. Has policy and/or budgetary authority over county agencies involved in the criminal justice system. County judges in some Eastern Oregon counties have judicial roles in juvenile matters.

**League of Oregon Cities.** A statewide association of 238 Oregon cities. The organization advocates for city officials to improve the quality of municipal services for citizens through training, technical assistance, research and providing information.

**Local Criminal Justice Advisory Committees.** Bodies consisting of legal and law enforcement officials operating under the authority of the presiding judge in each judicial district to help coordinate court, indigent defense and related services and resources. Established by statute in 1993. ORS 1.851

**Local Public Safety Coordinating Councils.** A multi-disciplinary body in each county established to coordinate criminal justice and juvenile justice policies, and plan for state resources sent to counties for adult community corrections and juvenile crime prevention. Created by statute in 1995. ORS 423.560-.565.

**Oregon Association of Community Corrections Directors.** The association representing county managers of community corrections programs.

**Oregon Criminal Defense Lawyers Association.** The association representing attorneys who defend persons accused of crimes. OCDLA provides training and advocacy services on behalf of its members.

**Oregon District Attorneys Association.** The association representing Oregon's district attorneys to assist in their mission of upholding the United States Constitution and the Constitution and laws of the State of Oregon, preserving the safety of the public, protecting the rights of crime victims and pursuing justice for all citizens with skill, honor and integrity.

**Oregon Juvenile Department Directors Associations.** The association representing the managers of county juvenile departments.

**Oregon State Sheriff's Association.** The Oregon State Sheriff's Association was formed in 1916 to give Oregon Sheriffs a single effective voice with the state and federal governments. Every Sheriff works diligently with their neighboring sheriff through the association to update and improve their profession and to elevate the entire law enforcement system through cooperation with all other enforcement agencies.

The association provides training and certification to sheriffs and deputies in those areas that are not readily available through the Oregon Department of Public Safety Standards and Training. An example of the training available is civil process, search and rescue, and jail management. The association has developed and copyrighted a model standard for Oregon's county jails.

Nearly every county receives is federal traffic safety grant funds and marijuana eradication grants are managed by the association.

## APPENDIX 3

### **OREGON'S JUVENILE JUSTICE SYSTEM**<sup>104</sup>

**System Flow** – Each of Oregon's 36 county juvenile departments are county government agencies, supported by county general funds. Legislation passed by the 1987 Oregon Legislature transferred the appointing authority of the juvenile department director from the presiding juvenile court judge (an elected state official) to the county Board of Commissioners, effective January 1, 1988. The juvenile department director is the administrator of the juvenile department, including any juvenile detention facilities maintained by the county, and supervises the staff of the juvenile department and detention facility.

**Conditions Under Which a Youth May be Taken Into Temporary Custody-** A peace officer or any other person authorized by the juvenile court of the county make take a youth into custody in the following circumstances:

- (a) When, if the youth were an adult the youth could be arrested without a warrant
- (b) Pursuant to a summons or otherwise as ordered by the juvenile court
- (c) If the peace officer or other person authorized by the juvenile court has probable cause to believe that the youth while in or an a public building or court facility within the last 120 days, possessed a firearm or destructive device.

**Citation in Lieu of Custody** – A peace officer may issue a citation to a youth for the same offenses and under the same circumstances that a citation may be issued to an adult.

Youth taken into custody must be released to the custody of the youth's parent, guardian or other responsible person except when:

- (a) The court has issued a warrant
- (b) There is probable cause to believe that the welfare of the youth or others may be endangered by the release
- (c) When there is probable cause to believe that the youth while in or on a public building or court facility within the last 120 days possessed a firearm or destructive device.

If the youth is not released, the youth must be taken before the court, to a juvenile detention facility, to shelter care or to a public or private agency designated by the court.

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<sup>104</sup> Excerpted from 1997 Report of the Juvenile Justice Advisory Committee; ORS Chapter 419C.

If there is probable cause to believe that the youth while in or on a public building or court facility within the last 120 days possessed a firearm or destructive device, the youth may not be released, but must be taken before the court, to detention.

If the youth resides in another county, the youth may be released to the youth's parent or guardian or to a peace officer or juvenile counselor in the county in which the youth resides.

As an alternative, the court may appoint a person to make detention decisions for youth who cannot be released. The person who takes the youth may communicate with the intake person by telephone or otherwise.

**Procedures After and Child is Taken Into Custody** – A person who takes a youth into temporary custody must notify the youth's parent or other person responsible for the youth. The youth must be released to the custody of the youth's parent or other responsible person, except when there is a warrant for the youth's arrest or where there is probable cause to believe the welfare of the youth or other may be immediately endangered by the release of the child.

When release of the youth is not appropriate, the person taking the youth into custody must take the youth directly to the juvenile court or to the place of detention or shelter or a public or private agency designated by the court, and then notify the court as soon as possible that the youth has been taken into custody.

As an alternative to the procedure outlined above, the court may appoint a person to make detention decisions for children who cannot be released. The person who takes the youth into custody may communicate with the intake worker by telephone or otherwise.

**Initial Intake Decision** – The designated intake worker has the authority to release a youth on the youth's own recognizance or subject to such conditions as will insure the youth's safety and appearance in court. The designated intake worker must comply with the same standards as those imposed on the court when placing a youth in detention.

If the youth is not released, the person who took the youth into custody must file additional information with the court, including efforts to notify the person having legal or physical custody of the youth, the results of those efforts, the reason for taking the youth into custody, the reason the youth was not released, and if the youth was not taken to court, why the type of placement was chosen.

Once authority has been transferred to the juvenile department, the court may release the youth to custody of the parent or other responsible person; release the youth on the youth's own recognizance; order that the youth remain in shelter

care; or, if the youth is found to meet the criteria for detention, order that the youth be placed in detention.

**Detention Procedures**- A detention hearing must be held within 36 judicial hours after the youth is taken into custody or within 24 hours for youth in protective custody.

If an intake worker releases a youth, the court may review the decision ex parte on the next judicial day and confirm or revoke the release or change the conditions or release. If the release is revoked, the action must be taken in accordance with the detention standards, and the youth has the right to a detention hearing.

Review hearings are required every 10 days, excluding judicial holidays, for a detained youth.

**Requirements for Detention** – Oregon’s current detention standards include specific criteria specifying when a child or youth may be detained. Briefly, a juvenile may be detained only if there is probable cause to believe the child or youth has committed an act that would be a crime if committed by an adult and chargeable as inflicting physical injury, any felony crime, history of FTA, violation of probation or conditional release, in possession of a firearm and that in addition, the court can find that no means less restrictive than detention will give assurance that the child or youth will appear for an adjudicative hearing. Having made these findings, the court must determine that certain other conditions related to the immediate and/or prior offenses apply. There are some exceptions to these standards, including the ability to hold out-of-state runaways; and the ability to hold for a limited time, parole violators and training school escapees or absentees.

**Referrals to Juvenile Departments** – All cases referred to the juvenile department must be investigated. Referral is the term for “arrest” when applied to juveniles. The youth can be brought to the juvenile department or the department receives a paper referral from law enforcement agencies. Once the department has investigated an alleged crime, it may decide to close the case, enter into an informal disposition agreement with the youth of not more than six months, or file a petition with the court.

**Formal Accountability Agreements (FAA)** – A Formal Accountability Agreement is an agreement that may be entered into only when the juvenile department counselor has probable cause to believe that the youth would be found within the jurisdiction of the court as a delinquent or status offender. An FAA require participation in or referral to counseling, community service, drug or alcohol education or treatment, vocational training or other activities or services which are viewed as beneficial to the child. A FAA may also require the youth to pay restitution to the victim of the alleged offense. There are a number of

safeguards to protect the rights of a youth who enters into an FAA, including the right to counsel, the right to revoke the agreement at any time, a prohibition against using the agreement as evidence against the youth in any adjudicatory hearing, and a requirement that the agreement be executed in writing and language that is easily understandable to the youth and his/her parents however, the FAA become part of the youth's juvenile court record. FAA's may not be entered into when the youth is alleged to have committed a felony sex offense, an offense involving the use of a firearm or destructive device or when the youth has more serious delinquency referrals to the juvenile department

**Formal court processing** – An original adjudicatory hearing on a petition alleging a youth is within the jurisdiction of the court must be heard within 60 days from the filing of the petition, except as ordered by the court upon a showing of good cause. If the youth is in detention, the fact-finding hearing must be held within 30 days, except as ordered upon showing of good cause. If no hearing has been conducted within the specified time period, the petition must be dismissed.

**Petitions** – The district attorney, or officials with the juvenile department as authorized by the DA, may file a petition in the juvenile court alleging that a youth is within the jurisdiction of the court as provided in ORS 419C.250.

The court may make an order providing temporary custody at any time after a petition is filed, or may remand the case to the appropriate court handling criminal actions, or to municipal court.

If a youth is found to be within the jurisdiction of the juvenile court, the youth is considered a youthful offender and the court may:

- Place the youth on probation or under protective supervision and may place certain requirements on the youthful offender including fines and restitution, taking into account present and future ability to pay, the rehabilitative effect on the child, and the method of payment. Placement of a youth on probation requires a court order. The court order may require participation in or referral to psycho-educational services, community service, drug or alcohol education or treatment, mental health treatment, vocational training or other activities or services which are viewed as beneficial to the child;
- Place the child in the legal custody of the Oregon Youth Authority for care, placement, and supervision, (i.e., the juvenile court retains wardship). The court may specify the particular type of care, supervision or services to be provided, but the actual responsibility for planning and providing such care and supervision or services are the responsibility of the OYA. When the juvenile court places a youth in the custody, care and supervision of OYA for out-of-home care, a variety of settings are available, including non-secure settings such as foster care and family shelter care; staff secure placements

in professional shelter care, group homes, and youth care centers; or close custody supervision in Oregon Youth Authority facilities, work-study camps or youth accountability camps;

- Place the youth in the custody of Services to Children and Families (SCF) if the court finds that the youth is in need and amenable to SCF's special services.
- Remand the child to the appropriate court handling criminal actions, or to municipal court, subject to the requirements of ORS 419C.340.
- ORS 419C.453. Pursuant to a hearing, order a youth 12 years of age or older placed in a detention facility for youthful offenders for a period of time not to exceed eight days, unless and until a program plan has been filed with and approved by the commission, in which case the youth may be held in detention for a maximum of 30 days in addition to time already spent in the facility. Program plans must conform to standards established by the state Commission on Children and Families. Program plans may be filed when:
  - 1) The youth has been found to be within the jurisdiction of the juvenile court by reason of having committed an act which would be a crime if committed by an adult; or
  - 2) The youth has been placed on formal probation for an act, which would be a crime if committed by an adult, and has been found to have violated a condition of that probation.
- Under certain condition, impose a fine or require the youth to perform community service or services to the victim;
- Under certain conditions, order a parent to assist the court in providing appropriate education or counseling to the child, or order a parent to participate in educational or counseling programs when it is consistent with the best interests of the child.

**Commitments to Youth Correctional Facilities-** Youth between the ages of 12 and 18 (ages 12 through 17) are committed to Oregon Youth Authority juvenile corrections programs by the county juvenile courts. The Oregon Youth Authority's graduated system of youth offender sanctions includes a multi-tiered system of secure institutions. These institutional programs promote public safety, accountability, and reformation opportunities to delinquent youth who are too dangerous to be served in the community.

- Eight correctional facilities are the most secure and where youth in closed custody serve the longest terms
- Four work -study camps are transitional programs for youth moving from youth correctional facilities to the community
- Three youth accountability camps are short-term, intensive, on-site programs for non-violent offenders followed by intensive aftercare service.

**Population Served-** The close custody system provides an array of services designed to provide opportunities for youth reformation, while protecting the public from further criminal behavior. OYA institutions serve youth age 12-25 who:

- Have committed juvenile crimes and were placed with OYA by juvenile court;
- Have committed Measure 11 offenses, and due to age, are placed in the physical custody of OYA while in the legal custody of the Department of Corrections;
- Have committed non-Measure 11 offenses but have been waived to adult court; and, due to age, are placed in the physical custody of OYA while in the legal custody of the Department of Corrections.

## APPENDIX 4<sup>105</sup>

### **JUVENILE CRIME PREVENTION**

After several decades of neglect, the Oregon legislature, in 1986, enacted a series of changes to Oregon's juvenile justice system. The changes reflected a national trend of "deinstitutionalizing" young offenders and moving them to communities where it was expected that they could be reformed in a more flexible, less restrictive environment. Sufficient resources were not allocated to accomplish this task. That same year marked the turning of the tide for juvenile crime. Between 1988 and 1992, violent offenses committed by juveniles had increased by over 80 percent. Oregon had a juvenile justice system that often was out of touch with the reality of juvenile crime that now included more gangs, more guns, and more person-to-person felonies. The system, restricted by the legislative policy of deinstitutionalization, was forced to resort to dealing with only the most serious juvenile offenders. Other juveniles quickly learned that there were little or no consequences for low-level juvenile crime. By the early 1990s, the problem had become a primary concern to citizens and lawmakers alike.

By January 1994, Governor Barbara Roberts initiated an effort to evaluate and reform the juvenile justice system by issuing Executive Order 94-01, which called for "a comprehensive, substantive review of Oregon's response to juvenile crime" by the Governor's Task Force on Juvenile Justice. The basic policy and structure of the state's Juvenile Code had undergone no significant review or amendment since 1977, and there was mounting evidence and citizen concern that the existing juvenile justice system was not working. Arrest rates for juvenile violent crimes had increased dramatically, and there had been a recent tenfold increase in the number of juveniles in custody for homicides as well a doubling of those in custody for sex offenses. Youth gang activity and juvenile drug and firearm offenses were no longer problems only of the State's metropolitan areas, but were evident throughout the State.

In November 1994, the voters of Oregon joined the debate and passed Measure 11. "Notwithstanding any other provision of law, when a person charged with any of the offenses listed in [Measure 11] is 15, 16 or 17 years of age, at the time the charges are filed, that person shall be tried as an adult." That one sentence in the voter-approved measure requiring mandatory sentences for violent juvenile offenders brought about the greatest change in Oregon's juvenile justice system in over 50 years.

In January 1995, the Task Force issued its final report, which proposed fundamental changes in the philosophy, structure and practices of the State's

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<sup>105</sup> Portions excerpted from the 1996 Final Report Of the Governor's Juvenile Crime Prevention Task Force

juvenile justice system. The proposed changes were submitted to the 1995 legislature as Senate Bill 1. After careful study and review, and amendment where appropriate, the legislature enacted Senate Bill 1 by an overwhelming majority, and on June 30, 1995, the bill became law.

The major components of the reform initiated by Senate Bill 1 include:

- A statement of policy that in delinquency cases, the purposes of the juvenile justice system are protection of the public, reduction of delinquency, and fair and impartial adjudication and disposition;
- The system is founded on principles of personal responsibility, accountability and reformation within the context of public safety and restitution to victims and the community.
- Creation of the Oregon Youth Authority as a new department to administer juvenile corrections programs and facilities;
- Provision for state/county cooperation and contracting in the admission and provision of juvenile corrections program;
- Implementation of Ballot Measure 11 as applied to youth aged 15-18 by demarcating juvenile court and adult court jurisdiction, clarifying charging and prosecution procedures, and providing for prosecution and sentencing review for juveniles convicted in adult court on non-Measure 11 offenses;
- Authorization for waiver to adult court for 12-14 year olds charged with certain violent felonies;
- Registration and other requirements for juvenile sex offenders;
- Required fingerprinting and photographing of juveniles in delinquency cases;
- Established criteria to be applied in determining dispositions in delinquency cases;
- Restricted use of informal dispositions in delinquency cases and established standards for juvenile court dismissal of delinquency petitions;
- Extension from age 21 to age 25 the maximum period for juvenile court jurisdiction; and
- Pre-adjudication detention of juveniles in possession of firearms.

The enactment of Senate Bill 1 was a major first step in the reevaluation and reform of Oregon's juvenile justice system. It provides a blueprint – a beginning framework – for responding effectively to the juvenile crime that confronts us now and for developing strategies and programs to prevent it in the future. The findings and the proposals of the Governor's Task Force on Juvenile Justice and the legislative process that resulted in the enactment of Senate Bill 1 made it clear that there was much more to be done, and that all of the institutions of our society, particularly the family, schools, churches and other community organizations, must be a part of that work.

In January 1996, Governor John A. Kitzhaber issued Executive Order 96-01 creating the Juvenile Crime Prevention Task Force. The Task Force was directed to:

- 1) Determine what could be done to divert young people from engaging in criminal activity
- 2) Review the implementation of reforms to the juvenile justice system from the 1995 legislative session
- 3) Determine how the state can best work with and assist communities in developing and implementing effective strategies for the prevention of juvenile delinquency and the protection and guidance of the youth of Oregon; and
- 4) Identify conflicts or gaps among programs, agencies or services, and make recommendations on how to resolve them. how to coordinate resources and planning for juvenile crime prevention needs;

State agencies were asked to develop detailed proposals to address the above issues resulting in the formation of a large interagency juvenile crime team of state agencies. As a result of the recommendations made by the team, Governor Kitzhaber proposed a Juvenile Crime Prevention Strategy to provide the most immediate return possible for taxpayer investment. The strategy:

- focused on community-based strategies for youth at highest levels of risk;
- coordinated efforts at the state and local levels;
- held the system accountable for achieving results;
- made a commitment to reinvestment of savings; and
- sought to avoid costs in prevention efforts designed to provide a long term return on tax payer investment

By June 1998, negotiations and agreements with counties resulted in a document entitled "Points of Agreement" that outlined specific elements of a juvenile crime prevention plan and included roles for the state and for local governments. Following these guidelines, each of Oregon's 36 counties developed juvenile crime prevention plans focusing on high-risk youth between the ages of 10-17, with more than one of the following risk factors: poor family

functioning, school failure, anti-social behavior, negative peer association, alcohol and drug use.

The passage of Senate Bill 555 during the 1999 legislative session placed juvenile crime prevention Points of Agreement in statute, folding juvenile crime prevention planning efforts into each county's coordinated comprehensive plan for children ages 0-18 and their families. In July of 1999, the Oregon Legislature appropriated \$20 million to fund community-based juvenile crime prevention programs that were outlined in the counties' plans.

## APPENDIX FIVE

### OREGON SENTENCING GUIDELINES GRID

| Crime Seriousness | A       | B       | C       | D       | E       | F       | G       | H       | I       | Prob Term | Max Depart | PPS     |
|-------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|-----------|------------|---------|
| 11                | 225-269 | 196-224 | 178-194 | 164-177 | 149-163 | 135-148 | 129-134 | 122-128 | 120-121 | 5 Years   |            | 3 Years |
| 10                | 121-130 | 116-120 | 111-115 | 91-110  | 81-90   | 71-80   | 66-70   | 61-65   | 58-60   |           |            |         |
| 9                 | 66-72   | 61-65   | 56-60   | 51-55   | 46-50   | 41-45   | 39-40   | 37-38   | 34-36   |           |            |         |
| 8                 | 41-45   | 35-40   | 29-34   | 27-28   | 25-26   | 23-24   | 21-22   | 19-20   | 16-18   | 3 Years   | 18 Mos.    |         |
| 7                 | 31-36   | 25-30   | 21-24   | 19-20   | 16-18   | 180-90  | 180-90  | 180-90  | 180-90  |           |            |         |
| 6                 | 25-30   | 19-24   | 15-18   | 13-14   | 10-12   | 180-90  | 180-90  | 180-90  | 180-90  |           |            |         |
| 5                 | 15-16   | 13-14   | 11-12   | 9-10    | 6-8     | 180-90  | 120-60  | 120-60  | 120-60  | 2 Years   | 12 Mos.    | 2 Years |
| 4                 | 10-11   | 8-9     | 120-60  | 120-60  | 120-60  | 120-60  | 120-60  | 120-60  | 120-60  |           |            |         |
| 3                 | 120-60  | 120-60  | 120-60  | 120-60  | 120-60  | 120-60  | 90-30   | 90-30   | 90-30   |           |            |         |
| 2                 | 90-30   | 90-30   | 90-30   | 90-30   | 90-30   | 90-30   | 90-30   | 90-30   | 90-30   | 1½ Years  | 6 Mos.     | 1 Year  |
| 1                 | 90-30   | 90-30   | 90-30   | 90-30   | 90-30   | 90-30   | 90-30   | 90-30   | 90-30   |           |            |         |

The presumptive grid block for any felony conviction is the intersection where the crime seriousness ranking and the criminal history classification meet. Grid blocks in the shaded area represent the range of presumptive imprisonment and post-prison supervision (PPS). Non-shaded grid blocks are presumptive sentences of probation (Prob. Term) with local custodial sanctions (upper number) and maximum jail without a departure (lower number).

## CRIMINAL HISTORY CATEGORIES<sup>106</sup>

|          |   |
|----------|---|
| <b>A</b> | The criminal history includes three or more person felonies in any combination of adult convictions or juvenile adjudications.  |
| <b>B</b> | The criminal history includes two person felonies in any combination of adult convictions or juvenile adjudications.  |
| <b>C</b> | The criminal history includes one adult conviction or juvenile adjudication for a person felony; and one or more adult conviction or juvenile adjudication for a non-person felony.   |
| <b>D</b> | The criminal history includes one adult conviction or juvenile adjudication for a person felony but no adult conviction or juvenile adjudications for a non-person felony.  |
| <b>E</b> | The criminal history includes four or more adult convictions for non-person felonies but no adult conviction or juvenile adjudication for a person felony.  |
| <b>F</b> | The criminal history includes two or three adult convictions for non-person felonies but no adult conviction or juvenile adjudication for a person felony.  |
| <b>G</b> | The criminal history includes four or more adult convictions for Class A misdemeanors; one adult conviction for a non-person felony; or three or more juvenile adjudications for non-person felonies, but no adult conviction or juvenile adjudication for a person felony. |
| <b>H</b> | The criminal history includes no adult felony conviction or juvenile adjudication for a person felony; no more than two juvenile adjudications for non-person felonies; and no more than three adult convictions for Class A misdemeanors.                                  |
| <b>I</b> | The criminal history does not include any juvenile adjudication for a felony or any adult conviction for a felony or Class A misdemeanor.   |

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<sup>106</sup> Criminal history categories are defined in OAR 213-04-007.

## APPENDIX 6

### SELECTED EXCERPTS FROM ARTICLE 1 OF THE OREGON CONSTITUTION

#### ARTICLE I- BILL OF RIGHTS

- Sec. 1. Natural rights inherent in people
2. Freedom of worship
3. Freedom of religious opinion
4. No religious qualification for office
5. No money to be appropriated for religion
6. No religious test for witnesses or jurors
7. Manner of administering oath or affirmation
8. Freedom of speech and press
9. Unreasonable searches or seizures
10. Administration of justice
11. Rights of accused in criminal prosecution
12. Double jeopardy; compulsory self-incrimination
13. Treatment of arrested or confined persons
14. Bailable offenses
15. Foundation principles of criminal law
16. Excessive bail and fines; cruel and unusual punishments; power of jury in criminal case
17. Jury trial in civil cases
18. Private property or services taken for public use
19. Imprisonment for debt
20. Equality of privileges and immunities of citizens
21. Ex-post facto laws; laws impairing contracts; laws depending on authorization in order to take effect; laws submitted to electors
22. Suspension of operation of laws
23. Habeas corpus
24. Treason
25. Corruption of blood or forfeiture of estate
26. Assemblages of people; instruction of representatives; application to legislature
27. Right to bear arms; military subordinate to civil power
28. Quartering soldiers
29. Titles of nobility; hereditary distinctions
30. Emigration
32. Taxes and duties; uniformity of taxation
33. Enumeration of rights not exclusive
34. Slavery or involuntary servitude
39. Sale of liquor by individual glass
40. Penalty for aggravated murder

41. Work and training for corrections institution inmates; work programs; limitations; duties of corrections director
42. Rights of victim in criminal prosecutions and juvenile court delinquency proceedings
43. Rights of victim and public to protection from accused person during criminal proceedings; denial of pretrial release
44. Term of imprisonment imposed by court to be fully served; exceptions
45. Person convicted of certain crimes not eligible to serve as juror on grand jury or trial jury in criminal case

**Section 9. Unreasonable searches or seizures.** No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.—

**Section 10. Administration of justice.** No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation.

**Section 11. Rights of accused in criminal prosecution.** In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor; provided, however, that any accused person, in other than capital cases, and with the consent of the trial judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing; provided, however, that in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict, and not otherwise; provided further, that the existing laws and constitutional provisions relative to criminal prosecutions shall be continued and remain in effect as to all prosecutions for crimes committed before the taking effect of this amendment. [Constitution of 1859; Amendment proposed by S.J.R. 4, 1931, and adopted by the people Nov. 8, 1932; Amendment proposed by S.J.R. 4, 1933 (2d s.s.), and adopted by the people May 18, 1934]

**Note:** The leadline to section 11 was a part of the measure submitted to the people by S.J.R. 4, 1933 (2d s.s.).

**Section 12. Double jeopardy; compulsory self-incrimination.** No person shall be put in jeopardy twice for the same offence (sic), nor be compelled in any criminal prosecution to testify against himself.—

**Section 13. Treatment of arrested or confined persons.** No person arrested, or confined in jail, shall be treated with unnecessary rigor.—

**Section 14. Bailable offenses.** Offences (sic), except murder, and treason, shall be bailable by sufficient sureties. Murder or treason, shall not be bailable, when the proof is evident, or the presumption strong.—

**Section 15. Foundation principles of criminal law.** Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation. [Constitution of 1859; Amendment proposed by S.J.R. 32, 1995, and adopted by the people Nov. 5, 1996]

**Section 16. Excessive bail and fines; cruel and unusual punishments; power of jury in criminal case.** Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense.—In all criminal cases whatever, the jury shall have the right to determine the law, and the facts under the direction of the Court as to the law, and the right of new trial, as in civil cases.

**Section 17. Jury trial in civil cases.** In all civil cases the right of Trial by Jury shall remain inviolate.

**Section 21. Ex-post facto laws; laws impairing contracts; laws depending on authorization in order to take effect; laws submitted to electors.** No ex-post facto law, or law impairing the obligation of contracts shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution; provided, that laws locating the Capitol of the State, locating County Seats, and submitting town, and corporate acts, and other local, and Special laws may take effect, or not, upon a vote of the electors interested.

**Section 23. Habeas corpus.** The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion, or invasion the public safety require it.

**Section 40. Penalty for aggravated murder.** Notwithstanding sections 15 and 16 of this Article, the penalty for aggravated murder as defined by law shall be death upon unanimous affirmative jury findings as provided by law and otherwise shall be life imprisonment with minimum sentence as provided by law. [Created through initiative petition filed July 6, 1983, and adopted by the people Nov. 6, 1984] .

**Section 41. Work and training for corrections institution inmates; work programs; limitations; duties of corrections director.** (1) Whereas the people of the state of Oregon find and declare that inmates who are confined in corrections institutions should work as hard as the taxpayers who provide for

their upkeep; and whereas the people also find and declare that inmates confined within corrections institutions must be fully engaged in productive activity if they are to successfully re-enter society with practical skills and a viable work ethic; now, therefore, the people declare:

(2) All inmates of state corrections institutions shall be actively engaged full-time in work or on-the-job training. The work or on-the-job training programs shall be established and overseen by the corrections director, who shall ensure that such programs are cost-effective and are designed to develop inmate motivation, work capabilities and cooperation. Such programs may include boot camp prison programs. Education may be provided to inmates as part of work or on-the-job training so long as each inmate is engaged at least half-time in hands-on training or work activity.

(3) Each inmate shall begin full-time work or on-the-job training immediately upon admission to a corrections institution, allowing for a short time for administrative intake and processing. The specific quantity of hours per day to be spent in work or on-the-job training shall be determined by the corrections director, but the overall time spent in work or training shall be full-time. However, no inmate has a legally enforceable right to a job or to otherwise participate in work, on-the-job training or educational programs or to compensation for work or labor performed while an inmate of any state, county or city corrections facility or institution. The corrections director may reduce or exempt participation in work or training programs by those inmates deemed by corrections officials as physically or mentally disabled, or as too dangerous to society to engage in such programs.

(4) There shall be sufficient work and training programs to ensure that every eligible inmate is productively involved in one or more programs. Where an inmate is drug and alcohol addicted so as to prevent the inmate from effectively participating in work or training programs, corrections officials shall provide appropriate drug or alcohol treatment.

(5) The intent of the people is that taxpayer-supported institutions and programs shall be free to benefit from inmate work. Prison work programs shall be designed and carried out so as to achieve savings in government operations, so as to achieve a net profit in private sector activities or so as to benefit the community.

(6) The provisions of this section are mandatory for all state corrections institutions. The provisions of this section are permissive for county or city corrections facilities. No law, ordinance or charter shall prevent or restrict a county or city governing body from implementing all or part of the provisions of this section. Compensation, if any, shall be determined and established by the governing body of the county or city which chooses to engage in prison work programs, and the governing body may choose to adopt any power or exemption allowed in this section.

(7) The corrections director shall contact public and private enterprises in this state and seek proposals to use inmate work. The corrections director may: (a) install and equip plants in any state corrections institution, or any other location, for the employment or training of any of the inmates therein; or (b) purchase, acquire, install, maintain and operate materials, machinery and appliances

necessary to the conduct and operation of such plants. The corrections director shall use every effort to enter into contracts or agreements with private business concerns or government agencies to accomplish the production or marketing of products or services produced or performed by inmates. The corrections director may carry out the director's powers and duties under this section by delegation to others.

(8) Compensation, if any, for inmates who engage in prison work programs shall be determined and established by the corrections director. Such compensation shall not be subject to existing public or private sector minimum or prevailing wage laws, except where required to comply with federal law. Inmate compensation from enterprises entering into agreements with the state shall be exempt from unemployment compensation taxes to the extent allowed under federal law. Inmate injury or disease attributable to any inmate work shall be covered by a corrections system inmate injury fund rather than the workers compensation law. Except as otherwise required by federal law to permit transportation in interstate commerce of goods, wares or merchandise manufactured, produced or mined, wholly or in part by inmates or except as otherwise required by state law, any compensation earned through prison work programs shall only be used for the following purposes: (a) reimbursement for all or a portion of the costs of the inmate's rehabilitation, housing, health care, and living costs; (b) restitution or compensation to the victims of the particular inmate's crime; (c) restitution or compensation to the victims of crime generally through a fund designed for that purpose; (d) financial support for immediate family of the inmate outside the corrections institution; and (e) payment of fines, court costs, and applicable taxes.

(9) All income generated from prison work programs shall be kept separate from general fund accounts and shall only be used for implementing, maintaining and developing prison work programs. Prison industry work programs shall be exempt from statutory competitive bid and purchase requirements. Expenditures for prison work programs shall be exempt from the legislative appropriations process to the extent the programs rely on income sources other than state taxes and fees. Where state taxes or fees are the source of capital or operating expenditures, the appropriations shall be made by the legislative assembly. The state programs shall be run in a businesslike fashion and shall be subject to regulation by the corrections director. Expenditures from income generated by state prison work programs must be approved by the corrections director. Agreements with private enterprise as to state prison work programs must be approved by the corrections director. The corrections director shall make all state records available for public scrutiny and the records shall be subject to audit by the Secretary of State.

(10) Prison work products or services shall be available to any public agency and to any private enterprise of any state, any nation or any American Indian or Alaskan Native tribe without restriction imposed by any state or local law, ordinance or regulation as to competition with other public or private sector enterprises. The products and services of corrections work programs shall be provided on such terms as are set by the corrections director. To the extent

determined possible by the corrections director, the corrections director shall avoid establishing or expanding for-profit prison work programs that produce goods or services offered for sale in the private sector if the establishment or expansion would displace or significantly reduce preexisting private enterprise. To the extent determined possible by the corrections director, the corrections director shall avoid establishing or expanding prison work programs if the establishment or expansion would displace or significantly reduce government or nonprofit programs that employ persons with developmental disabilities.

However, the decision to establish, maintain, expand, reduce or terminate any prison work program remains in the sole discretion of the corrections director.

(11) Inmate work shall be used as much as possible to help operate the corrections institutions themselves, to support other government operations and to support community charitable organizations. This work includes, but is not limited to, institutional food production; maintenance and repair of buildings, grounds, and equipment; office support services, including printing; prison clothing production and maintenance; prison medical services; training other inmates; agricultural and forestry work, especially in parks and public forest lands; and environmental clean-up projects. Every state agency shall cooperate with the corrections director in establishing inmate work programs.

(12) As used throughout this section, unless the context requires otherwise: "full-time" means the equivalent of at least forty hours per seven day week, specifically including time spent by inmates as required by the Department of Corrections, while the inmate is participating in work or on-the-job training, to provide for the safety and security of the public, correctional staff and inmates; "corrections director" means the person in charge of the state corrections system.

(13) This section is self-implementing and supersedes all existing inconsistent statutes. This section shall become effective April 1, 1995. If any part of this section or its application to any person or circumstance is held to be invalid for any reason, then the remaining parts or applications to any persons or circumstances shall not be affected but shall remain in full force and effect.

[Created through initiative petition filed Jan. 12, 1994, and adopted by the people Nov. 8, 1994; Amendment proposed by H.J.R. 2, 1997, and adopted by the people May 20, 1997; Amendment proposed by H.J.R. 82, 1999, and adopted by the people Nov. 2, 1999]

**Note:** Added to Article I as unnumbered section by initiative petition (Measure No. 17, 1994) adopted by the people Nov. 8, 1994.

**Note:** An initiative petition (Measure No. 40, 1996) proposed adding an unnumbered section relating to crime victims' rights to Article I. That section, appearing as section 42 of Article I in previous editions of this Constitution, was declared void for not being enacted in compliance with section 1, Article XVII of this Constitution. See Armatta v. Kitzhaber, 327 Or. 250, 959 P.2d 49 (1998).

**Section 42. Rights of victim in criminal prosecutions and juvenile court delinquency proceedings.** (1) To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role in the criminal and juvenile

justice systems, to accord crime victims due dignity and respect and to ensure that criminal and juvenile court delinquency proceedings are conducted to seek the truth as to the defendant's innocence or guilt, and also to ensure that a fair balance is struck between the rights of crime victims and the rights of criminal defendants in the course and conduct of criminal and juvenile court delinquency proceedings, the following rights are hereby granted to victims in all prosecutions for crimes and in juvenile court delinquency proceedings:

- (a) The right to be present at and, upon specific request, to be informed in advance of any critical stage of the proceedings held in open court when the defendant will be present, and to be heard at the pretrial release hearing and the sentencing or juvenile court delinquency disposition;
- (b) The right, upon request, to obtain information about the conviction, sentence, imprisonment, criminal history and future release from physical custody of the criminal defendant or convicted criminal and equivalent information regarding the alleged youth offender or youth offender;
- (c) The right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant provided, however, that nothing in this paragraph shall restrict any other constitutional right of the defendant to discovery against the state;
- (d) The right to receive prompt restitution from the convicted criminal who caused the victim's loss or injury;
- (e) The right to have a copy of a transcript of any court proceeding in open court, if one is otherwise prepared;
- (f) The right to be consulted, upon request, regarding plea negotiations involving any violent felony; and
- (g) The right to be informed of these rights as soon as practicable.

(2) This section applies to all criminal and juvenile court delinquency proceedings pending or commenced on or after the effective date of this section. Nothing in this section reduces a criminal defendant's rights under the Constitution of the United States. Except as otherwise specifically provided, this section supersedes any conflicting section of this Constitution. Nothing in this section is intended to create any cause of action for compensation or damages nor may this section be used to invalidate an accusatory instrument, ruling of a court, conviction or adjudication or otherwise suspend or terminate any criminal or juvenile delinquency proceedings at any point after the case is commenced or on appeal.

(3) As used in this section:

- (a) "Convicted criminal" includes a youth offender in juvenile court delinquency proceedings.
- (b) "Criminal defendant" includes an alleged youth offender in juvenile court delinquency proceedings.
- (c) "Victim" means any person determined by the prosecuting attorney to have suffered direct financial, psychological or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor. In the event that no person has been determined to be a victim of the crime, the people of Oregon, represented by the prosecuting attorney, are considered to be the

victims. In no event is it intended that the criminal defendant be considered the victim.

(d) "Violent felony" means a felony in which there was actual or threatened serious physical injury to a victim or a felony sexual offense. [Created through H.J.R. 87, 1999, and adopted by the people Nov. 2, 1999]

**Note:** The effective date of House Joint Resolutions 87, 89, 90 and 94, compiled as sections 42, 43, 44 and 45, Article I, is Dec. 2, 1999.

**Note:** Sections 42, 43, 44 and 45, were added to Article I as unnumbered sections by the amendments proposed by House Joint Resolutions 87, 89, 90 and 94, 1999, and adopted by the people Nov. 2, 1999.

**Section 43. Rights of victim and public to protection from accused person during criminal proceedings; denial of pretrial release.** (1) To ensure that a fair balance is struck between the rights of crime victims and the rights of criminal defendants in the course and conduct of criminal proceedings, the following rights are hereby granted to victims in all prosecutions for crimes:

(a) The right to be reasonably protected from the criminal defendant or the convicted criminal throughout the criminal justice process and from the alleged youth offender or youth offender throughout the juvenile delinquency proceedings.

(b) The right to have decisions by the court regarding the pretrial release of a criminal defendant based upon the principle of reasonable protection of the victim and the public, as well as the likelihood that the criminal defendant will appear for trial. Murder, aggravated murder and treason shall not be bailable when the proof is evident or the presumption strong that the person is guilty. Other violent felonies shall not be bailable when a court has determined there is probable cause to believe the criminal defendant committed the crime, and the court finds, by clear and convincing evidence, that there is danger of physical injury or sexual victimization to the victim or members of the public by the criminal defendant while on release.

(2) This section applies to proceedings pending or commenced on or after the effective date of this section. Nothing in this section abridges any right of the criminal defendant guaranteed by the Constitution of the United States, including the rights to be represented by counsel, have counsel appointed if indigent, testify, present witnesses, cross-examine witnesses or present information at the release hearing. Nothing in this section creates any cause of action for compensation or damages nor may this section be used to invalidate an accusatory instrument, ruling of a court, conviction or adjudication or otherwise suspend or terminate any criminal or juvenile delinquency proceeding at any point after the case is commenced or on appeal. Except as otherwise specifically provided, this section supersedes any conflicting section of this Constitution.

(3) As used in this section:

(a) "Victim" means any person determined by the prosecuting attorney to have suffered direct financial, psychological or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor. In the event no person has been determined to be a victim of the crime, the people of

Oregon, represented by the prosecuting attorney, are considered to be the victims. In no event is it intended that the criminal defendant be considered the victim.

(b) "Violent felony" means a felony in which there was actual or threatened serious physical injury to a victim or a felony sexual offense.

(4) The prosecuting attorney is the party authorized to assert the rights of the victim and the public established by this section. [Created through H.J.R. 90, 1999, and adopted by the people Nov. 2, 1999]

**Note:** See notes under section 42 of this Article.

**Section 44. Term of imprisonment imposed by court to be fully served;**

**exceptions.** (1)(a) A term of imprisonment imposed by a judge in open court may not be set aside or otherwise not carried out, except as authorized by the sentencing court or through the subsequent exercise of:

(A) The power of the Governor to grant reprieves, commutations and pardons; or

(B) Judicial authority to grant appellate or post-conviction relief.

(b) No law shall limit a court's authority to sentence a criminal defendant consecutively for crimes against different victims.

(2) This section applies to all offenses committed on or after the effective date of this section. Nothing in this section reduces a criminal defendant's rights under the Constitution of the United States. Except as otherwise specifically provided, this section supersedes any conflicting section of this Constitution. Nothing in this section creates any cause of action for compensation or damages nor may this section be used to invalidate an accusatory instrument, ruling of a court, conviction or adjudication or otherwise suspend or terminate any criminal or juvenile delinquency proceedings at any point after the case is commenced or on appeal.

(3) As used in this section, "victim" means any person determined by the prosecuting attorney to have suffered direct financial, psychological or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor. In the event no person has been determined to be a victim of the crime, the people of Oregon, represented by the prosecuting attorney, are considered to be the victims. In no event is it intended that the criminal defendant be considered the victim. [Created through H.J.R. 94, 1999, and adopted by the people Nov. 2, 1999]

**Note:** See notes under section 42 of this Article.

**Section 45. Person convicted of certain crimes not eligible to serve as juror on grand jury or trial jury in criminal case.** (1) In all grand juries and in all prosecutions for crimes tried to a jury, the jury shall be composed of persons who have not been convicted:

(a) Of a felony or served a felony sentence within the 15 years immediately preceding the date the persons are required to report for jury duty; or

(b) Of a misdemeanor involving violence or dishonesty or served a sentence for a misdemeanor involving violence or dishonesty within the five years immediately preceding the date the persons are required to report for jury duty.

(2) This section applies to all criminal proceedings pending or commenced on or after the effective date of this section, except a criminal proceeding in which a jury has been impaneled and sworn on the effective date of this section. Nothing in this section reduces a criminal defendant's rights under the Constitution of the United States. Except as otherwise specifically provided, this section supersedes any conflicting section of this Constitution. Nothing in this section is intended to create any cause of action for compensation or damages nor may this section be used to disqualify a jury, invalidate an accusatory instrument, ruling of a court, conviction or adjudication or otherwise suspend or terminate any criminal proceeding at any point after a jury is impaneled and sworn or on appeal. [Created through H.J.R. 89, 1999, and adopted by the people Nov. 2, 1999]