

Oregon's 2009 Legislative Session Wrap Up

Quick Summary of 2009 Session:

- Major criminal justice reform bill House Bill 3508 passes!
- Oregon Domestic and Sexual Violence Services Fund stays at current level!
- Youth justice work gains momentum and support.

Now that Oregon's 2009 Legislative Session has ended, we want to provide information on not only what happened, but also give you a glimpse into the inner workings of this legislative session around public safety issues. The capitol building, legislators and the whole legislative process can be both confusing and intimidating. We want to provide information that will start to demystify Oregon's law making process. By doing so, we hope to provide encouragement for you to increase your participation in making your voice heard with your individual legislators now and during the next legislative session.

Economic Crisis Dominates Session

Due to the economic crisis, agencies across the state were facing budget cuts of up to 30% as legislators figured out how to develop a budget that caused the least harm for the 2009-2011 biennium. Given the potential for program-destroying cuts across the state, even the Department of Corrections and the larger public safety sector had to look seriously at how to reduce costs. One of the greatest areas of increased costs to the public safety sector was the millions of dollars needed to implement Measure 57. Measure 57, a compromise developed by the legislature to counter Kevin Mannix's Measure 61 which would have created mandatory minimum sentences for addiction-driven crimes, was anticipated to cost the state tens of millions to fully enact. Delaying the implementation of Measure 57 was identified early on as a smart way to save money.

Delaying Measure 57 would not provide as much savings as the state needed so additional options were considered.

Advocating for Cost Saving Changes

Promise of Measure 57

In the spirit of the official campaign in support of Measure 57, "A Better Way to Fight Crime," another broad coalition of groups came together as the Promise of Measure 57 Coalition to push to ensure that the alcohol and drug treatment promised as a part of Measure 57 was not left behind.

The Coalition included some of the usual suspects like the Oregon Criminal Defense Lawyers Association (OCDLA) and Partnership for Safety and Justice, in addition to exciting new allies like the Oregon Business Association and the Association of Community Mental Health Programs, as well as many others. Representative Chip Shields was instrumental in bringing the Coalition together and providing leadership for the work throughout the session. The Coalition developed a short list of priorities including the phase-in of Measure 57 and earned-time increases as smart cost saving reforms for corrections. Gail Meyer

of the OCDLA and Melissa Unger with the labor union SEIU used these ideas to participate in direct negotiations with the District Attorneys Association to try to find some agreement on which reforms to push. No agreement was ever reached. In the meantime, with significant staffing support from PSJ, the Promise of Measure 57 Coalition continued to push its own agenda in individual meetings with legislators, weekly letters educating legislators on a range of policies, as well as working to generate positive media coverage.

- | |
|--|
| <p style="text-align: center;">Promise of Measure 57 Coalition</p> <p>Advocacy Coalition of Seniors and People with Disabilities
Association of Oregon Community Mental Health Programs</p> <p>The Confederated Tribes of Grande Ronde
Human Services Coalition of Oregon</p> <p>Juvenile Rights Project
League of Women Voters of Oregon</p> <p>National Association of Social Workers, Oregon Chapter
Oregon Alliance of Children's Programs</p> <p>Oregon Business Association
Oregon Criminal Defense Lawyers Association</p> <p>Oregon Education Association
Oregon Prevention Education & Recovery Association</p> <p>Partnership for Safety and Justice
SEIU, Local 503</p> <p>Self Enhancement, Inc.
Stand for Children</p> |
|--|

Streamlining the Criminal and Juvenile Justice Systems Workgroups

Judiciary Committee counsel Bill Taylor convened two workgroups to brainstorm cost saving ideas for corrections at the request of the Judiciary Committee chairs, Senator Floyd Prozanski (Eugene) and Representative Jeff Barker (Aloha). Again, a broad cross-section of stakeholders from PSJ to the District Attorneys to the Department of Corrections and the Oregon Youth Authority sat around a table to discuss a multitude of ideas. The goal was never to come to agreement but rather to brainstorm policies that could save money by changing Oregon's approach to public safety. The groups were divided between a focus on the adult system and juvenile system and met over the course of a few weeks. Legislative Counsel then worked to link various policy ideas with concrete fiscal savings estimates and also turned many of the ideas into draft legislation.

Ways and Means Committee Co-Chairs Budget

In May, the Ways and Means Committee Co-Chairs, Representative Peter Buckley (Ashland) and Senator Margaret Carter (Portland), proposed a state budget that accounted for \$78 million in savings created by reducing the need for prison beds. These savings were dependent on passing a package of reforms. Accounting for those savings became essential to both a balanced budget and to preventing even more significant cuts. The threat of further cuts meant new people were now advocating for corrections savings, including community corrections and crime survivor advocates, while increasing the attention SEIU members were giving this issue. Again,

this was an area where Representative Shields provided key leadership in his role as co-chair of the Public Safety Subcommittee of Ways and Means.

“The Group of Four”

Senator Prozanski and Representative Barker, along with the Co-Chairs of the Public Safety Subcommittee, Representative Chip Shields and Senator Joanne Verger, met regularly to try to find a compromise package of policies that would create the \$78 million of corrections savings. In the end, “the group of four” (as they became known to those of us working on public safety issues in the capitol) drafted House Bill 3508, the omnibus bill that created savings in the corrections and public safety budgets. Though they tried to work with the Oregon District Attorneys Association to agree on a proposal, the DAs remained in staunch opposition to its passage.

Certainly, there were many other dynamics at play over creating these savings, but this gives an overview of a few of the significant factors.

Overcoming Opposition & Hurdles

Oregon District Attorneys Association and Crime Victims United

The Oregon District Attorneys Association and Crime Victims United usually present a united front when it comes to policies dealing with crime. This was true again this session as Steve Doell of Crime Victims United and the District Attorneys Association would not agree to any of the proposals put forward. In the end, the District Attorneys proposed letting 2000 prisoners out as a “one-time purge” to save money instead of creating the earned time that was proposed. Though the use of earned time has been proven in Washington State to save money and reduce recidivism, the DAs held firm. It appeared that their position was based primarily on their desire to maintain control of sentencing decisions. Seen through this lens, a one-time release is less of a threat than a change to the amount of time people serve based on their behavior in prison, not on the wishes of the prosecutor. The Group of Four worked particularly hard to negotiate with the District Attorneys Association and some legislators were extremely vocal in their frustration with the Association’s lack of willingness to reach a compromise. The fact that House Bill 3508 passed over their opposition is a huge step forward for criminal justice reform in Oregon, and it’s even bigger when you consider Measure 10.

Measure 10

Sometimes called Measure 11’s sneaky cousin, Measure 10 is a major barrier to passing criminal justice reform legislation. Measure 10, passed in 1994, states that if the legislature wants to decrease a voter-approved criminal sentence they must get a two-thirds vote of both legislative bodies to do so. Normally it would take a simple majority, 50% plus one vote, to pass a bill. There is a requirement for the legislature to have a three-fifths majority to pass new taxes, but the two-thirds required by Measure 10 creates an even higher hurdle to overcome. Because Measure 57 (like Measure 11) was passed by the voters and delaying it would in essence reduce a criminal sentence, changing it required a two-thirds vote. So, not only did Oregon pass a major criminal

justice reform bill, we were able to get the super majority needed for passage, **even over the opposition of the District Attorneys Association.**

What Passed, What Failed & Where We Go From Here

House Bill 3508

House Bill 3508 is the omnibus corrections savings bill that, along with reforms we have been advocating for, also included sentencing enhancements and changes to the parole board process that we opposed. It is worth noting that for the bill to produce an actual savings, the reforms clearly had to outweigh the enhancements, and that was certainly the case. Nevertheless, this situation underscores that compromise is an unavoidable part of the legislative process and often out of our control. Below is a summary of the bill.

Positive Reforms

Phases in Measure 57: The implementation of Measure 57 continues until February 15, 2010 and then Measure 57 will be suspended until January 1, 2012. Increased sanctions will still apply to those committing fraud on the elderly, delivery of a controlled substance to a minor and for those who sell significant quantities of a controlled substance. *Estimated savings is \$25 million.*

Increases earned time: Increases the maximum eligible earned time from 20% to 30% for **non-violent offenders**. The bill sunsets on July 1, 2013. *Estimated savings is \$6 million.*

Limits jail time for probation violations: Changes the maximum amount of time a judge can sentence a person to spend in jail on a technical probation violation from 180 to 60 days, unless the person has committed a new crime; sunsets July 1, 2011. *Estimated savings is \$10 million.*

Allows earned-time reduction on probationary period: Sets a minimum amount of time a person must serve on probation and allows for up to a 50% reduction in the length of probationary period if the person complies with the terms of probation; sunsets July 1, 2011. *Estimated savings is \$1 million.*

(Note regarding increased earned time: PSJ has received many inquiries regarding this provision. **It does not apply to M11 prisoners.** It does apply retroactively, as well as prospectively, to those convicted of nonviolent offenses. According to the Oregon Criminal Defense Lawyers Association, because Oregon law requires that sentences must be declared in open court, existing prisoners will have to be resentenced. The process will be initiated by the DOC, who must calculate which prisoners are eligible for the increase and send notices of same to the DA, presiding judge and the prisoner. If the crime involves a victim, the DA must use reasonable efforts to locate the victim. The victim has 20 days from the date of the notice to file an objection with the DA. The victim or the DA may object to the increase and request a hearing within 21 days of receipt of the DOC notice. For a crime without a victim, the DA may file an objection to the increase within 14 days of receipt of the DOC notice. If the judge agrees to the entry of an order increasing earned time, no hearing will be held; the order will be signed and the prisoner entitled to the increase. If the judge does not agree to granting an increase without a hearing, or if either the DA or the victim requests a hearing, then counsel will be appointed for the prisoner and the hearing must be held within 35 days of receipt of DOC notice. The hearing is limited to determining whether the increase in earned time is appropriate based on information known at time of original sentence, not based on institutional behavior.)

Allows inactive probation status: A person on post-prison supervision may be transitioned to inactive supervision after six months for crimes in categories 1 to 3, and after 12 months for crimes in categories 4 to 10; sunsets July 1, 2011. *Estimated savings is \$5 million.*

Sentencing Enhancements

Increases penalty for kidnapping: Increases the penalty for kidnapping when it is for the purpose of committing a sex crime against a victim under age 12 from 70 months to 25 years. *Estimated cost is unknown.*

Increases penalty for Assault III: Increases the penalty for Assault in the Third Degree when the injury results from a person driving under the influence of intoxicants (DUII); changes from Class C felony to Class B felony. *Estimated cost is \$100,000.*

Parole Hearings: Allows the Parole Board to hold parole hearings in other than two-year increments, under certain circumstances, up to ten years. *Estimated costs are unknown.*

Change on Which We Took No Position

ICE Detainers: Streamlines the process for commutation for people subject to Immigration and Customs Enforcement (ICE) who are incarcerated for a non-violent felony and who have waived their right to contest deportation. Allows for appointment of counsel for the purpose of advising person regarding waiver of statutory or constitutional rights; sunsets July 1, 2011. *Estimated savings is \$2 million.*

PSJ's legislative agenda for 2009 had three core components: youth justice, victim services and justice re-investment. Below is a summary of how we did in each area.

Youth Justice

Partnership for Safety and Justice prioritized Second Look for youth during the 2009 legislative session. Second Look was drafted in Senate Bill 682 and received an informational hearing in the House Judiciary Committee but was not moved to a vote. The bill's best chance at passage was to be included in the omnibus public safety savings bill (HB 3508). PSJ staff, members and many of you advocated throughout the session for it to be a part of that package. While strongly considered for inclusion (with support from members of the Judiciary Committee and the Governor's office), in the end no Measure 11 reform was included in the omnibus bill. PSJ was deeply disappointed in that decision.

Second Look is a smart policy that needs to be passed in Oregon and PSJ is committed to working for its passage. During the session, we met with numerous legislators to give them information about Second Look, including polling information that shows strong public support for a policy like Second Look. Further, the Governor and Oregon Youth Authority staff voiced their support for Second Look. Data provided at the hearing by the Department of Corrections demonstrated that to the extent Second Look for youth is currently used it reduces recidivism.

Second Look for youth is gaining momentum and support, though it still faces strong opposition from Steve Doell (Crime Victims United) and the District Attorneys Association.

Victim Services

Oregon Domestic and Sexual Violence Services Fund

Partnership for Safety and Justice prioritized protecting the Oregon Domestic and Sexual Violence Services Fund (ODSVS) during the 2009 legislative session. OSDVS is the only source of general fund money that goes to community-based domestic and sexual violence assistance programs. Funding for community-based programs is already less than half what's needed to provide core emergency services to everyone in need. OSDVS was facing up to a 30% cut in the 2009-2011 budget.

PSJ was a key member of the Oregon Alliance to End Violence Against Women, a legislative coalition of victim service providers across Oregon. We hosted a Domestic and Sexual Violence Awareness Day, held a rally on the front Capitol steps, distributed floor letters, earned media, met individually with legislators, and launched the OSDVS Postcard Campaign. The Postcard Campaign brought in over 4,000 individualized postcards from across Oregon and delivered them to six key members of the Ways and Means Committee – PSJ brought in over one-third of the postcards!

Because of the hard work of the victim services community and PSJ staff and members – and the staunch commitment of key legislators, especially Representative Chip Shields – OSDVS was spared from funding cuts! It even received a slight increase, bringing OSDVS funds to \$4.8 million over the next biennium. This brings the total amount of funding for community-based domestic and sexual violence assistance programs to about half what is ultimately needed.

HB 3273: Domestic Violence Specialists in Child Welfare Offices

PSJ supported HB 3273, which allows the Department of Human Services child welfare offices to contract with domestic violence specialists who can provide the information and assistance that domestic violence survivors and their children need. Domestic violence is a contributing factor to one-quarter to one-third of all child abuse cases in Oregon. Having domestic violence specialists working in child welfare offices will give domestic violence survivors better access to information and assistance, which will help children remain with their non-abusive parent. Unfortunately, funding was not included in HB 3273, and it is unclear if any child welfare offices will be able to contract with a domestic violence specialist at this time, but we consider it a success to have this law on the books.

Justice Reinvestment

Justice Reinvestment is a strategy that involves increasing public safety while decreasing spending on corrections and investing those savings in the communities that need the most support.

House Bill 3508 took a giant step in the right direction towards this approach by mandating increased earned time and allowing for shortened probation sentences and sanctions.

Where we go from here...

There is critical work to be done between now and the 2011 legislative session. The phase-in of Measure 57 and increase in earned time will be studied by the Oregon Criminal Justice Commission. Results of these studies will have a significant impact on how we are able to move forward with future reforms. To the extent possible, we will be working to ensure the most accurate analysis of that information as it becomes available.

We are also positioning ourselves to deal with the slew of initiatives that Kevin Mannix is readying for the next election. Not surprisingly, some of the initiatives try to remove the increase in earned time just passed by the legislature in House Bill 3508. Though the initiatives haven't gotten very far in the signature collection stage, it is never too early to remind your friends, family, colleagues and neighbors to watch out for Mannix's next round of initiative petitions. He no longer puts his own name on many of them because he recognizes that his association is now a major negative. Therefore, you have to pay close attention to subject of the initiative petitions. Look to our website for more information, but a safe rule is – if you are not positively sure about how an initiative petition is being framed, **DECLINE TO SIGN!**

Governor Kulongoski, who supported a retroactive Second Look this session, has indicated that he wants Oregon to examine the financial stranglehold Measure 11 has put on us. During a speech at the City Club of Portland on May 15, 2009, Governor Kulongoski outlined the major players in creating Oregon's economic crisis:

“Today, the 90-percent of the budget I mentioned – for education, human services and public safety – are caught in a budgetary vise. They're squeezed between unfunded mandates on one end – primarily Measures 5 and 50 regarding local governments and the property tax; and Measure 11 and Measure 57 for prisons – and dedicated funding on the other end, including Measure 66 for parks, the gas tax for highways, and the corporate and individual kicker.

This vise leaves government with a shrinking General Fund and very little flexibility when economic conditions change – as they did suddenly at the end of 2008. The time has come to have a discussion with the public about the reality of our budgetary vise. It won't be an easy conversation. But if there was ever an appropriate time – it is after we manage through this legislative session and chart our path forward.”

Partnership for Safety and Justice will evaluate the opportunities to engage Governor Kulongoski in a meaningful conversation about Measure 11, Second Look for youth, and other potential reforms.

PSJ will also continue to prioritize getting additional funding for ODSVS. Even with the slight increase in funds, many women and children fleeing abuse will be turned away from shelters because there are not enough services to meet the need.

Oregon has put itself on the map as a state not afraid to implement smart on crime reforms that reduce crime and recidivism while saving money on prison beds. This is an inevitable and

necessary trend in the country that spends more on prisons than any other country in the world. But we have a lot more work to do.

Glossary of Terms

To those of us who have been around the legislature the terms used are familiar, but to those of us new to legislative work it's a whole new world of systems and of language. We are providing a short glossary of terms used in this article to help build our knowledge and ultimately our strength together.

Legislature: The Oregon Legislature consists of the Senate, whose 30 members are elected to serve four-year terms, and the House of Representatives, which has 60 members elected for two-year terms.

Legislative Session: The legislature convenes every two years in regular session on the second Monday in January during odd-numbered years with most sessions lasting approximately six months. During the interim, legislators serve on interim committees and task forces that study issues likely to be faced during the next legislative session.

Legislative Counsel: Lawyers employed by the state who write the bills and amendments to bills for legislators.

Judiciary Committee: The legislature has a number of committees that specialize in certain topic areas including education, health care and judiciary. There are many others, but the Judiciary Committee hears all issues pertaining to the courts. Bills must be passed by the committee members before they can be moved to the full House of Representatives or Senate.

Ways and Means Committee: Staffed by the Legislative Fiscal Office during regular session, the Joint Committee on Ways and Means is the legislative appropriations committee that determines state budget policy. It is a large committee of both Senate and House members that employs from six to eight subcommittees to facilitate adoption of a budget.

Ways and Means Subcommittee on Public Safety: The Public Safety Subcommittee reviews, revises and recommends final budgets for the following agencies: Department of Corrections (DOC); Oregon Youth Authority; Oregon State Police; Department of Justice; Oregon Military Department; Board of Parole and Post Prison Supervision; Oregon Judicial Department; District Attorneys; Department of Public Safety Standards and Training; and the Oregon Criminal Justice Commission.

Sunsets: When it comes to legislation, this means that the bill will be implemented only for a period of time and then it will go back to the original law. For example, the increased earned time provision of House Bill 3508 will be in effect for four years and then it will go back to 20%.

Most of these definitions are slightly edited versions of what can be found at the Oregon Legislative website, <http://www.leg.state.or.us/>.