

CRIME VICTIMS UNITED

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TO: President Peter Courtney, Speaker Dave Hunt, Senator Richard Devlin,
Senator Ted Ferrioli, Representative Mary Nolan, Representative Bruce Hanna

FROM: Steve Doell, President, Crime Victims United of Oregon

DATE: 1-25-2010

SUBJECT: Important Information Regarding HB 3508, "Earned Time" and the February Session

It is the position of Crime Victims United that the 30% "earned time" law should be repealed and returned to the 20% maximum that served the Oregon Criminal Justice System and the Oregon Department of Corrections well since its inception in 1989.

No "fix" can undo the harm caused by the early releases pursuant to HB 3508. As the saying goes, "the horse is out of the barn." As of 1-14-2010, 4800 notifications in retroactive cases have been issued by the DOC. In these cases, 3418 early releases have been granted, 738 cases were denied, 41 partial sentence reductions were allowed and 603 cases are still pending.

In addition, as of 1-20-2010, 1,399 criminals sentenced since the effective date of HB 3508 (7-1-2009) have been granted 30% earned time. Ex post facto law applies in the cases of inmates sentenced since the law was passed. In other words in criminal law, what has been given to the criminal cannot be taken away.

Likewise, the harm done to crime victims cannot be reversed. This law has caused crime victims renewed anxiety, pain and post-traumatic stress because of the hearings they had to endure and additionally, for far too many, because the early release was actually granted. And, if that is not bad enough, we are just beginning to see new victimizations take place by criminals committing new crimes who were released as a result of HB 3508 (see attached news story, paragraphs 13 and 14).

So much for the decrease in recidivism you were promised based on a Washington State study. What you were not told about the Washington study that proclaimed a small decrease in recidivism is that the study also found that increased "earned time" led to an estimated 4.7 additional property crimes per offender (1).

The anti-incarceration, pro-criminal lobby is now referring to HB 3508 / SB 1007 as a "Safety and Savings Bill." I doubt that anyone would want to sell this marketing slogan to either the original crime victims or to the new crime victims of the HB 3508 early-released criminals.

Most states and the federal government allow 15% "earned time" for inmates not serving mandatory minimum sentences, so even allowing 20% "earned time", as it was prior to HB 3508, made Oregon very generous with those convicted felons who actually go to prison. In Oregon, according to the Oregon Criminal Justice Commission, 23% of convicted felons go to prison while 77% receive alternative sanctions of probation and local control (2). Furthermore, Oregon ranks 30th among states in the rate of incarceration (3) dispelling the notion from some quarters that the state has become a penal colony.

"To promote a balanced criminal justice system through public awareness and legislative action"

Oregon Attorney General John Kroger stated at the November Oregon Sheriffs' Winter meeting in Bend that he favors a maximum 15% "earned time" for sentencing guideline inmates.

As I stated in the press release copied to all of you regarding the early release hearing for Christopher Lee Millis, attempted police killer and Marion County Courthouse arsonist on Wednesday, January 13:

"Make no mistake about it, despite the recession, this 50% increase in 'earned time' for convicted Oregon felons was not about saving money. After all, the projected savings of six million dollars in a fifty-six billion dollar all funds budget is 1/100th of 1%. This was about a fundamental philosophical shift in Oregon Criminal Justice Policy," stated Steve Doell, President of Crime Victims United, an advocacy group for crime victims and sound public safety policy.

"Remember what a famous politician once said, 'Never let a serious crisis go to waste,'" Doell concluded.

In this session as in the last, you will hear a lot of nonsense marketed as "smart on crime" from people who claim that our criminal justice policy over the last 15 years has been a wasteful disaster and that we should do an about-face. When you hear that, please keep these facts in mind:

- From 1995 to 2008, Oregon's violent crime rate decreased by 49 percent (4). Remember this the next time someone tells you that Oregon's tough-on-crime approach of the last 15 years has not made us any safer (5).
- Oregon prevents 100,000 crimes every year because of increased incarceration since 1995 (8). Remember this the next time someone tells you that Oregon's tough-on-crime approach of the last 15 years has not made us any safer (5).
- Oregon still ranks just 30th among states in incarceration rate (3). Remember this the next time someone tells you "Oregon spends more of its general fund dollars on corrections than any other state in the country."
- 77 percent of criminals convicted of felonies in Oregon receive non-prison sentences (2). Remember this the next time someone tells you that Oregon has a "one size fits all" approach to sentencing.
- 40 percent of criminals convicted of second-degree Measure 11 crimes receive sentences below the mandatory minimum (6). Remember this the next time someone tells you that Oregon has a "one size fits all" approach to sentencing.
- Over a five-year period, 56 percent of juveniles convicted of second degree Measure 11 crimes received sentences below the mandatory minimum including 23 percent who received probation sentences (7). Remember this the next time someone tells you that we have a "one-size fits all" approach to sentencing.

These figures demonstrate that our criminal justice policy has been a stunning success. So why are some voices in the Capitol calling to reverse course and why is anyone taking them seriously? If test scores were dramatically up and dropout rates dramatically down, would anyone be calling to reverse course on education policy and cut education spending? Yet this is what some people are telling us we need to do with corrections. If we follow their prescription we will surely return to the failures of the 1970's and 1980's when we had very low rates of incarceration and very high rates of crime.

This has been a difficult time for all of us - crime victims, judges, prosecutors and the Oregon Legislature. There is only one practical and political resolution to this terrible situation. It is time to do what is right and honorable. Repeal the "earned time" section of HB 3508 and return it to 20% in the February session.

It is our view that the expansion of earned time in HB 3508 was bad public safety policy. If the earned time provision is repealed effective at the end of the 2010 session, we will consider this issue to be addressed. I commit Crime Victims United to a promise of disengagement on the HB 3508 "earned time" issue when the repeal is signed into law.

Thank you for taking the time to read this letter. If you would like to discuss this matter further, please do not hesitate to contact me at sdoell@crimevictimsunited.org or 503-502-7572.

cc: Oregon State Senators and Representatives

REFERENCES

1. *"4.7 property crimes per offender are incurred in Washington as a result of the decreased incarceration rate."*

Washington State Institute for Public Policy, "Increased Earned Release from Prison", page 8, paragraph 3, <http://www.wsipp.wa.gov/rptfiles/09-04-1201.pdf>

CVU's analysis of the Washington State study is available at <http://www.crimevictimsunited.org/issues/corrections/WSIPPEarnedTimeAnalysis.pdf>.

2. *77 percent of criminals convicted of felonies in Oregon receive non-prison sentences.*

This figure comes from the Oregon Criminal Justice Commission. See <http://www.crimevictimsunited.org/issues/corrections/doc/dispositions2007.pdf>.

3. *Oregon ranks 30th among states in the rate of incarceration.*

This figure comes from the Bureau of Justice Statistics "Prisoners in 2008" (<http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>), page 30, Appendix Table 10. Note Oregon's 2008 total incarceration rate of 371 prisoners per 100,000 residents on page 31. Now go back to

the top of the table on page 30 and count the number of states with a higher incarceration rate. You will count 29 states with higher incarceration rates than Oregon.

4. *From 1995 to 2008, Oregon's violent crime rate decreased by 49 percent.*

Oregon's 1995 violent crime rate of 522.4 violent crimes per 100,000 residents comes from the Bureau of Justice Statistics Data Online web page (<http://bjsdata.ojp.usdoj.gov/dataonline/>). Oregon's 2008 violent crime rate of 257.2 violent crimes per 100,000 residents comes from the F.B.I. 2008 Uniform Crime Report table 4 (http://www.fbi.gov/ucr/cius2008/data/table_04.html).

5. *"There is recognition that our current state strategy hasn't made us any safer, but it has been very expensive," said David Rogers, the partnership's executive director.*

"Changes in prisons urged", The Register-Guard, January 28, 2007

6. *40 percent of criminals convicted of second-degree Measure 11 crimes receive sentences below the mandatory minimum.*

From the Oregon Criminal Justice Commission. See <http://www.crimevictimsunited.org/issues/corrections/doc/sb1049adult2007.pdf>.

7. *56 percent of juveniles convicted of second degree Measure 11 crimes received sentences below the mandatory minimum including 23 percent who received probation sentences.*

From the Oregon Criminal Justice Commission. See <http://www.crimevictimsunited.org/issues/corrections/doc/sb1049juvenile2007.pdf>.

8. *Oregon prevents 100,000 crimes every year because of increased incarceration since 1995.*

This figure is derived from a section of the Oregon Criminal Justice Commission's 2007 report to the legislature. The Criminal Justice Commission's confirmation of this figure can be found at: <http://www.crimevictimsunited.org/issues/corrections/doc/crimesprevented.pdf>.

Registered sex offender rearrested

By Maxine Bernstein

The Oregonian

Thursday, January 14, 2010

SUMMARY: Demetrius Jerome Payton is accused of breaking into an apartment, assault
Registered sex offender rearrested

MAXINE BERNSTEIN

A 33-year-old registered sex offender and convicted burglar who had his prison sentence reduced last year was back in court Wednesday, accused of breaking into a Northeast Portland apartment through a sliding door and sexually assaulting a woman this week.

Authorities say Demetrius Jerome Payton, of Portland, broke into an apartment in the very same Northeast Portland complex that he was convicted of burglarizing in September 2008.

A Portland police officer's sharp memory helped lead to Payton's rearrest Tuesday afternoon.

Canine Officer Jeff Dorn was on the other side of town when he heard a dispatcher radio a report of a burglary and sexual assault at the Willow Springs apartment complex off Northeast 125th Avenue about 1 a.m. Monday.

Dorn immediately recalled the rash of burglaries at the same apartment complex in the summer of 2008.

He also remembered that after a series of unsuccessful searches for the burglar then, his police dog, Ranger, finally homed in on a man about to pull out of the parking lot of the complex. That man was holding a credit card belonging to a victim whose apartment had been burglarized in the middle of the night, and who reported having her toe touched by the intruder.

Dorn never forgot the suspect's name, Payton.

So early Monday, Dorn headed to the Willow Springs apartment complex, spoke with the patrol officer who responded, and heard the suspect description and account of the sexual assault that occurred.

This time, an intruder broke into a unit at the apartment complex through a patio sliding door.

"Our victim awoke to find him in her home," said Sgt. Mike Geiger, supervisor of the Portland police sex crimes unit. "This was a stranger-to-stranger assault."

"I've been doing this long enough," Dorn said. "To have this happen at the same exact complex, I thought that was odd."

So Dorn checked Payton's status. "I researched his name and realized, he just got out of jail."

Payton had been released from prison Oct. 2, after having 55 days shaved off his 18-month prison sentence under a new law that went into effect last summer. He had been convicted in January 2009 of first-degree burglary and attempted burglary convictions from the September 2008 burglary at Willow Spring apartments.

The prison reduction resulted from House Bill 3508, which became law in July that made about 4,600 Oregon inmates eligible for a 30 percent decrease in their sentences for good behavior, instead of the standard 20 percent.

Later Monday morning, Dorn contacted the bureau's sex assault unit. Detective Todd Prosser was assigned to the case, and the victim was able to pick Payton out of a photo lineup, Geiger said. "We sure appreciate that officer notifying us right away, and his memory of past events," Geiger said.

Police don't know why Payton would return to the same apartments where he had committed previous burglaries. "I have no idea why he appears to be comfortable with that complex," Dorn said.

Prosser arrested Payton in the area of Northeast 117th Avenue and Sacramento Street about 2:20 p.m. Tuesday. Payton, of Northeast Portland and a registered felony sex offender in Washington state, was arraigned Wednesday, accused of first-degree burglary and unlawful sexual penetration.

Now, Geiger said, "We're trying to determine if he was tied to any other burglaries."

Payton was driving a red Land Rover when arrested, but police say he also may have been driving a red Ford Escort in the past few weeks. Detectives are asking anyone with information or anyone who may have seen Payton in the area of the apartment complex in the 4500 block of Northeast 125th Place to contact Prosser at 503-823-9320.