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City Club of Portland (Portland, Or.)

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Report on
Ballot Measure 4
Requires Full Sentences Without Parole,
Probation For Certain Repeat Felonies

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The City Club membership will vote on this report on November 4, 1988. Until the membership vote, the City Club does not have an official position on this report. The outcome of the membership vote will be reported in the City Club Bulletin (Vol. 69, No. 25) dated November 18, 1988.

Report on
Ballot Measure 4
**"REQUIRES FULL SENTENCES WITHOUT PAROLE,
 PROBATION FOR CERTAIN REPEAT FELONIES"**

To the Board of Governors,
 City Club of Portland:

Ballot Measure 4 is a response to citizen concern about rising crime in Oregon. It would require that full sentences be served by repeat offenders convicted of ten specified felony crimes. (See Appendix A for List of Felony Offenses.) Measure 4, sponsored by Representative Denny Smith and the Oregonians Against Crime, would eliminate temporary leave, parole, and early release, from sentences for certain repeat felony offenders. (See Appendix B for Glossary.)

Ballot Measure 4 would result in an increased prison population but it requires no prison construction and requests no funding. Its effective date is January 1, 1990, which would give the Legislature the opportunity to fund the anticipated need for more prison beds.

The question as it will appear on the ballot follows:

Question: Shall law be amended to require certain repeat felony offenders to serve full sentences without parole, probation or other reduction?

Explanation: Amends criminal sentencing laws. Eliminates "indeterminate sentence," probation and parole for persons convicted of any of the following class of crimes after previous conviction of any crime in the class: murder; and first degree manslaughter, assault, kidnapping, rape, sodomy, sexual penetration with foreign object, burglary, arson and robbery. Such offenders must serve their entire sentences without temporary leave, reduction for "good behavior" or prison employment. Affects crimes committed on or after January 1, 1990.

I. BACKGROUND

A. Crime

Signatures of over 110,000 citizens on Ballot Measure 4 petitions demonstrate the concern Oregonians have about crime. An Oregonian poll (December 13, 1987) found that 87 percent of area residents believed that crime had increased during the preceding year. This is more than a perception -- the number of reported index crimes rose by 25% between 1975 and 1987. Not only was there an increase in the number of crimes, but the rate (the number of index crimes per 100,000

inhabitants) also increased by 25%, to 545 per 100,000 in 1987.

B. Corrections System

Ballot Measure 4 would assure that certain criminals would be sentenced to longer prison terms. One of the issues raised by this measure is allocation of prison space. Prison beds are already at a premium, because commitments have risen at a greater rate than have the construction of beds. Between 1975 and 1987, the number of prison commitments increased by 135%, while the number of beds increased by only 30 percent. Various steps have been taken to deal with the overcrowding problem.

In January 1987, the prison system design capacity was 2,798, excluding bed space in city and county jails and juvenile facilities. At this same time, the state's ten correctional facilities were actually housing 4,610 offenders, or 59% over capacity.

In 1977, the Legislature shifted corrections policy with the enactment of the Oregon Community Corrections Act. This law was designed to divert offenders from institutions by placing more emphasis on probation, halfway houses, work release centers and other community based programs for Class B and C felons.

Between 1977 and 1987, the Legislature enacted mandatory sentences for certain crimes and reclassified some offenses in an effort to control who gets sent to prison and length of time spent in prison. For example, the 1987 Legislature increased the minimum value of stolen goods to qualify for Theft I and created a new felony, Aggravated Theft, for goods over \$10,000.

For 25 years, no new correctional facilities were funded until the 1983 Legislature appropriated state general fund dollars to convert portions of the Eastern Oregon State Hospital (now named the Eastern Oregon Correctional Institution) to a medium-security prison. However, the "design capacity," or beds for which architects provided an established space, was modified to achieve an "extended capacity." (See Appendix C for State Correctional Facility Occupancy.) The increase in population was accommodated through the use of "double bunking" (two persons in a cell designed for one person), "hot bedding" (using bed space in shifts), using non-housing portions of facilities and other population management tools.

The 1987 Legislature also acted bills to develop sentencing guidelines, construct 1000 minimum security beds and provide a substantial increase in the Department of Corrections (DOC) operational budget. In fact, the DOC budget for

the 1987-89 biennium is approximately \$230 million, compared to \$158 million in 1985-87. The current figure represents about 6% of the state general fund.

Oregon voters defeated prison construction ballot measures in 1980, 1982, and 1986. The City Club studied the 1982 and 1986 proposals and recommended in both instances support for authorizing state bonds to finance state and local corrections facilities.

C. Sentencing Procedures

Under the Oregon corrections system, judges impose prison sentences within the statutory ranges for each type of crime. The Oregon State Parole Board determines the actual amount of time that offenders serve in prison by considering the offender's criminal history and the severity of the crime. The Parole Board's matrix system has been changed twice to increase the time served by violent felons. The average prison time increased from 27.6 months in 1984 to 30 months in 1987. After serving the minimum prison term, prisoners can be placed on parole. On June 1, 1988, 2,057 offenders were on parole.

In addition to freeing space by paroling inmates from prison, space was also made available through the "temporary leave" program. Originally temporary leave allowed prisoners to be released 90 days prior to the end of their sentences; in 1981 the early release was advanced to six months, and in 1986 to seven months.

The original purpose for temporary leave was to provide offenders a transition to community life. Offenders are required to report each week, seek employment, participate in alcohol and drug programs and fulfill other conditions. After risk assessments, offenders are released from custody and into the community with a minimum of supervision. But today, because of limited bed space, temporary leave is strictly a population management tool. Presently, there are 850 offenders in the program; there have been as many as 1,126.

III. ARGUMENTS ADVANCED IN FAVOR OF MEASURE

The following arguments were made by proponents of the measure:

1. The measure sends a message to criminals and potential criminals that Oregon is tough on crime, and that they will be punished.
2. Repeat felony offenders commit a high proportion of crimes in Oregon. The measure targets these offenders and, by putting them out of circulation, reduces crime.

3. Incarceration is less expensive to citizens than the cost of the crimes themselves and the crime-prevention costs citizens are forced to undertake.
4. The measure sends a message to the Oregon Legislature that incarceration of criminals is a priority for citizens.
5. There is money in the state budget to pay for more prison space.

IV. ARGUMENTS ADVANCED AGAINST THE MEASURE

The following arguments were made by opponents of the measure.

1. The measure would be expensive but fails to provide a source of funding.
2. There is no conclusive evidence that mandatory sentences deter crime.
3. The measure will result in early release of some first-time offenders whose crimes were more severe than those of repeat felons.
4. If the intent of the proponents is solely to send a message to the Legislature, this measure is inappropriate because it would require changes to sentencing policy and additional prison space.
5. The measure eliminates parole, temporary leave and good time, which are valid rehabilitation and management tools for the corrections system.
6. This measure is an overly-simplistic answer to the crime problem.
7. Corrections policy is too complex to address through the initiative process.
8. The measure does not address other serious crimes against people, such as manufacturing or selling drugs, sex abuse or child abuse.
9. The measure reduces the discretion of judges and increases the power of prosecutors.
10. The measure contains technical flaws which will interfere with its effectiveness.

V. DISCUSSION

Few Oregonians would deny that crime has become an increasingly serious problem. Both the number of crimes and

the crime rate has increased during the past decade. While the arrest rate for all crimes, and particularly felonies, has increased significantly in Oregon, your Committee shares a widely-held belief that the state criminal justice system could do more to protect Oregonians from crime.

Statistics show that career criminals commit a high proportion of the crimes; a 1982 study found that 20 percent of the estimated criminal population was responsible for 80 percent of all crimes. Overcrowding at Oregon's correctional institutions has resulted in many offenders being released under "temporary leave" after serving only a fraction of their sentences. Many of these, perhaps most, have no jobs and receive only minimal parole supervision. Under this system, the recidivism rate is approaching 62 percent within three years of being released from prison.

Proponents argue that Ballot Measure 4 is the solution (or at least a partial solution) to the Oregon crime problem. The measure would reduce the population of repeat offenders by ensuring that each serves a long, complete sentence. Moreover, proponents state, Ballot Measure 4 sends a message to criminals that Oregon is getting tough on crime and will prosecute, convict, and severely sentence those caught.

According to witnesses, Ballot Measure 4 as drafted contains several flaws.

First, it does not ensure that all dangerous criminals will be incarcerated. Felonies addressed by Measure 4 account for only 21 percent of reported crimes in Oregon. Of those criminals subject to Ballot Measure 4, many are not violent criminals. The Department of Corrections estimates that two-thirds of the criminals who would be affected by the measure are burglars. The measure excludes some serious crimes against persons, such as child abuse, sexual abuse and second degree assault. More significantly, it fails to address drug or substance abuse crimes, which witnesses stated fuel 70 to 80 percent of all crimes. (See Appendix A)

Second, the measure arguably has no effect on first-time offenders, regardless how serious their crimes. According to witnesses, unless prison space increases appreciably, Measure 4 may have the effect of forcing the release of a first-time murderer to make room for a second-time burglar. Although some argue that mandatory sentencing will act as a deterrent even to first-time offenders, there is no evidence from other states that mandatory incarceration, as opposed to certainty of punishment, deters crime. Mandatory sentencing refers to specified prison terms for named crimes, while certainty of punishment refers to the assurance that an offender will serve a minimal sentence, regardless of the crime and mitigating factors. Material reviewed by your Committee indicates that many penologists believe that the certainty of a prison

sentence is more effective as a deterrent than the length of time served.

Third, the measure reduces the discretion of judges and enhances the power of prosecutors. One witness stated that habitual criminal provisions are generally a bargaining chip in plea negotiations and used most often as a threat. Crimes necessarily are defined broadly. For that reason, judicial discretion in sentencing is thought to be vital to making the penalty fit the crime. For example, a judge dealing with a first-time offender whose crime was especially brutal should have the discretion to deal with that crime on an individual basis. Because Ballot Measure 4 allows no flexibility for two-time felons and will reduce the availability of prison beds for first-time offenders, the discretion of the sentencing judge may be eliminated or restricted.

Last, for those crimes specified, Measure 4 eliminates parole. Parole provides individuals, some of whom have spent many years in prison, with supervision and support upon their release into the community. Few witnesses your Committee interviewed believed that the system should, or safely could, eliminate parole (or some other function that provides supervised release as a transition to society).

Witnesses stated that, these flaws aside, Ballot Measure 4 is a piecemeal, emotional approach to a complex problem and may frustrate more effective, reasoned solutions. Your Committee heard from several witnesses on current efforts to change Oregon's corrections system. The Oregon Criminal Justice Council has developed sentencing guidelines. The purposes of these guidelines are to: (1) ensure that sentences more closely reflect the actual time a convict spends in prison, i.e., "truth in sentencing"; (2) reduce sentencing disparities around the state; and (3) enhance the use of limited prison resources. The Governor's Task Force on Corrections Planning released its Strategic Corrections Plan in August 1988. This plan recommends a series of changes designed to increase the overall efficiency and effectiveness of the corrections system. Other efforts are underway to determine whether various prison alternatives, such as commitment to substance abuse and other community-based programs, are more effective and constructive for certain types of criminals. Some witnesses argued that these approaches would be more effective in addressing Oregon's crime problems than Ballot Measure 4.

Witnesses testified that parole and time off for good behavior remain effective means of influencing the behavior of prison inmates and supervising the reentry of prisoners into the community. Ballot Measure 4 would eliminate these tools for repeat offenders. According to witnesses, this measure would remove flexibility needed to respond to different types of offenses and different types of criminals and would bias spending decisions in favor of additional prison

space, regardless how effective these expenditures are in reducing crime.

Cost has been central to the debate over this measure before your Committee. The Oregon Department of Corrections projects that Ballot Measure 4 would require 2500 new medium and minimum security prison beds at an average construction cost of \$69,200 per bed and average annual operating costs of \$11,295 per offender. Constructing the necessary additional correction facilities is estimated by the state to cost between \$176 to \$184 million. The cost of operating the new prisons from 1989 through 2007 is estimated to be \$554 million. Although these figures depend on a great many variables including land acquisition cost, inflation and actual numbers of prisoners housed, they are nonetheless significant.

Proponents of the measure counter with a study that shows the social cost of crime including expenditures for operation of the corrections system, police, courts, private security, and victims' losses is more than the cost of confinement.¹ The study has been criticized because this type of cost/benefit analysis is very speculative.

Proponents also cite current state budget projections which show the 1989 Legislature will have an additional \$400 million to spend for the 1989-91 biennium. The measure's effective date is January 1, 1990 which proponents explained is designed to give the 1989 Legislature the opportunity to fund the anticipated need for more prison beds.

Several witnesses testified, however, that the new beds would consume over half of this money. Witnesses testified that most of this \$400 million is already committed to fund prison beds added by the last Legislature, maintain the current level of school funding, and cover state employee raises that have already been approved.

How much Ballot Measure 4 would actually cost and how much money is actually available may be unresolvable questions at this time.

VI. CONCLUSIONS

1. Crime in Oregon is a serious problem which needs to be addressed by recognizing the complexity of the issue and reacting with a comprehensive approach.

2. The failure of Ballot Measure 4 to address cost is a serious flaw. While estimates and arguments about cost abound, it is unwise to commit the state to unknown, and possibly unknowable, expenditures.

¹ Edwin W. Zedlewski, "Making Confinement Decisions," National Institute of Justice, Research in Brief, July 1987.

3. Ballot Measure 4 is a piecemeal, uncoordinated response to Oregon's crime problem, and it will likely frustrate more reasoned, comprehensive efforts that are currently being developed or underway.

4. Ballot Measure 4 is a flawed method for combatting crime:

-- It ignores some serious crimes against persons, while covering less serious property crimes.

-- Some first-time offenders may be released from prison early or may receive shorter sentences to make room for repeat offenders.

-- The discretion of judges to deal with especially brutal first-time offenders will probably be reduced.

-- Supervised transition back into society would no longer be available for the second-time felons this measure affects.

5. The ballot measure is not the most appropriate means of dealing with a complex issue like Oregon's crime problem and the comprehensive response that is necessary.

VII. RECOMMENDATION

Your Committee recommends a "No" vote on Ballot Measure 4 on November 8, 1988.

Respectfully submitted,

Edward B. Allen
 Todd A. Bauman
 Craig A. Crispin
 Linda J. Crum
 Clyde Doctor
 Steve Lee
 Kay J. Mannion
 Mike Oekerman
 Jolinda Osborne
 David E. Cook, Chair

Approved by the Research Board on October 13, 1988 for transmittal to the Board of Governors. Approved by the Board of Governors on October 17, 1988 for publication and distribution to the membership and for presentation and vote on November 4, 1988.

Appendix A
SELECTED CRIMINAL OFFENSES AND FELONY CLASSES

(Note: Offenses covered by Ballot Measure 4
 are denoted by an asterisk.)

Class A Felony Offenses

*Murder	*Assault I
*Kidnapping I	Treason
*Robbery I	*Manslaughter I
*Arson I	*Rape I
*Burglary I	*Sodomy I
Criminal Activity in Drugs	*Sexual Penetration
Manufacture or Delivery of a Controlled Substance	

Class B Felony Offenses

Escape I	Manslaughter II
Assault II	Obtaining Drugs Unlawfully
Rape II	Bribe by Giving or Receiving
Sodomy II	Robbery II

Class C Felony Offenses

Supplying Contraband	Poaching
Coercion	Burglary II
Sexual Abuse I	Theft I
Theft of Services	Welfare Fraud
Forgery I	Incest
Perjury	Bigamy
Escape II	Hindering Prosecution
Bribing a Witness	Promoting Prostitution
Criminally Negligent Homicide	Robbery III
Criminal Mistreatment	Theft by Receiving
Rape III	Abandoned Child

Class A Felony - Maximum sentence of 20 years

Class B Felony - Maximum sentence of 10 years

Class C Felony - Maximum sentence of 5 years

(All offenders convicted of felony can be
 subject to a fine not exceeding \$100,000)

Appendix B
GLOSSARY

- Determinate sentence:** The specification by a court that a fixed term must be served in full by the offender; there is no discretionary parole release.
- Good time:** When an incarcerated offender violates no rules while in an institution, days are accumulated on a formula basis that ultimately reduce the prison sentence.
- Index crimes:** The Uniform Crime Reports Index measures eight crimes that are reported to police: homicide, rape, robbery, assault, burglary, larceny, motor vehicle theft and arson.
- Jail:** Correctional facilities that are administered, operated and financed primarily by local governments that are used to house persons accused or convicted of violating state law or local ordinances or to house pretrial detainees. The term of incarceration in a jail for each offense is one year or less.
- Maximum security:** The most secure and most expensive type of prison space usually reserved for very dangerous offenders. The staff/offender ratio is very high with single-person cells.
- Medium security:** The most common type of prison space in which staff/offender ratio is high, but the population is mixed and can be housed dormitory style.
- Minimum security:** The least secure type of facility in which the staff/offender ratio is very low and the environment less secure than that of medium and maximum security areas. The population, offenders of non-violent crimes, frequently participate in work release programs and other similar community based programs.
- Parole:** Conditional release of an individual in the community, after incarceration in a state institution.
- Prison:** Correctional facilities administered, operated and funded by the state which are used to house persons convicted of violating state laws for sentences that exceed one year.
- Probation:** Conditional release of an individual in the community either after or in lieu of a period of incarceration.
- Work release:** A program that allows an incarcerated offender to be released from custody on a temporary basis to seek work, attend work related classes or work at a job.

APPENDIX C
Oregon Correctional Facility Occupancy
(7/1/87-6/30/88)

Facility	Low	High	Average	Extended Capacity*
Oregon State Penitentiary (Salem)	1,699	1,828	1,753	1,709
Oregon State Correctional Institution (Salem)	995	1,062	1,017	860
Oregon Women's Correctional Center (Salem)	121	141	133	142
Oregon State Hospital (Salem)	103	119	111	120
Department of Corrections Release Center (Salem)	387	473	427	420
Women's Release Unit (Salem)	36	55	48	58
Farm Annex (Salem)	218	226	221	230
Eastern Oregon Correctional Institute (Pendleton)	417	651	541	590
Forest Work Camp (Tillamook)	88	113	102	118
Bay Area Work Center (Housed 30 offenders 8/1/88)			30	30
Washington State (Housed 127 offenders 8/1/88)			127	127
Total	4,139	4,610	4,351	4,250

*Extended Capacity: A determination made by DOC and the Governor's Task Force on Correctional Planning that represents the optimal number of offenders that can be managed safely using every available bed in a facility.

Appendix D

PERSONS INTERVIEWED

Nancy Allen, Executive Director, Oregonians Against Crime Committee
 Kathleen M. Bogan, Executive Director, Oregon Criminal Justice Council
 Representative Mike Burton, Chair, Subcommittee on Corrections/Crime, Joint Interim Committee on Judiciary
 Charles Crookham, Multnomah County Circuit Court Judge
 Jan Curry, Assistant Director, Information Systems Division, Oregon Department of Corrections
 Mary Elledge, President, Crime Victims United
 James R. Ellis, Multnomah County Circuit Court Judge
 Vern Faatz, Chairperson, Board of Parole
 Ron Glenn, Parole/Probation Officer
 Kay Hutchison, Legislative Analyst, Oregon Legislative Fiscal Office
 Lowell L. Kester, Parole/Probation Officer
 Peter A. Ozanne, Executive Director, Governor's Task Force on Corrections Planning
 Michael D. Schrunk, Multnomah County District Attorney
 Charles A. Tracy, Professor of Administration of Justice, Portland State University
 Congressman Denny Smith (letter)

SITE VISITS: Oregon State Penitentiary

Appendix E

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