



October 20<sup>th</sup>, 2021

Governor Kate Brown  
900 Court Street, NE  
Suite 254  
Salem, Oregon 97301

**Re: Early Release of Youth and Adults in Custody Sentenced Prior to Effective Date of SB 1008**

Dear Governor Brown:

We have recently come to understand you are again requiring the Oregon Department of Corrections (DOC) to identify lists of potential candidates for early release from prison. You apparently believe that you have the authority to release duly convicted felons, in grouped categories, under your clemency powers. We disagree.

The Oregon Constitution, Article V, Section 10, is clear: You are not a law maker. The Governor is to “*take care that the Laws be faithfully executed*” not act as a super-legislature or alternative to the legislative process. As demonstrated by your own record of clemency actions until 2020, and all Oregon Governors before you, *clemency power is to be used in extraordinary circumstances*, including, among other factors to be weighed, instances of *significant* rehabilitation. Your own administrative process requires your balancing of several important factors, including the input of victims, district attorneys, and proven deeds of demonstrated reform *before* you make decisions and notifications to release convicted felons.

The language in our Oregon Constitution, Article V, Section 14, bestows upon you the power to grant clemency “...*subject to such regulations as may be provided by law*...”. The Oregon Constitution requires you to honor the constitution itself, and the pertinent regulations and administrative processes as you deliberate.

We have been in regular communication with your staff regarding our comprehensive public records request, initiated earlier this year, in response to your earlier release of nearly 1,000 convicted felons into our communities. Several weeks ago, we provided your legal staff with a white paper that explains clemency law and process, and our concern that you have acted outside the parameters of your clemency power. In an October 14, 2021, email response to our public records request, your staff attorney assured us that you will not engage in the early release of any more convicted felons in response to COVID under your “medically vulnerable” or “getting out in six months” rationale. However, you have presented a new rationale to release felons early,

2007 State Street | Salem, OR 97301 | PH 503.480.0523 | FX 503.362.0513

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outside the clemency process. This can be summarized as “SB 1008 is unfair because it is not retroactive and earlier sentences disproportionately impact people of color.”

As stated in your September 28<sup>th</sup>, 2021 letter to DOC Director Peters, you are reviewing, for possible commutation, the sentences of convicted felons, sentenced as a result of crimes they committed while between the ages of 15 and 18, most of them sentenced under Measure 11. The lists you requested from DOC are attached and reflect hundreds of convicted felons who murdered, raped, sodomized, assaulted, robbed, terrorized, and humiliated their victims. Each felon on the attached lists committed at least one of the serious crimes specified in Measure 11; many of them committed more than one.

In 1994, when they voted to pass Measure 11 by 66% of the vote, the citizens of Oregon made clear that they demand minimum mandatory sentences and they want people 15, 16, and 17 years of age, when charged with one of 16 serious crimes addressed in Measure 11, tried and sentenced as adults. The voters re-affirmed this position in 1999, when, by a 74% “No” vote, they rejected a repeal of Measure 11.

The Oregon Constitution vests the legislative power of the state exclusively in the Legislative Assembly, *except for the initiative and referendum powers reserved to the people*. Article IV, Section 33, specifically addresses the reduction of criminal sentences approved by initiative or referendum process and states, “... *a two-thirds vote of all the members elected to each house shall be necessary to pass a bill that reduces a criminal sentence approved by the people under section 1 of this Article.*” No option exists for you to circumvent this law.

We understand you may be influenced by arguments to use executive clemency power as a means of “justice reform” such as proposed by a law professor, Aliza Kaplan. However, her proposal to use the clemency power to undo Measure 11 sentences dismisses the will of the people and is an assault on truth in sentencing, which has been a guiding principle in Oregon law since 1989.

As you point out in your effort to justify your proposed early release of a round of Measure 11 offenders, the law was amended by SB 1008, effective January 1, 2020, allowing special dispensation to juvenile offenders sentenced after that date.

The law is not retroactive, and you cannot re-write it. Clemency power is not intended to correct a perceived imbalance in the justice system but is an act of mercy granted to an individual based on individual facts and extraordinary circumstances. You further justify your proposal of releasing another batch of convicted felons by asserting that “these youth are capable of tremendous transformation.” Yes. All human beings are *capable* of tremendous transformation. Whether each human demonstrates and adheres to transformation is another matter. More significantly, public policy as to truth in sentencing does not support across-the-board reductions of sentences properly imposed.

Our system is also designed so that convicted felons are in a prison system which affords them education, addiction treatment programs, skills-based education, counselling, and mental health

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care. These are important aspects of rehabilitation which are not easily provided in the general community.

In your latest letter to Director Peters, you explain that you aim to repair the disproportionate impact the sentencing law has on people of color who are in prison because they committed serious crimes.

Please understand that the victims, and future victims, of the felons you propose to release are disproportionately people of color, women, and children. Statistics bear out the fact that Blacks, and to a lesser extent Hispanics, suffer much higher rates of robbery and homicide victimization than do whites. Most of the perpetrators of these crimes are members of the same racial or ethnic group as their victims. Homicide is the leading cause of death among young black males and females. Violent physical and sexual crimes are most frequently perpetrated on women and children of all races. Special consideration for felons marginalizes those victims, and other law-abiding citizens.

It is our understanding that at least ten of the felons you released in the last batches have already re-offended. The victims of these new crimes are victims of the broad application of the clemency power.

We urge you to re-evaluate your proposed exercise of clemency powers as to groups of convicted felons and return to the focused clemency process as it has been carried out between 1859 and 2020.

Sincerely,



Kevin L. Mannix

President

Common Sense for Oregon

[kevin@commonsensefororegon.org](mailto:kevin@commonsensefororegon.org)

cc: Director Collette Peters, Oregon Department of Corrections

Attachments:

1. White Paper on Clemency in Oregon
2. List of convicted felons Governor Brown is considering for early release
3. Letter to ODC Director Peters