

# Secretary of State Audit Report

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## Department of Corrections: Administration of Earned Time

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### Summary

In 1989, the Oregon legislature enacted earned time in association with sentencing guidelines. Earned time is a program intended to reward prison inmates with earlier release if they maintain good conduct and participate in programs that serve rehabilitative purposes.

Earned time operates within the context of inmate sentencing requirements, which have changed over the decades. As a result, the Department manages a complicated sentencing structure that represents differing public safety policy decisions.

For crimes committed before November 1, 1989, courts sentenced inmates to a fixed period of incarceration, “matrix sentencing,” with the actual release date determined by the Board of Parole and Post-Prison Supervision. While these inmates are not eligible for earned time, they may be eligible for other programs that reduce their time in prison. For later crimes, sentences are based on the seriousness of the crime and the offender’s criminal history. Only some of these inmates are eligible for earned time because, as a result of subsequent statewide measures, certain serious crimes now have mandatory minimum sentences.

Earned time is applied to the specific crime or crimes, not the offender. As a result, all, a portion, or none of an offender’s time in prison may be eligible for earned time. Depending on the date the crime was committed or re-sentenced, offenders may earn up to 20% or 30% off their eligible sentences. Earned time also operates alongside other incarceration reduction programs, as well as several reward systems, to help manage inmate behavior and encourage program participation.

Offender conduct is generally reviewed at six-month intervals to assess whether or not earned time should be granted. Behavior and program compliance each determine half the possible earned time for that period. Behavior violations may trigger a review by a Hearings Officer who can retract time already earned.

During the 2010 Special Session, the Legislature directed the Secretary of State to conduct an audit of earned time to evaluate the actual and potential impacts of the program; assess the Department of Corrections’ compliance with statutes and its rules, policies and procedures; and to analyze best practices among similar programs in other jurisdictions.

We estimate that, for inmates released in fiscal year 2009, earned time saved at least \$25 million based on the average daily cost per inmate reported by the Department. Our analysis indicated that inmates who were convicted of more

serious offenses were less likely to be eligible for earned time and also served longer sentences than inmates with less serious offenses. As a result, the population of released offenders had a larger share of offenders sentenced for lesser crimes and shorter periods who were more likely to be eligible for earned time.

Because of concerns about availability and comparability of data, as well as varying definitions of recidivism, we were not able to draw conclusions about the impact of earned time on the recidivism of inmates released in Oregon. However, later in this report we identify studies from other jurisdictions that provide information on recidivism and the benefits and costs of incarceration reduction.

We reviewed data in the Department's information systems and files for a sample of 70 inmates released in 2009 and concluded that the Department's practices were generally consistent with earned time statutes and rules. We found that the earned time eligibility determinations agreed with the county court judgments. In addition, earned time retractions, restoration and withholding for conduct were adequately supported, and complied with relevant administrative rules. We did note some areas in which practices could be improved.

For most of the 70 inmate files, major violations resulted in a reduction of earned time. However, for misconduct cases occurring in the four-month period prior to an inmate's release, we found that only two of the four Level I violations resulted in earned time retractions. Hearings officers suspended the earned time retraction for the other two Level I misconducts. This practice appears inconsistent with mandatory language in the administrative rules, though other rules grant hearings officers the authority to suspend sanctions. The Department also noted that a change of release date at that time makes it more difficult to effectively plan an inmate's transition, which can involve arrangements for housing, work, and supervision.

One area needing attention is the awarding of earned time when inmates do not participate in mandated programs such as substance abuse treatment. We found cases when inmates were required to participate in a mandated program, but were not assigned to the program by Department staff. We did not determine the reason for these situations.

We found several areas where greater clarification of the rules could better guide the judgments of prison personnel in deciding to withhold earned time. In addition, we noted a few cases when data was not always consistently or correctly entered by personnel in the corrections facilities and central office, or displayed on their computer screens.

We also analyzed research on earned time and incarceration reduction programs at 30 states and the federal Bureau of Prisons. With a national doubling of jail and prison populations over the past 25 years, many states have implemented incarceration reduction programs to reduce public safety costs.

We found a large variety of programs among the jurisdictions, and studied five jurisdictions in detail. Variances in the sentencing structure, offense characteristics of the prison population, and methods for calculating recidivism prevent quantitative comparisons, or any distinction of best practices.

In addition, quantitative research on the effects of other incarceration reduction programs has reached only tentative conclusions. For example, research seems to indicate that recidivism is no worse for inmates who receive an incarceration reduction. Similarly, studies have not established a strong relationship between incarceration reduction and the overall crime rate. Several states have conducted cost-benefit analyses, including Oregon and Washington, which concluded that incarceration reduction produced a net savings to the public.

## **Recommendations**

We recommend that the Oregon Department of Corrections clarify its earned time rules, policies and guidance; and review its procedures for assigning inmates to programs and disciplining them for rule violations in the four months prior to release. Our detailed recommendations appear on page 26.

## **Agency Response**

The agency response is attached at the end of the report.

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## Background

In 1989, the Oregon legislature enacted earned time as part of the transition to sentencing guidelines. Earned time is an administrative practice that under certain circumstances reduces the length of incarceration for inmates at the Oregon Department of Corrections. Statutes provide that earned time is awarded to inmates for appropriate institutional behavior.

During the 2010 Special Session, the legislature directed the Secretary of State to conduct an audit of earned time in the following areas:

- assessment of Department of Corrections' compliance with statutory law and department rules, policies and procedures;
- evaluation of the actual and potential impacts of the earned time program, including an evaluation of the program's financial impact and its impact on recidivism and public safety; and
- an analysis of best practices in similar programs in other jurisdictions.

This audit compares Oregon's earned time practices with other jurisdictions, evaluates the fiscal impact of the program for fiscal year 2009, and assesses department compliance with selected laws and administrative rules. The legislature directed the Criminal Justice Commission to report in 2013 on recidivism impacts of the program.

### **Earned Time Operates Within a Complex Legal and Institutional Framework**

The Oregon Constitution requires that the punishment of crime be founded on the principles of protection of society, personal responsibility, accountability for one's actions, and reformation. Similarly, the objectives of sentencing are to punish offenders appropriately and ensure the security of the public, within the limits of resources provided by the Legislature.

While the court judgment sets the sentence length and whether the offense is eligible for earned time, statutes and administrative rules require the Department to calculate and implement the sentence accurately. However, because incarceration severely limits inmates' freedoms, the Department could face costly litigation if, by error or inconsistency, it were to hold prisoners longer than appropriate. These conflicting risks make it important that the Department accurately award and administer earned time.

These decisions become more complicated when inmate release dates must be calculated within multiple systems of sentencing, interpreting sometimes ambiguous court judgments, combining several different incarceration reduction programs, based upon the eligibility of each offense, and across 14 institutions.

## ***Indeterminate and Determinate Sentencing***

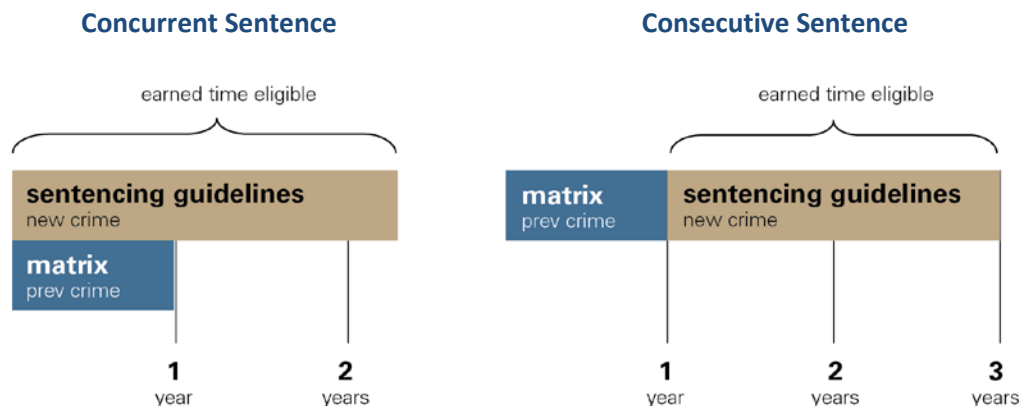
Like many states, Oregon has a complex sentencing system reflective of changes in its approach to crime, particularly with the sentencing and incarceration of its offenders. As a result, the Department manages a prison population size and offender composition representative of the various public safety policy decisions made over the past several decades.

Prior to 1989, the state utilized an indeterminate sentencing system also referred to as “matrix sentences.” The court imposed a sentence length in its judgment, but the Board of Parole and Post-Prison Supervision determined the actual term of incarceration served in prison by setting the parole date. Unless revoked by the Board, parole allowed the inmate to serve the remainder of his sentence in the community.

In 1989, to better ensure consistent statewide prison sentences, Oregon joined the federal government and other states in adopting a “sentencing guidelines” approach, or determinate sentencing system, for felonies committed on or after November 1, 1989. The sentencing guidelines established sentences based on the seriousness of the crime and the offender’s criminal history. Judges retained the discretion to impose sentences that were more or less severe if there were substantial and compelling reasons.

In addition to offenders in prison both for matrix crimes and sentencing guidelines crimes, offenders with multiple offenses within the same custody cycle may serve the sentences concurrently or consecutively, depending on the court judgment. This sentence structure affects all inmates who serve multiple sentences within the same custody cycle.

For example, an offender first serves a matrix sentence and is released from prison on parole for one more year. While on parole, the offender commits a new property crime resulting in the revocation of his parole and his return to prison to complete the original matrix sentence. He is then convicted and sentenced to two years under sentencing guidelines for the new crime. The court can decide whether the new sentence will be concurrent or consecutive to the original matrix sentence, which will affect when the inmate becomes eligible for earned time.



## ***Mandatory Minimum Sentences***

In addition, statewide measures added a mandatory or statutory minimum sentence for certain serious crimes. Some of the significant overlays to the sentencing guidelines system are described below.

Measure 4 (ORS 137.635) requires mandatory minimum sentences for certain repeat felony offenders who committed one of ten specifically restricted crimes on or after January 1, 1990.

Measure 11 (ORS 137.700 for adults; ORS 137.707 for juveniles) established mandatory minimum sentences for particularly serious crimes (e.g. person felonies like murder, assault, kidnapping) committed on or after April 1, 1995, and prohibited any form of incarceration reduction during the minimum period. The list of applicable offenses and minimum terms has changed over time (e.g. Jessica's Law applies for crimes involving a victim less than 12 years of age if committed on or after April 24, 2006). Statutes also provide courts discretion under specified circumstances to impose sentences shorter than the mandated minimums for certain less severe Measure 11 crimes, which makes these offenses eligible for earned time (ORS 137.712).

For some crimes, the sentence given in the sentencing guidelines differs from the mandatory minimum sentence specified in statute. For example, the guidelines provide a sentence of 120-121 months for murder if the offender has no prior felony or Level A misdemeanor convictions, whereas statute specifies a mandatory minimum of 300 months. In such cases, statute (ORS 137.637) requires that the court impose the longer sentence.

## ***Court Judgments***

As part of the inmate intake process, the Department must interpret county circuit court judgments. This may be difficult because presentation formats and eligibility language used differ across Oregon's 36 counties. While some counties use the Uniform Criminal Judgment form, other counties use varying forms. Department staff at the Offender Information and Sentence Computation Unit are responsible for accurately interpreting the judgments and, at times, must ask judges for clarification or seek amended judgments in order to carry out the court's intent.

## ***Earned time Is One of Several Inmate Behavior Management Tools***

Earned time is one of the tools available to the Department to manage inmate behavior. Inmates may have offenses eligible for other types of incarceration reduction that may be used in combination with earned time (see Figure 1). In addition to these reduction-type programs, the Department also uses a variety of other incentives and disincentives to discipline or reward its inmate population.

For example, the Department uses a system of monetary awards and other incentives to recognize and encourage good institutional conduct. The awards are based on three considerations: level of responsibility associated

with an inmate's program assignments, level of inmate performance in his/her program assignments, and the inmate's institutional conduct.

There are also incentives associated with work assignments. As a result of Measure 17, offenders are constitutionally required to work. Assignments vary by institution but include custodial, kitchen, administrative, agricultural and work camp duties. The Oregon Corrections Enterprises (OCE) also offers work in manufacturing, metal fabrication, call center and laundry assignments at some institutions. Inmates with good conduct are generally given more preferable assignments.

Inmate behavior is one factor that affects custody levels and housing assignments. Disciplinary segregation as well as special and intensive management units are also used for inmates with severe misconduct issues or who otherwise pose a threat to themselves or the safety of the general population.

Two types of incarceration reductions exist for matrix sentences unless the court imposes a minimum incarceration term or life sentence. The first type – “Statutory Good Time” – results in automatic reductions for offenders with eligible offenses. For example, if an offender's sentence exceeds one year, one day is deducted for every two days spent in prison. The second type – “Extra Good Time” – is applied in addition to Statutory Good Time for offenders who perform work or participate in education while in prison. The Extra Good Time reduction rate varies based on different categories of work and the length of time employed. For example, offenders earn the maximum Extra Good Time rate of one day deducted for every four days worked after performing one year of firefighting, tree planting or forest camp work.

In addition, short-term transitional leave is available if offenders meet certain offense-specific eligibility criteria, fulfill specific Department requirements and abide by certain conditions of release.

Table 1: Incarceration Reduction Programs

Matrix	Sentencing Guidelines	Program	Eligibility	Basis For Reduction
		→	<b>Statutory Good Time (prior to 11/01/1989)</b>	Automatic unless life sentence; cannot reduce incarceration below any minimum imposed unless set aside by the Board of Parole and Post-Prison Supervision
→	<b>Extra Good Time (prior to 11/01/1989)</b>	Automatic unless life sentence; cannot reduce incarceration below any minimum imposed unless set aside by the Board of Parole and Post-Prison Supervision	Specific work and/or program assignments	
→	<b>Earned Time (11/01/1989 and later)</b>	Specific offense; judge determination required starting 12/05/1996	Specific conduct and program compliance	
→	<b>Alternative Incarceration Program (includes 90 days of transitional leave)</b>	Specific offense; judge determination and additional department criteria	Fulfillment of program and transitional leave requirements	
→	<b>Short-Term (30 days) Transitional Leave</b>	Specific offense; judge determination and additional department criteria	Leave essential to successful reintegration into the community	
→	<b>Educational Attainment (effective 01/01/2010)</b>	Offense must be eligible for earned time	Attainment of specific certificates or degrees	

***Earned Time Is Based Upon Each Offense***

Oregon’s approach to earned time is that eligibility applies to the offense rather than the offender. Many crimes under sentencing guidelines are eligible for earned time reductions. However, statutes preclude sentences for several kinds of felony offenses from receiving reductions. Offenses that are generally ineligible for earned time include Measure 11 offenses (during the mandatory minimum period), Measure 4 offenses, life and death sentences, and any revocation sentences imposed for violation of post-prison supervision.

The date of the offense also factors into earned time eligibility determinations. For example, as a result of Measure 40 and subsequently Senate Bill 936 (“Victims Rights Bill”), the law (ORS 137.750) requires the court to include additional judgment language related to earned time eligibility for all crimes committed on and after December 5, 1996. The judgment must positively affirm that the Department may apply earned time



on the offense. Otherwise, the offense is considered ineligible for earned time.

Eligibility determinations can become very complex because of mandatory minimum requirements and the reality that many offenders in prison are serving a combination of earned time-eligible and ineligible offenses. For example, an offender is convicted of Assault I committed on January 1, 2010. The assault conviction is a Measure 11 offense with a mandatory minimum of 90 months. Generally, Measure 11 offenses are ineligible for earned time but, if the court sentences the offender to 100 months, the 10 months above the minimum would be eligible for earned time if the judgment positively affirms eligibility. Moreover, if the inmate is also serving concurrent sentences with the Measure 11 sentence, those sentences are all ineligible for earned time during the Measure 11 minimum term. Only upon completion of the mandatory minimum can the other eligible offenses be considered for earned time.

### ***Recent Changes to Earned Time Statute***

The earned time statute (ORS 421.121) was left substantially unchanged for 20 years but, due to limited General Fund resources, the Legislature enacted recent revisions to better manage public safety expenditures. In 2009, House Bill 3508 increased the maximum earned time available from 20% to 30% for certain crimes committed before July 1, 2013 and sentenced on or after July 1, 2009. The increase applied to most previously eligible offenses except for specifically restricted crimes. In addition, for offenders already serving sentences for offenses eligible for 20% earned time, a retroactive application was available but contingent upon resentencing proceedings where the court found the increase to 30% was appropriate. The legislature reduced the Department's budget \$6 million due to anticipated reductions in bed need based on these actions. At the time we completed our fieldwork, the Department was assessing whether the expected bed need reductions were realized.

In the 2010 session, the Legislature passed Senate Bill 1007, which reduced the earned time maximum back to 20%. The bill went into effect on February 17, 2010, and the 20% maximum earned time applied to any crimes committed on or after that date through July 1, 2011. The bill also expanded the list of ineligible offenses when the suspension is lifted and returned to the 30% maximum for crimes committed on or after July 1, 2011, but before July 1, 2013.

As a result of the two bills, certain sentencing guidelines crimes committed prior to February 17, 2010 remain eligible for the 30% maximum earned time under Ex Post Facto Clauses of both the federal and state constitutions.

In addition to House Bill 3508, the Legislature passed House Bill 2623 in 2009, which allows a reduction in term of incarceration not to exceed 60 days for certain offenders who obtain specified educational certificates or degrees. The award of this reduction cannot cause the entire rate of earned time reduction to exceed the applicable maximum rate.

In Executive Order 09-13, Governor Kulongoski called for the restructure of state government to better fulfill its core functions and preserve and improve critical services for Oregonians. To begin this effort, the Governor created a Reset Cabinet to develop options for future decision-makers. In its final report dated June 2010, the Reset Cabinet included the following proposal concerning earned time: "Finally, at the recommendation of many in the public safety community, the subcommittee proposes that the state adopt federal earned-time guidelines including 15% earned time for all offenders who are not incarcerated for life, and greater use of transitional resources such as halfway houses and electronic monitoring at the end of their sentences."

## **Administering Earned Time**

While eligibility applies to the offense, the inmate's behavior is considered in determining whether earned time is awarded or not. When earned time was established in Oregon in 1989, the Department developed specific rules that have been regularly updated over the past 20 years. The purpose clause in the administrative rules states, "Earned time credits are designed to provide a minimum amount of time credits necessary to serve as adequate incentive for appropriate institutional behavior and program participation."

In general, earned time determinations are based on two criteria – offenders' institutional conduct and whether they successfully participate in mandated rehabilitative programs – as outlined in the Department's administrative rules (OAR 291-097, OAR 291-105) and internal policies and procedures. In practice, the Department withholds earned time only for certain types of program failures and for specific levels of misconduct.

### ***Determinations During Review Periods***

Starting with the date of admission, staff within the Department's Offender Information and Sentence Computation (OISC) Unit review offenders at six month intervals to assess whether or not earned time should be granted. At the end of each review period, OISC staff examine entries made in the Corrections Information System (CIS) and make compliance determinations. Award and non-award decisions are made for program and institutional conduct, with each comprising half of the maximum earned time available. Awards for the two areas are all or nothing. For example, for an offense eligible for 20% earned time, an offender may receive either 0% or 10% for program compliance and either 0% or 10% for conduct compliance. The CIS automatically computes the appropriate number of earned time days awarded and updates the offender's projected release date.

Offenders also receive a final review and advanced review for periods just prior to their release date. The final review may vary in length, but always ends four months prior to an offender's projected release date, while the advanced review covers the period from the end of the final review to the projected release date. Unlike other review periods, the Department awards earned time at the beginning of the "advanced" review to project a release

date and facilitate transition and release procedures (e.g. housing, employment, contact with local community corrections officers). Other periods may be reviewed, depending upon the incarceration history of the inmate. For example, some offenders may spend time in county jails prior to being sentenced, with that time applied against the total term of incarceration. Likewise, there are other review periods to represent escapes or unauthorized absences and short-term transitional leave periods that require separate earned time determinations.



### ***Determinations of Program Compliance***

As part of its intake process, the Department conducts a wide variety of assessments to develop an individualized action plan for each offender. Called the Oregon Corrections Plan (OCP), it addresses factors that contribute to an offender’s risk of future criminal behavior, such as alcohol and drug addiction, anger management issues, health issues, educational needs and work deficiencies. The OCP prescribes required programs (such as cognitive programs, education, and work assignments), as well as voluntary programs and activities that may benefit the offender (such as parenting courses, Alcoholics Anonymous, etc.).

In general, offenders are considered in compliance with program requirements and awarded earned time for the review period unless they fail to appropriately participate in available prescribed programs. Institutional staff familiar with the offender decide whether a program failure is warranted. For example, Department staff or contractors may issue a “daily fail” at their discretion for minor issues such as being late to class or disrupting others while in class.

An offender is not awarded the program portion of earned time if he or she has received a specific type of program refusal or failure code. Unless these particular codes are entered into CIS, offenders are awarded earned time for the review period.

### ***Determinations of Conduct Compliance***

To earn time off their sentences, offenders must maintain a certain level of misconduct-free behavior during the review period. The rules on prohibited conduct provided to offenders during their orientation distinguish “major” and “minor” violations. Currently, there are four levels of major violations and two levels of minor violations. Every violation requires Department

staff to immediately gather sufficient evidence and file a misconduct report with a supervisor.

The misconduct rules are more clearly defined than program rules, but still rely on Department staff to exercise discretion and professional judgment. For example, the Department's progressive discipline approach allows for corrective action to include reprimands, warnings and counseling. Department staff may issue a "conduct order" if the misconduct does not constitute a threat to life, health, facility security or good order, employee authority or property. Conduct orders are less formally documented than a misconduct report and may require an offender to stay in his or her cell for up to 72 hours. Conduct orders, like daily fails, do not result in withholding earned time.

Generally, the conduct portion of earned time is not granted if a Hearings Officer finds an inmate guilty of a major-level violation. In the past, all levels of major violations could result in the Department withholding earned time. However, effective August 31, 2009, the Department changed its policy to limit the withholding of earned time to upper level major violations (Levels I and II). In addition, major violation hearings that occur during the advanced review do not result in withholding earned time. For these periods, retraction (discussed below) is the only option for reducing earned time.

### ***Earned Time Retractions***

During a formal hearing, the Hearings Officer independently evaluates the evidence related to a misconduct report and, as appropriate, imposes sanctions, which can include retractions of earned time, fines, loss of privileges, and time in disciplinary segregation. Hearings Officers are required to order an earned time retraction for Level I major rule violations (OAR 291-105-0069) based upon the days available for retraction. Superintendents review sanctions imposed by Hearings Officers and can choose to amend the order for specified reasons.

A second way earned time may be retracted is specific to the advanced review that typically covers the four-month period prior to an offender's release. When calculating an inmate's release date, OISC staff advance the maximum program and conduct earned time available for this period. OISC staff can later retract earned time for any misconduct or program failures that occur within this period. However, retractions for misconduct occur only as a result of the hearing process.

The last way earned time may be retracted is specific to offenders required to obtain alcohol and drug treatment who have not completed the program by their final review period. Department rules indicate that earned time is retracted if an offender refuses to enter the program if offered the opportunity or enters the program and receives a program failure. Offenders who were not offered the opportunity to enter the program are not subject to an earned time retraction as long as they were willing to be placed on a wait list. However, unlike other retraction situations, during our audit period the alcohol and drug treatment retraction was applied to all earned time

awarded for programming during that admission. Therefore, all concurrent and consecutive offenses served during that admission were affected.

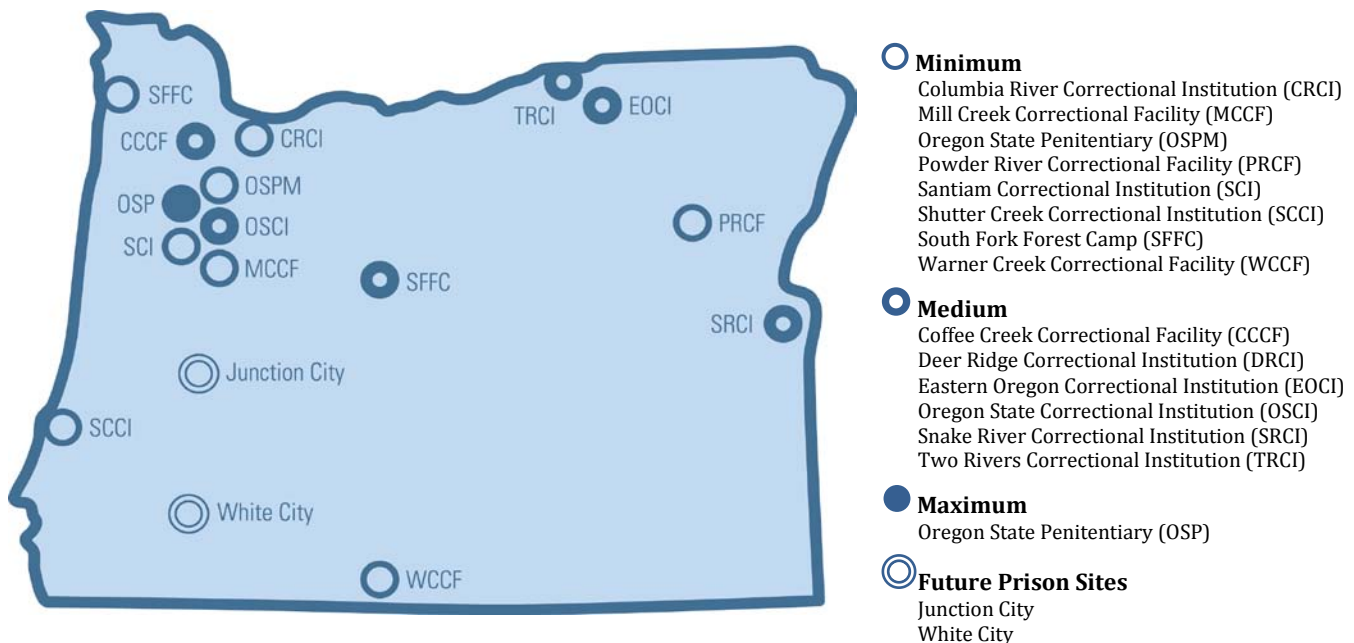
## Divisions Responsible for Earned Time

Several Department divisions and their units participate in aspects of earned time. Within the Transitional Services Division, two units are involved in some aspect of earned time. OISC personnel interpret judgments, enter and verify selected data in CIS, make earned time eligibility determinations, process retractions and restorations, provide earned time balance information to hearings officers, and verify the inmates' projected release dates as they approach. OISC also reviews files at intake and prior to release to assure the accuracy of information that determines the release date.

The Department reported one of the most challenging administrative tasks with earned time is interpreting judgments to ascertain whether the court determined an offense was earned time-eligible.

The Workforce Development Unit manages program offerings and tracks program success or failure in the aggregate. After our audit period, it became responsible for entering any refusals of OCP-mandated programs into the CIS based on notification from institutional counselors.

The Operations Division encompasses all 14 correctional institutions and includes staff directly responsible for the custody of inmates during incarceration. The 14 institutions represent varying custody levels and are located throughout the state. Moreover, different institutions offer a different mix of available programs. Staff from the Transitional Services Division and the Operations Division are located within each institution but are centrally coordinated through the respective divisions. The map below shows the location and custody level of the 14 institutions.



The Operations Division includes security staff responsible for writing misconduct reports and counselors who identify failures that may impact earned time. The division also includes the Behavioral Health Services Unit that performs mental health evaluations and determines related programmatic needs for inmates. Any such services would be considered OCP mandated programs.

The Inspector General includes all hearings staff who adjudicate major misconducts that affect earned time conduct compliance determinations.

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## Audit Results

We estimate that Oregon saved at least \$25 million with the earned time program for 2009. Among the group of 3,706 inmates who were released to post-prison supervision during fiscal year 2009, 79% had their incarceration shortened due to earned time, which typically reduced the amount of time in prison by about 82 days.

Based on our review of department data and files of 70 inmates released in fiscal year 2009, we concluded the Department's practices were generally consistent with the earned time statutes and rules. Specifically, we found that the earned time eligibility determinations agreed with the county court judgments. In addition, earned time retractions, restoration and withholding for conduct were adequately supported, and complied with relevant administrative rules. We did note some areas in which practices could be improved.

We also analyzed research on earned time and incarceration reduction programs, focusing on four states and the federal Bureau of Prisons. Variances in the sentencing structure and offense characteristics of the prison populations, and differences in recidivism calculations, prevent quantitative comparisons, or any distinction of best practices.

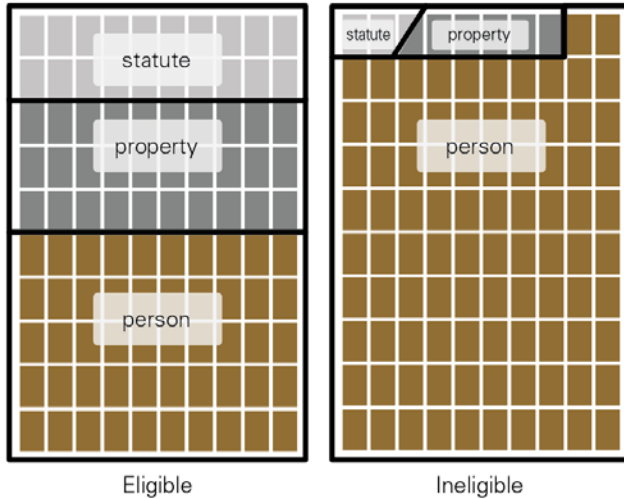
Quantitative research on the effects of other incarceration reduction programs has reached only tentative conclusions: that recidivism is no worse for inmates who receive an incarceration reduction, that no strong relationship exists between incarceration reduction and the incidence of crime, and that a few cost-benefit analyses conclude that incarceration reduction produced a net savings to the public.

### **Earned Time Saved at Least \$25 Million for 2009**

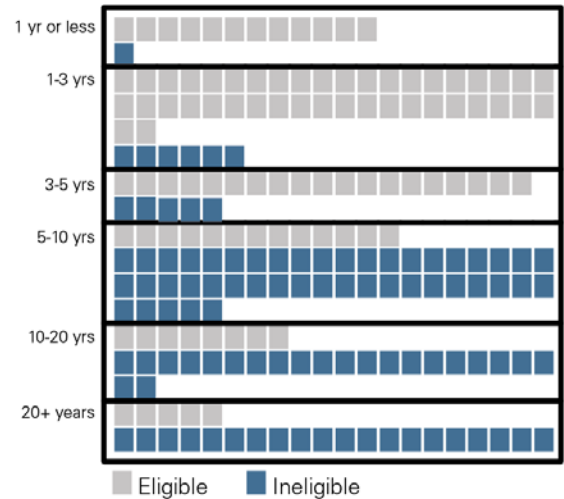
Decisions made by voters and the Legislature have changed sentencing practices over the years. As a result, the Department manages a prison population comprised of a changing mix of inmates convicted for earned time-eligible and ineligible offenses. The Department reported an inmate population of 13,553 at the beginning of fiscal year 2009. Of these inmates, about 54% had at least one earned time-eligible offense.

Generally, inmates eligible to receive earned time were less likely to have been convicted of a serious crime. For example, only 50% of inmates eligible for earned time were convicted of person crimes, whereas nearly all (92%) of ineligible inmates were convicted of those crimes. Additionally, earned time eligible inmates generally served shorter sentences than earned time ineligible inmates. For example, only 13% of those eligible for earned time had sentences over 10 years, while 42% of the ineligible group had sentences over 10 years.

Composition (%) of prison population by  
**most serious crime type**



Composition (%) of prison population by  
**inmate incarceration length**



As a result, a larger share of inmates released in FY 2009 was comprised of offenders sentenced for shorter periods and lesser crimes, and more likely to be eligible for earned time. In contrast, the population in prison contained a larger share of offenders with longer sentences who were less likely to be eligible for earned time. Of the 4,503 inmates released during fiscal year 2009, we found 3,768 (84%) had at least one earned time-eligible offense versus 54% of the population in prison at the beginning of fiscal year 2009.

***Estimating the Fiscal Implications of Earned Time***

We analyzed the sentencing and incarceration patterns of released inmates to assess the fiscal impact of earned time decisions. Given the complex interactions of sentence type and structure, we focused on the largest subgroup: inmates who were serving only sentencing guidelines offenses and released to post-prison supervision. Within this subgroup of 3,706 inmates, we found earned time reduced the amount of time served in prison for 79%, with the typical length of reduction about 82 days. Had earned time not existed, these inmates would have remained in prison longer and contributed to an increase in the Department’s prison population, serving in total an additional 321,778 days. The remaining 21% of inmates either were eligible but ultimately did not have their prison time reduced through earned time, were serving a mix of sentences for which an ineligible sentence determined the release date, or were serving sentences not eligible for earned time.

Using the Department’s average daily cost per inmate for the 2007 to 2009 biennium of \$77.78, we estimate at least \$25 million dollars was saved because these inmates spent less time in prison. However, this amount does not include deferred costs due to delays in transitional services and post-



prison supervision had these inmates been kept in prison longer. It also does not include any social, victim, or law enforcement costs associated with any new crimes committed by inmates during the time they otherwise would have been in prison had they not been awarded earned time.

From the population of inmates released in fiscal year 2009, we also analyzed a randomly selected group of 70 with at least one earned time eligible offense. Collectively, this group had an average incarceration reduction of 12%, with a median reduction of 17%. In total, the inmates did not serve about 7,813 days in prison due to earned time reductions. Of the 70 inmates, 63 had earned time eligible sentences only and 7 had a mix of eligible and ineligible sentences.

Because of concerns about availability and comparability of data, as well as varying definitions of recidivism, we were not able to draw conclusions about the impact of earned time on the recidivism of released inmates.

### **Most Aspects of Earned Time Managed Appropriately**

We concluded that the Department's practices were generally consistent with the earned time statutes and rules, based upon our examination of earned time data in the Department's information systems and files of 70 inmates who were released during fiscal year 2009. We noted some data coding errors as well as efforts by the Department to improve consistency through centralization and other strategies.

We found that the earned time eligibility determinations agreed with the county court judgments, despite the complex task of determining earned time for the variety of sentences and offenses OISC personnel encountered.

In addition, with one exception, retraction, restoration and the withholding of earned time due to conduct were adequately supported, and complied with relevant administrative rules. As described below, we did find that some practices could be improved.

#### ***Program Non-Participation***

Inmates were considered program compliant unless a specific type of failure or refusal for required programs was documented. However, earned time was awarded to inmates who never entered a program but remained on a waitlist, and inmates whose programming was discontinued when they were moved to another institution. For example, nine inmates (13%) within our sample were designated as having severe drug and alcohol addictions that were likely to cause them to recidivate. Four of these nine inmates were offered substance abuse programming. Of those four inmates, three either refused or failed, while one was participating in substance abuse programming at the time of his release. As required by rule, the Department retracted all of the programming earned time for the three who refused or failed. Five inmates who were not offered substance abuse programming received earned time attributable to program compliance.

### ***Earned Time Reductions for Misconduct in the Four-Month Period Prior to Release***

When a hearings officer determines an inmate violated the rules, depending on the severity of the misconduct, sanctions such as restitution or earned time reductions may be applicable. The Department's guidance to Hearings Officers states that an earned time reduction recommendation is mandatory for all Level I violations, the most severe.

Of the 70 case files we reviewed, most of those with Level I violations resulted in a reduction of earned time. However, for misconduct cases adjudicated in the four-month period prior to an inmate's release, we found that only two of the four Level I violations had earned time retractions as one of the sanctions. Hearings officers suspended the earned time retraction for the other two Level I misconducts, representing 124 earned time days.

This practice appears inconsistent with the mandatory language in the administrative rules, though other rules grant hearings officers the authority to suspend sanctions. The Department also noted that a change of release date at that time makes it more difficult to effectively plan an inmate's transition, which can involve arrangements for housing, work, and supervision.

Moreover, for 40 files we reviewed in greater depth, we found that all major misconducts (violation Levels I through IV) adjudicated before the four-month period prior to release resulted in earned time withholding. However, only 4 of the 35 major misconducts adjudicated during the final review period resulted in earned time retractions, including the two discussed above.

### ***Required Programs Are Not Always Identified in CIS***

It is not always clear to department personnel which inmate programs are required and which are considered collateral. The OCP is displayed as a screen within CIS. Department staff told us that the "criminogenic interventions" section of the CIS screen contained the required programs that would affect an inmate's earned time. The "collateral interventions" section listed on the screen contained other programs, such as parenting services and GED programs, that would not affect earned time.

However, we found multiple instances where "required" programs, such as adult basic skills development, were shown as a collateral program on the CIS screen for an inmate. We learned that if a required program will not fit in the criminogenic interventions section of the CIS screen, it automatically moves down to the collateral section. This could result in the erroneous awarding of earned time to inmates

### ***Data Coding Errors Regarding Inmate Program Non-Compliance***

During our review of 70 inmate files, we found 10 failures of OCP-required programs that should have resulted in a loss of earned time. Appropriately, earned time was not granted in seven of these cases, but the other three inmates received a total of 48 days of earned time. These three inmates had

failures entered into the CIS, but not the code needed to prompt the withholding of earned time. In two of the cases, the error appeared to result during the transfer of responsibilities to OISC. In the other case, staff acknowledged the program failure should have affected earned time.

Institutional staff are responsible for creating and entering program records, a function the Department has tried to centralize to consistently gather information across institutions. However, we found a number of program exit codes that had been eliminated in 2004 among our sampled inmates, representing 52% of all entries made after 2004. We learned the CIS continued to accept the codes until about 2009. These outdated codes make it more difficult to determine inmate program compliance and any subsequent effect on earned time.

We also noted other issues with the data coding and entry department and county personnel perform. For example, some data fields appeared to be inconsistent within data records. While the Department has a policy requiring staff to note errors found in earned time calculations, it does not have a monitoring system to assure accurate CIS data entry. In addition, we could find no department-wide orientations, manuals or training materials to instruct users about CIS entry and accuracy.

### ***More Guidance Needed in Some Areas***

Administrative rules do not address earned time during periods of segregation. In reviewing inmate files, we found that counselors were not consistent when making program compliance determinations that involved disciplinary segregation. In some files, counselors noted segregation time as the reason for not granting earned time, but in other cases segregation did not result in withholding earned time.

While department rules are silent in this matter, three of the states we reviewed have clear rules that limit earned time when an offender exceeds a certain amount of time in segregation. For example, Washington does not award earned time for any calendar month during which an inmate spends more than 20 days in segregation. In New York, inmates who spend more than 60 days in segregation for violating certain rules become ineligible for earned time, while Oklahoma inmates are ineligible for earned time for any days spent in segregation.

More guidance could have assisted decisions about program participation. Unlike inmate conduct, to which the Department has dedicated a chapter of its administrative rules to provide a consistent agency response, we found an absence of guidance for processing program failures or refusals. For example, while evaluating program failures, we found that Department staff entered failure codes that did not affect earned time for two inmates in mental health and statutorily required work programs. While these determinations were made by the appropriate counselor or multi-disciplinary team, we found no guidance to distinguish between a failure that would affect earned time and one that would not.

In addition, the Department should revisit the purpose clause in its administrative rules, in particular the reference to the minimum amount of time credits necessary to serve as adequate incentive for appropriate institutional behavior and program participation, to ensure that it adequately expresses its general approach to earned time. While the purpose clause has remained unchanged since 1989, many statutory changes have occurred and the Department has revised the substantive rule sections over the last twenty years.

As part of the Correctional Case Management Initiative, the Department is developing a policy document to provide guidance, which addresses some of the issues raised in this report.

## **Incarceration Reduction Programs Exist Nationwide But There Is No Agreed Upon Model**

Incarceration reduction programs such as earned time are not unusual in the United States. Describing the common features of earned time programs and policies nationwide, a 2009 report by the National Conference of State Legislatures (NCSL) noted that at least 31 states had some form of earned time policy.

### ***Incarceration Reduction Used to Address Increasing Corrections Expenditures***

According to a report by the Pew Center on the States, the United States has seen a large rise in incarceration rates and state corrections expenditures since the 1980s. The report indicates that prison and jail populations rose 274% from 1982-2007, resulting in an additional 1.6 million individuals incarcerated, and notes that the national incarceration rate rose from 207 inmates per 100,000 residents in the 1980s to 506 inmates in 2007. The report also describes how state corrections expenditures rose to an estimated \$47 billion in fiscal year 2008, an increase of over 300% in 20 years.

The NCSL suggests that surging corrections expenditures may be one reason many states have considered implementing or changing earned time policies. In 2009 alone, 19 pieces of legislation addressing earned time policies were enacted across 13 states, many of which expanded or increased the amount of earned time available to eligible offenders. The report mentions that most states determine eligibility by the type of offense and limit eligibility to lower-risk or nonviolent offenders, though some states offer smaller award amounts to higher-risk offenders. It also notes that a state's sentencing structure, particularly mandatory minimums, affects how earned time is awarded.

### ***Oregon Compared to Five Other Jurisdictions***

While a majority of states have incarceration reduction programs, the extent and basis for reductions vary across jurisdictions. For example, NCSL reported at least 21 states allow credits for educational activities, making education the most common way for inmates to accrue earned time.

Additionally, 18 states have policies allowing credits for work-related programs, and 13 states give credits for special projects or meritorious service.

To better understand the variation that exists nationwide, we selected five jurisdictions to review and compare with Oregon's incarceration reduction policies. These were the Federal Bureau of Prisons (BOP) and the states of New York, Oklahoma, Pennsylvania and Washington. However, differences in sentence structure, prison populations, and definitions of recidivism are factors that prevented us from drawing conclusions regarding best practices. For example, in terms of sentencing structure, the state and federal systems we reviewed vary considerably, though most (BOP, New York, Pennsylvania, and Washington) have some form of mandatory minimum sentences for certain types of offenses, typically drug or violent offenses.

Moreover, Oregon, Washington, and New York housed mostly inmates convicted of violent crimes, whereas BOP and Oklahoma mainly incarcerated inmates convicted of drug offenses. Additionally, jurisdictions may measure recidivism on different bases, such as re-arrest, return to incarceration, or re-conviction.

### ***Commonalities with Oregon Earned Time***

Although earned time policies in these jurisdictions differ in important ways, some common practices appear to be prevalent. Restrictions on eligibility for various offense types are common, such as excluding violent felonies as defined by the jurisdiction. The award is based on successful completion of, or progress toward, identified inmate programs, such as substance abuse treatment, education and/or vocational programs. There are also opportunities for an inmate to lose earned time for serious and/or repeated misconduct. These practices exist in Oregon's approach to earned time as well as the other five jurisdictions reviewed.

### ***Variations from Oregon Earned Time***

Given each jurisdiction's unique approach to criminal justice, it was not surprising that we also found specific differences in Oregon's earned time compared with the other five jurisdictions. These differences can be categorized in four ways: unit of eligibility (i.e. inmate or offense), criteria for eligibility, maximum level or rates of earning reductions, and the basis for receiving an award (e.g. completion or progress toward a program).

Table 2: Comparison of Oregon's Earned Time to Other Systems

Jurisdiction	Unit Of Eligibility	Eligibility Criteria	Basis For Award	Maximum Award Available <sup>1</sup>
<b>Federal</b>	Offender	<p>1) Good Conduct Time – All offenders with incarceration length over one year.</p> <p>2) Early Release under 18 U.S.C § 3621(e) - Substance abuse, nonviolent offense, not previously granted early release under 18 U.S.C § 3621(e)</p>	<p>1) Institutional conduct. For offenses committed after September 13, 1994, satisfactory progress toward a GED or high school diploma</p> <p>2) Completion of drug and alcohol program</p>	<p>1) Up to 54 days (~15%)</p> <p>2) Up to one year depending on sentence length (~20-32%)</p>
<b>New York</b>	Offense	<p>Merit Time – All offenses except violent felonies, sex offenses, and certain other excluded offenses are eligible. Sentences of less than one year are ineligible. Serious disciplinary infractions while incarcerated, total sanctions of more than 60 days in special housing or for loss of good time, frivolous lawsuit, violation of temporary release, placement in a relapse program, or removal from the shock incarceration program all result in ineligibility.</p>	<p>Successful performance and pursuit of plan requirements and must complete at least one of the following: GED, drug and alcohol certification, six months of vocational programming resulting in a vocational trade certificate, or 400 hours of work crew service</p>	<p>Up to one-third (~33%) off the minimum term or period imposed by the court, for a limited number of offenses. Up to one-sixth (~17%) or one-seventh (~14%) for most eligible offenses.</p>
<b>Oklahoma</b>	Offense	<p>1) Earned Credits – Certain offenses are ineligible (death/life/drug trafficking). Other offenses are eligible for lesser amounts only after stipulated portions of sentence have been served (violent offenses, repeat offenders, etc.). In these cases, the offender must first serve either 85% or 50% of the imposed sentence, depending on the offense, before the remainder of the sentence becomes eligible</p> <p>2) Achievement Credits – All offenses</p>	<p>1) ) Earning level determinations are based on the offense and conduct, as well as participation and satisfactory performance in qualifying activities (i.e. work, programs)</p> <p>2) Completion of specific substance abuse, educational, cognitive/behavioral, vocational, or other programs</p>	<p>1) Varies based on earned credit class level, but up to 60 days for each month served (equivalent to ~67%) for Enhanced Class Level 4.</p> <p>2) Varies for each of the 41 programs offered, with a maximum of 90 days for GED/HS diploma</p>
<b>Pennsylvania</b>	Offender	<p>Recidivism Risk Reduction Incentive – No history of past or present violent behavior (i.e. only nonviolent offenses eligible), no current or prior convictions for certain types of offenses (violent, deadly weapon, sex offender, drug trafficking, etc). The prosecuting attorney may waive the eligibility requirements, but the court can reject the waiver based on the victim's input.</p>	<p>No more than two misconducts of any class, particularly no more than one Class I misconduct; average or higher ratings for work and housing reports; compliant, partial or waiting ratings for programs; and compliance with plan expectations.</p>	<p>Minimum served is three-fourths (~25% reduction) for sentences of 3 years or less; five-sixths (~17% reduction) for sentences over 3 years</p>
<b>Washington</b>	Offender	<p>Earned Time – Inmates are not eligible for Earned Time if: not involved in mandatory programming, found guilty of serious program-related infractions, or serving the mandatory minimum portion of a sentence.</p>	<p>Conduct and participation in work/programs.</p> <p>Loss of earned time for: each month an offender refuses a transfer; 20+ days per month in segregation (until returned to general population).</p>	<p>Varies based on offense, but up to 50% (not applicable for crimes committed after July 1, 2010); limited to 10% for certain violent and sex offenses</p>

<sup>1</sup>Auditor calculated equivalent in parentheses

While not exhaustive, we identified examples to demonstrate the type of provisions other jurisdictions use that contrast with Oregon's earned time. The following examples describe the criteria for eligibility, rates of earning, or award thresholds that must be met:

- Under Washington's program, inmates who refuse or who are terminated from a mandatory program assignment contained in their Custody Facility Plan are ineligible for a reduction for the duration of their sentence, rather than one review period.
- Oklahoma's program includes Earned Credit Class Levels, which determine the rate at which an inmate is eligible to earn a reduction. In order to earn more than the minimum level of credits, an inmate must receive good evaluations for participation in work and program assignments, meet program participation requirements, and maintain a satisfactory attitude and relationship with staff and other inmates, among other requirements.
- For some jurisdictions, the threshold to receive an award is successful completion of an identified rehabilitation program. For instance, New York State's Merit Time program requires inmates to achieve at least one of the following in order to receive a reduction: a GED, an alcohol or substance abuse treatment certificate, a vocational trade certificate that requires at least six months of programming, or 400 hours of community service in a community work crew or through an outside assignment.

In addition to the provisions listed above, several of the comparison jurisdictions do not award earned time when there are disciplinary infractions or when an inmate refuses or fails to complete certain programs. Examples include:

- In New York, inmates with disciplinary sanctions totaling more than 60 days in segregation are ineligible for Merit Time for their entire custody cycle. Similarly, Oklahoma inmates are ineligible for earned time credits for any days spent in disciplinary segregation. Inmates in New York are also ineligible for Merit Time if they commit one of 20 different "serious disciplinary infractions."
- Washington inmates who refuse a transfer (excluding work release transfers) are awarded no earned time for each month the inmate refuses the transfer. Washington also allows for future earned time awards to be taken away from certain offenders found guilty of serious disciplinary violations.
- Pennsylvania's Recidivism Risk Reduction Initiative, which is geared toward alcohol and drug dependent inmates, requires the inmate to complete all programs identified on his or her program plan in order to be released early.

## **Analyses of Other Incarceration Reduction Programs**

It is difficult to determine the effect of incarceration reduction programs on recidivism and crime rates across jurisdictions due to differences in programs, definitions of recidivism, and other factors. A variety of studies reach only tentative conclusions regarding the impact of incarceration reduction.

### ***Incarceration Reduction Does Not Appear to Increase Recidivism***

We reviewed various studies to better understand the relationship between incarceration reduction and recidivism. Overall, research on the relationship between incarceration reduction policies and recidivism appears to suggest that recidivism is no worse for inmates receiving a reduction.

Studies by the Washington State Institute of Public Policy (WSIPP) and the State of New York Department of Corrections Services (DOCS) indicate lower recidivism rates for offenders released under earned time policies. A literature review by the National Council on Crime and Delinquency (NCCD) appears more mixed, but concludes that no strong indication of increased crime due to early release could be found. Research by the Bureau of Justice Statistics (BJS), though not focused on earned time policies specifically, was also varied. The BJS study found no significant difference in recidivism when grouping offenders by length of incarceration, with one exception: those incarcerated over 60 months had significantly lower recidivism rates, though no explanation is offered. A separate literature review by WSIPP concluded that the effect of incarceration on recidivism appears to be offender specific, while a review commissioned by the Colorado Division of Criminal Justice found no indication that increased incarceration reduces recidivism.

The studies cited above have limitations. For example, several utilize comparison groups, not randomly assigned control groups, to determine the effect of earned time policies on recidivism. Although random assignment may not have been possible in many cases, the use of comparison groups cannot fully account for factors other than earned time that may have affected earned time recipients' recidivism. However, these comparison studies represent the current understanding in the field.

### ***Incarceration Is Only One of Many Factors Affecting Crime Rates***

Studies of the relationship between incarceration and crime rates also appear to be mixed. A report by the Justice Policy Institute found that large drops in crime rates occurred both for states that increased incarceration rates greatly and those that did not. Research by The Sentencing Project found similar results, noting that states with the largest increases in incarceration had smaller average drops in crime rate than those states with below average increases in incarceration rates. A report by the VERA Institute of Justice concludes that although research seems to confirm a relationship between higher incarceration rates and lower crime rates, the effect size differs significantly from study to study. The report also notes



that for states with high incarceration rates, reducing crime rates by further increasing incarceration would require a large rise in prison spending. Other experts argue that roughly 27% of the drop in crime in the 1990s was due to increased imprisonment of offenders, which appears to suggest that rising incarceration rates had a noteworthy, if limited, impact on reducing crime rates.

The Oregon Criminal Justice Commission (CJC) and WSIPP have looked at the effect increasing incarceration would have on crime rates in Oregon and Washington. They found that a 10% increase in incarceration rates would lead to a 2.6% decrease in the overall crime rate in Oregon and a 3.3% reduction in Washington. CJC noted that this would require an additional \$73 million in prison spending per biennium in Oregon, but would result in approximately 12,000 fewer crimes, mostly property crimes.

### ***Analyses Suggest Earned Time Policies Produce Overall Benefit***

Cost-benefit analyses conducted on earned time policies seem to indicate that such policies often produce more overall benefits than costs. The WSIPP study cited previously found \$1.88 in benefits to the public for each dollar of costs associated with Washington's Earned Release Time program. An analysis by the Oregon CJC found that each dollar of incarceration costs in 2005 resulted in \$1.03 in benefits in Oregon, significantly down from the \$3.31 in benefits for each dollar spent in 1994. Though not a cost-benefit analysis, the report by New York's DOCS mentioned earlier estimated over \$350 million in savings from 1997-2006 for its Merit Time program, in addition to lower recidivism rates for those released under the program. Finally, a review by the Pew Center for the States cited research from 1999 concluding that for half of Arizona's entering inmate population, the cost of incarceration exceeds the level of social costs saved by locking these offenders up.

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## Recommendations

We recommend the Department take the following actions to improve its administration of earned time:

1. Develop clear policy and guidance to address:

- the definitions of a program failure and refusal;
- the identification of all required Oregon Corrections Plan programs;
- the definitions, use and management of program exit codes; and
- treatment of disciplinary segregation.

2. Ensure that its rules and purpose statement are appropriately aligned.

3. Review program enrollment procedures to ensure that willing inmates are entered into programs mandated by their Oregon Corrections Plan.

4. Revise administrative rules to consistently address inmate accountability for misconduct during the four months prior to release.

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## Objectives, Scope and Methodology

In order to respond to the Legislature's mandate in Senate Bill 1007, we identified the following final objectives for this audit of the Department of Corrections' earned time program:

- Assess the Department's compliance with selected earned time requirements;
- Describe the relationship between inmates, program participation, conduct history and earned time;
- Estimate the fiscal impact of earned time on Oregon's fiscal year 2009 released population; and
- Summarize existing studies and incarceration reduction programs at other jurisdictions.

To accomplish the first three objectives, we spoke with a variety of people, both outside and inside the Department, to gain an understanding of earned time policies and administration. Individuals we interviewed included representatives from stakeholder groups, the Oregon Criminal Justice Commission and the Oregon Department of Justice. Since the Department incorporates earned time administration within its operations, our interviews with its staff spanned much of the agency and included central and/or prison-based representatives from the General Services, Operations, Public Services and Transitional Services Divisions as well as the Inspector General's Office, Internal Audits, Planning and Budget, and Population Management units.

We reviewed numerous documents related to the Department's operations generally and the earned time administration specifically. This included an extensive review of laws and regulations in order to gain an understanding of sentencing and the administration of incarceration reduction programs in Oregon. Moreover, we reviewed administrative rules, policies and procedures, manuals and other technical guidance the Department developed related to earned time. In order to gain an understanding of department organization and operations, we reviewed the agency's organizational charts, budget, daily cost per inmate figures, Correctional Case Management Initiative documentation, prison population reports and briefing documents. In order to conduct testing, we reviewed inmate institutional files and Corrections Information System (CIS) computer records for selected inmates.

Given the complexity of earned time administration, we also received training and observed the work of key staff. For example, we received the technical training on Earned Time and Good Time that the Department offers its sentence computation staff. We also reviewed the work of staff responsible for intake, compliance determinations and release processing. Since inmate activities occur within separate department institutions, we conducted field visits to four institutions near Salem that represented a range of custody levels: the Coffee Creek Correctional Facility, Oregon State Correctional Institution, Oregon State Penitentiary, and Santiam Correctional Institution.

We analyzed Department data for the 4,503 inmates released from prison during fiscal year 2009. The released population data set included records for sentencing, compliance determinations, program participation, and conduct and hearings activity. For our analysis, we divided the released population into groups related to their release reason code, then by whether an inmate had at least one earned time-eligible offense within the mix of sentences applicable to our release period. To describe the composition of the released population, we obtained department data on the entire prison population at the beginning of fiscal year 2009 for comparison.

For our first and second objectives, we focused our analysis on the group of released inmates most relevant and material to earned time: the 3,094 inmates released to post-prison supervision (i.e. those who served time for offenses under the sentencing guidelines system) who had at least one earned time-eligible offense. From this group, we randomly selected a sample of 70 case files to test for compliance. Moreover, we applied additional procedures within the first 40 of the sample items to assess whether the data the Department provided was sufficiently reliable for our work. We determined that, with any necessary adjustments described below, the data was sufficiently reliable for our audit purposes.

As part of our data reliability assessment, we performed specific verification procedures to assure entries in the CIS data warehouse were sufficiently reliable for the compliance audit objective. For example, we compared CIS data to source documents such as county jail time certifications, court judgments and pre-certifications for release records. We also used this information to verify the CIS-calculated date fields, such as the maximum sentence date and physical release date, as well as earned time days awarded.

While our audit results stem largely from the above sample of 70 inmates, we performed testing of inmates outside of this group. Specifically, we selected an additional 30 files to obtain assurance that earned time eligibility determinations were consistent across release types (i.e. no supervision requirements, or released to parole, transitional leave, or a mix of parole and post-prison supervision) and eligibility (i.e. those released to post-prison supervision but no earned time-eligible offenses). We did encounter inaccurate release type entries for multiple offenders, as well as misapplied earned time on jail time for one inmate with ineligible offenses, issues we disclosed verbally to the Department.

For the third objective, we initially planned to provide a ten-year analysis of the Department's prison population and isolate the fiscal impact had earned time not existed during this period. However, we encountered a number of challenges in attempting to use the Department's data due to its selection and design of the data warehouse query. As a result of these challenges and time constraints, we had to limit the scope of the fiscal impact analysis to just fiscal year 2009. Even the fiscal year 2009 release population data proved challenging due to anomalies in the data fields for release type, sentencing guidelines, eligibility and date fields (i.e. admission, release, maximum) necessary to estimate the fiscal impact of earned time in the aggregate. The information presented in the audit results reflects our adjustment from the

4,503 inmates released down to 3,726 inmates – the inmates released to post-prison supervision – with data records that we considered reliable for reporting. The total prison days we reported reflects our procedures to remove the impact of the statutorily required adjustment for sentences anticipated to expire on a weekend or legal holiday.

For the fourth objective, we began with interviews of people from outside and inside the Department to help us identify research sources and potential jurisdictions for our review. To supplement this information, we also conducted our own assessment of available information using key word searches of the Oregon State Library databases and the Internet to select the relevant research and identify jurisdictions to include in the report. The programs cited may not reflect all incarceration programs available at these jurisdictions, but include those most comparable to Oregon's earned time program. Given the differences that exist across jurisdictions, we conducted in-depth reviews of other sentencing systems, as well as relevant policies and procedures available on the Internet. We also interviewed representatives of the jurisdictions to verify that our interpretation of this information accurately reflected their operations.

During the course of our work, we identified other areas outside the scope of this audit that warrant further attention. These areas are rehabilitation program management, data management and reporting, judgment guidance, and the inmate work program. We will consider these issues for future audits as resources become available.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Appendix

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# Oregon

Theodore R. Kulongoski, Governor

## Department of Corrections

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December 27, 2010

Secretary of State Kate Brown  
136 State Capitol Building  
Salem, OR 97301

Dear Secretary of State Brown:

In December 2010, the Secretary of State completed an audit of the Administration of Earned Time as directed by the Oregon State Legislature. The audit included a review of three specific areas:

- the Department of Corrections' compliance with statutory law and department rules, policies and procedures;
- the actual and potential impacts of the earned time program, including financial impact and its impact on recidivism and public safety; and
- the best practices in similar programs in other jurisdictions.

The Secretary of State audit found "the Department's practices were generally consistent with earned time statutes and rules." Moreover, the auditors determined "the earned time eligibility determinations agreed with the county court judgments" and "earned time retractions, restoration and withholding for conduct were adequately supported, and complied with relevant administrative rules." At the same time, the Secretary of State audit team made recommendations in four areas where they concluded practice improvements could be made:

- the development of clear policies and guidance to address:
  - the definition of program failure and refusal;
  - the identification of all required Oregon Corrections Plan programs;
  - the definition, use and management of program exit codes; and
  - treatment of disciplinary segregation.
- Ensure that its rules and purpose statement are appropriately aligned.
- Review program enrollment procedures to ensure willing inmates are entered into programs mandated by their Oregon Corrections Plans.
- Revise administrative rules to consistently address inmate accountability for misconduct during the four months prior to release.

### **Develop clear policies and guidance to address the definition of program failures and refusal**

The Department partially agrees with this recommendation. Current policies and rules provide "guidance" on the definition of compliance; however, practices between institutions and counselors may appear inconsistent without adequate documentation.

On October 19, 2010, the Department temporarily adopted a revised version of OAR 291, Division 097, Prison Term Modification. Consistent with the previous version of this rule, the following definition of "compliance" was offered in 291-097-0020(3)(A): "An inmate will be considered to be



compliant if he/she was not failed from the required activity(ies) during the review period under consideration, nor did the inmate refuse to participate in required programming during the review period under consideration.” In 291-097-0020(3)(a), compliance with the Oregon Corrections Plan is defined as “acceptable participation in work and self-improvement programs required within the OCP.”

The Department has written a new policy entitled “Correctional Case Management” that is pending adoption in early 2011. In the new policy, additional direction is given to counselors and staff who participate on multi-disciplinary teams (MDT) to determine when an inmate has failed and/or refused participation in a mandatory or required program. The policy defines an FOCP (Failed Oregon Corrections Plan – Case Plan) as a “Level 1 or 2 major misconduct violation as defined in OAR 291-105 that occurred during or as a result of the program/work assignment; and refusal to participate in a mandated or required program/work assignment.” The Department does not support any inference the lack of available program space or opportunity to participate in a program is the responsibility of the inmate and advocates for the continued practice of recognizing program compliance for inmates on waitlists for mandated and required programs.

While agreeing that better definitions may be necessary, in the same instance, the Department does not support the creation of strict definitions that eliminate all professional discretion also expected and supported by rule, policy and procedure. In regard to making appropriate earned time determinations, the proposed Correctional Case Management policy states, “Professional judgment and the best interest of the inmate should be used when making decisions.” The Department firmly believes discretion is necessary to meet the demands of its mission to promote public safety by holding inmates accountable for their actions and reducing the risk of future criminal behavior. In addition, professional discretion is necessary in those instances where the best interests of the community, such as the safe transition of the inmate from the institution requires an established release plan, override the need to adhere to a strict definition of “failure.”

**Develop clear policies and guidance to address the identification of all required Oregon Corrections Plan programs**

The Department agrees with this recommendation and is already taking steps to clarify required programming for inmates in its care and custody. The Department acknowledges the auditors found instances where programs currently defined as “required” were not accurately listed on the OCP. The auditors correctly observed the absence of a desk and/or training manual for counselors and for the use of CIS. The Department agrees these will be valuable tools for staff.

Currently, Policy 90.1.1, Oregon Corrections Plan defines those programs that should be listed on an inmate’s OCP in section III(B)(3): “Only those programs which are designated to mitigate specific criminogenic risk factors, based on evidence based practices, shall be listed on an inmate’s Oregon Corrections Plan.” In section III(C)(1), Policy 90.1.1 adds, “Inmates with a high or moderate criminogenic rating in any domain as a result of the criminogenic assessment shall have a problem area listed on their OCP that corresponds to the driving factor behind their risk to re-offend.”

In the proposed Correctional Case Management policy, mandatory programs are defined as those programs defined by statute, regardless of inmate supervision level and are ABE (Adult Basic Education)/GED (General Education Diploma)/ESL (English as a Second Language) educational programs and work assignments. Required programs are defined as those programs based on

criminogenic – LS/CMI risk factors or DOC sanctioned assessments, e.g., TCU or STATIC 99, for those inmates whose supervision level is intermediate or intensive and include only alcohol and drug treatment, Think, Pathfinders and sex offender treatment/education.

The Correctional Case Management policy provides for the consistent application of these definitions through the use of peer site reviews and formal audits. Counselors, Transitional Services Managers, Assistant Superintendents of Transitional Services and several division staff within the Department have contributed to the creation of this policy.

***Develop clear policies and guidance to address the definition, use and management of program exit codes***

The Department agrees with this recommendation and has already taken steps to improve the definitions, use and management of exit codes. As noted in the audit report, CIS continued to allow the entry of exit codes eliminated as early as 2004 through part of 2009. On March, 1, 2010, a list of program exit codes was updated and posted on the universal drive, accessible to all staff regardless of work unit. This list identifies 30 approved codes and categorizes the exit codes by administrative actions.

In the proposed Correctional Case Management Policy, there is an additional level of review built into the program review process. In accordance with this policy, inmates will be coded as “RFR” (Removed for Program Review). The counselor and/or the institution MDT will review the issues surrounding the inmate’s removal from a program and the appropriate exit code will replace the RFR code at the conclusion of the review. The counselor and/or the MDT will determine if the issues warrant an FOCP, which would result in earned time not being applied for the review period under consideration, or a less formal intervention, which would result in the application of earned time for the applicable review period, is warranted. This policy provides for the use of professional discretion and requires either decision to be supported with documentation.

Identifying a limited number of exit codes, restricting the use of outdated codes, establishing a review process for program removals and requiring documentation should address the clarification recommended by the auditors.

***Develop clear policies and guidance to address the treatment of disciplinary segregation***

The Department partially agrees with the recommendation. Current rules provide the structure necessary for an inmate’s misconduct to result in an inmate failing to earn earned time associated with the institutional conduct portion of the earned time calculation. In addition, the proposed Correctional Case Management policy includes direction on how to address compliance in the case of an inmate whose behavior prevents him/her from being offered or placed into a mandated or required program. The Department does not agree an inmate’s program compliance is necessarily impacted by their placement in segregation as some inmates are able to participate in OCP required/mandated programs.

OAR 291, Division 011 establishes a procedure and standards for the placement of inmates into disciplinary segregation as well as their treatment while housed there. In addition, OAR 291, Division 011 provides for the continuation of programming and work assignments for inmates assigned to disciplinary segregation. In an informal review of institution operations, OISC determined some facilities allow for the continuation of education and mental health programming required by the OCP

in cases where staffing, conduct while housed in segregation, activity space and the length of the imposed sanction allow. Coffee Creek and Powder River both indicated they have the ability to continue to facilitate certain programs, including GED and mental health groups. Although neither had tutors or teachers conduct formal classes in disciplinary segregation, inmates were allowed to check out GED materials and continue their programming through self-directed study. Coffee Creek staff facilitate the provision of self-help packets and materials to inmates whose required programming includes mental health treatment.

Institutions are not built the same, staffed the same and do not have the same ability to offer programming to inmates housed in disciplinary segregation. For those inmates who are able to continue to work in accordance with their mandated/required OCP programming, it would be an injustice to deny them the opportunity to remain in compliance with the programming portion of earned time. Those inmates whose behavior prevents their ability to participate in programs and who refuse to program if offered the opportunity in segregation should fail to earn earned time for that review period. The new policy on Correctional Case Management will provide guidance and definition, without prohibiting the application of earned time when it is appropriate and supported by rule, policy and procedure.

**Ensure the Department's rules and purpose statement are appropriately aligned**

The Department agrees with this recommendation and will convene a group, including DOJ counsel and representatives from the Criminal Justice Commission, to review the rules in comparison to the purpose statement. As indicated by the auditors, earned time was established in Oregon in 1989 and while the rules have been updated and modified through initiative and legislation in the last 21 years, the purpose statement has not been reviewed.

**Review program enrollment procedures to ensure willing inmates are entered into programs mandated by their Oregon Corrections Plan**

The Department partially agrees with this recommendation and is currently engaged in a review and rewrite of OAR 291, Division 113, Workforce Development and Education Programs. The Department does not agree the current enrollment procedures prevent "willing" inmates from participating in programming nor does it agree "willingness" is the only factor it is required to consider when enrolling inmates in department-offered programs. The biggest challenge for enrolling inmates into programs remains, and will continue to be, the reality there are more inmates in need of programming than there are programming opportunities. At its most basic, this is the challenge of demand exceeding supply and the resources necessary to increase that supply.

As of December 1, 2010, the Department of Corrections housed 13,872; 1,109 women and 12,763 men. According to a Workforce Development Frequently Asked Questions response, "It is anticipated more than three-quarters of Oregon's inmates will participate in WFD programs during the biennium." In a two-year period, that equates to approximately 10,404 inmates who participate in required, mandated and voluntary programming.

ORS 423.020(e) directs the Department of Corrections to "provide persons who are motivated, capable and cooperative with opportunities for self-improvement and work." OAR 291-113-0005(2) establishes "uniform entry requirements for all educational programs offered in the Department of Corrections facilities, as well as a uniform procedure for the assignment of inmates to inter-institutions

programs in the department.” Subsection three states, “Criteria for selection and assignment to these programs shall be equitable and non-discriminatory for all participants based on the inmate’s interest, academic need, aptitude, prior academic record and career goals as identified at the time of admission to a Department of Corrections facility.”

Per Policy 90.1.1(III)(D), “The following criteria shall be used to determine the sequence in which inmates are admitted to ODOC programs:

1. Mental Health and Medical Treatment
2. Education
3. Alcohol and Drug Treatment
4. Cognitive Programs
5. Sex Offender Treatment
6. Parenting Skills
7. Repetition of Programs

As addressed in rules, policies and procedures, inmate “willingness” is only one factor the department is required to consider when enrolling inmates in workforce development programs.

As identified in the June 2010 Final Report from the Governor’s Reset Cabinet, “Over 70 percent of the offenders in Oregon prisons need some level of A&D treatment.” As of December 1, 2010, 1,579 inmates were identified as having “severe addiction;” 6,356 inmates were identified as having a “severe problem” with alcohol and/or controlled substances; and 2,264 had a “moderate problem” with alcohol and/or controlled substances. A total of 10,379 inmates, or approximately 75% of those inmates currently incarcerated in the Department of Corrections are in need of some level of alcohol and drug treatment intervention.

In 2009, there were six (6) institutions that provided some level of alcohol and drug treatment by contract providers: Columbia River Correctional Institution, Powder River Correctional Facility, Oregon State Correctional Institution, Coffee Creek Correctional Facility, Deer Ridge Correctional Institution and Oregon State Penitentiary Minimum, for approximately 300 male and 54 female treatment beds. Despite the continued and increasing need, in 2010, the number of beds at Powder River decreased and the Oregon State Penitentiary Minimum facility was decommissioned, further reducing the supply of alcohol and drug treatment beds and programming for ODOC inmates.

In October 2010, OAR 291, Division 097, Prison Term Modification, was rewritten to reflect the Department changing its stance on mandated alcohol and drug treatment for inmates. As a result of recent information indicating that coerced alcohol and drug treatment in a correctional setting is ineffective, the department discontinued the use of Special Case Factor (SCF) 25 that mandated treatment for certain inmates with a harsher penalty for non-compliance; seven (7) SCF 25-identified inmates who received earned time retractions as a result of their failure to complete alcohol and drug treatment prior to release, received a restoration of their earned time that resulted in immediate releases as a result of the rule change. The audit report indicated an inconsistent application of SCF 25 and earned reductions; the revision of discontinuation of SCF 25 and the revision of OAR 291, Division 097 will address and resolve this issue. Moreover, removing the mandate for certain inmates will open a limited number of beds to those inmates who are “willing” to participate in alcohol and drug treatment programs.

**Revise administrative rules to consistently address inmate accountability for misconduct during the four-months prior to release**

The Department partially agrees with this recommendation. The Department agrees to review its rules as they relate to the assumption of compliance at the final review conducted four months prior to an inmate's release. The Department does not agree with the suggestion it fails to address inmate misconduct in the last four months of incarceration as seriously as it does during the prior period of incarceration.

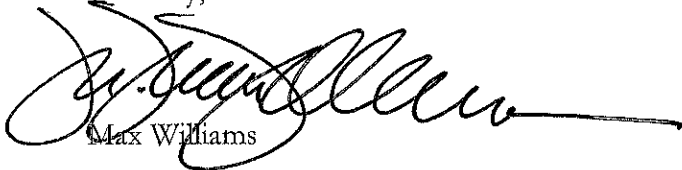
The Department is required to do "just in time" releases; not one day less and not one day more than allowed by law, rule, policy and procedure. The audit team observed two cases in which hearings officers failed to order a retraction of earned time within the last four months as required by policy. In one case, the hearings officer acknowledged it was an error, in the second case it could not be determined if it was an error or an application of professional discretion and judgment. As indicated previously, there are situations in which a firm release date takes priority and the inmate may be held accountable for the misconduct via other methods.

Per the Inspector General's Office, all hearing officers statewide attended training conducted by Jeffrey VanValkenburgh, Senior Assistant Attorney General with the Oregon Department of Justice on Oregon Administrative Rules and the duties of a hearings officer in 2010. DOC hearings officers are to provide a consistent response to like types of misconduct committed by inmates with similar misconduct histories.

### Conclusion

The results of the audit found the Department and its staff to be in compliance with the law and identified a savings to the State of Oregon of at least \$25 million through the use and correct application of earned time. The Department welcomes the new perspective and information provided by the Secretary of State audit team and acknowledges it is both prudent and necessary to routinely review all rules, policies, procedures and practices.

Sincerely,



Max Williams

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## About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of her office, Auditor of Public Accounts. The Audits Division exists to carry out this duty. The division reports to the elected Secretary of State and is independent of the Executive, Legislative, and Judicial branches of Oregon government. The division audits all state officers, agencies, boards, and commissions and oversees audits and financial reporting for local governments.

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The courtesies and cooperation extended by officials and employees of the Oregon Department of Corrections during the course of this audit were commendable and sincerely appreciated.