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February 2, 2011

Senate Judiciary Committee  
Oregon State Capitol  
Salem, Oregon 97301

**Re. SB 77 (2011)**

Dear Senators Prozanski, Kruse, Bonamici, Dingfelder and Whitsett:

As former heads of the state prison systems in California, Washington, and Colorado, we write to provide our perspective on SB 77, legislation related to prisoner litigation that has been introduced by the Oregon Department of Corrections (ODOC). In particular we are concerned about the provision that would require prisoners to exhaust all administrative remedies prior to filing suit against a public body in state court. This provision is similar to the requirements for filing a federal lawsuit imposed on prisoners by a 1996 federal law called the Prison Litigation Reform Act (PLRA). Over the years we have seen the unintended negative consequences of the PLRA on prison administration and the safety and security of correctional institutions. Because of the negative consequences of the federal exhaustion requirement and its unrealistic application to the corrections context, we urge the Oregon legislature not to pass legislation imposing such a requirement at the state level.

We certainly agree that ODOC officials should have an opportunity to address problems internally before they go to court. But while it is important for the Department to be aware of problems in its facilities before claims are filed in court, it is unrealistic to expect prisoners to exhaust the prison grievance system under *all* circumstances without *ever* making a mistake, and to bar them from the courts if they fail to do so. Even with the best possible grievance system in place, there are circumstances in which a prisoner may not have the opportunity to file a complaint, or may be fearful of doing so. For example, when a prisoner is transferred to another prison or to a hospital for treatment, he or she would likely miss a filing deadline. When a prisoner is raped or assaulted by another prisoner, he or she may fear retaliation for reporting the incident internally. Prisoners with mental illness or developmental disabilities may find it impossible to navigate the requirements of the grievance system. Prisoners in these situations should not forfeit their right to protection from the courts, but that is what would occur under the exhaustion requirement proposed in SB 77.

SB 77 also contains additional provisions that limit prisoners' access to the legal system. We do not believe that such provisions are either necessary or desirable. Prisoners need to understand that violating the rights of others has consequences, and that the justice system is there to protect the rights of everyone. Denying them equal access to the courts sends a negative and counterproductive message.

From our years of experience leading state correctional agencies, we have come to understand the importance of court oversight. The courts and the rule of law must play a meaningful role in our nation's jails and prisons. We know that the best correctional institutions in our country serve the public and must be open to public scrutiny. The courts are an essential part of this oversight, and their function is ever more important in a time where our jail and prison populations continue to climb while state budgets are shrinking.

For these reasons, we respectfully urge you not to enact the proposals contained in SB 77.

**Sincerely,**

**Jeanne Woodford**

**Former Director, California Department of Corrections**

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