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Washington State Senate

Senator Mike Padden
4th Legislative District

Committees:
Law & Justice, Chair
Accountability & Reform, Vice Chair
Human Services, Mental
Health & Housing
Ways & Means

District Office:
11707 E. Sprague Ave., Suite 305
Spokane Valley, WA 99206
Phone: (509) 921-2460

January 13, 2016

Governor Jay Inslee
Office of the Governor
P.O. Box 40002
Olympia, WA 98504-0002

Dear Governor Inslee,

It is with great concern that we write to you as Chair and Vice Chair of the Senate Law and Justice Committee. The Department of Corrections Sentencing Error Scandal in which the agency released thousands of prisoners early has been an unqualified disaster for our state.

The Department of Corrections Scandal

To date, two people that we know of are dead. Potentially hundreds have been victims of crimes that dangerous felons never should have been out of prison to commit. Those former inmates who had just begun to rebuild their lives after paying their debts to society were torn from their homes at the holidays and sent back to prison. This despite the Legislature's investment of a million dollars a year in a vendor overseeing the DOC's OMNI computer system. The State spent millions more on auditors whose sole purpose was to ensure accurate calculation of prisoner sentences. This is failure on a colossal and systematic scale that has endangered the lives and property of our state's citizens.

On December 22, 2015 you held a press conference in which you announced that your general counsel had hired two former prosecutors to investigate these matters. You said the investigation would last two months- a period that happened to coincide with this year's legislative session. You claimed that the investigators would leave no stone unturned in their quest to find who should be held accountable.

Legislative Attempts to Obtain Information

As legislators we have a constitutional duty and oversight responsibility to ensure that state agencies are operating effectively. We have made every effort to work within the normal processes to obtain information regarding this matter and your legal office's investigation, but your administration has not made this possible. We have done so despite the enormous time pressure that comes with both an expedited session and the need to obtain documents and hear from witnesses while both are available.

On December 22, 2015, shortly after your announcement, the chair of Law and Justice sent a public records request to you and DOC regarding this matter. That letter was returned without any responsive documents from DOC. A copy of both the original request and the letter from DOC are attached. Although DOC staff was requested to correct this, no documents have been received to date.

On January 4 and 6, we each met individually with Secretary Pacholke to discuss the scandal. We notified him that the Senate Law and Justice committee would be holding a hearing on this matter. We indicated that in order for him to be prepared, days in advance of the hearing we would provide him with ten questions that the Chair intended to ask. Secretary Pacholke was provided the questions by our staff on January 6.

At these early meetings, we also repeatedly requested that the investigators be made available at the hearing so that legislators could become familiar with the details of the investigation. On January 7, 2016, your staff responded that the investigators were not available for the hearing. The investigators were made available to the chair for about 15 minutes by phone. In response to a question from the chair regarding the scope of their investigation, the investigators indicated that their "boilerplate state contract" afforded them broad powers to look into these matters. A copy of the contract was requested by the Chair. A new meeting date was set. To date, no copy of the contract that would enable the members of the committee to understand how much the investigators were being paid, by who, and the scope of their authority has been provided.

Unfortunately, at the Law and Justice hearing on January 11, despite being provided the questions days in advance, Secretary Pacholke's testimony raised even more questions about the independence of the investigation.

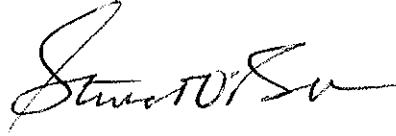
- He confirmed that the investigators work for Nicholas Brown- your general counsel.
- He said that their investigation would likely be limited to the three years of your administration which runs counter to your investigators' assertions of broad authority to investigate a scandal that spans at least twelve years.
- Despite our legislative role in administering the finances of the state, Sec. Pacholke was unable to shed any light on how much the investigators were being paid, how much the investigations were projected to cost, how your office was paying them, or even provide a rough estimate of the potential liability costs associated with this scandal.
- His testimony failed to address whether attorney client privilege attached to their investigation, how evidence of intentional or negligent criminal wrong doing may be handled, or even whether witnesses would be placed under oath by investigators.
- In response to a question of why it took more than a month for that information to reach the agency's senior management after DOC's new chief information officer became aware of the problem in early November, he answered, "I have not asked him that question, nor do I have the answer to it."
- It was unclear from his answers whether the investigators would independently draft their report or whether your office would have an opportunity to review their work product in advance. He also seemed unclear whether legislators would have access to the fruits of the investigation including transcripts of witness interviews. He hinted that such material might be subject to the public records process which, as noted above, had already failed on a previous request from the committee chair.

Legislative Plan to Obtain Information

The testimony today raises the legitimate concern regarding whether your administration's investigation is actually independent. Moreover, because other common methods of obtaining information from your agencies by legislators have failed, we are compelled to exercise the legitimate constitutional and legal authority and tools at our disposal.

This letter is to provide you with the courtesy of a notice that we intend to proceed with the legislative process in obtaining and exercising subpoena power to obtain documents and witnesses regarding this matter. We request that you instruct your administration to preserve all documents, provide all evidence, and cooperate as witnesses.

Sincerely,



Sen. Mike Padden, Chair of the Senate Law and Justice Committee
Sen. Steve O'Ban, Vice-Chair

Enclosure

Questions Provided to Sec. Pacholke Prior to January 11, 2016 Law and Justice Meeting

1. When did you first learn of the sentencing errors and when was this information relayed to the Governor and his staff?
2. Please describe your understanding of the nature of the error, what caused it, and what is being done to fix it.
3. Please describe the investigation, how is it being conducted, who is paying for it, how much is budgeted, and your understanding of the scope of the investigation.
4. I understand that DOC has had policy for a number of years that each inmate sentence is recalculated by hand 60 days prior to release and 4 weeks after a transfer between facilities. I also understand that each facility has about five correctional records technicians responsible for hand calculating prisoner sentences. If this work was actually being done, how could a computer error have affected these routine multiple hand calculations of each sentence?
5. Have you been able to determine whether there is a pattern of the errors occurring at particular institutions? In other words were the errors occurring more often at particular prisons?
6. Can you describe how much training and supervision the DOC employees responsible for auditing the prisoner files and sentences received and whether this contributed to the error?
7. Is the contractor that handles the OMNI system responsible under its contract with DOC for system errors or failure to detect errors? In the transition to the OMNI system, weren't all prisoner sentences recalculated by hand?
8. Is there any evidence that this was a conscious decision by employees of the department of corrections to reduce prisoner incarceration time in order to save money?
9. Who is responsible for this error?
10. Has DOC or its counsel done any estimate of the approximate cost in potential liability as a result of the sentence calculation errors?



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Senator Mike Padden
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Law & Justice, Chair
Human Services & Corrections
Ways & Means

District Office:
11707 E. Sprague Ave., Suite 305
Spokane Valley, WA 99206
Phone: (509) 921-2460

December 22, 2015

RECEIVED

DEC 30 2015

Governor Jay Inslee
Office of the Governor
P.O. Box 40002
Olympia, WA 98504-0002

Office of the Secretary

Secretary Dan Pacholke
Department of Corrections
P.O. Box 41100
Olympia, WA 98504-1100

Dear Governor Inslee and Secretary Pacholke,

I write to you with concern regarding the actions of the Department of Corrections. I understand from the press conference on December 22, 2015 that the Department erred in calculating the release date of 3200 inmates resulting in their early release from custody. I am deeply troubled by this apparent lack of diligence and concern for our citizens' safety.

As chair of the law and justice committee and in exercise of the legislative oversight of corrections within that committee's jurisdiction, I intend to hold a work session early in session.

Pursuant to the state public records act, I am requesting a copy of the following for the period from January 1, 2012 through December 22, 2015:

1. The name of the family of the victim of the crime referenced in the Governor's press conference on December 22, 2015 who discovered the error described above.
2. A list of all prisoners released early as a result of the error described above from January 1, 2012 through December 22, 2015.
3. All communications from when the error described above was found in 2012 up until the time of the press conference. In particular, all communications from when the Secretary of DOC was informed of the error, all communications from DOC to the Governor's staff and Governor, and all communications from the Governor's staff about this issue from when they were informed until the press conference.

In light of the seriousness of this matter and in the interest of full transparency, I would request that you consider waiving any privilege held by your agencies associated with any documents that fall under this request, including attorney-client privilege. If you'd like to provide an electronic copy, you may send your response to my email address: mike.padden@leg.wa.gov. Hard copy documents should be mailed

to my Olympia office address: INB 106, P.O. Box 40404, Olympia, WA 98504. As provided in RCW 42.56.520, I will expect your response within five business days.

Sincerely,

A handwritten signature in cursive script that reads "Mike Padden".

Senator Mike Padden



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY

P. O. Box 41101 • Olympia, Washington 98504-1101 • Tel (360) 725-8810

December 31, 2015

Washington State Senate
Senator Mike Padden
INB 106, PO Box 40404
Olympia, WA 98504

Dear Senator Padden:

I am returning your public records request received in our office on December 30, 2015.

Under WAC 137-08-090, you must submit your public records request directly to the Department's public records officer. You may submit it by:

U.S. Mail: Public Records Officer
 Public Disclosure Unit
 Department of Corrections
 P.O. Box 41118
 Olympia WA 98504

Email: DOCpublicdisclosureunit@doc.wa.gov

Your request should include your name, daytime telephone number, mailing address, email address, and DOC number (if you have one). The public disclosure unit will use this information to contact you about your request.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Pennington".

Cindy Pennington, Confidential Secretary
Secretary's Office
Department of Corrections