

Background Information on
Measure 57

General Election
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Ballot Measure 57

EASY VOTERS' GUIDE

Ballot Measure 57: Prison plus Treatment

Official Title: Increases Sentences for Drug Trafficking, Theft against Elderly and Specified Repeat Property and Identity Theft Crimes; Requires Addiction Treatment for Certain Offenders

The way it is now

When people are found guilty of dealing drugs or of stealing, the judge uses a sentencing guide to decide their punishment. Their punishment depends on how bad their crime was and how many times they were guilty of crimes in the past. A lot of criminals are sent to jail, but many get "probation." (They are watched, but they are not in jail.) Most people who steal are drug addicts, but only a few of them get help to break their drug habits while they are in jail.

What Measure 57 would do:

Measure 57 would put more people in jail or prison for 3 to 10 years or more for:

- (1) selling large amounts of drugs like heroin, meth, cocaine and ecstasy;
- (2) selling drugs to someone less than 18 years old; or
- (3) stealing more than \$10,000 from a person who is older than 65.

People who sell a lot of drugs more than once would have to go to prison and not have probation. Also, people who are found guilty more than 2 or 3 times of stealing a lot of money, a car, or someone's identity would have to spend at least 5 months longer in jail than they do now. The measure also says that the prisons and probation system must offer drug treatment to help criminals who are very addicted and likely to do more crimes. If a criminal who is out of jail refuses to get the drug treatment he is supposed to get, he would be punished and probably sent back to jail.

The Legislature put Measure 57 on the ballot as an option and alternative to Measure 61. If Measure 57 and Measure 61 both pass, the one with the most votes will win and become the law.

Argument for:

This measure would put the worst criminals in jail for a long time, but help other criminals break their drug habits so they won't steal again. It would cost one-third to one-half as much as Measure 61.

Argument against:

This measure would not put enough thieves and drug dealers in jail, and it would not keep them locked up long enough.

A "Yes" vote means: Increase the amount of prison time for certain crimes. Give treatment to criminals who are addicted to drugs.

A "No" vote means: Do not make changes in the way that prison time is decided.

How much it would cost: New spending for state government of \$9 million the first year. This new spending will go up to between about \$75 million to \$100 million for the next few years. After 2012, the cost will be about \$143 million per year.

REGULAR VOTERS' GUIDE

Oregon Ballot Measure 57

STATUTORY AMENDMENT: Increases Sentences for Drug Trafficking, Theft Against Elderly and Specified Repeat Property and Identity Theft Crimes; Requires Addiction Treatment for Certain Offenders

REFERRAL: This is a statutory measure referred to voters by the 2008 Special Session of the Oregon Legislature with a vote of 54 in favor and 2 opposed (and 4 absent) in the House and a vote of 23 in favor and 7 opposed in the Senate.

A related and competing measure is Ballot Measure 61, placed on the November 2008 ballot by a citizen initiative petition. If both measures are passed, the one with the higher number of "yes" votes will take effect. See information on Ballot Measure 61.

FINANCIAL IMPACT: The costs of the measure include the cost of keeping more criminals in prison for longer periods of time (running prisons, providing temporary prison beds and, if necessary, building more prisons) as well as expanding addiction treatment programs and supervising criminals after they are released from prisons. The measure will require additional state spending of approximately \$9 million in the first year, \$74 million in the second year, \$79 million in the third year, \$106 million in the fourth year, and more than \$143 million each year after that. The measure does not require additional local government spending.

If additional prison space is needed, the state would have to borrow \$314 million from 2010 to 2017 to build it. The state would repay this amount plus interest of \$203 million over 25 years. The measure does not provide for additional revenue to be collected by state government to pay for these additional costs.

Probable results of a Yes Vote

If this measure passes, it would increase sentences for drug trafficking (methamphetamine, heroin, "ecstasy," cocaine), theft against elderly persons, and specified repeat property and identity theft crimes. This measure also requires addiction treatment for certain offenders. This measure is an alternative to Measure 61 on this ballot, which would impose mandatory minimum sentences for similar crimes.

Probable results of a No Vote

If this measure fails, current laws, which provide lesser sentences for specified crimes and do not require treatment for addicted offenders, would remain in effect.

Background

Ballot Measure 57 is the response of the 2008 Special Session of the Oregon Legislature to the citizen initiative that is now Ballot Measure 61. The goal was to offer an alternative to the mandatory minimum sentences of Measure 61 while also addressing public concerns and law enforcement recommendations about drug and property crime.

At the present time judges use the state Sentencing Guidelines and the Repeat Property Offenders law to determine jail/prison terms and/or probation sentences for most people convicted of property crimes. The guidelines and law base the severity of punishment and the length of probation or prison term on the seriousness of the crime plus previous convictions of the offender, if any. The judge has the power to reduce or increase the length of the sentences within certain limits if he/she decides there are "substantial and compelling" reasons. Probation is an option for first-time offenders for many of the crimes that would be covered by Measure 57. Property offenders may be able to earn reductions in their sentences of up to 20% for appropriate conduct in prison and also earn additional reductions of up to 20% by participating in certain alternative incarceration programs. Since the passage of two initiatives in 1990 and 1995, people convicted

of most violent crimes against other persons (murder, rape, assault, etc.), must serve mandatory minimum prison sentences with no possible reduction or parole.

According to the Oregon Criminal Justice Commission (OCJC), in the 20 years since Oregon began sentencing more criminals to longer prison sentences, Oregon's prisoner population has more than tripled, and taxpayer expense for the Department of Corrections has increased by 179% in inflation-adjusted dollars. From 1986 to 2006, Oregon's violent crime rate fell by 49% and Oregon's property crime rate fell by 44%. Oregon now ranks 38th in the U.S. for violent crime and 18th for property crime. Although other factors, like the economy, also affect the crime rate, the OCJC cites national and state studies showing that increasing prison terms does reduce crime. Studies also show that the cost benefit of longer sentences is far greater for violent crime than for property crime. Imprisoning more drug offenders for long periods is not cost-effective. According to the Department of Corrections, 85% of repeat property offenders are addicts, but only 12% participate in a treatment program while in custody and 49% re-offend within three years after their release. Currently some prison terms are too short for drug-addicted convicts to complete treatment. Studies show that combining addiction treatment with longer prison terms can be an effective way to break the cycle of crime.

The Proposal

Measure 57 would require prison time with no probation or less severe sentences for the following crimes:

- Delivery or manufacture of more than certain substantial amounts of cocaine, methamphetamine, heroin or "ecstasy:" 34 to 130 months depending on the amounts of the drugs and on past criminal history.
- Delivery of any of these drugs to a person under 18 years old: 34 to 72 months. The increased penalties would not apply if the dealer is less than 3 years older than the minor, unless the dealer had a previous conviction.
- Any theft involving more than \$10,000 from a victim who is more than 65 years old: 16 to 45 months.

Currently sentencing guidelines call for a minimum of 36 months probation to a maximum of 45 months in prison for the first two crimes or 30 months in prison for the third.

In addition, the measure would increase sentences for repeat offenders, by:

- Prohibiting a shorter sentence or probation if the sentencing guidelines call for a prison sentence when a person convicted of the manufacture or delivery of illegal drugs (other than marijuana) has a previous conviction for one of these drug crimes;
- Increasing the prison sentences for serious property crimes from 19 months to 24 months if the criminal:
 - Has one previous conviction for a serious crime or
 - Has two or more convictions for less serious crimes or
 - Committed the crime while on probation or post-prison supervision or less than 3 years afterward;
- Increasing the prison sentences for less serious property crimes from 13 months to 18 months if the criminal has previous convictions (as above);
- Adding robbery and all identity theft to the list of serious crimes that receive 24-month sentences for repeat offenses;
- Adding mail theft, possession of a forged legal document and fraudulent use of a credit card to the list of less serious crimes that receive 18-month sentences for repeat offenses;
- Increasing sentences by 2 months for each previous conviction (beyond the number of property crime convictions that trigger the longer sentence) up to a total of 12 months additional time;
- Making it more difficult for a judge to give less severe sentences or probation to repeat offenders.

In addition to increasing penalties, Measure 57 would require the Department of Corrections (DOC) to provide appropriate treatment for drug-addicted offenders who have significant treatment needs and a high to

medium risk of becoming repeat offenders. Grants of money would be provided to counties for addiction treatment services as well as to fund jails, drug courts and supervision of criminals on probation, parole or post-prison supervision. If a person does not complete a required addiction treatment program while under DOC or county supervision, the measure calls for "swift and certain punishment, including incarceration in jail." A companion measure (House Bill 3638) passed by the 2008 Legislature provides that offenders who successfully complete treatment programs could earn reductions in their sentences of up to, but not more than, 20% after they have served at least one year in prison. It also clarifies that no offender has a legal right to treatment.

Supporters Say

- Measure 57 targets the state's limited resources to combating major crime problems: high-level drug dealers, repeat offenders, identity thieves who prey on seniors, and people who sell drugs to kids.
- Victims of identity theft, particularly the elderly, can have their lives ruined. Measure 57 punishes more severely those who prey on elderly victims.
- Measure 57 increases sentences for big-time drug dealing while working to stop repeat offenders through required addiction treatment.
- Measure 57 gives courts discretion to give sentences that fit crimes and criminals' histories, rather than "one-size-fits-all."
- Measure 57 costs half as much as Measure 61 and spends those dollars more wisely on a combination of treatment plus punishment.

Opponents Say

- Measure 57 allows probation for nearly all meth dealers, identity thieves, burglars, and auto thieves on their first convictions.
- Some opponents say Measure 57 does not adequately penalize persons convicted of property crimes, identity theft, mail theft, and drug crimes.
- All of the sentences in Measure 57 are guideline sentences with a range of penalties. Measure 57 does not have mandatory minimum sentences like Measure 61.
- Sentences in Measure 57 could be reduced up to 40%: 20% for "good behavior" and 20% for "rehabilitation."
- Some opponents say current sentencing guidelines for property crimes, identity theft, mail theft, and drug crimes are adequate and cost-effective.

REFERENCES AND RESOURCES

Phone and email interviews:

Jennifer Black, Public Affairs Manager/Communications, Oregon Department of Corrections, 2575 Center Street NE, Salem, OR 97301; Phone: (503) 945-9426; jennifer.black@doc.state.or.us

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Michael Wilson, Economist, Oregon Criminal Justice Commission, 885 Summer Street, Salem, OR 97301; Phone: 503-378-4850; Fax: 503-378-4861; Michael.K.Wilson@state.or.us

The Oregonian, "Crime measures will fight it out come fall. The Legislature approves an alternative to Kevin Mannix's plan, giving voters a rare ballot choice," Saturday, Feb. 23, 2008

Websites and documents available through websites:

"Are Mandatory Minimum Drug Sentences Cost-Effective?" Drug Policy Research Center, Rand Corporation, © 1997, http://www.rand.org/pubs/research_briefs/RB6003/index1.html

"Background Brief on Measure 11," June 2008, Legislative Committee Services, State Capitol Building, Salem, OR 97301, 503-986-1813 or Bill Taylor, 503-986-1694, http://www.leg.state.or.us/comm/commsrvs/background_briefs2008/briefs/PublicSafety/Measure11.pdf

"Comparing Legislative Property Crime Ballot Measure to Mannix's Mandatory Minimum Measure," Partnership for Safety and Justice, <http://www.safetyandjustice.org/node/1183/print>

"Criminal Justice Commission Report to the Legislature, January 2007," available as a pdf through: http://www.oregon.gov/CJC/about_us.shtm

Criminal Justice Commission, Statistical Analysis Center, crime statistics: <http://www.oregon.gov/CJC/SAC.shtml>

Information on Measure 61

<http://www.oregoninitiativesreport.com/initiative-40.php> (Access via <http://www.KevinMannix.com/>)

Information on Senate Bill 1087: complete text, staff measure summaries, history, and audio of committee hearing at:

<http://www.leg.state.or.us/08ss1/measures/sb1000.dir/sb1087.en.html>,

<http://www.leg.state.or.us/comm/sms/SMS07Frameset.html>,

<http://www.leg.state.or.us/08ss1/pubs/senmh.html> and

<http://www.leg.state.or.us/listn/> (audio recording of Senate Judiciary work session 2/12/08, 6 PM)

Oregon Revised Statutes - 2007 Edition, Chapters 164 and 165, regarding definitions for various types of theft, robbery, burglary, fraud etc., <http://www.leg.state.or.us/ors/home.htm>

"SB 1087 and IP 40 Comparison," Oregon Department of Corrections, Issue Brief – 2008, <http://www.oregon.gov/DOC/PUBAFF/docs/pdf/IB-73-SB1087comparisonIP40.pdf>

"Sentencing Under Oregon's Felony Sentencing Guidelines," <http://www.oregon.gov/CJC/SGworkshop.shtml>

"Summary of Oregon Sentencing Laws," <http://www.oregon.gov/CJC/SentenceLawSum.shtml>

ADDITIONAL MEASURE BACKGROUND

prepared for Speakers' Kit by League Researcher

Measure 57 began life as Senate Bill 1087 and much information about this measure is found through references to SB 1087. Although it is a legislative referral, it was also called "Initiative 408" before it officially became Measure 57. In developing this measure, the Legislature worked with representatives of the following organizations: Oregon Criminal Justice Commission, Oregon District Attorney's Association, Oregon State Sheriffs' Association, Oregon Association Chiefs of

Police, Association of Oregon Counties, Association of Community Corrections Directors, OPERA (the Oregon Prevention, Education & Recovery Association), as well as Kevin Mannix, a chief petitioner for Measure 61, and Crime Victims United. The Oregon Criminal Justice Commission is neutral; the law enforcement associations and counties supported SB 1087; Mannix and CVU oppose it.

Although this measure probably would not have been put on the ballot if Mannix's Initiative 40, which became Measure 61 (see article below), had not been expected to qualify, the House Judiciary Committee of the Legislature did consider many similar provisions for repeat offenders in House Bill 2329 during its regular 2007 session. Because of concerns that some drug-addicted offenders might sue the state if not offered treatment, language in SB 1087, and also a companion bill passed by the 2008 Special Session, HB 3638, clarifies that Measure 57 would not create a legal right to treatment and in fact offenders would have to be found eligible to participate.

The current Sentencing Guidelines allow judges to have discretion in sentencing – the flexibility to tailor sentences on a case-by-case basis to the severity of the crime and history of the offender. Measure 57 preserves the ability of judges to use discretion in imposing sentences for drug and property crimes, especially for first-time offenders and less serious crimes. Measure 57 would eliminate the ability of a judge to give a sentence of probation instead of prison for repeat drug and property crimes, when the guidelines call for prison. Opponents of Measure 57 may claim that it would still allow probation for convicted drug dealers who have had as many as four previous drug convictions. This could be true for dealers who sell small quantities of drugs and who were previously convicted as juveniles.

The current Sentencing Guidelines are shown in a somewhat complex grid at <http://www.oregon.gov/CJC/GuidelinesGrid.pdf>. Readers who go to this site will see a color-coded grid: in the yellow and cream-colored blocks above the bold line on the grid are prison terms in months; in the green, blue and lavender blocks below the bold line are days in custody, which may be part of a probation sentence. [Some of these guidelines are shown below in the SOS charts.]

Evidence that mandatory minimum sentences alone (or imprisoning more offenders for longer periods) are not cost-effective for drug offenders is included in the Oregon Criminal Justice Commission 2007 Report to the Legislature and in the Rand Corporation study, referenced above. The Rand study found that (except for high-level dealers) treatment is substantially more cost-effective than long prison sentences for reducing drug crime. [The *Wall Street Journal* reported recently (9/6/08, A3) that the U.S. Sentencing Commission, whose members are appointed by the President and confirmed by the Senate Judiciary Committee, plans to focus on recommending alternatives to incarceration. This may cause a conflict with the Justice Department. *ed*]

SECRETARY OF STATE'S INFORMATION FOR MEASURE 57

EXPLANATORY STATEMENT

This statement, required by ORS 251.215, was prepared for the Election Division by Senator Floyd Prozanski, Rep. Greg Macpherson, Kevin Mannix, Steve Doell, and James Brown

This measure increases criminal sentences for persons convicted of certain high-quantity or repeat drug crimes, or repeat property crimes. The measure also requires that:

- Certain drug-addicted offenders be provided with appropriate treatment services.

- Certain offenders be punished for failing to successfully complete a drug or alcohol treatment program.
- Grants be provided to counties to assist in funding jail operations, drug courts, treatment services and intensive supervision of drug-addicted offenders on probation, parole or post-prison supervision.

This measure requires that courts shall sentence persons convicted of the following crimes as follows:

Crime	Current Sentencing Guideline Range Depending on Facts of the Case and Criminal History	Measure 57 Sentence
Manufacturing or dealing 500 or more grams of meth or cocaine, or 100 grams or more of heroin or ecstasy	Probation to 45 months	58 to 130 months
Manufacturing or dealing 100 or more grams of meth or cocaine, or 50 grams or more of heroin or ecstasy	Probation to 45 months	34 to 72 months
Dealing meth, cocaine, ecstasy, or heroin to persons under 18. Provides exception if person is less than three years older than minor, unless dealer is a repeat offender.	Probation to 45 months	34 to 72 months
Stealing \$10,000 or more from a victim who is 65 years of age or older	Probation to 30 months	16 to 45 months
Repeat offense of manufacturing or dealing controlled substance other than marijuana	Probation to 45 months	Up to 45 months (Directs Judge not to give probation if prison sentence is called for in sentencing guidelines.)

This measure modified the presumptive sentences imposed upon repeat drug and repeat property offenders as follows:

Crime	Current Sentencing Range	Measure 57 Sentence
Repeat property offender	13 or 19 months if this is offender's second conviction for serious property crimes, or 5th conviction for common property crimes	18 or 24 months if this is offender's second conviction for serious property crimes, or second conviction for common property crimes within 3 years of supervision, 2 months for each additional conviction.
Repeat identity theft with prior convictions for certain crimes	13 months if this is offender's second conviction for serious property crimes, or 5th conviction for common property crimes	24 months if this is offender's second conviction for serious property crimes, or second conviction for common property crimes within 3 years of supervision, 2 months for each additional conviction.
Repeat mail theft with prior convictions for certain crimes	Probation to 12 months	18 months if this is offender's second conviction for serious property crimes, or second conviction for common property crimes within 3 years of supervision, 2 months for each additional conviction.

This measure is presented by the Legislative Assembly as an alternative to Ballot Measure 61 and provides that if both measures receive a majority of "yes" votes, only the measure receiving the greater number of "yes" votes will become law.

ESTIMATE OF FINANCIAL IMPACT by the Secretary of State's Office

The measure will require additional state spending of approximately \$9 million in the first year, \$74 million in the second year, \$79 million in the third year, \$106 million in the fourth year, and more than \$143 million each year after that. The measure does not require additional local government spending.

The state will borrow \$314 million from 2010 to 2017 to build new prison space. The state will repay those amount plus interest of \$203 million over 25 years.

The measure does not affect the amount of funds collected for state government.

EXPLANATORY STATEMENT FOR ESTIMATE OF FINANCIAL IMPACT

by the Secretary of State's Office

The measure increases sentences for specific drug and property crimes, and requires addiction treatment for certain criminals. The measure also requires state grants to counties for jail treatment, and supervision expenses, and for drug court operations.

State impact

The costs of the measure are due to keeping more criminals in prison for longer periods of time. Those costs include: running prisons, providing temporary prison beds, supervising criminals after they are released from prison, and building more prison space. Other costs include: providing foster care for some children whose parents are convicted of the measure's crimes, providing lawyers for defendants who cannot afford legal counsel, defending the state against inmates' lawsuits, and assessing the results of grant-funded addiction treatment.

The measure will cost \$9 million in the first year, and increase to more than \$143 million after the fourth year. These costs include the cost of grants to local government.

The state will borrow \$314 million from 2010 to 2017 to build new prison space. The state will repay those amounts plus interest of \$203 million over 25 years.

Local impact

The amount of grants to local governments cannot be estimated.

The measure does not require additional local government spending.

Implementing the measure

The total cost of the measure could change depending on the length of time to build new prisons, inflation, the cost of drug treatment, and the cost to hire and train new prison staff.

The measure does not identify a funding source. Today the costs of prisons are paid for out of the General Fund, which comes from income taxes. The General Fund is also used to pay for public education, services for vulnerable citizens, public safety, and other programs.