

EFFECTS OF MEASURE 11 ON JUVENILE JUSTICE IN OREGON

Measure 11, as approved by voters in 1994, established mandatory minimum sentences for 16 felonies. The 1995 and 1997 legislatures added more crimes to the list (see Table 1). Measure 11 also required that any youth 15 or older who was charged with a Measure 11 crime would automatically be prosecuted as an adult.

Table 1. Measure 11 Offenses and Minimum Sentences

Offenses	Measure 11 Required Sentences	
Aggravated Murder	30 years-Life	
Murder*	25 years	0 months
Attempt to commit aggravated murder	10	
Conspiracy to commit aggravated murder	10	
Manslaughter I*	10	
Rape I*	8	4
Sodomy I*	8	4
Unlawful Sexual Penetration I*	8	4
Attempt to commit murder	7	6
Conspiracy to commit murder	7	6
Assault I*	7	6
Kidnapping I*	7	6
Robbery I*	7	6
Arson I	7	6
Manslaughter II*	6	3
Rape II*	6	3
Sodomy II*	6	3
Unlawful Sexual Penetration II*	6	3
Sexual Abuse I*	6	3
Assault II*	5	10
Kidnapping II*	5	10
Robbery II*	5	10
Using a Child in a Display of Sexually Explicit Conduct	5	10
Compelling Prostitution	5	10

*=Original Measure 11 Offense

Notes: Aggravated Murder is not included in the statutory list of Measure 11 mandatory sentences. The trial jury decides on the sentence from the options of 30 years, life imprisonment, or death (for adults). Aggravated Murder applies to specific types of murder, such as murder of a police officer or murder for hire.

The definitions for these offenses are in Oregon Revised Statutes Chapter 163 and at ORS 167.017. Oregon Revised Statutes can be found in many libraries and on the internet at www.leg.state.or.us/ors/

Source: Oregon Revised Statutes, 1998 Edition

How many juveniles have been charged with and convicted of Measure 11 offenses?

A statewide tracking system is not yet operational, but counties keep records of juvenile cases. Multnomah County, for example, reported a total youth population (ages 10-17) of 64,293 in 1998. Of those, 167, or 0.26 percent, have been convicted of the 12 most violent Measure 11 offenses. Another 1.37 percent, or 880 juveniles, have been convicted of other violent offenses, many of which are not Measure 11 offenses. The total of violent offenders and Measure 11 violent offenders make up less than 2 percent of all youth in Multnomah County.

Since Measure 11 became law in April 1995, Multnomah County has completed 346 prosecutions of juveniles on Measure 11 offenses. Jackson County reported 65 youths charged with Measure 11 crimes during that period, while Benton County had 31 juvenile Measure 11 cases. Benton County referred a total of 1,795 juvenile cases to the court system since 1995, while Multnomah County referred 24,578 juvenile cases. The percentage of juvenile cases that are Measure 11 cases in the two counties is very similar—1.73 percent for Benton County and 1.4 percent for Multnomah County. Juveniles who have been charged and convicted of Measure 11 offenses in these two counties are an extremely small percentage of both the total youth population and the total youth offender population.

How does the justice system handle juveniles charged with Measure 11 offenses?

Serious crimes are reviewed by the county district attorney's office, which determines the charges to be filed. Any youths charged with Measure 11 offenses are referred automatically to adult court, with the rights to bail and a trial by jury. Juveniles under 16 who are unable to post bail are held in county detention facilities until the court disposition. Those 16 and over can be housed in an adult county jails until court disposition and also can be sent to the Oregon Correctional Intake Center for orientation to the adult system. However, no youth can be housed in an adult prison at this stage of the adjudication process, and juveniles are nearly always kept in OYA facilities rather than adult jails.

Once charges have been brought, a juvenile has several choices. Going to trial and being found guilty of a Measure 11 crime results in the mandatory sentences defined by statute. Most juveniles opt for a plea bargain, where they plead guilty to a lesser or a non-Measure 11 charge. In Multnomah County, of the 346 completed prosecutions for juvenile Measure 11 offenses, 269 were settled by plea bargains, 20 were referred to Juvenile Court, 24 were dismissed, and only 33 went to trial. The same is true in Jackson County, where the majority of juveniles pled to non-Measure 11 charges. In Benton County, 6 of the 31 juvenile Measure 11 cases resulted in adult sentences; 2 were dismissed, 2 were pending, and 21 were sentenced as juveniles.

What happens to juveniles convicted of Measure 11 offenses?

Senate Bill 1, the enabling legislation for Measure 11 passed by the 1995 legislature, also revamped Oregon's juvenile corrections system. The bill created the Oregon Youth Authority

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(OYA) as a independent department to operate juvenile correction facilities, parole supervision, and other programs. SBI also included the expansion of secure custody options. Five new regional facilities have been built and 5 work/study camp facilities are operational (see Table 2). As a result of the expansion of the facilities, OYA correctional capacity has increased from 581 in 1995 to 1238 in 1999.

Northwest Region	
North Coast Youth Correctional Facility	72 beds
Tillamook Youth Accountability Camp	50 beds
Camp Tillamook	25 beds
North Valley Region	
Hillcrest Youth Correctional Facility	260 beds
Maclaren Youth Correctional Facility	460 beds
Multnomah Facility	32 beds
South Valley Region	
Oakcreek Youth Correctional Facility	72 beds
Corvallis House	25 beds
Camp Florence	25 beds
Southern Region	
Rogue Valley Youth Correctional Facility	96 beds
East/Central Region	
Eastern Oregon Youth Correctional Facility	48 beds
Ochoco Youth Correctional Facility	48 beds
Camp Hilgard	25 beds
Youth Accountability Camp opening soon	
Total	1238 beds
Definitions:	
Secure Youth Corrections Facilities: highly secure, intensive accountability and treatment designed to meet the specific needs of youth, while protecting the public. Measure offenders must be housed in these facilities.	
Work/Study Camps: provide a bridge between the secure facilities and community placement to continue treatment, education, and to work on community service projects.	
Youth Accountability Camps: an alternative to longer incarceration with the addition of military drill and physical training as key components.	

Source: Oregon Youth Authority

Juveniles convicted of Measure 11 offenses are placed in the legal custody of the Oregon Department of Corrections (DOC). Every 16-18 year old who is sentenced to DOC is sent to the Oregon Correctional Intake Center in Oregon City. Statute requires that DOC juveniles be transferred to OYA. Inmates under age 16 *must* be housed at OYA. Inmates aged 16 or older *may* be housed at OYA until age 25. Inmates who will complete their sentences before age 25 could serve all their time at OYA. Inmates aged 16 or older can be returned to DOC to complete their sentences if they become a discipline or security concern.

Most juvenile Measure 11 offenders serve their sentences at the OYA facilities at Maclaren and Hillcrest. However, as of August 1999 there were 23 16- and 17-year olds in adult penal institutions. Unlike juvenile convictions, which have no sentences, Measure 11 convictions have specific, mandatory sentences ordered by the Court. Priority on placement in correctional facilities is given to juveniles convicted of Measure

11 offenses and other juveniles who have been sentenced as adults. This could lead to the release of lesser offenders if a shortage of beds occurs.

What are the projected future trends in juvenile justice?

Office of Economic Analysis figures are used by OYA to forecast for the next ten years the "close custody" population (defined as youth housed in secure facilities). The forecasts are based on such issues as projected youth populations, arrest and release rates, types of crimes, and lengths of sentences (see Table 3). Several elements of these OYA forecasts relate to juvenile Measure 11 offenders.

FY	Population	FY	Population
1999	1116	2005	1364
2000	1133	2006	1393
2001	1180	2007	1416
2002	1229	2008	1431
2003	1293*	2009	1442
2004	1336		

*Exceeds current OYA capacity.

Source: Oregon Youth Authority

- * Little growth is forecast in the total population of 10- to 17-year olds in Oregon during the next decade.
- * Arrest rates are expected to climb during the next several years.
- * Lengths of stay at OYA facilities have increased due to mandatory Measure 11 sentences.
- * Close custody facilities cannot house more offenders than their designed capacity.

Nearly half of the 29 percent projected growth in juvenile close custody population over the next ten years is due to Measure 11 and other juveniles sentenced as adults. Even if new intakes do not increase, close custody population will be affected by the longer sentences of juvenile Measure 11 offenders.

On the other hand, the FBI in October 1999 reported a steady decline in violent juvenile crimes in the nation and in Oregon. For example, in Multnomah County, despite increases in the number of 10- to 17-year old youth since 1993, the proportion of this population who were referred to the juvenile justice system has consistently decreased during the same period. OYA's October 1999 close custody forecast states that "arrest rates, especially for serious person crime, have fallen since the mid- 1990s," and OYA has lowered its population figures for some of its future projections.

As stated in Juvenile Crime Trends Report from Multnomah County, "It is always important to consider the potential impact of various law enforcement policy and ordinance changes on any criminal offense rate." Increased or decreased

arrests for specific types of crime can be the result of specific arrest strategies (such as drug busts) or redefining of laws rather than a change in criminal behavior.

What are the opinions of proponents and opponents about the effects of Measure 11 on juvenile justice in Oregon?

Opinions vary on all aspects of the effects of Measure 11, from initial criminal charges through post-sentence implementations. Benton County District Attorney Scott Heiser states that as a prosecutor he "recognizes that Measure 11 gives us amazing authority. With it comes corresponding responsibility and we exercise discretion in charging and negotiating judiciously." Amy Holmes Hehn, who is in charge of juvenile cases in the Multnomah County District Attorney's Office, describes the "careful attention" that is given to juvenile cases through a process of review by a committee of prosecutors to decide on their proper disposition. Benton County Judge Robert S. Gardner believes that "the District Attorney in Benton is responsible about negotiating." Deschutes County Circuit Court Judge Michael Sullivan agrees that "the District Attorneys in the state have used this measure responsibly. There may be some instances where there has been over-zealous prosecution, but I've not witnessed it in this area."

On the other hand, Michael Greenlick, a defense attorney in Multnomah County, feels that the preliminary reviews in the district attorney's office do not meet the goals of the American legal system. "Moving the procedure from the court to the prosecutor's office is not right or fair and can result in severe injustices," he concludes. Richard Wehmeyer, a defense attorney in Benton County, asks "why delegate judicial authority to prosecutors?" He feels that district attorneys "have a big hammer and can stack offenses" by charging Measure 11 offenses whenever they can interpret the facts as Measure 11. Benton County Judge Henry R. Dickerson is concerned about charges that barely meet the criteria of Measure 11 crimes. Judge Gardner says that overcharging puts pressure on the defendant and gives the district attorney great power in negotiations. Judge Sullivan notes that Measure 11's mandatory sentences "are so severe that defendants with an arguable defense will almost always take a negotiated plea and forego the trial."

Most agree that Measure 11 has resulted in fewer trials than initially expected. Alan Young of the Jackson County Juvenile Department reports that the greater portion of juvenile cases were plea-bargained so that juveniles were not sentenced under Measure 11. Judge Gardner agrees that very few Measure 11 cases go to trial and feels that negotiated dispositions are usually fair. District attorney Heiser explains that his office negotiates out of Measure 11 for first-time offenders for felony charges with a single victim and single incident. Judge Dickerson believes that Measure 11 encourages negotiation and that "society is not hurt by these negotiations."

State Representative Jo Ann Bowman (Portland) feels that "there is a lot of pressure on the youth and parents to accept a

plea agreement to avoid the mandatory [Measure 11] sentence, whether or not the individual is guilty. Even defense attorneys are pressuring people to plead guilty if the district attorney offers a deal" rather than risking a guilty verdict at trial to a more severe charge. Defense attorney Wehmeyer agrees that often a juvenile must choose between a trial with the potential of a mandatory Measure 11 sentence or a plea offer for a non-mandated offense that may be higher than justified but eliminates the risk of trial.

Critics feel that Measure 11 trials are an unacceptable risk because mandatory sentences eliminate any possibility of judicial discretion in sentencing. Rep. Bowman believes that a judge should have some freedom in setting the sentence for the person found guilty, after hearing all the facts in the case and the background of the defendant. Wehmeyer also believes that juveniles deserve some consideration from the judge. Judge Gardner feels that Measure 11 is too harsh in some cases. Some Assault II and Robbery II charges are questionable and sex offenses are serious because of lifetime registry requirements, but judges have no choice but to impose the mandatory sentences.

Judge Gardner points out, however, that judges have discretion in other aspects of Measure 11 cases. The 1997 legislature passed Senate Bill 1049, which gave judges discretion at sentencing for substantial and compelling reasons in certain limited situations for some offenders charged with Robbery II, Assault II, or Kidnapping II. Judges also have discretion in deciding whether multiple sentences will be served consecutively or concurrently.

Once a sentence has been imposed, the convicted juvenile is in the legal custody of the Department of Corrections. Measure 11 proponents feel that the longer, mandatory sentences result in protection for the public. Norm Frink, Chief Criminal Deputy in the Multnomah County District Attorney's Office, states that most juveniles serving Measure 11 sentences are repeat offenders. State representative Kevin Mannix (Salem), who sponsored Measure 11, believes that "violent criminals are not going to be 'reformed' through a probation system nor through a few months in a juvenile facility." He points out that "violent criminals are not able to prey on innocent citizens" during their years of incarceration. Mannix also notes that juveniles remain under OYA jurisdiction until the age of 25, usually in OYA facilities rather than in adult prisons.

Judge Sullivan notes opponents' concerns about lengthy sentences for juveniles. There are fewer services provided to those in the adult system. With no possibility of early release, juveniles have no incentives to rehabilitate themselves. Defense attorney Wehmeyer also mentions that prisoners cannot earn good time for earlier release and have no motivation to behave. Jackson County officials are concerned that Measure 11 focuses on punishment instead of rehabilitation. Rep. Bowman believes that funds would be better spent on

treatment and counseling than on mandatory prison terms.

District attorney Hehn believes that the certainty of mandatory prison terms is a "real deterrent" to criminal behavior by juveniles. She feels that juveniles did not take the previous juvenile justice system seriously. District attorney Heiser also feels that Measure 11 has been a deterrent for younger teens and a reflection that the public was "fed up with coddling teenagers."

Rep. Bowman is concerned that Measure 11 discriminates against racial minorities and the poor, who cannot afford high-priced lawyers. She points to statistics that show that although African-Americans comprise only 2 percent of the states's juvenile population, they are 16 percent of the juveniles serving time under Measure 11. Multnomah County's Juvenile Crime Trends Report of March 1999 confirms that "despite being approximately 10% of the total youth population (10-17 yrs.) in Multnomah County, African-Americans are over-represented in the juvenile justice system at 21% to 23% of the offender population."

Observations

The percentages of juvenile Measure 11 offenders compared to the total youth population and the total criminal population are so small as to be almost statistically insignificant.

However, Measure 11's impact on the juvenile justice system facilities has been immediate and significant. If forecasts are accurate, current facilities will be inadequate to house future juvenile offenders.

Proponents claim that the decrease in juvenile crime is a direct result of Measure 11. They also believe that Measure 11 protects the public from violent offenders and is a deterrent to younger juveniles. Opponents point out that juvenile crime has been decreasing both nationally and in Oregon since before Measure 11 was implemented. They believe that it is harsh and inflexible and that it discriminates against racial minorities and the poor.

Measure 11 has been in effect for only four years. It is difficult to determine its total, long-term effects on public safety and justice in Oregon. It remains a highly charged and emotional issue.

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Interviews

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