



# Monitoring Mandatory Minimums: Application of Measure 11

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# Oregon's Measure 11

*"It is time to put 'justice' back into the criminal justice system"*

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- ❑ Mandatory sentences for 16 person crimes (applies at age 15)
  - ❑ Passed by the voters in 1994
  - ❑ Mandatory sentences range from 70 months for Robbery II to 300 months for murder
  - ❑ Legislature added six more crimes
  - ❑ opt out for some 2nd degree offenses under limited circumstances
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# The Function of the Commission

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- Monitor adherence to principles
  - Judges Applying Guidelines
    - Transparency
    - Proportionality
    - Predictability
    - Eliminate Disparity
    - Connect sentencing to prison capacity
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# Oregon's Sentencing Structure

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□ Sentencing Guidelines, 1989

□ Mandatory, Appellate review

- Offender's criminal history

- Severity of Offense

- "substantial and compelling" departure

Superseded by mandatory minimums  
and other sentencing enhancements

- Measure 11, 1995

- Repeat Property Offender, 1997

- Measure 57, 2009

- Measure 73, 2010

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# Oregon Sentencing

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## □ Pre-Guidelines

- Judge and Parole Board control sentence
- Release Matrix implemented
- 1975 to 1987 prison population doubled
- 1980 federal decree to reduce (vacated)
- 3 Failed citizen initiatives to borrow

## □ 1989 “capacity based” guidelines

- Legislative control

## □ 1994 Citizen Control

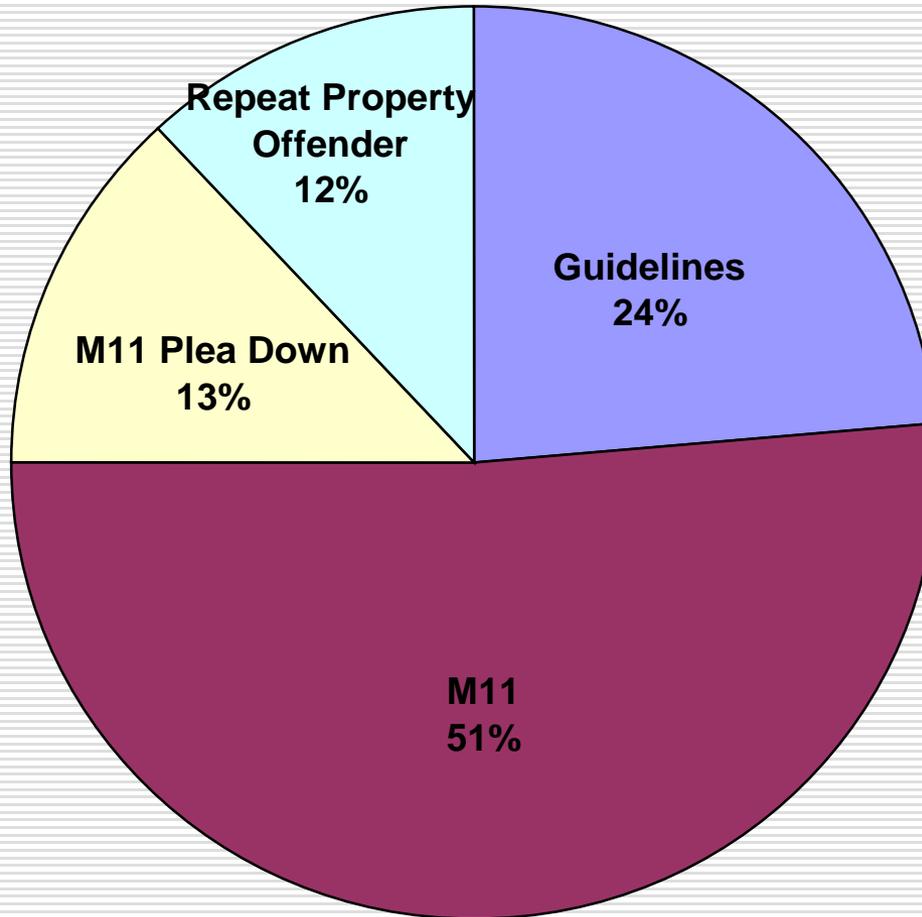
- DA control through application
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# Most Prison Intakes are Impacted by Voter Approved Initiatives

| Top 20 Prison Intakes, 2010 |     |         |                      |
|-----------------------------|-----|---------|----------------------|
| Crime                       | N   | Cumm. % | Sentencing Structure |
| BURG I                      | 401 | 8%      | Guidelines/M57       |
| THEFT I                     | 248 | 15%     | M57                  |
| DELIV METH                  | 220 | 20%     | Guidelines/M57       |
| ID THEFT                    | 219 | 26%     | M57                  |
| UN USE VEH                  | 191 | 30%     | M57                  |
| ROBB II                     | 153 | 34%     | M11/Guidelines       |
| SEXAB I                     | 137 | 37%     | M11                  |
| DUII-FELON                  | 129 | 41%     | M73/Guidelines       |
| ASSA IV CF                  | 129 | 44%     | Guidelines           |
| ASSA III                    | 128 | 47%     | Guidelines/M11 Plea  |
| ASSA II                     | 126 | 50%     | M11/Guidelines       |
| FELON WEAP                  | 119 | 52%     | Guidelines           |
| BURG II                     | 98  | 54%     | M57                  |
| ASSA II AT                  | 97  | 57%     | Guidelines/M11 Plea  |
| DEL HEROIN                  | 88  | 58%     | Guidelines/M57       |
| SEXAB II                    | 87  | 60%     | Guidelines/M11 Plea  |
| ROBB I                      | 84  | 62%     | M11                  |
| SEXAB I AT                  | 83  | 64%     | Guidelines/M11 Plea  |
| THEFT AGGR                  | 79  | 65%     | M57                  |
| WEAP USE                    | 77  | 67%     | Guidelines           |

## Prison Months for all Intakes, 2009

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# How is Measure 11 Applied?

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- ❑ Impacts more than 50% of prison months
  - ❑ M11 conviction implies mandatory minimum sentence ... *in most cases*
  - ❑ District Attorneys exercise discretion
    - Charging decisions (ORS 132.390)
    - Pursuing M11 convictions
  - ❑ Data show variation across
    - Counties
    - Crimes
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# M11 Chief Petitioner's argument

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- "The mandatory minimum sentences in this measure for the violent crimes listed in this measure are the minimum required for justice for society and the victim."
  - Our report- 70% of cases- Either that is not true, the indicted did not do the crime, or justice for society and the victim was not done.
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# Chief Petitioner's Outcomes

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- Incapacitation
  - Deterrence
  - Predictability of Sentence
  - Comparability of Sentence
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# Incapacitation

“The criminal cannot commit crimes while in prison”

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- ❑ M11 fulfilled this goal but not at level originally estimated
  - ❑ Originally estimated over 6,000 beds would need to be added to Oregon's prison system
  - ❑ Actually estimated to have added around 3,000 prison beds
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# Deterrence

“career criminals will learn that crime does not pay in Oregon”

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- ❑ Our research did not seek to answer this question
  - ❑ However we found that most offenders were not “career criminals”
  - ❑ Only 30% had a previous felony conviction in Oregon and only 15% had previously been incarcerated in Oregon
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# Predictability of Sentences

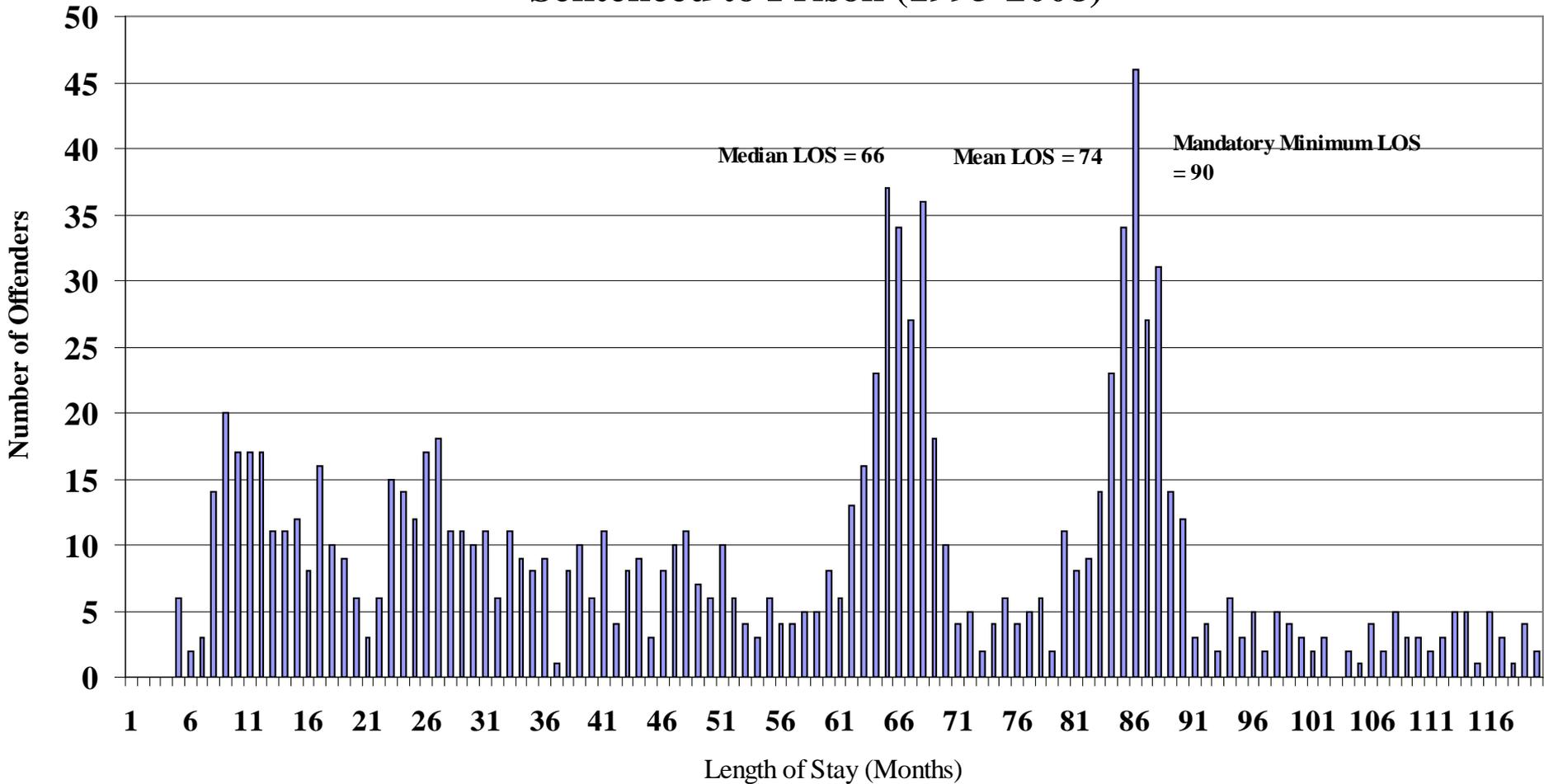
“everyone will know the exact minimum sentence which must be served”

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- ❑ The measure did provide predictability of those convicted but not for those indicted
  - ❑ Only 42% of offenders indicted for a M11 crime were convicted of a M11 crime
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# Graph 1

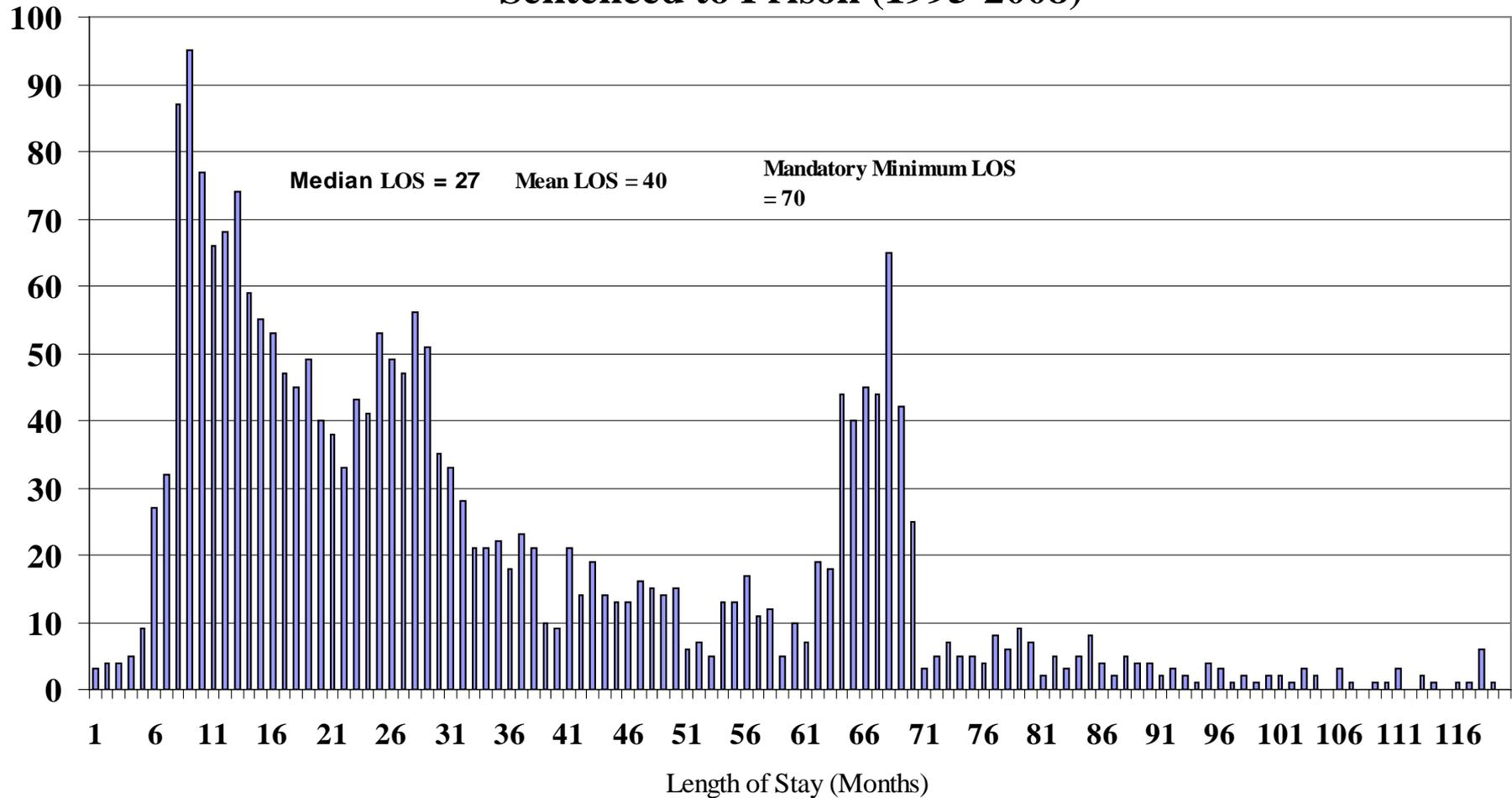
## Distribution of Length of Stay for Assault I Indicted Offenders Sentenced to Prison (1995-2008)



Note: 79% of those charged with Assault I went to Prison. The graph above only shows offenders with length of stay less than or equal to 120 months. There were 146 (12%) that had sentences longer than 120 months.

## Graph 2

### Distribution of Length of Stay for Assault II Indicted Offenders Sentenced to Prison (1995-2008)



Note: 44% of those charged with Assault II went to Prison. The graph above only shows offenders with length of stay less than or equal to 120 months. There were 80 (3%) that had sentences longer than 120 months.

# M11 Indictment

## Length of Stay- Trial/ No Trial

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**Length of Stay in Months by Trial**

| Length of Stay in Months | No Trial    |      |        | Trial       |       |        |
|--------------------------|-------------|------|--------|-------------|-------|--------|
|                          | % to Prison | Mean | Median | % to Prison | Mean  | Median |
|                          | 58%         | 62.8 | 47.5   | 73%         | 106.7 | 76.0   |

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# Comparable Sentences

“All judges in Oregon, no matter how soft, must impose the minimum sentence when a jury has found the criminal guilty”

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- ❑ Only about 15% of these cases are heard by a jury
  - ❑ In the other 85% there is broad disparity in the sentences arrived at through the plea negotiations
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# Conviction of the Most Serious Charge Varies by County

(The 5 largest counties are listed)

**M11 Charge and Conviction by County, 2008**

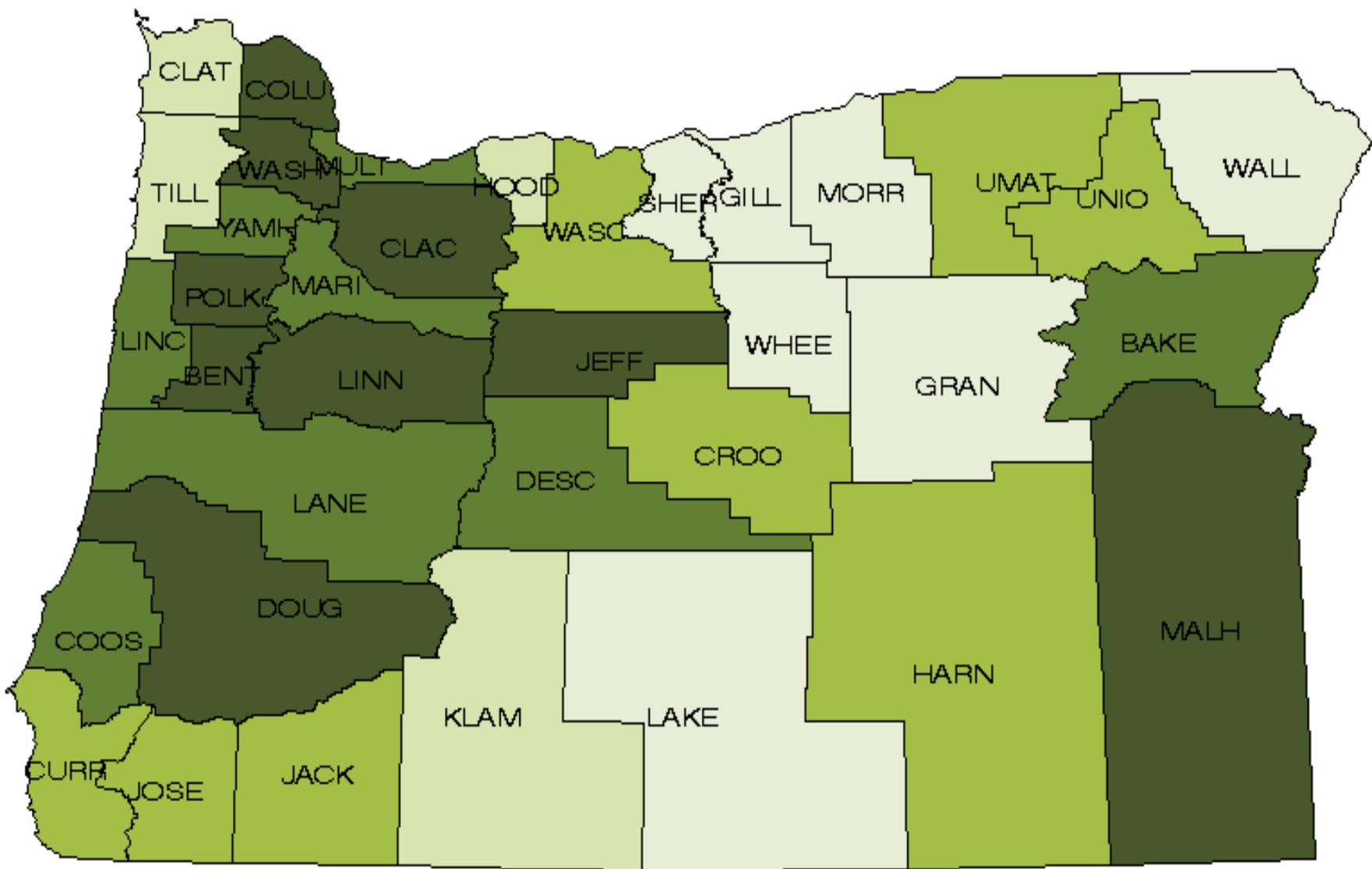
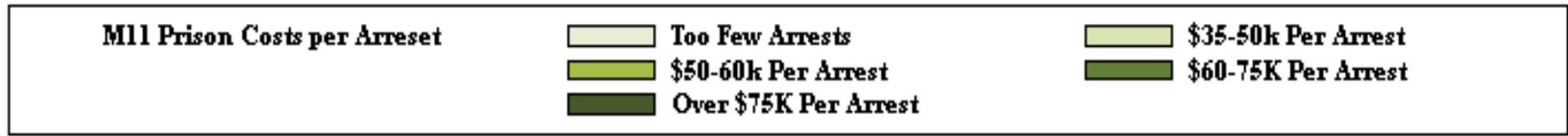
| County       | Most Serious |     | Other M11 |     | Other |     | No Conviction |     | All  |
|--------------|--------------|-----|-----------|-----|-------|-----|---------------|-----|------|
|              | N            | %   | N         | %   | N     | %   | N             | %   | N    |
| <b>MULT</b>  | 99           | 21% | 69        | 15% | 263   | 56% | 42            | 9%  | 473  |
| <b>WASH</b>  | 110          | 41% | 39        | 15% | 109   | 41% | 8             | 3%  | 266  |
| <b>MARI</b>  | 120          | 48% | 37        | 15% | 70    | 28% | 25            | 10% | 252  |
| <b>LANE</b>  | 57           | 38% | 23        | 15% | 64    | 42% | 8             | 5%  | 152  |
| <b>CLAC</b>  | 46           | 34% | 22        | 16% | 58    | 43% | 9             | 7%  | 135  |
| <b>State</b> | 662          | 29% | 302       | 13% | 1105  | 49% | 203           | 9%  | 2272 |

# Dispositions Also Vary by County

(The 5 largest counties are listed)

| <b>M11 Sentences by County, 2008</b> |               |          |                  |          |              |          |             |          |            |
|--------------------------------------|---------------|----------|------------------|----------|--------------|----------|-------------|----------|------------|
| <b>County</b>                        | <b>Prison</b> |          | <b>Probation</b> |          | <b>Other</b> |          | <b>None</b> |          | <b>All</b> |
|                                      | <b>N</b>      | <b>%</b> | <b>N</b>         | <b>%</b> | <b>N</b>     | <b>%</b> | <b>N</b>    | <b>%</b> | <b>N</b>   |
| <b>MULT</b>                          | 329           | 70%      | 93               | 20%      | 9            | 2%       | 42          | 9%       | 473        |
| <b>WASH</b>                          | 192           | 72%      | 63               | 24%      | 1            | 0%       | 10          | 4%       | 266        |
| <b>MARI</b>                          | 155           | 62%      | 64               | 25%      | 6            | 2%       | 27          | 11%      | 252        |
| <b>LANE</b>                          | 116           | 76%      | 25               | 16%      | 3            | 2%       | 8           | 5%       | 152        |
| <b>CLAC</b>                          | 105           | 78%      | 20               | 15%      | 1            | 1%       | 9           | 7%       | 135        |
| <b>5 County Total</b>                | 897           | 70%      | 265              | 21%      | 20           | 2%       | 96          | 8%       | 1278       |
| <b>Rest of State</b>                 | 507           | 51%      | 333              | 34%      | 42           | 4%       | 112         | 11%      | 994        |
| <b>State</b>                         | 1404          | 62%      | 598              | 26%      | 62           | 3%       | 208         | 9%       | 2272       |

# M11 Prison Costs per M11 Arrest, 2004-2008



# Factors that influence the sentence and disposition of M11 indicted offenders

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- ❑ Offenders charged in an urban county are twice as likely to go to prison
  - ❑ Juveniles and females are 20% less likely to be convicted of a M11 offense
  - ❑ Blacks are 15% less likely than whites to be sentenced to prison and Hispanics are 40% more likely than whites to be sentenced to prison
  - ❑ Offenders who go to trial are 4 times more likely to be convicted of a M11 offense
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## Factors that influence the sentence and disposition of M11 indicted offenders cont.

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- ❑ Offenders with a private attorney are 25% less likely to be convicted of a M11
  - ❑ Offenders with 3 or more prior person felonies are twice as likely to be convicted of a M11
  - ❑ Marion County- If they indict for M11, they convict- 6X more likely to be convicted than in the "rural counties"
  - ❑ Multnomah County- If they indict for M11, will plea down but still go to prison.
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# Take Away

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- ❑ Limiting discretion of “soft judges” stated intent of the M11
  - ❑ Unstated consequence was that when judicial discretion was limited, shifted the discretion to prosecutor
  - ❑ Still a case by case decision- no guidance, no check and balance
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# Take Away

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- ❑ Should a party-opponent, rather than judge, decide what is appropriate in individual case?
  - ❑ Checks and balances of 3 branches-disrupted
  - ❑ Legislature-Prison Capacity
  - ❑ Judge-fair trial, not fair sentence
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# For More Information Contact...

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